Federal Register

6–7–05 Tuesday

Vol. 70 No. 108 June 7, 2005

Pages 32977–33334

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

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

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

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

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

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

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

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

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

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

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

## SUBSCRIPTIONS AND COPIES

**PUBLIC**

**Subscriptions:**

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

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

**Single copies/back copies:**

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

**FEDERAL AGENCIES**

**Subscriptions:**

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

**FEDERAL REGISTER WORKSHOP**

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

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

WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, July 19, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

# Contents

**Federal Register**

Vol. 70, No. 108

Tuesday, June 7, 2005

**Agriculture Department**
*See* Animal and Plant Health Inspection Service
*See* Commodity Credit Corporation
*See* Cooperative State Research, Education, and Extension Service
*See* Natural Resources Conservation Service

**Animal and Plant Health Inspection Service**
**RULES**
Plant protection and quarantine:
Phytosanitary treatments, 33264–33326

**Centers for Disease Control and Prevention**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Breast and prostate cancer data quality and patterns of care study, 33146–33154
Incidence, Natural History, and Quality of Life of Diabetes in Youth, 33154–33165
Meetings:
Los Alamos Historical Document Retrieval and Assessment Project Study Team, 33165
Public safety and health protection:
Special Exposure Cohort at Iowa Army Ammunition Plant; employee class designation, 33165

**Children and Families Administration**
**NOTICES**
Grants and cooperative agreements; availability, etc.:
Environmental impact mitigation on Indian lands, 33165–33177

**Coast Guard**
**PROPOSED RULES**
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Oahu, Maui, Hawaii, and Kauai, HI, 33047–33053

**Commerce Department**
*See* International Trade Administration
*See* National Oceanic and Atmospheric Administration

**Commodity Credit Corporation**
**PROPOSED RULES**
Loan and purchase programs:
Collection of State commodity assessments, 33043–33045

**Cooperative State Research, Education, and Extension Service**

**NOTICES**
Reports and guidance documents; availability, etc.:
Agricultural research and extension formula funds; State plans of work; guidelines, 33055–33062

**Customs and Border Protection Bureau**
**PROPOSED RULES**
Foreign trade zones:
Expanded weekly entry procedure; revisions; withdrawn, 33046

**Defense Base Closure and Realignment Commission**
**NOTICES**
Meetings, 33126–33130

**Defense Department**
**NOTICES**
Arms sales notification, transmittal letter, etc., 33130–33134
Meetings:
Defense Education Benefits Board of Actuaries, 33134
Defense Intelligence Agency Advisory Board, 33134

**Drug Enforcement Administration**
**NOTICES**
*Applications, hearings, determinations, etc.:*
Bergman, Stuart A., M.D., 33193–33194
Canon, Robert M., M.D., 33194
Graham, Carlin Paul, Jr., M.D., 33194–33195
Joy's Ideas, 33195–33199
Kobrin, Kennard, M.D., 33199–33200
Nearing, Scott H., D.D.S., 33200–33203
Prakasam, Felix K., M.D., 33203–33206
Rodriguez, Roger A., M.D., 33206–33207
Smith, Robert A., M.D., 33207–33209

**Education Department**
**NOTICES**
Postsecondary education:
Federal student aid programs—
Applications, reports, etc.; award year deadline dates, 33134–33140

**Energy Department**
*See* Federal Energy Regulatory Commission

**Environmental Protection Agency**
**RULES**
Air pollutants, hazardous; national emission standards:
Electric utility steam generating units and removal of coal- and oil-fired electric utility steam generating units from Section 112(c) list; correction, 33000–33002

**Executive Office of the President**
*See* Presidential Documents

**Farm Credit Administration**
**NOTICES**
Meetings; Sunshine Act, 33144

**Federal Aviation Administration**
**RULES**
Airworthiness directives:
BAE Systems (Operations) Ltd., 32982–32984
Boeing, 32984–32986, 32996–32998
Bombardier, 32986–32988, 32998–33000
Extra Flugzeugproduktions und Vertriebs GmbH, 32990–32992
Grob-Werke, 32988–32990
Precise Flight, Inc., 32992–32996
**PROPOSED RULES**
Airworthiness directives:
McDonnell Douglas, 33045

**Federal Emergency Management Agency**
**RULES**
Flood elevation determinations:
Various States, 33002–33015

**Federal Energy Regulatory Commission**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33140–33142
Electric rate and corporate regulation filings, 33142–33144

**Federal Reserve System**
**NOTICES**
Banks and bank holding companies:
Formations, acquisitions, and mergers, 33144–33145

**Fish and Wildlife Service**
**RULES**
Endangered and threatened species:
Critical habitat designations—
Munz's onion, 33015–33033

**Food and Drug Administration**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33177–33182
Reports and guidance documents; availability, etc.:
Bar Code Labor Requirements-Questions and Answers; industry guidance, 33182–33183

**General Services Administration**
**NOTICES**
Environmental statements; notice of intent:
Washington, D.C.; St. Elizabeth's West Campus redevelopment, 33145–33146

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Children and Families Administration
*See* Food and Drug Administration
*See* Health Resources and Services Administration
*See* National Institutes of Health

**Health Resources and Services Administration**
**PROPOSED RULES**
Grant appeal process; simplification, 33053–33054

**Homeland Security Department**
*See* Coast Guard
*See* Customs and Border Protection Bureau
*See* Federal Emergency Management Agency
*See* Transportation Security Administration

**Housing and Urban Development Department**
**NOTICES**
Agency information collection activities; proposals, submissions, and approvals, 33188–33189

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

**Internal Revenue Service**
**NOTICES**
Meetings:
Taxpayer Advocacy Panels, 33256–33257

**International Trade Administration**
**NOTICES**
Antidumping:
Softwood lumber products from—
Canada, 33063–33082
Stainless steel plate in coils from—
Taiwan, 33083–33084
Welded carbon steel pipe and tube from—
Turkey, 33084–33088
Countervailing duties:
Softwood lumber products from—
Canada, 33088–33116

**International Trade Commission**
**NOTICES**
Import investigations:
Pet food treats, 33192–33193

**Justice Department**
*See* Drug Enforcement Administration

**Labor Department**
**NOTICES**
Organization, functions, and authority delegations:
Ombudsman for Energy Employees Occupational Illness Compensation Program Act, 33328–33329

**Land Management Bureau**
**NOTICES**
Alaska Native claims selection:
Golovin Native Corp., 33189
Realty actions; sales, leases, etc.:
Alaska, 33189–33190
Colorado, 33190

**National Institutes of Health**
**NOTICES**
Inventions, Government-owned; availability for licensing, 33183–33185
Meetings:
National Heart, Lung, and Blood Institute, 33185
National Institute of Allergy and Infectious Diseases, 33186
National Institute of Dental and Craniofacial Research, 33185–33186
National Institute of Neurological Disorders and Stroke, 33185
National Library of Medicine, 33186–33187
Scientific Review Center, 33187–33188

**National Oceanic and Atmospheric Administration**
**RULES**
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic bluefin tuna, 33033–33042
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico grouper, 33033
Northeastern United States fisheries—
Summer flounder, 33042
**NOTICES**
Endangered and threatened species:
Findings on petitions, etc.—
Pacific herring; Cherry Point stock, 33116–33122
Marine mammals:
Incidental taking; authorization letters, etc.—
Eglin Air Force Base, FL; Naval Explosive Ordnance Disposal School (NEODS) Training Operations; cetaceans, 33122–33126

**National Park Service**
NOTICES
National Register of Historic Places:
Pending nominations, 33190–33191

**Natural Resources Conservation Service**
NOTICES
Environmental statements; notice of intent:
South Kona Watershed, HI, 33062–33063

**Nuclear Regulatory Commission**
RULES
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list, 32977–32982
NOTICES
Environmental statements; availability, etc.:
PPD, Inc., 33209–33210
Meetings; Sunshine Act, 33210
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 33210–33225

**Presidential Documents**
PROCLAMATIONS
Special observances:
National Child's Day (Proc. 7909), 33331–33334

**Securities and Exchange Commission**
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 33226–33228
Chicago Board Options Exchange, Inc., 33228–33230
Chicago Stock Exchange, Inc., 33230–33232
International Securities Exchange, Inc., 33232–33233
National Association of Securities Dealers, Inc., 33234–33238
National Stock Exchange, 33238–33243
Pacific Exchange, Inc., 33244–33250
Philadelphia Stock Exchange, Inc., 33250–33252
*Applications, hearings, determinations, etc.:*
Exelon Corp., 33225–33226

**Small Business Administration**
NOTICES
Meetings:
District and regional advisory councils—Wisconsin, 33252
Regulatory Fairness Boards—Region III; hearing, 33252–33253

**State Department**
NOTICES
Committees; establishment, renewal, termination, etc.:
Enterprise for the Americas Board, 33253
Meetings:
International Telecommunication Advisory Committee, 33253
Shipping Coordinating Committee, 33253

**Surface Mining Reclamation and Enforcement Office**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33191–33192

**Transportation Department**
*See* Federal Aviation Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 33253–33254
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 33254

**Transportation Security Administration**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33188

**Treasury Department**
*See* Internal Revenue Service
*See* United States Mint
PROPOSED RULES
Foreign trade zones:
Expanded weekly entry procedure; revisions; withdrawn, 33046
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33254–33256

**United States Mint**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33257

**Veterans Affairs Department**
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33257–33261

---

**Separate Parts In This Issue**

**Part II**
Agriculture Department, Animal and Plant Health Inspection Service, 33264–33326

**Part III**
Labor Department, 33328–33329

**Part IV**
Presidential Documents, 33331–33334

---

**Reader Aids**

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

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

## CFR PARTS AFFECTED IN THIS ISSUE

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

**3 CFR**
**Proclamations:**
7909 ..... 33333

**7 CFR**
300 ..... 33264
301 ..... 33264
305 ..... 33264
318 ..... 33264
319 ..... 33264
**Proposed Rules:**
1405 ..... 33043

**10 CFR**
72 ..... 32977

**14 CFR**
39 (8 documents) ..... 32982, 32984, 32986, 32988, 32990, 32992, 32996, 32998
**Proposed Rules:**
39 ..... 33045

**19 CFR**
**Proposed Rules:**
146 ..... 33046

**33 CFR**
**Proposed Rules:**
165 ..... 33047

**40 CFR**
63 ..... 33000

**42 CFR**
**Proposed Rules:**
50 ..... 33053

**44 CFR**
65 ..... 33002

**50 CFR**
17 ..... 33015
622 ..... 33033
635 (2 documents) ..... 33033, 33039
648 ..... 33042

# Rules and Regulations

Federal Register
Vol. 70, No. 108
Tuesday, June 7, 2005

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 72

**RIN 3150–AH64**

### List of Approved Spent Fuel Storage Casks: HI–STORM 100 Revision

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to revise the Holtec International HI–STORM 100 cask system listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 2 to Certificate of Compliance (CoC) Number 1014. Amendment No. 2 modifies the cask design to include changes to materials used in construction, changes to the types of fuel that can be loaded, changes to shielding and confinement methodologies and assumptions, revisions to various temperature limits, changes in allowable fuel enrichments, and other changes to reflect current NRC staff guidance and use of industry codes, under a general license.

**DATES:** *Effective Date:* This final rule is effective June 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear reactor power sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule in 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72 entitled, ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of dry storage cask designs. The NRC subsequently issued a final rule on May 1, 2000 (65 FR 25241), that approved the Holtec International HI–STORM 100 cask design and added it to the list of NRC-approved cask designs in § 72.214 as CoC No. 1014.

### Discussion

On March 4, 2002, and as supplemented on October 31, 2002; August 6 and November 14, 2003; February 20, April 23, July 22, August 13, October 14, and December 3, 2004, the certificate holder, Holtec International, submitted an application to the NRC to amend CoC No. 1014 to modify the cask design to include changes to materials used in construction, changes to the types of fuel that can be loaded, changes to shielding and confinement methodologies and assumptions, revisions to various temperature limits, changes in allowable fuel enrichments, and other changes to reflect current staff guidance and use of industry codes, under a general license. The specific changes requested in Amendment No. 2 to CoC No. 1014 are listed in the Safety Evaluation Report (SER). No other changes to the HI–STORM–100 cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there continues to be reasonable assurance that public health and safety and the environment will be adequately protected.

This rule revises the HI–STORM 100 cask design listing in § 72.214 by adding Amendment No. 2 to CoC No. 1014. The amendment consists of changes to the Technical Specifications (TS) as described above. The particular TS which are changed are identified in the NRC staff's SER for Amendment No. 2.

The NRC published a direct final rule (70 FR 9504; February 28, 2005) and the companion proposed rule (70 FR 9550) in the **Federal Register** to revise the Holtec International HI–STORM 100 cask system listing in 10 CFR 72.214 to include Amendment No. 2 to the CoC. The comment period ended on March 30, 2005. One comment letter was received on the proposed rule. The comments were considered to be significant and adverse and warranted withdrawal of the direct final rule. A notice of withdrawal was published in the **Federal Register** on May 12, 2005; 70 FR 24936. Additionally, the NRC staff amended the TS and the SER to clarify the leak rate test requirement, as discussed in the response to Comment 4.

The NRC finds that the amended HI–STORM 100 cask system, as designed and when fabricated and used in accordance with the conditions specified in its CoC, meets the requirements of part 72. Thus, use of the amended Holtec International HI–STORM 100 cask system, as approved by the NRC, will provide adequate protection of public health and safety and the environment. With this final rule, the NRC is approving the use of the Holtec International HI–STORM 100 cask system under the general license in 10 CFR part 72, subpart K, by holders of power reactor operating licenses under 10 CFR part 50. Simultaneously, the NRC is issuing a final SER and CoC that will be effective on June 7, 2005. Single copies of the CoC and SER are available for public inspection and/or copying for a fee at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Copies of the public comments are available for review in the

NRC Public Document Room, 11555 Rockville Pike, Rockville, MD.

**Summary of Public Comments on the Proposed Rule**

The NRC received one comment letter on the proposed rule from the New England Coalition. A copy of the comment letter is available for review in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. As stated in the proposed rule (70 FR 9550; February 28, 2005), the NRC considered this amendment to be a noncontroversial and routine action. Therefore, the NRC published a direct final rule (70 FR 9504; February 28, 2005) concurrent with the proposed rule (70 FR 9550; February 28, 2005). The NRC indicated that if it received a ''significant adverse comment'' on the proposed rule, the NRC would publish a document withdrawing the direct final rule and subsequently publish a final rule that addressed comments made on the proposed rule. The NRC believes some of the issues raised by the commenter were ''significant adverse comments.'' Therefore, the NRC published a notice withdrawing the direct final rule (70 FR 24936; May 12, 2005). This subsequent final rule addresses the issues raised by the commenter that were within the scope of the proposed rule.

*Comments on Amendment 2 to the Holtec International HI–STORM 100 Cask System*

The commenter provided specific comments on the draft CoC, the NRC staff's preliminary SER, the TS, and the applicant's Topical Safety Analysis Report. As a result of public comments, both TS 3.1.1 and SER section 8.4 were amended to clarify the leak rate test requirement. Other sections of the SER were changed to conform with the clarification of SER section 8.4. A review of the comments and the NRC staff's responses follows:

*Comment 1:* The commenter stated that most changes in the CoC amendment ''appear to diminish engineering conservation and increase impact or risk.'' The commenter noted that ''while the changes appear to be within the bounds of regulation, it is not apparent that NRC or the CoC holder have demonstrated that diminished engineering conservation and increased impact or risk are offset by gains and benefits elsewhere.'' The commenter provided as examples of changes which diminish engineering conservation ''incorporating the storage of high burnup fuel and raising maximum permissible fuel cladding temperatures per Proposed Change Number 15a in LAR 1014 to incorporate a permissible spent fuel cladding temperature limit of 4000 °C.''

*Response:* Amendments to a CoC are reviewed under the same criteria as are used for the approval of the original CoC (10 CFR 72.246). The applicant for an amendment must show that any changes meet all applicable requirements to store spent fuel safely in the cask. However, the applicant is not required to show that a change, which might be viewed as reducing engineering conservatism, is offset by some increased gain or benefit elsewhere as long as the change meets all regulatory requirements for safety. The commenter acknowledges that all the changes appear to be within the bounds of regulations. The NRC staff specifically examined the effects of incorporating the storage of high burnup fuel and incorporating a permissible single spent fuel cladding temperature limit of 400 °C. It should be noted that the commenter made an error in stating that Amendment No. 2 raised ''permissible spent fuel cladding temperature limit'' to 4000 °C. The staff has reviewed the SER of Amendment No. 2 and found 5 references to the fuel temperature of 400 °C on pages 4–2, 4–6, 8–1(2), and 8–2. There was no mention of a 4000 °C temperature in the SER. The 570 °C temperature was mentioned a number of times. Consequently, the potential for a zirconium cladding exothermic reaction would not be an issue at 400 °C.

*Comment 2:* The commenter referred to an NRC staff statement that no review of the existing CoC was repeated. The commenter believes this may be an error if it also means that no review was undertaken to ascertain if the changes affect conditions, assumptions, and other inputs in determining compliance in the original application.

*Response:* The NRC staff did not state that no review of the existing CoC was repeated. The SER states that the staff's evaluation focused mainly on modifications requested in the amendment and did not reassess previously approved portions of the CoC, TS, and the Final Safety Analysis Report (FSAR), or those areas of the FSAR modified by Holtec as allowed by 10 CFR 72.48.

*Comment 3:* The commenter referred to a specific section in the SER which would allow ''storage of damaged fuel in the multipurpose canister (MPC)-32 and damaged fuel and damaged fuel debris in the MPC–32F. Additionally, include appropriate values for soluble boron for MPC–32 and MPC–32F based on fuel assembly array/class, intact versus damaged fuel, and initial enrichment.'' The commenter stated that a definition of ''damaged fuel'' versus ''fuel debris'' including a bounding description of ''damaged fuel'' and ''fuel debris'' should be included. Damaged fuel could range from a rod that marginally failed a leak test to a fuel fragment. Small, unclad bits of fuel would need to be properly containerized and those containers certified to some degree.

*Response:* The definitions of ''damaged fuel'' and ''fuel debris'' are given in section 1.0, Definitions, of Appendix B to the TS attached to the CoC for Certificate Number 1014, Amendment No. 2. The definitions contain commonly used terminology to distinguish between these two classes of contents. The definitions are repeated here:

''DAMAGED FUEL ASSEMBLIES are fuel assemblies with known or suspected cladding defects, as determined by a review of records, greater than pinhole leaks or hairline cracks, empty fuel rod locations that are not filled with dummy fuel rods, or those that cannot be handled by normal means. Fuel assemblies that cannot be handled by normal means due to fuel cladding damage are considered FUEL DEBRIS.''

''FUEL DEBRIS is ruptured fuel rods, severed rods, loose fuel pellets or fuel assemblies with known or suspected defects which cannot be handled by normal means due to fuel cladding damage.''

''Damaged fuel assemblies'' and ''fuel debris'' must be enclosed in a specially designed ''damaged fuel container'' before being loaded into the cask.

*Comment 4:* The commenter referred to a section in the SER that stated that the change requested in this amendment affected the inspection and leak testing of the final closure welds. The applicant applied the criteria described in ISG–15, ''Materials Evaluation,'' and ISG–18, ''The Design/Qualification of Final Closure Welds on Austenitic Stainless Steel Canisters as Confinement Boundary for Spent Fuel Storage and Containment Boundary for Spent Fuel Transportation,'' in the amendment request. The commenter further stated that ISG–15 provides an NRC-approved alternative to the ASME Code for the inspection of final closure welds for austenitic materials. The inspection techniques described by ISG–15 will detect any such flaws which could lead to a failure. In addition, ISG–18 states that when the closure welds of austenitic stainless steel canisters are executed in accordance with ISG–15, the staff concludes that no undetected flaws of significant size will exist. Therefore, the NRC staff has reasonable assurance that the inspection

demonstrates no credible leakage would occur from the final closure welds of austenitic stainless steel canisters, and that ISG–18 removes the need for a helium leak test of the final closure welds in accordance with ANSI N14.5.

The commenter further stated that, in the past, inspection systems have not been considered adequate for critical welds. A proof-system is typically required due to the consequence of container leakage for failure. The commenter believed it should be noted that helium is used as a leak test agent due to its small size and inert properties. The commenter did not credit that the inspection system referred to, or any inspection system that could be used expeditiously, can detect flaws at the molecular level. The commenter believed it is possible by this revised process to approve welds that may have ordinarily failed a helium leak test and stated this change could constitute a significant reduction in the gas-tight certification of the containers.

*Response:* Dry storage casks use redundant means to achieve adequate structural and confinement capability. First, the final closures incorporate a double barrier. This is accomplished by the use of two separate welded barriers. For the Holtec design, this is accomplished by way of the structural lid and a separate closure ring that is welded over the structural lid. If, in the unlikely event one of these welded barriers should have a leak, the other would be capable of retaining all the helium inside the storage canister.

With respect to testing of the various closure welds, a number of independent tests are employed. During the welding of the structural lid, Interim Staff Guidance (ISG)-15 specifies that a multi-pass liquid penetrant test (PT) be employed. This means that a PT exam is performed several times during the execution of the weld. The NRC staff guidance calls for the initial weld pass (called root pass) to be examined. Then, depending upon the results of a fracture mechanics evaluation or net-section stress calculation, additional PTs are performed each time a specified thickness of weld metal is deposited. Finally, the last weld pass (cover pass) is examined by PT. If any flaws are detected by any of these tests, the indicated flaw is removed by grinding. Then the affected area is rewelded and retested. Any such rework is governed by the provisions of the American Society of Mechanical Engineers (ASME) Code.

Upon acceptance of the multiple PT exams, the structural lid weld is pressure tested in accordance with the ASME Code. This pressure test is performed at an elevated pressure that is above the design pressure of the vessel. Holtec may use either water or helium for this pressure test.

Due to the large size of the structural lid weld (approximately 3/4-inch thick or greater), it is extremely unlikely that a weld flaw could exist that provided a leak path completely through the weld, and that went undetected after multiple PT exams and the Code-required pressure test. Because of the redundant nature of these independent tests, the weld thickness, and staff and industry experience with heavy section welds, it was deemed unnecessary to perform a helium leak test on the structural lid weld.

After other loading operations are completed, the cask is filled with helium and the helium pressure is adjusted to the design pressure. Then the vent and drain valves (used for filling the vessel with helium) are closed, and the valve access port is covered with a welded-on closure plate. These final closure welds are both helium leak tested and penetrant tested.

After successful completion of these required tests, the closure ring, which provides a second confinement barrier, is welded on over the structural lid, weld, and associated access port welds. This weld is penetrant tested.

As a result of the comment regarding leak testing of the final closure welds, NRC staff reviewed the TS and SER and clarified the helium leak rate test requirements within these documents.

TS 3.1.1.C was modified to reflect the requirement to helium leak rate test the vent and drain port cover plate welds. Section 8.4 of the SER was added to clarify guidance, specifically that the vent and drain port cover plate welds shall be helium leak rate tested but that it is not necessary to helium leak rate test the lid-to-shell weld. Other sections of the SER were revised accordingly to reflect this clarification.

The NRC staff finds that with the double confinement barriers and the multiple tests employed to verify their quality and integrity, a high level of assurance exists regarding the leak-tightness of the confinement boundary.

*Comment 5:* The commenter referred to section 2.3.5 of the SER, ''Criticality.'' The design criterion for criticality safety is that the effective neutron multiplication factor, including statistical biases and uncertainties, does not exceed 0.95 under normal, off-normal, and accident conditions. The commenter stated that 0.95 is pretty close to <= 1 multiplication, or criticality. The commenter was concerned that ''after pencil-whipping a design someone is willing to work under a margin of error of 0.06.'' The commenter further stated that the exact interior of the structure, the boron loading of the Metamic neutron absorber, the exact position of the fuel (damaged or otherwise) plus other factors, must be within a margin of error, potentially, of 0.06. The commenter stated it was difficult to credit that the fuel assemblies are packed so tight that they can be packed to an MF of 0.94.

*Response:* A dry-storage cask design which maintains the effective multiplication factor ($k_{eff}$) ≤ 0.95 at a 95-percent confidence level when combined with the additional bounding assumptions described below is considered by the NRC to provide reasonable assurance that the cask and its contents will remain sufficiently subcritical under all credible normal, off-normal, and accident conditions. This acceptance criterion is specified in section 6.0, subsection IV, of the ''Standard Review Plan for Dry Cask Storage Systems,'' NUREG–1536.

In addition to the administrative margin described above (*i.e.*, when the final adjusted value of $k_{eff}$ is at least 0.05 below the critical value of 1.0), the applicant applied the following bounding assumptions in its criticality analysis:

(1) No credit was taken for fuel burnup;

(2) The worst hypothetical combination of tolerances (*i.e.*, those value limits which maximized the multiplication factor) was assumed for the basket structure and fuel assembly dimensions;

(3) Reduced credit from the minimum acceptable boron content in the poison plates (25-percent reduction for Boral plates and 10-percent reduction for the Metamic plates) was applied;

(4) Fuel related burnable neutron absorbers were neglected;

(5) Each fuel assembly was placed in its most reactive position within its respective basket fuel cell;

(6) Neutron absorption in minor structural members and optional heat conducting elements were neglected; and

(7) The flooding water (fresh or borated) was assumed to be at its optimum density to maximize $k_{eff}$.

These bounding assumptions are consistent with NRC's guidance and provide an additional margin of safety that encompasses any margin of error in the nominal parameter values of the design and contents.

*Comment 6:* The commenter did not believe that the NRC staff demonstrated consideration of a reasonably assumed error bandwidth within each of the

seven coefficients (inputs) to the equation listed in Equation 2.1.9.3. The commenter stated that the cumulative error potential is large enough to have ''Biblical'' overtones, as in ''77 times 7.'' The commenter also stated that one would like to assume that parallel calculations were performed using traditional methods as a ''sanity check.'' The commenter believed that with unique source-term analyses and curve-fitting analyses designed by the applicant to drive the coefficients, verification and validation information regarding this burnup model is essential and should be included or referenced in the SER.

*Response:* The comment expresses a concern regarding error in the applicant's new methodology and the need for confirmatory analysis to verify and validate the burnup equation and its coefficients. The existing sections 5.0, 5.2.3, and 5.2.4 of the SER address this concern and document that the NRC staff reviewed and explicitly considered the applicant's methodology, the burnup equation, and its coefficients, which include adjustments that account for error and uncertainty. As part of its review, the staff performed confirmatory analyses, using Computer Code SAS–2H, to test the validity of the burnup equation and its associated coefficients. These calculations produced decay heats that were in general agreement with the burnups and associated thermal values applied in the burnup equation. The NRC staff did not identify any significant errors in the new methodology, the burnup equation, and its coefficients. The staff believes that its review of the new methodology, including confirmatory calculations, provides reasonable assurance that the shielding and thermal design is safe and satisfies the regulations at 10 CFR part 72.

*Comment 7:* The commenter stated that NRC shot the SER through with subjective language. The example given was ''The amendment request addresses a slight increase of 10% in the off-normal internal design.'' The commenter objected to using the word ''slight'' and stated that describing a 10% increase as slight is amateurish in regulatory language or in any technical document and gives the appearance of collusion, as if to help sell to the audience any changes that are less conservative. The commenter questioned if a 10% reduction in the allowable pressure would be described as huge.

*Response:* Section 3.0 of the SER provides an overview of the structural evaluation. The full text of the third paragraph of that section to which the commenter referred is as follows:

''The amendment request addresses a slight increase of 10% in the off-normal internal design pressure, increases in the allowable temperature of the structural materials and the creation of an eighth type MPC unit: The MPC–32F. No changes were made to the drawings of the various components that have been previously provided in Section 1.5 of the FSAR since no material or design dimensions were revised.''

On page S–2 of the SER, the following is stated in Item 16: ''Increase off-normal design pressure from 100 psig to 110 psig and increase the normal temperature limit for the overpack lid top plate from 350-degrees F to 450-degrees F.'' This reflects the change incorporated into the Amendment 2 documents.

Section 3.1.2.1 of the SER, ''Criteria for Multi-Purpose Dry Storage Canisters,'' contains the following statements: ''The proposed amendment revises the MPC off-normal internal pressure from 100 psig to 110 psig as noted in Table 2.2.1 of the FSAR * * *. No physical changes were necessary to accommodate the revised pressure * * *.''

The technical document is quite clear in the fact that the increase of 10 psig (an increase of 10 percent) has no impact on the physical dimensions or design of the MPC pressure vessel. The reason for this is that the physical dimensions of the MPC are not governed by the off-normal internal pressure.

*Comment 8:* The commenter stated that there is an element of vagueness in the SER that offers little guidance to a reader seeking to confirm the degree of rigor to which the amendment application was exposed. The NRC refers to many staff reviews of the licensee's practices, but without specifics. In some cases, it is inferred that the staff verified calculations; in others, that approval was cursory because of similarities with other cask models. It is difficult to say that early cask designs will be safe in the long term. One has to be careful in approving a new design that is ''similar'' to the old one when the old one has not yet met the test of time.

*Response:* NRC disagrees with the commenter that this amendment application was not exposed to a sufficient degree of rigor. This amendment request was under active review by the NRC staff for over 2.75 years. As discussed in the response to Comment #1, amendments to a CoC are reviewed under the same criteria as are used for the approval of the original CoC (10 CFR 72.246). Also, the application for an amendment must show that any changes meet all applicable requirements to store spent fuel safely in the cask. NRC's review process is documented in NUREG–1536 entitled ''Standard Review Plan for Dry Cask Storage Systems.'' NRC regulations permit applicants to demonstrate compliance by various means, including certification through testing, analyses, comparison to similar approved designs, or combinations of these methods. Referencing previously reviewed information that has not changed is acceptable. The SER documents the NRC's review process and conclusions regarding the cask design's ability to comply with part 72. Furthermore, this amendment will not extend the CoC period. Therefore, it does not change the conclusion reached previously regarding the safety of the cask with respect to time.

*Comment 9:* The commenter is concerned that the NRC review does not extend beyond a review of the proposed theoretical model. The commenter also stated that the application spoke very little about QA/QC with respect to cask/canister materials and performance.

*Response:* The NRC conducts planned and reactive inspections of cask vendors and their major fabricators on a continuing basis. The results of these inspections, including any technical concerns of a licensing nature, are shared internally with the NRC's Spent Fuel Project Office staff, and are documented in publicly available inspection reports. Quality assurance program implementation inspections were performed at the Holtec corporate office in September 2004 (reference ML043080505) and its fabricator, U.S. Tool & Die, in October 2004 (reference ML043100408). No significant adverse findings with respect to quality assurance/control issues were identified during those inspections.

## Summary of Final Revisions

*Section 72.214 List of Approved Spent Fuel Storage Casks*

Certificate No. 1014 is revised by adding the effective date of Amendment Number 2.

## Good Cause To Dispense With Deferred Effective Date Requirement

The NRC finds that good cause exists to waive the 30-day deferred effective date provisions of the Administrative Procedure Act (5 U.S.C. 553(d)). The primary purpose of the delayed effective date requirement is to give affected persons, *e.g.*, licensees, a reasonable time to prepare to comply with or take other action with respect to the rule. In

this case, the rule does not require any action to be taken by licensees. The regulation allows, but does not require, use of the amended Holtec International HI–STORM 100 cask system for the storage of spent nuclear fuel. The Holtec International HI–STORM 100 cask system, amended to include changes to materials used in construction, changes to the types of fuel that can be loaded, changes to shielding and confinement methodologies and assumptions, revisions to various temperature limits, changes in allowable fuel enrichments, and other changes to reflect current staff guidance and use of industry codes, meets the requirements of 10 CFR part 72, and is ready to be used. A number of utilities have an operational need to load the casks to preserve full core off-load capability at their sites. The utilities are preparing for refueling outages in Fall of 2005 and need to load fuel into the storage casks in advance of the outages. The amended Holtec International HI–STORM cask system, as approved by the NRC, will continue to provide adequate protection of public health and safety and the environment.

**Voluntary Consensus Standards**

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is revising the HI-STORM 100 cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

**Agreement State Compatibility**

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

**Finding of No Significant Environmental Impact: Availability**

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This final rule amends the CoC for the HI-STORM 100 cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment modifies the present cask system design to include changes to materials used in construction, changes to the types of fuel that can be loaded, changes to shielding and confinement methodologies and assumptions, revisions to various temperature limits, changes in allowable fuel enrichments, and other changes to reflect current NRC staff guidance and use of industry codes, under a general license. The EA and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the EA and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

**Paperwork Reduction Act Statement**

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

**Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

**Regulatory Analysis**

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On May 1, 2000 (65 FR 25241), the NRC issued an amendment to part 72 that approved the HI-STORM 100 cask design by adding it to the list of NRC-approved cask designs in § 72.214. On March 4, 2002, and as supplemented on October 31, 2002; August 6 and November 14, 2003; February 20, April 23, July 22, August 13, October 14, and December 3, 2004, the certificate holder, Holtec International, submitted an application to the NRC to amend CoC No. 1014 to modify the present cask system design to include changes to materials used in construction, changes to the types of fuel that can be loaded, changes to shielding and confinement methodologies and assumptions, revisions to various temperature limits, changes in allowable fuel enrichments, and other changes to reflect current staff guidance and use of industry codes, under a general license.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each utility. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the final rule will eliminate this problem and is consistent with previous NRC actions. Further, the final rule will have no adverse effect on public health and safety. This final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

**Regulatory Flexibility Certification**

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Holtec International. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set

forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

**Backfit Analysis**

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

**Small Business Regulatory Enforcement Fairness Act**

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

**List of Subjects in 10 CFR Part 72**

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

## PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

**Authority:** Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1014 is revised to read as follows:

**§ 72.214 List of approved spent fuel storage casks.**

* * * * *

*Certificate Number:* 1014.

*Initial Certificate Effective Date:* June 1, 2000.

*Amendment Number 1 Effective Date:* July 15, 2002.

*Amendment Number 2 Effective Date:* June 7, 2005.

*SAR Submitted by:* Holtec International.

*SAR Title:* Final Safety Analysis Report for the HI–STORM 100 Cask System.

*Docket Number:* 72–1014.

*Certificate Expiration Date:* June 1, 2020

*Model Number:* HI–STORM 100

* * * * *

Dated at Rockville, Maryland, this 25th day of May, 2005.

For the Nuclear Regulatory Commission.

**Luis A. Reyes,**

*Executive Director for Operations.*

[FR Doc. 05–11216 Filed 6–6–05; 8:45 am]

BILLING CODE 7590–01–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–20724; Directorate Identifier 2004–NM–233–AD; Amendment 39–14115; AD 2005–11–13]**

**RIN 2120–AA64**

## Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain BAE Systems (Operations) Limited Model BAe 146 airplanes. This AD requires repetitive inspections for cracks of the fuselage pressure skin above the left and right main landing gear (MLG) bay. This AD also requires corrective action, including related investigative actions, if leaks are found. This AD is prompted by reports of cracks in the fuselage pressure skin above the left and right MLG bay. We are issuing this AD to detect and correct fatigue cracking in the fuselage pressure skin above the left and right MLG bay; such fatigue cracking could adversely affect the structural integrity of the fuselage and its ability to maintain pressure differential.

**DATES:** This AD becomes effective July 12, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of July 12, 2005.

**ADDRESSES:** For service information identified in this AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

*Docket:* The AD docket contains the proposed AD, comments, and any final disposition. 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 U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20724; the directorate identifier for this docket is 2004–NM–233–AD.

**FOR FURTHER INFORMATION CONTACT:** Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with an AD for certain BAE Systems (Operations) Limited Model BAe 146 airplanes. That action, published in the **Federal Register** on March 30, 2005 (70 FR 16173), proposed to require repetitive inspections for cracks of the fuselage pressure skin above the left and right main landing gear (MLG) bay. The action also proposed AD to require

corrective action, including related investigative actions, if leaks are found.

### Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

### Explanation of Change to Applicability

We have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected model.

### Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

### Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Inspection, per inspection cycle ... | 7 | $65 | $0 | $455 | 18 | $8,190, per inspection cycle. |

### 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 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.

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 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 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, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

**2005–11–13 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Amendment 39–14115. Docket No. FAA–2005–20724; Directorate Identifier 2004–NM–233–AD.

**Effective Date**

(a) This AD becomes effective July 12, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes, certificated in any category; except those on which BAe Modification HCM00972A or HCM00972C has been accomplished.

**Unsafe Condition**

(d) This AD was prompted by reports of cracks in the fuselage pressure skin above the left and right main landing gear (MLG) bay. We are issuing this AD to detect and correct fatigue cracking in the fuselage pressure skin above the left and right MLG bay; such fatigue cracking could adversely affect the structural integrity of the fuselage and its ability to maintain pressure differential.

**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.

**Initial and Repetitive Inspections**

(f) At the times specified in Table 1 of this AD, inspect the fuselage pressure skin above the left and right MLG bay for cracks in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin 53–170, dated August 8, 2003.

TABLE 1.—COMPLIANCE TIMES

| For airplanes listed in paragraph (c) of this AD— | Do initial inspections— | And do repetitive inspections thereafter— |
|---|---|---|
| On which neither BAe modification HCM00744M nor HCM00850A has been accomplished. | Prior to the accumulation of 15,000 total flight cycles or within 500 flight cycles after the effective date of this AD, whichever occurs later. | At intervals not to exceed 1,000 flight cycles. |
| On which either BAe modification HCM00744M or HCM00850A has been accomplished. | Prior to the accumulation of 15,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever occurs later. | At intervals not to exceed 3,000 flight cycles. |
| On which both BAe modifications HCM00744M and HCM00850A have been accomplished. | | |

**Corrective Action**

(g) If any crack is found during any inspection required by paragraph (f) of this AD, do the corrective action and any related investigative actions, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin 53–170, dated August 8, 2003, except as required by paragraph (h) of this AD.

(h) If any cracking is found during any inspection or related investigative action required by this AD, and the service bulletin recommends contacting BAE Systems for appropriate action: Before further flight, repair the cracks according to a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

**No Reporting**

(i) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**Alternative Methods of Compliance (AMOCs)**

(j) The Manager, International Branch, ANM–116, 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–2004–0004, dated February 26, 2004, also addresses the subject of this AD.

**Material Incorporated by Reference**

(l) You must use BAE Systems (Operations) Limited Inspection Service Bulletin 53–170, dated August 8, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 26, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–11056 Filed 6–6–05; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2004–19988; Directorate Identifier 2004–NM–30–AD; Amendment 39–14111; AD 2005–11–09]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727–200 Series Airplanes Equipped With a No. 3 Cargo Door

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 727–200 series airplanes equipped with a No. 3 cargo door. This AD requires repetitive detailed and high frequency eddy current inspections for cracking of the forward, lower corner frame and forward end of the lower beam of the No. 3 cargo door, and corrective actions if necessary. The AD provides an optional terminating action for the repetitive inspections. This AD is prompted by reports of cracking at the forward, lower corner frame and lower beam of the No. 3 cargo door. We are issuing this AD to detect and correct cracking of the forward, lower corner frame and forward end of the lower beam of the No. 3 cargo door, which could result in failure of the affected door stops, loss of the cargo door, and consequent rapid decompression of the airplane.

**DATES:** This AD becomes effective July 12, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of July 12, 2005.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

*Docket:* The AD docket contains the proposed AD, comments, and any final disposition. 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 U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2004–19988; the directorate identifier for this docket is 2004–NM–30–AD.

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

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 727–200 series airplanes equipped with a No. 3 cargo door. That action, published in the **Federal Register** on January 5, 2005 (70 FR 729), proposed to require repetitive detailed and high frequency eddy current inspections for cracking of the forward, lower corner frame and forward end of the lower beam of the No. 3 cargo door, and corrective actions if necessary. That action also proposed to provide an optional terminating action for the repetitive inspections.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We have

considered the comments that have been submitted on the proposed AD.

**Support for the Proposed AD**

One commenter supports the intent of the NPRM and actions of the proposed AD.

**Request To Replace Reference to Designated Engineering Representative (DER)**

One commenter, the manufacturer, requests that paragraph (k)(2) of the final rule be changed to replace the reference to a Designated Engineering Representative (DER) with references to a Boeing Authorized Representative as a part of the Boeing Delegated Compliance Organization with Delegated Option Authorization.

We agree with this request. Boeing has received a Delegation Option Authorization (DOA). We have revised this final rule to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Authorized Representative for the Boeing DOA Organization rather than the Designated Engineering Representative (DER).

**Conclusion**

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

**Costs of Compliance**

There are about 390 Model 727–200 series airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Detailed and HFEC Inspections, per inspection cycle. | 2 | $65 | None ..... | $130 | 274 | $35,620 |

**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 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.

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 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 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, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

**2005–11–09 Boeing:** Amendment 39–14111. Docket No. FAA–2004–19988; Directorate Identifier 2004–NM–30–AD.

**Effective Date**

(a) This AD becomes effective July 12, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 727–200 series airplanes, equipped with a No. 3 cargo door, as identified in Boeing Special Attention Service Bulletin 727–52–0149, dated October 16, 2003; certificated in any category.

**Unsafe Condition**

(d) This AD was prompted by reports of cracking at the forward, lower corner frame and lower beam of the No. 3 cargo door. We are issuing this AD to detect and correct cracking of the forward, lower corner frame and forward end of the lower beam of the No. 3 cargo door, which could result in failure of the affected door stops, loss of the cargo door, and consequent rapid decompression of the airplane.

**Compliance**

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

**Repetitive Detailed and High Frequency Eddy Current (HFEC) Inspections**

(f) Do detailed and HFEC inspections for cracking of the forward, lower corner frame and forward end of the lower beam of the No. 3 cargo door by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 727–52–0149, dated October 16, 2003. Do the inspections at the times specified in the applicable table in paragraph 1.E., ''Compliance,'' of the service bulletin, except as required by paragraph (g) of this AD.

Repeat the inspections thereafter at intervals not to exceed 4,500 flight cycles. Doing the applicable actions in paragraph (h) or (j) of this AD terminates the repetitive inspections.

(g) Where the service bulletin specified in paragraph (f) of this AD provides a threshold relative to the release date of the service bulletin, this AD requires compliance within the applicable threshold following the effective date of this AD, if the ''total airplane flight cycles'' or ''total replaced door flight cycles'' threshold has been exceeded.

**Corrective Actions**

(h) For airplanes on which cracking is found during any inspection required by paragraph (f) of this AD: Before further flight, do all of the applicable corrective actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 727–52–0149, dated October 16, 2003. Repairing any affected area terminates the repetitive inspections required by paragraph (f) of this AD.

**Parts Installation**

(i) Any replacement No. 3 cargo door installed on any airplane after the effective date of this AD must be inspected or modified in accordance with either paragraph (i)(1) or (i)(2) of this AD, as applicable.

(1) If the number of total flight cycles on the door can be positively determined: Do the actions required by paragraphs (f) and (h) of this AD, as applicable, or paragraph (j) of this AD. Do the actions at the times specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 727–52–0149, dated October 16, 2003.

(2) If the number of total flight cycles on the door cannot be positively determined: Do the actions required by paragraphs (f) and (h) of this AD, as applicable, or paragraph (j) of this AD, before installing the door.

**Optional Terminating Action**

(j) Concurrently with doing the inspection required by paragraph (f) of this AD, if no cracking is found, doing the preventative modification specified in paragraph 3.B.2. of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 727–52–0149, dated October 16, 2003, terminates the repetitive inspections required by paragraph (f) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(k)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

**Material Incorporated by Reference**

(l) You must use Boeing Special Attention Service Bulletin 727–52–0149, dated October 16, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to 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 Renton, Washington, on May 26, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–11055 Filed 6–6–05; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–20756; Directorate Identifier 2004–NM–52–AD; Amendment 39–14112; AD 2005–11–10]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311 and –315 airplanes. This AD requires installation of check valves in Numbers 1 and 2 hydraulic systems, removal of the filters from the brake shuttle valves, and removal of the internal garter spring from the brake shuttle valves. This AD results from two instances of brake failure due to the loss of hydraulic fluid from both Numbers 1 and 2 hydraulic systems and one incident of brake failure due to filter blockage in the shuttle valve. We are issuing this AD to prevent the loss of hydraulic power from both hydraulic systems, which could lead to reduced controllability of the airplane, and to prevent brake failure, which could result in the loss of directional control on the ground and consequent departure from the runway during landing.

**DATES:** This AD becomes effective July 12, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of July 12, 2005.

**ADDRESSES:** For service information identified in this AD, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

*Docket:* The AD docket contains the proposed AD, comments, and any final disposition. 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 U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20756; the directorate identifier for this docket is 2004–NM–52–AD.

**FOR FURTHER INFORMATION CONTACT:** Ezra Sasson, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7320; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with an AD for certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. That action, published in the **Federal Register** on March 30, 2005 (70 FR 16182), proposed to require installation of check valves in Numbers 1 and 2 hydraulic systems, removal of the filters from the brake shuttle valves, and removal of the internal garter spring from the brake shuttle valves.

**Comments**

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

**Explanation of Editorial Change**

We have revised the Costs of Compliance section of this AD to correct a mathematical error.

## Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

## Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD:

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Average fleet cost |
|---|---|---|---|---|---|---|
| Installation of check valves in Numbers 1 and 2 hydraulic systems | 3 | $65 | $279–$405 | $474–$600 | 179 | $84,846–$107,400 |
| Removal of filters and internal garter springs from brake shuttle valves | 3 | 65 | 252–1,360 | 447–1,555 | 179 | 80,013–278,345 |

## 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 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.

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 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 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, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

**2005–11–10 Bombardier, Inc. (Formerly de Havilland, Inc.):** Amendment 39–14112. Docket No. FAA–2005–20756; Directorate Identifier 2004–NM–52–AD.

**Effective Date**

(a) This AD becomes effective July 12, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, certificated in any category; serial numbers 003 through 593 inclusive.

**Unsafe Condition**

(d) This AD was prompted by two instances of brake failure due to the loss of hydraulic fluid from both Numbers 1 and 2 hydraulic systems and one incident of brake failure due to filter blockage in the shuttle valve. We are issuing this AD to prevent the loss of hydraulic power from both hydraulic systems, which could lead to reduced controllability of the airplane, and to prevent brake failure, which could result in the loss of directional control on the ground and consequent departure from the runway during landing.

**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.

**Installation of Check Valves in Numbers 1 and 2 Hydraulic Systems**

(f) Within 12 months after the effective date of this AD, install check valves in the Numbers 1 and 2 hydraulic return systems by incorporating Modsum 8Q101320 in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–29–36, Revision ''B,'' dated January 6, 2003.

**Removal of Filters and Internal Garter Spring From the Brake Shuttle Valves**

(g) Within 12 months after the effective date of this AD, modify the brake shuttle valves, part number (P/N) 5084–1, by doing the actions in either paragraph (g)(1) or (g)(2) of this AD. The installation specified in paragraph (f) of this AD must be done prior to doing any actions in accordance with Bombardier Service Bulletin 8–29–37, Revision ''A,'' dated September 19, 2003 (Modsum 8Q101316), that are specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Remove the filter assemblies by incorporating Modsum 8Q101422 in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–29–39, dated July 14, 2003; and within 40,000 flight hours after removing the filter assemblies, remove the internal garter spring by incorporating Modsum 8Q101316 in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–29–37, Revision ''A,'' dated September 19, 2003.

(2) Remove the filter assemblies and internal garter spring by incorporating Modsum 8Q101316 in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–29–37, Revision ''A,'' dated September 19, 2003.

**Note 1:** You can mix shuttle valves that have incorporated either Modsum 8Q101316 or 8Q101422 on the same airplane.

**Actions Accomplished According to Previous Issues of Service Bulletins**

(h) Installations accomplished before the effective date of this AD according to Bombardier Service Bulletin 8–29–36, dated December 6, 2002; and Revision ''A,'' dated December 12, 2002, are considered acceptable for compliance with the corresponding installation specified in paragraph (f) of this AD.

(i) Removals of the filters and internal garter springs accomplished before the effective date of this AD according to Bombardier Service Bulletin 8–29–37, dated July 15, 2003, are considered acceptable for compliance with the corresponding removals specified in paragraph (g) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(j) The Manager, New York 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.

**Related Information**

(k) Canadian airworthiness directive CF–2004–02, dated February 9, 2004, also addresses the subject of this AD.

**Material Incorporated by Reference**

(l) You must use the documents listed in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

| Bombardier service bulletin | Revision level | Date |
|---|---|---|
| 8–29–36 .... | B ..... | January 6, 2003. |
| 8–29–37 .... | A ..... | September 19, 2003. |
| 8–29–39 .... | Original ..... | July 14, 2003. |

Issued in Renton, Washington, on May 26, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–11054 Filed 6–6–05; 8:45 am]

BILLING CODE 4910–13–P

---

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–20590; Directorate Identifier 2005–CE–13–AD; Amendment 39–14110; AD 2005–11–08]**

**RIN 2120–AA64**

## Airworthiness Directives; GROB–WERKE Model G120A Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA adopts a new airworthiness directive (AD) for all GROB–WERKE (GROB) Model G120A airplanes. This AD requires you to replace the main landing gear front and rear spherical bearings with improved spherical bearings. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to replace front and rear main landing gear bearings that are susceptible to damage when exposed to high axial loads, which could result in failure of the landing gear bearing. This failure could lead to loss of control on landing.

**DATES:** This AD becomes effective on July 18, 2005.

As of July 18, 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 GROB–WERKE, Burkart Grob e.K., Unternehmenbereich Luft-und Raumfahrt, Lettenbachstrasse 9, 86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998 105; facsimile: 011 49 8268 998 200.

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–2005–20590; Directorate Identifier 2005–CE–13–AD.

**FOR FURTHER INFORMATION CONTACT:** Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4146; facsimile: 816–329–4090.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What events have caused this AD?* The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all GROB–WERKE (GROB) Model G120A airplanes. The LBA reports an incident of a damaged spherical bearing (part number (P/N) S20) installed in the main landing gear on one of the affected airplanes. Evidence showed that the bearing inner ring was shifted against the outer ring. This indicated that the bearing was exposed to high axial loads. Grob has an improved spherical bearing (P/N SSRC 20 C2) that can tolerate higher axial loads.

*What is the potential impact if FAA took no action?* Main landing gear front and rear bearings that are susceptible to damage when exposed to high axial loads could result in failure of the landing gear bearing. This failure could lead to loss of control on landing.

*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 all GROB–WERKE (GROB) Model G120A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 1, 2005 (70 FR 16769). The NPRM proposed to require you to replace the main landing gear front and rear spherical bearings with improved spherical bearings.

### 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 6 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 do the replacement of the main landing gear front and rear spherical bearings with improved spherical bearings. We have no way of determining the number of airplanes that may need this replacement:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 8 work hours × $65 per hour = $65 | None. GROB will supply parts free of charge. | $520 | 6 × $520 = $3,120 |

## 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 other information as included in the Regulatory Evaluation) 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–2005–20590; Directorate Identifier 2005–CE–13–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 adding a new AD to read as follows:

**2005–11–08 GROB-WERKE:** Amendment 39–14110; Docket No. FAA–2005–20590; Directorate Identifier 2005–CE–13–AD.

**When Does This AD Become Effective?**

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

**What Other ADs Are Affected by This Action?**

(b) None.

**What Airplanes Are Affected by This AD?**

(c) This AD affects Model G120A airplanes, all serial numbers, that are certificated in any category.

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to replace front and rear main landing gear bearings that are susceptible to damage when exposed to high axial loads, which could result in failure of the landing gear bearing. This failure could lead to loss of control on landing.

**What Must I Do To Address This Problem?**

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Replace any part number (P/N) S20 main landing gear front and rear spherical bearings with improved spherical bearings (P/N SSRC 20 C2). | Within the next 100 hours time-in-service (TIS) after July 18, 2005 (the effective date of this AD), unless already done. | Follow GROB Service Bulletin No. MSB1121–054, dated November 22, 2004. |
| (2) Do not install any P/N S20 main landing gear front and rear spherical bearings. | As of July 18, 2005 (the effective date of this AD). | Not Applicable. |

**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, FAA. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4146; facsimile: 816–329–4090.

**Is There Other Information That Relates to This Subject?**

(g) German AD Number D–2005–075, dated February 9, 2005, 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 GROB Service Bulletin No. MSB1121–054, dated November 22, 2004. 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 GROB-WERKE, Burkart Grob e.K., Unternehmenbereich Luft-und Raumfahrt, Lettenbachstrasse 9, 86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998 105; facsimile: 011 49 8268 998 200. 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–2005–20590; Directorate Identifier 2005–CE–13–AD.

Issued in Kansas City, Missouri, on May 26, 2005.

**Kim Smith,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–11042 Filed 6–6–05; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–20588; Directorate Identifier 2005–CE–11–AD; Amendment 39–14109; AD 2005–11–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Extra Flugzeugproduktions-und Vertriebs-GmbH Models EA–300, EA–300S, EA–300L, and EA–300/200 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA adopts a new airworthiness directive (AD) for certain Extra Flugzeugproduktions-und Vertriebs-GmbH (EXTRA) Models EA–300, EA–300S, EA–300L, and EA–300/200 airplanes. This AD requires you to seal with firewall sealant the gaps between the bottom fuselage cover (belly fairing) and the firewall and repeat the sealing procedure whenever you install the bottom fuselage cover (belly fairing). This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent fuel from flowing behind the firewall in the case of a fuel leak. This could result in an in-flight fire, which could cause loss of the airplane and crew.

**DATES:** This AD becomes effective on July 18, 2005.

As of July 18, 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 EXTRA Flugzeugproduktions-und Vertriebs-GmbH, Schwarze Heide 21, 46569 Hünxe, Germany; telephone: 011–011–49–2858–9137–30; facsimile: 49–2858–9137–30.

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–2005–20588; Directorate Identifier 2005–CE–11–AD.

**FOR FURTHER INFORMATION CONTACT:** Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4146; facsimile: 816–329–4090.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What events have caused this AD?* The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain Extra Flugzeugproduktions-und Vertriebs-GmbH (EXTRA) Models EA–300, EA–300S, EA–300L, and EA–300/200 airplanes. The LBA reports an incident of a fire in the engine compartment on one of the affected airplanes due to a leaking gascolator. Evidence showed that the spilled fuel had leaked down the firewall and through the non-sealed connections between the firewall and the bottom fuselage cover (belly fairing). The fire in the engine compartment spread to the cabin and resulted in loss of the airplane.

*What is the potential impact if FAA took no action?* A fuel leak behind the firewall could result in an in-flight fire, which could cause loss of the airplane and crew.

*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 Flugzeugproduktions-und Vertriebs-GmbH (EXTRA) Models EA–300, EA–300S, EA–300L, and EA–300/200 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 1, 2005 (70 FR 16771). The NPRM proposed to require you to seal with firewall sealant the gaps between the bottom fuselage cover (belly fairing) and the firewall and whenever you install the bottom fuselage cover (belly fairing).

### 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 199 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 seal with firewall sealant the gaps between the bottom fuselage cover (belly fairing) and the firewall:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 1 work hour × $65 per hour = $65 | $140 | $205 | $205 × 199 = $40,795 |

### 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 other information as included in the Regulatory Evaluation) 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–2005–20588; Directorate Identifier 2005–CE–11–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 adding a new AD to read as follows:

**2005–11–07 Extra Flugzeugproduktions-Und Vertriebs-GmbH:** Amendment 39–14109; Docket No. FAA–2005–20588; Directorate Identifier 2005–CE–11–AD.

**When Does This AD Become Effective?**

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

**What Other ADs Are 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 numbers |
|---|---|
| (1) Group A: | |
| (i) EA–300 | 0 through 67. |
| (ii) EA–300S | 0 through 31. |
| (iii) EA–300L | 0 through 167, 168 through 170 (or converted to 1168 through 1170), 1171, 172 (or converted to 1172), 173 (or converted to 1173), and 1174 through 1181. |
| (iv) EA–300/200 | 0 through 31. |
| (2) Group B: EA–300, EA–300S, EA–300L, and EA–300/200. | All. |

**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 prevent fuel from flowing behind the firewall in the case of a fuel leak. This could result in an in-flight fire, which could cause loss of the airplane and crew.

**What Must I Do To Address This Problem?**

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) For airplanes listed in Group A of paragraph (c)(1) of this AD: Seal with firewall sealant the gaps between the bottom fuselage cover (belly fairing) and the firewall. | Within the next 50 hours time-in-service (TIS) or 3 calendar months after July 18, 2005 (the effective date of this AD), whichever occurs first, unless already done. | Follow EXTRA Flugzeugproduktions-und Vertriebs-GmbH Service Bulletin No. 300–4–04, Issue: A, dated May 25, 2004. |
| (2) For airplanes listed in Group B of paragraph (c)(1) of this AD: Whenever you install the bottom fuselage cover (belly fairing), do the sealing procedure required by paragraph (e)(1) of this AD. | As of July 18, 2005 (the effective date of this AD), whenever you install the bottom fuselage cover (belly fairing). | Follow EXTRA Flugzeugproduktions-und Vertriebs-GmbH Service Bulletin No. 300–4–04, Issue: A, dated May 25, 2004. |

**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, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4146; facsimile: 816–329–4090.

**Is There Other Information That Relates to This Subject**

(g) German AD Number D–2004–489, dated November 11, 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 Flugzeugproduktions-und Vertriebs-GmbH Service Bulletin No. 300–4–04, Issue: A, dated May 25, 2004. 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 EXTRA Flugzeugproduktions-und Vertriebs-GmbH, Schwarze Heide 21, 46569 Hünxe, Germany; telephone: 011–011–49–2858–9137–30; facsimile: 49–2858–9137–30. 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–2005–20588; Directorate Identifier 2005–CE–11–AD.

Issued in Kansas City, Missouri, on May 26, 2005.

**Kim Smith,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–11041 Filed 6–6–05; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2004–19354; Directorate Identifier 2004–CE–30–AD; Amendment 39–14107; AD 2005–11–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Precise Flight, Inc. Models SVS I and SVS IA Standby Vacuum Systems

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA adopts a new airworthiness directive (AD) for all airplanes equipped with Precise Flight, Inc. (Precise Flight) Models SVS I and SVS IA standby vacuum systems (SVS) installed under certain supplemental type certificates or through field approval. This AD requires you to replace the airplane flight manual supplement (AFMS) in the airplane flight manual with the appropriate revision and install placards as defined in the AFMS, upgrade the Model SVS I or SVS IA SVS to the Model VI SVS, and add the instructions for continued airworthiness (ICA) to the maintenance schedule for the aircraft. This AD results from several reports of failed shuttle control valves of the standby vacuum system (SVS) and one report of an airplane crash with a fatality in which improper use of the SVS was a factor. We are issuing this AD to correct problems with the SVS before failure or malfunction during instrument flight rules (IFR) flight that can lead to pilot disorientation and loss of control of the aircraft.

**DATES:** This AD becomes effective on July 18, 2005.

As of July 18, 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 Precise Flight, Inc., 63354 Powell Butte Road, Bend, Oregon 97701, telephone: (800) 547–2558; facsimile: (541) 388–1105; electronic mail: *preciseflight@preciseflight.com;* Internet: *http://www.preciseflight.com/svs.html.*

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–2004–19354; Directorate Identifier 2004–CE–3–AD.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tin Truong, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4065; telephone: (425) 917–6486; facsimile: (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What events have caused this AD?* AD 99–24–10 currently requires the following on all aircraft equipped with Precise Flight, Inc. Model SVS III standby vacuum systems installed under the applicable supplemental type certificate (STC) or through field approval:

—Incorporate revised operating limitations for the affected SVS into the airplane flight manual (AFM);

—Inspect (repetitively) the push-pull cable, vacuum lines, saddle fittings, and shuttle valve for correct installation and damage (wear, chafing, deterioration, and so forth); and

—Correct any discrepancy found and conduct a functional test of the vacuum system after the inspections.

The SVS is intended to provide emergency vacuum power for aircraft

instruments when the primary vacuum system fails. The design of the Precise Flight, Inc. Models SVS I and SVS IA SVS is similar to the Model SVS III SVS, and so may not be able to provide sufficient vacuum power without actions similar to those of AD 99–24–10.

The Precise Flight, Inc. Models SVS I and SVS IA SVS are installed on aircraft through a supplemental type certificate (STC) or through field approval. The Applicability section of the proposed AD lists the applicable STCs and aircraft that could have these SVS installed. This list is not meant to be exhaustive nor does it include all aircraft with the systems installed through field approval.

*What is the potential impact if FAA took no action?* Failure or malfunction of the SVS during IFR flight can lead to pilot disorientation and loss of control of the aircraft.

*Has FAA taken any action to this point?* Consequently, 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 all airplanes equipped with Precise Flight, Inc. (Precise Flight) Models SVS I and SVS IA standby vacuum systems (SVS) installed under certain supplemental type certificates or through field approval. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 4, 2005 (70 FR 10517). The NPRM proposed to require you to replace the airplane flight manual supplement (AFMS) in the airplane flight manual with the appropriate revision and install placards as defined in the AFMS, upgrade the Model SVS I or SVS IA SVS to the Model VI SVS, and add the instructions for continued airworthiness (ICA) to the maintenance schedule for the aircraft.

## 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 No. 1: Manufacturer's Mailing and Internet Address

*What is the commenter's concern?* Precise Flight has moved and requests use of the new mailing address. Further, Precise Flight Inc. requests use of a specific Internet address for information about the Models SVS I and SVS IA.

*What is FAA's response to the concern?* We agree with the commenter. We will include the correct mailing and Internet addresses in the AD.

### Comment Issue No. 2: Increase in Cost of Parts

*What is the commenter's concern?* Precise Flight states that the cost of parts has increased since FAA first issued the NPRM. The cost of parts has changed from $77 to $195. Precise Flight requests the AD to reflect this increase.

*What is FAA's response to the concern?* The FAA agrees with the commenter. We have re-evaluated the proposed cost of parts and determined that the correct cost of parts is $195.

We will change the final AD action to include the correct cost of parts.

### Comment Issue No. 3: Correct Reference to Service Information

*What is the commenter's concern?* Precise Flight states that the correct report number for the cited service information should change from 08080 to 08074. The commenter requests that the final AD action reflect the correct report number.

*What is FAA's response to the concern?* We agree with Precise Flight that the correct report number is 08074.

We will change the final AD action to show that the correct report number 08074.

### Comment Issue No. 4: AD Applicability

*What is the commenter's concern?* Precise Flight states that to avoid confusion, the final AD action should state that the AD does not apply to the Models SVS V or SVS III which have been upgraded to the SVS V following the FAA-approved alternative method of compliance (AMOC) dated December 22, 1999. The commenter requests the final AD action include a note that clarifies the affected models of SVS.

*What is FAA's response to the concern?* To avoid confusion about the applicability of the proposed AD we will include a note to read: ''This AD affects Models SVS I and SVS IA only. The Model SVS III is addressed by AD–99–24–10, Amendment 39–11434 (64 FR 66747, November 30, 1999).''

## 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.

## 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 800 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 replace the airplane flight manual supplement (AFMS) in the airplane flight manual with the appropriate revision. We have no way of determining the number of airplanes that may need this replacement:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 1 work hour × $65 = $65 | None | $65 |

We estimate the following costs to do any upgrade to the Model VI SVS, install placards, and add the installation report including the instructions for continued airworthiness (ICA) to the maintenance schedule for the aircraft. We have no way of determining the number of airplanes that may need this upgrade:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 3 work hour × $65 = $195 | $195 | $390 |

## 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 other information as included in the Regulatory Evaluation) 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–2004–19354; Directorate Identifier 2004–CE–3–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 adding a new AD to read as follows:

**2005–11–05 Precise Flight, Inc.:** Amendment 39–14107; Docket No. FAA–2004–19354; Directorate Identifier 2004–CE–3–AD.

**When Does This AD Become Effective?**

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

**What Other ADs Are Affected by This Action?**

(b) None.

**What Airplanes Are Affected by This AD?**

(c) This AD affects Models SVS I and SVS IA standby vacuum systems (SVS), installed on, but not limited to, the following aircraft that are certificated in any category. These systems can be installed under the applicable supplemental type certificate (STC) or through field approval:

| Affected STC | Make and model/series aircraft |
|---|---|
| SA2160NM | Raytheon Beech Models 23, A23, A23A, A23–19, 19A, B19, B19A, A23–24, B23, C23, A24, A24R, B24R, C24R, 35, A35, B35, C35, D35, E35, F35, G35, 35R, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 35–33, 35–A33, 35–B33, 35–C33, 35–C33A, E33, E33A, E33C, F33, F33A, F33C, G33, 36, A36, A36TC, B36TC, 4S(YT–34), A45(T–34A, B–45), D45(T–34B), and Series 77. |
| SA2161NM | Raytheon Beech Model V35B. |
| SA2162NM | The Cessna Aircraft Company Models 321 (Navy OE–2), 172N, 172P, 172D, 172M, 172L, 172I, 172H (USAF T–41A), 172F (USAF T–41A), 172E, 172C, 172, 172Q, 172B, TR182, T182, 305B (Military T0–1D, 0–1D, 0–1F), R172E Series, 175C, 175B, 175A, R172F (USAF T–41D), P172D, 150, 150A, 150C, 150B, 150D, A152, A150M, 150M, 152, A150L, 150K, 150J, 150H, 150G, 150F, 210–5 (205), 210–5A (205A), T210R, P210R, T210N, 210N, P210N, 210M, T210L, 210K, T210K, 210J, T210H, 210H, T210G, T210F, 210F, 210D, 210C, 210B, 210A, 210L, 210, A185F, A185E, 185E, 185C, 185B, 185A, 185, 140A, 305A (USAF 0–1A), 305C (USAF 0–1E), 305D (USAF 0–1G), 305F, 120, 170B, 170A, 170, 207A, T207, 207, 206, P206B, P206, P206C, TU206A, TU206G, TU206E, TU206C, P206D, U206G, U206F, U206E, U206D, U206C, U206A, TP206E, TP206D, TP206C, TP206A, P206E, TU206D, T188C, A188B, A188, 188A, and 188. |
| SA2164NM | The Cessna Aircraft Company Model 180A. |
| SA2167NM | The New Piper Aircraft, Inc. Models PA–16S and PA–16, Series PA–24, Models PA–24–400, PA–24–250, PA–24, PA–24–260, PA–18S–''135'', PA–18''105'' (Special), PA–18AS–''135'', PA–18A–''135'', PA–18–''150'', PA–19S, PA–19 (Army L–18C), PA–18S–''150'', and PA–18–''135'' (Army L–21B), Series PA–18, Models PA–18–''125'' (Army L–21A), PA–18S, PA–18A, PA–18, and PA–18S–''125'', Series PA–19 and PA–20, Models PA–20, PA–20S, PA–20–''135'', PA–20–''115'', and PA–22S–160, Series PA–22, Models PA–22–160, PA–22S–150, PA–22–150, PA–22, PA–22–108, PA–22–135, and PA–22S–135, Series PA–28, Model PA–28R–200, Series PA–28S and PA–28R, Models PA–28–236, PA–28–201T, PA–28R–180, PA–28RT–201T, PA–28RT–201, PA–28R–201, PA–28–181, PA–28S–180, PA–28R–201T, PA–28S–160, PA–28–235, PA–28–180, PA–28–161, PA–28–160, PA–28–151, PA–28–150, and PA–28–140, Series PA–25 (Normal Category (Cat.)), Models PA–25–260 (Normal Cat.), PA–25–235 (Normal Cat.),PA–25 (Normal Cat.), L–14, PA–12S, PA–12, PA–14, PA–15, PA–17, PA–38–112, PA–46–310P, and PA–32–260, Series PA–32 and PA–32R, Models PA–32–300, PA–32–301T, PA–32–301, PA–32R–301T, PA–32R–301(HP), PA–32R–301(SP), PA–32RT–300T, PA–32RT–300, PA–32R–300, and PA–32S–300, Series PA–36, Models PA–36–375 (Normal Cat.), PA–36–300 (Normal Cat.), and PA–36–285 (Normal Cat.) |

| Affected STC | Make and model/series aircraft |
|---|---|
| SA2168NM | Learjet Inc. Model Learjet 24D Mooney Aircraft Corporation Models M20C, M20M, M20K, M20J, M20G, M20B, M20A, M20, M20F, M20E, and M22. |
| SA2683NM | Aermacchi S.p.A. Models F.260, F.260B, S.205–22/R, S.205–18/F, S.205–18/R, S.205–20/F, S.205–20/R, S.208A, and S.208 Aerocar, Incorporated Model I Aerodifusion, S.L. Model Jodel D–1190S Aeromere S.A. Model Falco F.8.L Aeronautica Macchi S.p.A. Models AL60, AL60–B, AL60–F5, and AL60–C5 Aeronautica Macchi S.p.A. & Aerfer-Industrie Aerospaziali Meridionali S.p.A. Model AM–3 Aeronca Aircraft Corporation Models S15AC and 15AC Ag Cat Corporation Models G–164B, G–164, and G–164A Alliance Aircraft Group, LLC Models H–395 (USAF L–28A or U–10B), H–250, H–295 (USAF U–10D), HT–295, H–391 (USAF YL–24), H–391B, H–700, and H–395A American Champion Aircraft Corp. Models 7AC, 7FC, 7ACA, S7AC, 7BCM (L–16A), 7CCM (L–16B), 7DC, S7DC, 7EC, S7EC, 7ECA, 7GC, 7GCA, 7GCAA, 7GCB, 7GCBA, 7GCBC, 7HC, 7JC, 7KC, 7KCAB, 11BC, S11AC, S11BC, 11AC, 11CC, S11CC, 8KCAB, and 8GCBC Arctic Aircraft Company, Inc. Models S–1A, S–1A–65F, S–1A–85F, S–1A–90F, S–1B2, S–1B1 (Army L–6), and S–1B1 (Army XL–6) Augustair, Inc. Models 2150A, 2180, and 2150 Avions Jodel Models D–1190, 150, D–140–B, and DR–1050 Bellanca Aircraft Corporation Models 14–19–2, 14–19–3A, 17–30, 17–31, 17–31TC, 14–9, 14–9L, 14–12F–3, 14–13, 14–13–2, 14–13–3, 14–13–3W, 17–30A, 17–31A, and 17–31ATC Biemond, C. Model Teal CB1 Board, G.R. Model Columbia XJL–1 Booth, Lee F. dba Taylorcraft Aerospace Models F21, F21A, and F19 Chaparral Motors, Inc. Models 2T–1A–1 and 2T–1A–2 Clark Aircraft, Inc. Models 12 and 1000 Commander Aircraft Company Models 114A, 112, 112B, 112TCA, 114, and 112TC C. Itoh Aircraft Maintenance and Engineering Co., Ltd. Model N–62 DaimlerChrysler Aerospace AG Models Bolkow Jr., BO–209–150 FV & RV, BO–209–160 FV & RV, and BO–209–150 FF Flugzeugwerke Altenrheim AG (FFA) Model AS 202/15 "BRAVO" Found Brothers Aviation Limited Model FBA–2C Fuji Heavy Industries, Ltd. Models FA–200–180AO, FA–200–180, and FA–200–160 Funk Aircraft Company Model Funk C Goodyear Aircraft Corporation Model GA–22A Gulfstream Aerospace Corporation Model 111 Jamieson Corporation, The Model J–2–L1B Kearns, Edward Scott Model Trojan A–2 Luscombe Aircraft Corporation Model 11A Luscombe, The Don, Aviation History Foundation, Inc. Models T–8F, 8A, 8E, 8D, 8B, 8, 8F, and 8C Maule Aerospace Technology, Inc. Models Bee Dee M–4–210, Bee Dee M–4–180S, Bee Dee M–4–180C, Bee Dee M–4T, Bee Dee M–4–210S, Bee Dee M–4S, Bee Dee M–4–210T, Bee Dee M–4–210C, Bee Dee M–4–220S, Bee Dee M–4–220T, Bee Dee M–5–180C, Bee Dee M–5–200, Bee Dee M–5–210TC, Bee Dee M–7–235, Bee Dee M–6–235, Bee Dee M–4C, Bee Dee M–5–220C, Bee Dee M–5–235C, Bee Dee M–6–180, Bee Dee M–5–210C, Bee Dee MX–7–235, Bee Dee M–4, MX–7–160C, Bee Dee M–7 Series, Bee Dee MXT–7–180, Bee Dee MT–7–235, Bee Dee M–8–235, Bee Dee MX–7–160, Bee Dee MXT–7–160, Bee Dee MX–7–180A, Bee Dee MXT–7–180A, Bee Dee MX–7–180B, Bee Dee M–7–235B, Bee Dee M–6 Series, Bee Dee MX–7 Series, Bee Dee M–7–235C, Bee Dee M–4 Series, Bee Dee M–8 Series, Bee Dee MX–7–180C, Bee Dee M–7–260C, M–7–260, MT–7–260, Bee Dee MX–7–180, and Bee Dee M–7–235A Nardi S.A. Model FN–333 Navion Aircraft Company, Ltd. Models Navion (L–17A), Navion A (L–17B), Navion A (L–17C), Navion B, Navion D, Navion E, Navion F, Navion G, and Navion H Procaer Progetti Costruzioni Aeronautiche Models F 15/C, F 15/B, and F 15/E Prop-Jets, Inc. Models 200, 200A, 200B, 200C, and 200D REVO, Incorporated Models Lake LA–4–200, Colonial C–1, Colonial C–2, Colonial Lake Model 250, and Lake LA–4 Sky International Inc. Models S–1S, S–2A, S–2, and S–1T SOCATA—Groupe Aerospatiale Models MS880B, MS885, MS892A–150, MS892E–150, MS893A, MS893E, MS894A, MS894E, TB10, TB20, TB21, and TB9 Sud Aviation Models Gardan GY.80–160, Gardan GY.80–150, and Gardan GY.80–180 Swift Museum Foundation, Inc. Models GC–1A and GC–1B Tiger Aircraft LLC Models AA–1, AA–1A, AA–1B, AA–1C, AA–5, AA–5A, and AA–5B Univair Aircraft Corporation Models 415–C, 415–CD, 108–2, 108–3, and F–1 Univair Aircraft Corporation Models F–1A, E, 415D, M10, A–2–A, and A–2 Wright, Jr., Elzie Model F–1. |
| SE1779NM | Textron Lycoming, AVCO Corporation Series IGO–540, IO–320, IGSO–540, O–290, GSO–580, O–320, IGO–480, GO–480, GSO–435, O–435, SO–580–A1A, SO–580–A1B, SO–580, O–540, VO–540, TIO–541, TIO–360, TO–360, and LTO–360. |
| SE1780NM | Curtiss-Wright Corporation Models A70 and A70–2 Teledyne Continental Motors Series TSIO–470, A–65, A–75, C75, C–125, C–115, Models A100–1 and A100–2, Series E–165, E–185, O–200, C90, C145, O–300, E–225, O–470, IO–470, Models FSO–470A, FSO–526A, FSO–526–C, Series GO–300, Models GSO–526–A and 6–260–A, Series IO–360, Models 6–320–B, GIO–470–A, T6–320–A, IO–346–B, and IO–346–A, Series IO–520, GTSIO–520, TSIO–520, TSIO–360, and LTSIO–360. |

**Note:** This AD affects Models SVS I and SVS IA only. The Model SVS III is addressed by AD–99–24–10, Amendment 39–11434 (64 FR 66747, November 30, 1999).

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of several reports of failed shuttle control valves of the SVS and one report of an airplane crash with a fatality in which improper use of the SVS was a factor. The actions specified in this AD are intended to correct problems with the SVS before failure or malfunction during instrument flight rules (IFR) flight that can lead to pilot disorientation and loss of control of the aircraft.

**What Must I Do To Address This Problem?**

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

| Actions | Compliance | Procedures |
|---|---|---|
| (1) Incorporate the airplane flight manual supplement (AFMS) in the airplane flight manual with the appropriate revision in the FAA-approved airplane flight manual (AFM). (i) 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. (ii) 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). | Within 30 days after July 18, 2005 (the effective date of this AD), unless already done. | Not applicable. |
| (2) Install placards described in the AFMS ..... | Before further flight after incorporating the AFMS in the FAA-approved airplane flight manual (AFM) required by paragraph (e)(1) of this AD. | Follow the MANUAL VALVE Standby Vacuum System AFM SUPPLEMENT, dated February 4, 2000. |
| (3) Upgrade the Model SVS I or SVS IA SVS to the Model VI SVS, install the appropriate placards, and add the installation report including the instructions for continued airworthiness (ICA) to the maintenance schedule for the aircraft. | Within 1 year after July 18, 2005 (the effective date of this AD), unless already done. | Follow Precise Flight, Inc. Installation Report No. 08074, Standby Vacuum System Model VI Upgrade Kit, dated January 7, 2000. |
| (4) Do not install any Model SVS I or SVS IA SVS without also doing the actions required by paragraphs (e)(1), (e)(2) and (e)(3) of this AD. | As of July 18, 2005 (the effective date of this AD). | Not applicable. |

**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 (ACO), FAA. For information on any already approved alternative methods of compliance, contact Mr. Tin Truong, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4065; telephone: (425) 917–6486; facsimile: (425) 917–6590.

**Does This AD Incorporate Any Material by Reference?**

(g) You must do the actions required by this AD following the instructions in Precise Flight, Inc. Installation Report No. 08074, Standby Vacuum System Model VI Upgrade Kit, dated January 7, 2000 and the MANUAL VALVE Standby Vacuum System AFM SUPPLEMENT, dated February 4, 2000. 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 Precise Flight, Inc., 63354 Powell Butte Road, Bend, Oregon 97701, telephone: (800) 547–2558; facsimile: (541) 388–1105; electronic mail: *preciseflight@preciseflight.com;* Internet: *http://www.preciseflight.com/svs.html.* 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–2004–19354; Directorate Identifier 2004–CE–30–AD.

Issued in Kansas City, Missouri, on May 25, 2005.

**David R. Showers,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–10864 Filed 6–6–05; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2004–19990; Directorate Identifier 2004–NM–199–AD; Amendment 39–14114; AD 2005–11–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 767–200, –300, and –300F series airplanes. This AD requires installing a new, improved foam seal around certain ducts in the forward cargo compartment. This AD is prompted by the detection of incorrectly installed smoke barrier seals around the electrical/electronic equipment air supply and exhaust ducts. We are issuing this AD to prevent fire extinguishing agent from leaking out of the seals around the ducts in the forward cargo compartment in the event of an in-flight fire, which could result in failure to extinguish the fire and consequent smoke or fire extinguishing agent entering a compartment occupied by passengers or crew.

**DATES:** This AD becomes effective July 12, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of July 12, 2005.

**ADDRESSES:** For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

*Docket:* The AD docket contains the proposed AD, comments, and any final disposition. 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 U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401,

Washington, DC. This docket number is FAA–2004–19990; the directorate identifier for this docket is 2004–NM–199–AD.

**FOR FURTHER INFORMATION CONTACT:** Barbara Mudrovich, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6477; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 767–200, –300, and –300F series airplanes. That action, published in the **Federal Register** on January 5, 2005 (70 FR 727), proposed to require installing a new, improved foam seal around certain ducts in the forward cargo compartment.

## Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD. Two commenters concur with the proposed AD.

## Request To Change Costs of Compliance Section

One commenter estimates that the proposed modification of the foam seals requires approximately 3.5 work hours per airplane, at a cost of $22,220 for its fleet. The commenter notes that it has accomplished the modification on all of its fleet. A second commenter estimates that the required work hours for the proposed AD would be 4.5 work hours per airplane, as specified in the referenced service information, at an estimated cost of $292.50 per airplane.

We infer that the commenters are asking that the work hour estimate specified in the ''Costs of Compliance'' section be increased. We do not agree. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. This AD requires installing a new, improved foam seal around certain ducts in the forward cargo compartment. We recognize that in accomplishing the requirements of any AD, operators may incur incidental costs in addition to the direct costs. However, the cost analysis in AD rulemaking actions typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. We have made no change to the AD in this regard.

## Conclusion

We have carefully reviewed the available data, including the comments that have been submitted, and determined that air safety and the public interest require adopting the AD as proposed.

## Costs of Compliance

There are about 468 airplanes of the affected design in the worldwide fleet. This AD affects about 342 airplanes of U.S. registry.

*For Group 1 and 2 airplanes:* The foam seal installation around the cooling air supply and exhaust ducts takes about 2 work hours per airplane, at an average labor rate of $65 per work hour. The cost of parts is minimal. Based on these figures, the estimated cost of the installation is $130 per airplane.

*For Group 2 airplanes:* The foam seal installation around the avionics cooling and refrigeration unit duct takes about 2 work hours per airplane, at an average labor rate of $65 per work hour. The cost of parts is minimal. Based on these figures, the estimated cost of the installation is $130 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 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.

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 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 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, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

**2005–11–12 Boeing:** Amendment 39–14114. Docket No. FAA–2004–19990; Directorate Identifier 2004–NM–199–AD.

**Effective Date**

(a) This AD becomes effective July 12, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767–26A0119, Revision 1, dated July 15, 2004.

**Unsafe Condition**

(d) This AD was prompted by the detection of incorrectly installed smoke barrier seals around the electrical/electronic equipment air supply and exhaust ducts. We are issuing this AD to prevent fire extinguishing agent from leaking out of the seals around the ducts in the forward cargo compartment in the event of an in-flight fire, which could result in failure to extinguish the fire and consequent smoke or fire extinguishing agent entering a compartment occupied by passengers or crew.

**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.

**Seal Installation**

(f) Within 24 months or 8,000 flight hours after the effective date of this AD, whichever is first: Do the applicable actions required by paragraphs (f)(1) and (f)(2) of this AD by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–26A0119, Revision 1, dated July 15, 2004.

(1) *For Group 1 and 2 airplanes:* Install a foam seal around the four cooling air supply and exhaust ducts in the electrical/electronic equipment bay in the forward cargo compartment.

(2) *For Group 2 airplanes:* Install a foam seal around the avionics cooling and refrigeration unit duct in the forward cargo compartment.

**Credit for Actions Accomplished Previously**

(g) Accomplishing the applicable actions before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–26A0119, dated April 19, 2001, is considered acceptable for compliance with the corresponding actions in paragraph (f)(1) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(h) 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.

**Material Incorporated by Reference**

(i) You must use Boeing Alert Service Bulletin 767–26A0119, Revision 1, dated July 15, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on May 26, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–11058 Filed 6–6–05; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–20727; Directorate Identifier 2004–NM–148–AD; Amendment 39–14113; AD 2005–11–11]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–8–400, –401, and –402 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400, –401, and –402 series airplanes. This AD requires repetitive inspections to detect discrepancies of the attachment fittings of the outboard flap front spar at flap track Number 4 and Number 5 locations, and corrective actions if necessary. This AD also requires eventual replacement of the attachment fittings as terminating action for the repetitive inspections. This AD is prompted by the discovery of several airplanes that have loose flap front spar attachment fittings at flap track Number 4 and Number 5 locations. We are issuing this AD to prevent the attachment fittings from becoming detached, and consequent loss of control of the airplane.

**DATES:** This AD becomes effective July 12, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of July 12, 2005.

**ADDRESSES:** For service information identified in this AD, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

*Docket:* The AD docket contains the proposed AD, comments, and any final disposition. 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 U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2005–20727; the directorate identifier for this docket is 2004–NM–148–AD.

**FOR FURTHER INFORMATION CONTACT:** David A. Lawson, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7327; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with an AD for certain Bombardier Model DHC–8–400, –401, and –402 series airplanes. That action, published in the **Federal Register** on March 30, 2005 (70 FR 16170), proposed to require repetitive inspections to detect discrepancies of the attachment fittings of the outboard flap front spar at flap track Number 4 and Number 5 locations, and corrective actions if necessary. The proposed AD also would require eventual replacement of the attachment fittings as terminating action for the repetitive inspections.

### Explanation of Change to Applicability

We have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

### Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that was submitted on the proposed AD. The commenter supports the proposed AD.

### Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

### Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet hours |
|---|---|---|---|---|---|---|
| Inspections (per inspection cycle). | 1 | $65 | $0 | $65 | 22 | $1,430 per inspection cycle. |
| Permanent repair ..... | 20 | 65 | 0 | 1,300 | 22 | $28,600. |

## 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 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.

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 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 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, Incorporation by reference, Safety.

## Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

**2005–11–11 Bombardier, Inc. (Formerly de Havilland, Inc.):** Amendment 39–14113. Docket No. FAA–2005–20727; Directorate Identifier 2004–NM–148–AD.

**Effective Date**

(a) This AD becomes effective July 12, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Bombardier Model DHC–8–400, –401 and –402 series airplanes, certificated in any category; serial numbers 4001, and 4003 through 4093 inclusive.

**Unsafe Condition**

(d) This AD was prompted by the discovery of several airplanes that have loose flap front spar attachment fittings at flap track Number 4 and Number 5 locations. We are issuing this AD to prevent the attachment fittings from becoming detached, and consequent loss of control of the airplane.

**Compliance**

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

**Service Bulletin Reference**

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–57–06, Revision ''B,'' dated March 9, 2004.

**Inspections of Flap Track Number 4**

(g) For any front spar attachment fitting at the flap track Number 4 location on which Bombardier Repair Drawing (RD) RD8/4–57–228, Issue 1, dated October 27, 2003; in combination with Bombardier RD8/4–57–173, Issue 2, dated June 17, 2003; or Bombardier RD8/4–57–180, Issue 2, dated September 22, 2003; or Bombardier RD8/4–57–226, Issue 2, dated November 11, 2003; has not been done prior to the effective date of this AD: Within 400 flight hours after the effective date of this AD, do a general visual inspection to detect discrepancies of the front spar attachment fittings at the flap track Number 4 location on both the left and right outboard flap assemblies. Do the inspection in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 800 flight hours until the terminating action required by paragraph (j) of this AD is done.

**Note 1:** For the purposes of this AD, a general visual inspection is: ''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 ensure visual access to all 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.''

**Inspections of Flap Track Number 5**

(h) Within 400 flight hours after the effective date of this AD, do a general visual inspection to detect discrepancies of the front spar attachment fittings at the flap track Number 5 location on both the left and right outboard flap assemblies. Do the inspection in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 800 flight hours until the terminating action required by paragraph (j) of this AD is done.

**Corrective Actions**

(i) If any discrepancy is found during any inspection required by paragraph (g) or (h) of this AD, before further flight, repair the discrepancy in accordance with the service bulletin. Where the service bulletin says to contact the manufacturer for repair instructions, before further flight, repair in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

**Terminating Action—Permanent Repair**

(j) Within 4,000 flight hours after the effective date of this AD, do the permanent repair required by paragraphs (j)(1) and (j)(2) of this AD. Completing the permanent repair

constitutes terminating action for the requirements of this AD.

(1) Modify the attachment of the front fittings of flap track Number 4 on both the left and right outboard flap assemblies in accordance with Bombardier RD8/4–57–226, Issue 2, dated November 11, 2003. Fittings on which the repairs specified in Bombardier RD8/4–57–173, Issue 2, dated June 17, 2003; or Bombardier RD8/4–57–180, Issue 2, dated September 22, 2003; have been done do not require that Bombardier RD8/4–57–226 be incorporated at those fitting locations.

(2) Modify the attachment of the front fittings of flap track Number 5 on both the left and right outboard flap assemblies in accordance with Bombardier Modification Summary Package IS4Q5750002, Revision D, dated December 1, 2003.

**Inspections Accomplished According to Previous Issue of Service Bulletin**

(k) Inspections accomplished before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A84–57–06, dated November 5, 2003; or Revision ''A,'' dated December 16, 2003; are acceptable for compliance with the inspections required by this AD.

**No Reporting Requirement**

(l) Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**Alternative Methods of Compliance (AMOCs)**

(m) The Manager, New York 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.

**Related Information**

(n) Canadian airworthiness directive CF–2004–11, dated June 28, 2004, also addresses the subject of this AD.

**Material Incorporated by Reference**

(o) You must use the service documents listed in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. (Only page 2 of Bombardier Modification Summary Package IS4Q5750002, contains the issue date of the document; no other page of the document contains this information. Only page 1 of Bombardier Repair Drawing RD8/4–57–226, Issue 2, contains the issue date of the document; no other page of this document contains this information.) The Director of the Federal Register approves the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

| Service document | Revision/ issue level | Date |
|---|---|---|
| Bombardier Alert Service Bulletin A84–57–06 | B | March 9, 2004. |
| Bombardier Modification Summary Package IS4Q5750002 | D | December 1, 2003. |
| Bombardier Repair Drawing RD8/4–57–226 | 2 | November 11, 2003. |

Issued in Renton, Washington, on May 26, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–11057 Filed 6–6–05; 8:45 am]

**BILLING CODE 4910–13–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[OAR–2002–0056; FRL–7921–5]**

**RIN 2060–AM96**

## Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units From the Section 112(c) List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects and clarifies certain text of the final rule entitled ''Revision of December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants from Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units From the Section 112(c) List.'' The final rule was published in the **Federal Register** on March 29, 2005 (70 FR 15994) and contains two discrete regulatory actions: The reversal of the December 2000 finding based on EPA's conclusion that it is neither appropriate nor necessary to regulate coal- and oil-fired electric utility steam generating units (Utility Units) under section 112 of the Clean Air Act (CAA); and the removal of coal- and oil-fired Utility Units from the CAA section 112(c) list.

This document corrects certain explanatory text in the final rule published at 70 FR 15993. These corrections do not affect the substance of the two above-noted regulatory actions, nor do they change the rights or obligations of any party. Rather, this notice merely corrects certain explanatory text in support of EPA's actions. Thus, it is proper to issue this notice of final rule corrections without notice and comment. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's action final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial, and do not substantively change the agency actions taken in the final rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

**DATES:** *Effective Date:* June 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol Holmes, OGC Attorney, Office of General Counsel, EPA, (AR–2344), Washington, DC 20460, telephone number: (202) 564–8709; fax number: (202) 564–5603; e-mail address: *holmes.carol@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

On March 15, 2005 (70 FR 15994), EPA issued a final rule in which EPA revised the regulatory finding issued on December 15, 2000, pursuant to CAA section 112(n)(1)(A), and concluded that it is neither appropriate nor necessary to regulate coal- and oil-fired Utility Units under CAA section 112. Based on this

revised finding, EPA removed coal- and oil-fired Utility Units from the CAA section 112(c) list.

**II. Correction to Regulatory Finding Final Rule (70 FR 15994–16035)**

This notice corrects certain explanatory text, which is the text in the final rule that supports the two above-noted regulatory actions. The corrections can be categorized generally as follows: (a) Insertion of citations inadvertently omitted from the text; (b) correction of typographical errors; (c) clarification of confusing explanatory text; and (d) correction of incorrect factual statements.

Below, we identify each technical correction to the explanatory text at 70 FR 15994–16035 and provide a brief explanation for the corrections. Specifically, 70 FR 15994–16035 is corrected, as follows:

(1) On page 16012, column 1, in the second full paragraph, after the second sentence, add the following citation: See Centers for Disease Control, *Blood Mercury Levels in Young Children and Childbearing-Aged Women—United States, 1999–2002,* MMWR Morb Mortal Wkly Rep. 2004 Nov 5; 53(43):1018–1020. *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5343a5.htm.*

We are adding the above citation because the explanatory text on page 16012 of the final rule summarizes the Center for Disease Control report, but inadvertently fails to include the citation to that report.

(2) On page 16024, column 3, in the second full paragraph, after the second sentence, add the following: *http://www.epa.gov/ttn/atw/nata/gloss1.html#hazardquotient.*

This revision adds an inadvertently omitted citation for the text quoted in the noted paragraph.

(3) On page 16012, column 1, in the second full paragraph, change the fourth sentence to read as follows:

''The analysis of the first 1,500 of these women, which was based on 1999–2000 data, showed that Hg blood levels were higher in the women who reported eating three or more servings of fish in the month before they were tested.''

We are revising this sentence because the original sentence in the preamble is confusing as to the number of women studied and the years of data examined in the study. This revision clarifies that the analysis of 1,500 women concerned only the first part of a larger study of 3,600 women and was based on 1999–2000 data.

(4) On page 16024, column 1, in the first full paragraph, in the second sentence, insert the phrase ''having utility-attributable exposures'' before the word ''exceeding.''

This clarification is necessary to make clear that the statement is limited to utility-attributable mercury exposures. As noted throughout the March 29, 2005 final rule, EPA's analysis pursuant to CAA section 112(n)(1)(A) focused on utility-attributable mercury exposures. (See 70 FR 15998, 16022.)

(5) On page 16024, column 3, in the last paragraph that begins on that page, in the second sentence, add the phrase ''to utility-attributable methylmercury'' before the word ''above.''

This clarification is necessary to make clear that the statement is limited to utility-attributable mercury exposures. See explanation provided in item 4 above.

(6) At the following locations, delete the word ''anglers'' or ''angler'' and insert in lieu thereof ''fishers'' or ''fisher'' respectively:

(i) On page 16012, column 1, in the last paragraph, in the first sentence;

(ii) On page 16022, column 1, in the first full paragraph, in the last sentence;

(iii) On page 16023, column 3, in the second full paragraph, in both places;

(iv) On page 16024, column 1, in the carryover paragraph from page 16023, in the second full sentence;

(v) On page 16024, in the first full paragraph, in all three places that it appears;

(vi) On page 16024, column 2, in the first full paragraph, in the last sentence;

(vii) On page 16024, column 2, in the second full paragraph, in the first sentence; and

(viii) On page 16024, column 3, in the last paragraph that begins on that page, in the second sentence.

The term ''fishers'' is appropriate because it includes anglers, who are individuals who catch fish with a pole or rod, as well as persons who catch fish in other ways. Our conclusions in the final rule were based on information concerning fishers, not anglers; thus, all references to ''anglers'' or ''angler'' should be to ''fishers'' or ''fisher,'' respectively.

(7) On page 16022, column 3, in the carryover paragraph from column 2, delete the number ''292.8'' and insert in lieu thereof the number ''394.''

The sentence at issue here summarizes a study by the Great Lakes Indian Fish and Wildlife Commission. The sentence incorrectly summarizes one of the figures cited in that study. The above-noted change rectifies this inadvertent error and correctly reflects the number in the study.

(8) On page 16023, column 3, in the carryover paragraph from column 2, in the first full sentence, delete the word ''commercial'' and insert in lieu thereof ''marine.''

This revision corrects the erroneous use in this sentence of the term ''commercial'—which refers to purchased marine, freshwater, and estuarine fish—by replacing it with the term ''marine,'' which refers to ocean fish, whether commercially obtained or self-caught. The water quality criterion discussed in this paragraph was based on possible exposure to methylmercury through the consumption of marine, not commercial, fish, as described in more detail on page 16014, column 3, in the second full paragraph.

(9) On page 16023, column 3, in the second full paragraph, in the second sentence, insert the phrase ''at or'' before the word ''below'' in both places.

This revision corrects an arithmetic error.

(10) On page 16024, column 2, in the second full paragraph, in the second sentence, delete the number ''293'' and insert in lieu thereof the number ''394.''

This revision corrects an error in the summary of the public comments to accurately reflect the data provided by the commenters.

(11) On page 15999, footnote 14, in the second sentence, insert the word ''not'' before the word ''adequate'' The corrected sentence should read: ''Section 112(m)(6) also requires EPA to promulgate additional regulations setting emission standards or control requirements, ''in accordance with'' section 112 and under the authority of section 112(m)(6), if EPA determines that the other provisions of section 112 are not adequate, and such regulations are appropriate and necessary to prevent serious adverse public health and environmental effects.''

This change corrects a typographical error. The word ''not'' was inadvertently omitted from the sentence and without that term, the sentence improperly summarizes CAA section 112(m)(6), which requires EPA to first determine if the other provisions of CAA section 112 are ''adequate to prevent serious adverse effects to public health and serious or widespread environmental effects,'' and then make an assessment based on that determination whether additional standards or control requirements are ''necessary and appropriate.'' (42 U.S.C. 7412(m)(6).''

(12) On page 16009, renumber sections ''3.'' and ''4.'' as sections ''2.'' and ''3.,'' respectively.

This revision corrects a typographical error, as the sections were improperly numbered.

(13) On page 16010, renumber section ''C.'' as section ''B.''

See explanation provided in item 12, above.

(14) On page 16021, renumber section ''5.'' as section ''3.''

See explanation provided in item 12, above.

(15) On page 16024, column 2, last paragraph, first sentence, delete the reference ''VII.B.,'' and insert in lieu thereof the reference ''VI.B.''

This correction accurately cites the appropriate cross-reference.

(16) On page 16026, column 2, first full paragraph, delete the references ''VII.D.'' and ''VII.E.,'' and insert in lieu thereof the references ''VI.D.'' and ''VI.E.,'' respectively.

See explanation provided in item 15, above.

(17) On page 16027, column 3, first full paragraph, delete the reference ''VII.E.,'' and insert in lieu thereof the reference ''VI.E.''

See explanation provided in item 15, above.

**III. Statutory and Executive Order Reviews**

Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget (OMB). This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The technical corrections do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Because EPA has made a ''good cause'' finding that this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

The corrections do not have substantial direct effects on the States, or 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, Federalism (64 FR 43255, August 10, 1999).

Today's action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 9, 2000). The technical corrections also are not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because this action is not economically significant.

The corrections are not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because this action is not a significant regulatory action under Executive Order 12866.

The corrections do not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

The corrections also do not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 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 U.S. The EPA will submit a report containing this final action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of today's action in the **Federal Register**. Today's action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The final rule will be effective on June 7, 2005.

The EPA's compliance with the above statutes and Executive Orders for the underlying rule is discussed in the March 29, 2005 **Federal Register** notice containing ''EPA's revision to the December 2000 Regulatory Finding on the Emissions of Hazardous Air Pollutants from Electric Utility Steam Generating Units and the Removal of Coal- and Oil-Fired Electric Utility Steam Generating Units From the Section 112(c) List'' (70 FR 15994).

Dated: June 1, 2005.

**Jeffrey R. Holmstead,**

*Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 05–11273 Filed 6–6–05; 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.

**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: | | | | | |
| Washington County, (Case No. 04–06–1740P), (FEMA Docket No. P7640). | City of Fayetteville .. | November 23, 2004, November 30, 2004, *Northwest Arkansas Times*. | The Honorable Dan Coody, Mayor, City of Fayetteville, 113 W. Mountain, Fayetteville, AR 72701. | November 12, 2004 | 050216 |
| Sebastian, (Case No. 03–06–847P), (FEMA Docket No. P7638). | City of Fort Smith ... | September 15, 2004, September 22, 2004, *Southwest Times Record*. | The Honorable C. Ray Baker, Jr., Mayor, City of Fort Smith, 4420 Victoria Drive, Fort Smith, AR 72904. | September 27, 2004 | 055013 |
| Pulaski, (Case No. 04–06–1607P), (FEMA Docket No. P7638). | City of Jacksonville | July 14, 2004, July 21, 2004, *Jacksonville Patriot*. | The Honorable Tommy Swaim, Mayor, City of Jacksonville, P.O. Box 126, Jacksonville, AR 72076–0126. | July 27, 2004 ..... | 050180 |
| Pulaski, (Case No. 03–06–2526P), (FEMA Docket No. P7638). | City of Little Rock ... | August 4, 2004, August 11, 2004, *Little Rock Free Press*. | The Honorable Jim Dailey, Mayor, City of Little Rock, Little Rock City Hall, 500 West Markham, Room 203, Little Rock, AR 72201. | November 10, 2004 | 050181 |
| Pulaski, (Case No. 03–06–697P), (FEMA Docket No. P7638). | City of Little Rock ... | September 15, 2004, September 22, 2004, *Little Rock Free Press*. | The Honorable Jim Dailey, Mayor, City of Little Rock, Little Rock City Hall, 500 West Markham, Room 203, Little Rock, AR 72201. | December 22, 2004 | 050181 |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Pope, (Case No. 04–06–853P), (FEMA Docket No. P7638). | City of Russellville .. | September 3, 2004, September 10, 2004, *The Courier*. | The Honorable Raye Turner, Mayor, City of Russellville, P.O. Box 428, Russellville, AR 72811. | August 11, 2004 ..... | 050178 |
| Illinois: | | | | | |
| Kane, (Case No. 03–05–3991P), (FEMA Docket No. P7636). | City of Aurora ..... | March 3, 2004, March 10, 2004, *The Beacon News*. | The Honorable David L. Stover, Mayor, City of Aurora, 44 East Downer Place, Aurora, IL 60507. | February 3, 2004 .... | 170320 |
| McLean, (Case No. 04–05–0891P), (FEMA Docket No. P7640). | City of Bloomington | November 12, 2004, November 19, 2004, *The Pantagraph*. | The Honorable Judy Markowitz, Mayor, City of Bloomington, 109 East Olive Street, Suite 200, Bloomington, IL 61701. | February 18, 2005 .. | 170490 |
| Will, (Case No. 03–05–5771P), (FEMA Docket No. P7638). | Village of Bolingbrook. | August 20, 2004, August 27, 2004, *The Bolingbrook Sun*. | The Honorable Roger Claar, Mayor, Village of Boliingbrook, 375 West Briarcliff Road, Bolingbrook, IL 60440. | July 27, 2004 ..... | 170812 |
| Cook, (Case No. 03–05–1460P), (FEMA Docket No. P7636). | Village of Burr Ridge. | April 7, 2004, April 14, 2004, *The Suburban Life*. | The Honorable Jo Irmen, President, Village of Burr Ridge, Village Hall, 7660 County Line Road, Burr Ridge, IL 60521. | July 14, 2004 ..... | 170071 |
| Cook, (Case No. 03–05–3989P), (FEMA Docket No. P7638). | Unincorporated Areas. | June 24, 2004, July 1, 2004, *Orland Township Messenger*. | The Hon. Donald H. Wlodarski, Commissioner, Cook County, 69 West Washington Street, Suite 2830, Chicago, IL 60602. | September 30, 2004 | 170054 |
| Cook, (Case No. 04–05–4062P), (FEMA Docket No. P7640). | Unincorporated Areas. | October 13, 2004, October 20, 2004, *The Chicago Tribune*. | The Hon. Donald H. Wlodarski, Commissioner, Cook County, 69 West Washington Street, Suite 2830, Chicago, IL 60602. | October 1, 2004 ..... | 170054 |
| Cook, (Case No. 03–05–5180P), (FEMA Docket No. P7640). | Unincorporated Areas. | October 21, 2004, October 28, 2004, *Orland Township Messenger*. | The Hon. Donald H. Wlodarski, Commissioner, Cook County, 69 West Washington Street, Suite 2830, Chicago, IL 60602. | January 27, 2004 .... | 170054 |
| Will, (Case No. 04–05–0768P), (FEMA Docket No. P7638). | Village of Frankfort | July 22, 2004, July 29, 2004, *The Star*. | The Honorable Raymond Rossi, Mayor, Village of Frankfort, 432 West Nebraska Street, Frankfort, IL 60423. | June 29, 2004 ..... | 170701 |
| Kane, and DeKalb, (Case No. 03–05–3994P), (FEMA Docket No. P7636). | Unincorporated Areas. | March 18, 2004, March 25, 2004, *The Elburn Herald*. | The Honorable Michael McCoy, Chairman, Kane County Board, Kane County Government Center, 719 South Batavia Avenue, Bldg. A, Geneva, IL 60134. | June 24, 2004 ..... | 170896 |
| Kane, (Case No. 04–05–2895P), (FEMA Docket No. P7640). | Unincorporated Areas. | November 10, 2004, November 17, 2004, *Kane County Chronicle*. | The Honorable Michael McCoy, Chairman, Kane County Board, Kane County Government Center, 719 South Batavia Avenue, Bldg. A, Geneva, IL 60134. | February 16, 2005 .. | 170896 |
| Kane, and DeKalb, (Case No. 03–05–3994P), (FEMA Docket No. P7636). | Village of Maple Park. | March 18, 2004, March 25, 2004, *The Elburn Herald*. | Mr. Mark T. Delany, Village President, Village of Maple Park, P.O. Box 220, Maple Park, IL 60151. | June 24, 2004 ..... | 171018 |
| McHenry, (Case No. 04–05–0758P), (FEMA Docket No. P7638). | City of Marengo ..... | August 24, 2004, August 31, 2004, *The Northwest Herald*. | The Hon. Dennis Hammortree, Mayor, City of Marengo, 132 East Prairie Street, Marengo, IL 60152. | November 30, 2004 | 170482 |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Kane and Kendall, (Case No. 04–05–0087P), (FEMA Docket No. P7640). | Village of Montgomery. | November 17, 2004, November 24, 2004, *Aurora Beacon News*. | The Honorable Marilyn Michelini, President, Village of Montgomery, Village Hall, 1300 South Broadway, Montgomery, IL 60538. | November 8, 2004 .. | 170328 |
| Cook, (Case No. 03–05–3989P), (FEMA Docket No. P7638). | Village of Orland Park. | June 24, 2004, July 1, 2004, *Orland Township Messenger*. | The Hon. Daniel McLaughlin, Mayor, Village of Orland Park, Village Hall, 14700 South Ravinia Avenue, Orland Park, IL 60462. | September 30, 2004 | 170140 |
| Cook, (Case No. 03–05–5180P) (FEMA Docket No. P7640). | Village of Orland Park. | October 21, 2004, October 28, 2004, *Orland Township Messenger*. | The Hon. Daniel McLaughlin, Mayor, Village of Orland Park, 14700 S. Ravinia Avenue, Orland Park, IL 60462. | January 27, 2004 .... | 170140 |
| Will, (Case No. 04–05–0088P) (FEMA Docket No. P7636). | Village of Plainfield | April 7, 2004, April 14, 2004, *The Enterprise*. | The Honorable Richard Rock, Mayor, Village of Plainfield, 24000 West Lockport Street, Plainfield, IL 60544. | March 5, 2004 ..... | 170771 |
| Will, (Case No. 04–05–1634P), (FEMA Docket No. P7638). | Village of Plainfield | June 23, 2004, June 30, 2004, *The Enterprise*. | The Honorable Richard Rock, Mayor, Village of Plainfield, 24000 West Lockport Street, Plainfield, IL 60544. | July 12, 2004 ..... | 170771 |
| Will, (Case No. 04–05–0769P), (FEMA Docket No. P7638). | Village of Plainfield | September 22, 2004, September 29, 2004, *The Enterprise*. | The Honorable Richard Rock, Mayor, Village of Plainfield, 24000 West Lockport Street, Plainfield, IL 60544. | September 9, 2004 | 170771 |
| Will, (Case No. 03–05–1850P) (FEMA Docket No. P7638). | Village of Shorewood. | September 14, 2004, September 21, 2004, *The Herald News*. | The Honorable Richard Chapman, President, Village of Shorewood, 903 West Jefferson Street, Shorewood, IL 60431. | August 27, 2004 ..... | 170712 |
| Cook, (Case No. 03–05–1457P), (FEMA Docket No. P7638). | Village of Tinley Park. | July 22, 2004, July 29, 2004, *The Courier News*. | The Honorable Edward Zabrocki, Mayor, Village of Tinley Park, 16250 South Oak Park Avenue, Tinley Park, IL 60477. | July 30, 2004 ..... | 170169 |
| Will, (Case No. 04–05–1634P), (FEMA Docket No. P7638). | Unincorporated Areas. | June 23, 2004, June 30, 2004, *The Enterprise*. | The Honorable Joseph L. Mikan, Executive, Will County, Will County Office Building 302 North Chicago Street, Joliet, IL 60432. | July 12, 2004 ..... | 170695 |
| Will, (Case No. 03–05–1850P), (FEMA Docket No. P7638). | Unincorporated Areas. | September 14, 2004, September 21, 2004, *The Herald News*. | The Honorable Joseph L. Mikan, Executive, Will County, Will County Office Building 302 North Chicago Street, Joliet, IL 60432. | August 27, 2004 ..... | 170695 |
| Will, (Case No. 04–05–3541P), (FEMA Docket No. P7640). | Unincorporated Areas. | November 12, 2004, November 19, 2004, *The Herald News*. | The Honorable Joseph L. Mikan, Will County Executive, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432. | October 19, 2004 .... | 170695 |
| Indiana: | | | | | |
| Hamilton, (Case No. 04–05–1640P), (FEMA Docket No. P7636). | City of Carmel ..... | May 4, 2004, May 11, 2004, *The Noblesville Ledger*. | The Honorable James Brainard, Mayor, City of Carmel, One Civic Square, Carmel, IN 46032. | August 10, 2004 ..... | 180081 |
| Hamilton, (Case No. 03–05–5182P), (FEMA Docket No. P7636). | Town of Fishers ..... | April 2, 2004, April 9, 2004 *The Noblesville Ledger*. | Mr. Michael J. Booth, Manager, Town of Fishers, Fishers Town Hall, One Municipal Drive, Fishers, IN 46038. | July 9, 2004 ..... | 180423 |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Johnson, (Case No. 04–05–0097P), (FEMA Docket No. P7638). | City of Greenwood .. | August 4, 2004, August 11, 2004, *The Daily Journal*. | The Hon. Charles Henderson, Mayor, City of Greenwood, 2 North Madison Avenue, Greenwood, IN 46142. | July 12, 2004 ..... | 180115 |
| Marion, (Case No. 04–05–0895P), (FEMA Docket No. P7640). | City of Indianapolis | November 12, 2004, November 19, 2004, *The Indianapolis Star*. | The Honorable Bart Peterson, Mayor, City of Indianapolis, 2501 City-County Building, 200 E. Washington Street, Indianapolis, IN 46204. | February 18, 2005 .. | 180159 |
| Marion, (Case No. 03–05–3389P), (FEMA Docket No. P7638). | City of Indianapolis | August 20, 2004, August 27, 2004, *The Indianapolis Star*. | The Honorable Bart Peterson, Mayor, City of Indianapolis, 2501 City-County Building, 200 E. Washington Street, Indianapolis, IN 46204. | November 26, 2004 | 180159 |
| Iowa: | | | | | |
| Story, (Case No. 03–07–892P), (FEMA Docket No. P7636). | City of Ames ..... | April 8, 2004, April 15, 2004, *The Tribune*. | The Honorable Ted Tedesco, Mayor, City of Ames, 515 Clark Avenue, Ames, IA 50010. | July 15, 2004 ..... | 190254 |
| Scott, (Case No. 03–07–888P), (FEMA Docket No. P7636). | City of Davenport .... | March 24, 2004, March 31, 2004, *Quad City Times*. | The Hon. Charles W. Brooke, Mayor, City of Davenport, City Council Office, 226 West 4th Street, Davenport, IA 52801. | June 30, 2004 ..... | 190242 |
| Johnson, (Case No. 04–07–047P), (FEMA Docket No. P7640). | City of North Liberty | October 20, 2004, October 27, 2004, *North Liberty Leader*. | The Honorable Clair Mekota, Mayor, City of North Liberty, 35 Vixen Lane, North Liberty, IA 52317. | October 5, 2004 ..... | 190630 |
| Story, (Case No. 04–07–046P), (FEMA Docket No. P7636). | Unincorporated Areas. | March 25, 2004, April 1, 2004, *The Tribune*. | The Honorable Jane Halliburton, Story County, Board Commissioner, 900 6th Street, Nevada, IA 50201. | July 1, 2004 ..... | 190907 |
| Kansas: | | | | | |
| Johnson, (Case No. 04–07–026P), (FEMA Docket No. P7636). | City of Overland Park. | May 13, 2004, May 20, 2004, *The Sun Newspapers*. | The Honorable Ed Eilert, Mayor, City of Overland Park, City Hall, 8500 Santa Fe Drive, Overland Park, KS 66212. | April 21, 2004 ..... | 200174 |
| Saline, (Case No. 04–07–037P), (FEMA Docket No. P7638). | City of Salina ..... | June 23, 2004, June 30, 2004, *The Salina Journal*. | The Honorable Allan E. Jilka, Mayor, City of Salina, 300 West Ash Street, Salina, KS 67402. | September 29, 2004 | 200319 |
| Saline, (Case No. 04–07–037P), (FEMA Docket No. P7638). | Unincorporated Areas. | June 23, 2004, June 30, 2004, *The Salina Journal*. | The Honorable Sheri Barragree, Chairman, Saline County Commissioners, 300 West Ash Street, Room 211, Salina, KS 67401. | September 29, 2004 | 200316 |
| Sedgwick, (Case No. 03–07–898P), (FEMA Docket No. P7636). | City of Wichita ..... | March 10, 2004, March 17, 2004, *The Wichita Eagle*. | The Honorable Carlos Mayans, Mayor, City of Wichita, City Hall—1st Floor, 455 North Main Street, Wichita, KS 67202. | February 12, 2004 .. | 200328 |
| Sedgwick, (Case No. 03–07–890P), (FEMA Docket No. P7636). | City of Wichita ..... | April 9, 2004, April 16, 2004, *The Wichita Eagle*. | The Honorable Carlos Mayans, Mayor, City of Wichita, City Hall—1st Floor, 455 North Main Street, Wichita, KS 67202. | April 26, 2004 ..... | 200328 |
| Sedgwick, (Case No. 03–07–1283P), (FEMA Docket No. P7636). | City of Wichita ..... | April 22, 2004, April 29, 2004, *The Wichita Eagle*. | The Honorable Carlos Mayans, Mayor, City of Wichita, City Hall—1st Floor, 455 North Main Street, Wichita, KS 67202. | July 29, 2004 ..... | 200328 |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Sedgwick, (Case No. 03–07–878P), (FEMA Docket No. P7638). | City of Wichita ..... | June 23, 2004, June 30, 2004, *The Wichita Eagle*. | The Honorable Carlos Mayans, Mayor, City of Wichita, City Hall—1st Floor, 455 North Main Street, Wichita, KS 67202. | June 17, 2004 ..... | 200328 |
| Maryland: Montgomery, (Case No. 03–03–133P), (FEMA Docket No. P7638). | City of Rockville ..... | August 11, 2004, August 18, 2004, *The Montgomery Journal*. | The Honorable Larry Giammo, Mayor, City of Rockville, Rockville City Hall, 111 Maryland Avenue, Rockville, MD 20850. | November 17, 2004 | 240051 |
| Michigan: | | | | | |
| Macomb, (Case No. 04–05–0884P), (FEMA Docket No. P7636). | Charter Township of Clinton. | March 23, 2004, March 30, 2004, *The Macomb Daily*. | Mr. Robert J. Cannon, Township Supervisor, 40700 Romeo Plank Road, Clinton Township, MI 48038. | February 19, 2004 .. | 260121 |
| Genesee, (Case No. 03–05–2569P), (FEMA Docket No. P7638). | City of Grand Blanc | July 22, 2004, July 29, 2004, *The Flint Journal*. | Mr. Randall Byrne, City Manager, City of Grand Blanc, 203 East Grand Blanc Road, Grand Blanc, MI 48439. | June 29, 2004 ..... | 260255 |
| Oakland, (Case No. 03–05–5184P), (FEMA Docket No. P7638). | City of Novi ..... | July 15, 2004, July 22, 2004, *The Novi News*. | The Honorable Lou Casordas, Mayor, City of Novi, 45175 West Ten Mile Road, Novi, MI 48375. | August 2, 2004 ..... | 260175 |
| Minnesota: | | | | | |
| Anoka, (Case No. 03–05–3380P), (FEMA Docket No. P7638). | City of Blaine ..... | August 13, 2004, August 20, 2004, *Blaine-Spring Lake Park Life*. | The Honorable Tom Ryan, Mayor, City of Blaine, 12147 Radisson Road NE., Blaine, MN 55449. | July 26, 2004 ..... | 270007 |
| Isanti, (Case No. 03–05–3978P), (FEMA Docket No. P7638). | Unincorporated Areas. | July 7, 2004, July 14, 2004, *Isanti County News*. | The Honorable George Larson, Chairman, Isanti County, Board of Commissioners, Isanti County Courthouse, 555 18th Avenue, SW., Cambridge, MN 55008. | July 21, 2004 ..... | 270197 |
| Olmsted, (Case No. 03–05–3988P), (FEMA Docket No. P7636). | Unincorporated Areas. | March 23, 2004, March 30, 2004, *The Post-Bulletin*. | Mr. Richard Devin, Olmsted County Administrator, 151 4th Street SE., Rochester, MN 55904. | February 23, 2004 .. | 270626 |
| Olmsted, (Case No. 03–05–3988P), (FEMA Docket No. P7636). | City of Rochester .... | March 23, 2004, March 30, 2004, *The Post-Bulletin*. | The Honorable Ardell Brede, Mayor, City of Rochester, City Hall, Room 281, 201 4th Street, SE., Rochester, MN 55904. | February 23, 2004 .. | 275246 |
| Winona, (Case No. 04–05–0100P), (FEMA Docket No. P7636). | City of Winona ..... | March 24, 2004, March 31, 2004, *Winona Daily News*. | The Honorable Jerry Miller, Mayor, City of Winona, 207 Lafayette Street, Winona, MN 55987. | February 5, 2004 .... | 275250 |
| Missouri: | | | | | |
| Clay, (Case No. 02–07–552P), (FEMA Docket No. P7638). | Village of Glenaire .. | July 21, 2004, July 28, 2004, *The Liberty Tribune*. | The Honorable Bryan Smith, Mayor, Village of Glenaire, P.O. Box 766, Glenaire, MO 64068. | October 27, 2004 .... | 290092 |
| Jefferson, (Case No. 04–07–035P), (FEMA Docket No. P7638). | Unincorporated Areas. | June 23, 2004, June 30, 2004, *Jefferson County Journal*. | The Honorable Mark Mertens, Presiding Commissioner, Jefferson County Courthouse, P.O. Box 100, Hillsboro, MO 63050. | September 29, 2004 | 290808 |
| Clay, (Case No. 02–07–552P), (FEMA Docket No. P7638). | City of Liberty ..... | July 21, 2004, July 28, 2004, *The Liberty Tribune*. | The Hon. Stephen Hawkins, Mayor, City of Liberty, 611 Lancelot Drive, Liberty, MO 64069. | October 27, 2004 .... | 290096 |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Greene, (Case No. 04–07–038P), (FEMA Docket No. P7636). | City of Republic ..... | May 12, 2004, May 19, 2004, *The Republic Monitor*. | The Honorable Keith D. Miller, Mayor, City of Republic, 213 North Main Street, Republic, MO 65738. | April 19, 2004 ..... | 290148 |
| Nebraska: | | | | | |
| Sarpy, (Case No. 02–07–551P), (FEMA Docket No. P7636). | City of Bellevue ..... | March 24, 2004, March 31, 2004, *The Bellevue Leader*. | The Honorable Jerry Ryan, Mayor, City of Bellevue, 210 West Mission Avenue, Bellevue, NE 68005. | July 1, 2004 ..... | 310191 |
| Sarpy, (Case No. 02–07–551P), (FEMA Docket No. P7636). | City of La Vista ..... | March 25, 2004, April 1, 2004, *The Papillion Times*. | The Hon. Harold Anderson, Mayor, City of La Vista, 8116 Park View Boulevard, La Vista, NE 68128. | July 1, 2004 ..... | 310192 |
| Sarpy, (Case No. 02–07–551P), (FEMA Docket No. P7636). | City of Papillion ..... | March 25, 2004, April 1, 2004, *The Papillion Times*. | The Honorable James E. Blinn, Mayor, City of Papillion, 122 East Third Street, Papillion, NE 68046. | July 1, 2004 ..... | 315275 |
| New Mexico: | | | | | |
| Bernalillo, (Case No. 03–06–1003P), (FEMA Docket No. P7636). | City of Albuquerque | March 25, 2004, April 1, 2004, *Albuquerque Journal*. | The Honorable Martin Chavez Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103. | March 3, 2004 ..... | 350002 |
| Bernalillo, (Case No. 04–06–1193P), (FEMA Docket No. P7638). | City of Albuquerque | July 22, 2004, July 29, 2004, *Albuquerque Journal*. | The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103. | July 9, 2004 ..... | 350002 |
| Sandoval, (Case No. 03–06–681P), (FEMA Docket No. P7638). | Town of Bernalillo ... | June 17, 2004, June 24, 2004, *Albuquerque Journal*. | The Honorable Charles Aguilar, Mayor, Town of Bernalillo, P.O. Box 638, Bernalillo, NM 87004. | June 4, 2004 ..... | 350056 |
| Bernalillo, (Case No. 04–06–1193P), (FEMA Docket No. P7638). | Unincorporated Areas. | July 22, 2004, July 29, 2004, *Albuquerque Journal*. | The Hon. Tom Rutherford, Chairman, Bernalillo County, Commission, One Civic Plaza NW., Albuquerque, NM 87102. | July 9, 2004 ..... | 350001 |
| Bernalillo, (Case No. 04–06–659P), (FEMA Docket No. P7636). | Unincorporated Areas. | March 22, 2004, March 29, 2004, *Albuquerque Journal*. | The Hon. Tom Rutherford, Chairman, Bernalillo County, Commission, One Civic Plaza NW., Albuquerque, NM 87102. | February 27, 2004 .. | 350001 |
| Dona Ana, (Case No. 04–06–234P), (FEMA Docket No. P7636). | City of Las Cruces .. | March 23, 2004, March 30, 2004, *Las Cruces Sun News*. | The Hon. William M. Mattiace, Mayor, City of Las Cruces, P.O. Box 20000, Las Cruces, NM 88004. | February 18, 2004 .. | 355332 |
| Oklahoma: Cleveland, (Case No. 04–06–1915P), (FEMA Docket No. P7640). | City of Moore ..... | November 23, 2004, November 30, 2004, *The Moore American*. | The Honorable Glenn Lewis, Mayor, City of Moore, 301 North Broadway, Moore, OK 73160. | November 9, 2004 .. | 400044 |
| New Mexico: | | | | | |
| Torrance County, (Case No. 04–06–674P), (FEMA Docket No. P7640). | City of Moriarty ..... | October 14, 2004, October 21, 2004, *Mountain View Telegraph*. | The Hon. Adan M. Encinias, Mayor, City of Moriarty, P.O. Drawer 130, Moriarty, NM 87035. | January 20, 2005 .... | 350083 |
| Sandoval, (Case No. 03–06–681P), (FEMA Docket No. P7638). | City of Rio Rancho | June 17, 2004, June 24, 2004, *The Observer*. | The Honorable Jim Owen, Mayor, City of Rio Rancho, 3900 Southern Boulevard, Rio Rancho, NM 87124. | June 4, 2004 ..... | 350146 |
| Ohio: | | | | | |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Greene, (Case No. 03–05–3977P), (FEMA Docket No. P7640). | City of Beaver Creek. | October 22, 2004, October 29, 2004, *Beavercreek News-Current*. | The Honorable Robert Glaser, Mayor, City of Beaver Creek, 1368 Research Park Drive, Beavercreek, OH 45432. | January 28, 2005 .... | 390876 |
| Butler, (Case No. 03–05–5177P), (FEMA Docket No. P7640). | Unincorporated Areas. | October 21, 2004, October 28, 2004 *The Journal-News*. | The Hon. Charles R. Furmon, President, Butler County, Board of Commissioners, 315 High Street, 4th Floor, Government Services Center, Hamilton, OH 45011. | January 27, 2004 .... | 390037 |
| Fairfield, (Case No. 03–05–5190P), (FEMA Docket No. P7636). | Unincorporated Areas. | April 7, 2004, April 14, 2004, *Lancaster Eagle-Gazette*. | The Honorable Jon Myers, Fairfield County, Board of Commissioners, 210 East Main Street, Room 301, Lancaster, OH 43130. | April 5, 2004 ..... | 390158 |
| Greene, (Case No. 03–05–3977P), (FEMA Docket No. P7640). | Unincorporated Areas. | October 22, 2004, October 29, 2004, *Xenia Daily Gazette*. | The Honorable Jeff Gilbert, Chairman, Greene County Board, County Courthouse, 519 North Main Street, Carrollton, OH 62016. | January 28, 2005 .... | 390193 |
| Summit, (Case No. 04–05–0770P), (FEMA Docket No. P7640). | Village of Hudson ... | October 20, 2004, October 27, 2004, *Hudson Hub-Times*. | The Honorable William Currin, Mayor, Village of Hudson, 27 East Main Street, Hudson, OH 44236–3099. | January 26, 2005 .... | 390660 |
| Licking, (Case No. 04–05–0765P), (FEMA Docket No. P7638). | Unincorporated Areas. | July 19, 2004, July 26, 2004, *The Advocate*. | The Hon. Albert Ashbrook, President, Licking County, Board of Commissioners, 20 South Second Street, Newark, OH 43055. | August 2, 2004 ..... | 390328 |
| Lucas, (Case No. 04–05–4066P), (FEMA Docket No. P7640). | Unincorporated Areas. | October 19, 2004, October 26, 2004, *Farmland News*. | The Honorable Harry Barlos, President, Lucas County, Board of Commissioners, One Government Center, Suite 800, Toledo, OH 43604. | September 30, 2004 | 390539 |
| Shelby, (Case No. 04–05–2336P), (FEMA Docket No. P7638). | Unincorporated Areas. | August 12, 2004, August 19, 2004, *The Sidney Daily News*. | Mr. Larry Klainhans, Chairman, Shelby County, Board of Commissioners, 129 East Court Street, Suite 100, Sidney, OH 45365. | July 22, 2004 ..... | 390503 |
| Oklahoma: | | | | | |
| Mayes, (Case No. 04–06–575P), (FEMA Docket No. P7638). | Unincorporated Areas. | August 3, 2004, August 10, 2004, *The Daily Times*. | The Hon. Jim Montgomery, Chairman, Mayes County, Board of Commissioners, P.O. Box 95, County Courthouse, Pryor, OK 74362–0095. | July 8, 2004 ..... | 400458 |
| Oklahoma, (Case No. 04–06–035P), (FEMA Docket No. P7636). | City of Midwest City | March 25, 2004, April 1, 2004, *The Midwest City Sun*. | The Honorable Eddie Reed, Mayor, City of Midwest City, P.O. Box 10570, Midwest City, OK 73140. | March 2, 2004 ..... | 400405 |
| Tulsa, (Case No. 04–06–1737P), (FEMA Docket No. P7638). | City of Owasso ..... | August 12, 2004, August 19, 2004 *Owasso Reporter*. | The Honorable Susan Kimball, Mayor, City of Owasso, P.O. Box 180, Owasso, OK 74055. | November 18, 2004 | 400210 |
| Payne, (Case No. 03–06–840P), (FEMA Docket No. P7638). | Unincorporated Areas. | July 21, 2004, July 28, 2004, *The News Press*. | The Honorable Gloria Hesser, Payne County Commissioner, 2600 S. Main Street, Suite C, Stillwater, OK 74074. | October 27, 2004 .... | 400493 |
| Payne, (Case No. 03–06–840P), (FEMA Docket No. P7638). | City of Stillwater ..... | July 21, 2004, July 28, 2004, *The News Press*. | The Honorable Bud Lacy, Mayor, City of Stillwater, P.O. Box 1449, Stillwater, OK 74076. | October 27, 2004 .... | 400493 |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Tulsa, (Case No. 04–06–552P), (FEMA Docket No. P7636). | City of Tulsa ..... | March 18, 2004, March 25, 2004, *Tulsa World*. | The Honorable Bill LaFortune, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, OK 74103. | February 12, 2004 .. | 405381 |
| Tulsa, (Case No. 03–06–1946P), (FEMA Docket No. P7638). | City of Tulsa, ..... | August 18, 2004, August 25, 2004, *Tulsa World*. | The Honorable Bill LaFortune, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, OK 74103. | November 24, 2004 | 405381 |
| Texas: | | | | | |
| Taylor and Jones, (Case No. 03–06–2669P), (FEMA Docket No. P7636). | City of Abilene ..... | May 4, 2004, May 11, 2004, *The Abilene Reporter-News*. | The Honorable Grady Barr, Mayor, City of Abilene, P.O. Box 60, Abilene, TX 79604. | August 10, 2004 ..... | 485450 |
| Parker, (Case No. 03–06–1950P), (FEMA Docket No. P7636). | City of Aledo ..... | March 3, 2004, March 10, 2004, *The Weatherford Democrat*. | The Honorable Sue Langley, Mayor, City of Aledo, 200 Old Annetta Road, Aledo, TX 76008. | June 9, 2004 ..... | 481659 |
| Brazoria, (Case No. 03–06–2336P), (FEMA Docket No. P7638). | City of Angleton ..... | June 30, 2004, July 7, 2004, *The Facts*. | The Hon. L.M. Sebesta, Jr., Mayor, City of Angleton, 2372 East Highway 35, Angleton, TX 77515. | October 6, 2004 ..... | 480064 |
| Tarrant, (Case No. 04–06–1903P), (FEMA Docket No. P7640). | City of Arlington ..... | November 12, 2004, November 19, 2004, *Northeast Tarrant County Morning News*. | The Hon. Dr. Robert Cluck, Mayor, City of Arlington, 101 W. Abram Street, Arlington, TX 76004–0231. | October 29, 2004 .... | 485454 |
| Tarrant, (Case No. 03–06–2875P), (FEMA Docket No. P7638). | City of Bedford ..... | August 24, 2004, August 31, 2004, *The Star Telegram*. | The Honorable R. D. Hurt, Mayor, City of Bedford, 200 Forest Ridge Drive, Bedford, TX 76021. | August 27, 2004 ..... | 480585 |
| Brazoria, (Case No. 03–06–2336P), (FEMA Docket No. P7638). | Unincorporated Areas. | June 30, 2004, July 7, 2004, *The Facts*. | The Honorable John Willy, Judge, Brazoria County, 111 East Locust Street, Angleton, TX 77515. | October 6, 2004 ..... | 485458 |
| Brazos, (Case No. 04–06–1025P), (FEMA Docket No. P7640). | City of Bryan ..... | October 5, 2004, October 12, 2004, *The Eagle*. | The Honorable Ernie Wentrcek, Mayor, City of Bryan, P.O. Box 1000, Bryan, TX 77805. | January 11, 2005 .... | 480082 |
| Dallas, (Case No. 03–06–2532P), (FEMA Docket No. P7636). | City of Carrollton ..... | April 7, 2004, April 14, 2004, *The Carrollton Leader*. | The Honorable Mark Stokes, Mayor, City of Carrollton, 1945 East Jackson Road, Carrollton, TX 75006. | March 23, 2004 ..... | 480167 |
| Dallas, (Case No. 04–06–228P), (FEMA Docket No. P7638). | City of Carrollton ..... | July 28, 2004, August 4, 2004, *The Carrollton Leader*. | The Honorable Mark Stokes, Mayor, City of Carrollton, 1945 East Jackson Road, Carrollton, TX 75006. | July 15, 2004 ..... | 480167 |
| Tarrant, (Case No. 04–06–383P), (FEMA Docket No. P7634). | City of Colleyville .... | January 29, 2004, February 5, 2004, *The Star Telegram*. | The Honorable Joe Hocutt, Mayor, City of Colleyville, 5400 Bransford Road Colleyville, TX 76034. | May 6, 2004 ..... | 480590 |
| Tarrant, (Case No. 03–06–1204P), (FEMA Docket No. P7638). | City of Colleyville .... | September 2, 2004, September 9, 2004, *Northeast Tarrant County Morning News*. | The Honorable Joe Hocutt, Mayor, City of Colleyville, 5400 Bransford Road, Colleyville, TX 76034–0185. | December 9, 2004 .. | 480590 |
| Collin, (Case No. 04–06–1470P), (FEMA Docket No. P7640). | Unincorporated Areas. | October 20, 2004, October 27, 2004, *Plano Star Courier*. | The Honorable Ron Harris, Judge, Collin County, 210 South McDonald Street Suite 626 Wylie, TX 75098. | January 26, 2005 .... | 480130 |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Comal, (Case No. 03–06–1394P), (FEMA Docket No. P7636). | Unincorporated Areas. | April 28, 2004, May 5, 2004 | The Honorable Danny Scheel, Judge, Comal County, Comal County Beacon, 199 Main Plaza, New Braunfels, TX 78130. | August 4, 2004 ..... | 485463 |
| Comal, (Case No. 04–06–127P), (FEMA Docket No. P7638). | Unincorporated Areas. | June 23, 2004, June 30, 2004, *Comal County Beacon*. | The Honorable Danny Scheel, Judge, Comal County, 199 Main Plaza, New Braunfels, TX 78130. | June 4, 2004 ..... | 485463 |
| Dallas, (Case No. 03–06–1942P), (FEMA Docket no. P7638). | City of Dallas ..... | August 24, 2004, August 31, 2004, *Dallas Morning News*. | The Honorable Laura Miller, Mayor, City of Dallas, City Hall, 1500 Mariall Street, Room 5EN, Dallas, TX 75201–6390. | November 30, 2004 | 480171 |
| Denton, (Case No. 04–06–664P), (FEMA Docket No. P7638). | City of Denton ..... | July 21, 2004, July 28, 2004, *Denton Record Chronicle*. | The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, TX 76201. | June 29, 2004 ..... | 480194 |
| Denton, (Case No. 04–06–1464), (FEMA Docket No. P7640). | Town of Double Oak | November 23, 2004, November 30, 2004, *Denton Record Chronicle*. | The Honorable Richard Cook, Mayor, Town of Double Oak, 320 Waketon Road, Double Oak, TX 75077. | March 1, 2005 ..... | 481516 |
| El Paso, (Case No. 04–06–1606P), (FEMA Docket No. P7640). | City of El Paso ..... | November 12, 2004, November 19, 2004, *El Paso Times*. | The Honorable Joe Wardy, Mayor, City of El Paso, 2 Civic Center Plaza, El Paso, TX 79901–1196. | October 29, 2004 .... | 480214 |
| Tarrant, (Case No. 04–06–875P), (FEMA Docket NO. P7638). | City of Euless ..... | July 1, 2004, July 8, 2004, *The Star Telegram*. | The Honorable Mary Lib Saleh, Mayor, City of Euless, 201 N. Ector Drive, Building B, Euless, TX 76039. | June 4, 2004 ..... | 480593 |
| Denton, (Case No. 03–06–2331P), (FEMA Docket No. P7636). | Town of Flower Mound. | March 3, 2004, March 10, 2004, *Flower Mound Leader*. | The Honorable Lori DeLuca, Mayor, Town of Flower Mound, 2121 Cross Timbers Road, Flower Mound, TX 75028. | June 9, 2004 ..... | 480777 |
| Fort Bend, (Case No. 03–06–2671P), (FEMA Docket No. P7638). | Unincorporated Areas. | September 1, 2004, September 8, 2004, *Fort Bend Star*. | The Honorable Robert Herbert, Judge, Fort Bend County, 301 Jackson Street, Richmond, TX 77469. | December 9, 2004 .. | 480228 |
| Fort Bend, (Case No. 04–06–2155P) (FEMA Docket No. P7640). | City of Missouri City | October 21, 2004, October 28, 2004, *Fort Bend Mirro*. | The Honorable Allen Owen, Mayor, City of Missouri City, 1522 Texas Parkway, Missouri City, TX 77489. | January 27, 2005 .... | 480304 |
| Fort Bend, (Case No. 04–06–2155P), (FEMA Docket No. P7640). | Unincorporated Areas. | October 20, 2004, October 27, 2004, *Fort Bend Star*. | The Honorable Robert Herbert, Judge, Fort Bend County, 301 Jackson Street, Richmond, TX 77469. | January 27, 2005 .... | 480228 |
| Tarrant, (Case No. 03–06–2551P), (FEMA Docket No. P7636). | City of Fort Worth ... | March 3, 2004, March 10, 2004, *The Star Telegram*. | The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | March 12, 2004 ..... | 480596 |
| Tarrant, (Case No. 04–06–230P) (FEMA Docket No. P7636). | City of Fort Worth ... | April 13, 204, April 20, 2004, *The Star Telegram*. | The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | July 20, 2004 ..... | 480596 |
| Tarrant, (Case No. 03–06–2049P) (FEMA Docket No. P7636). | City of Fort Worth ... | April 22, 2004, April 29, 2004, *The Star Telegram*. | The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | July 30, 2004 ..... | 480596 |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Tarrant, (Case No. 04–06–864P) (FEMA Docket No. P7638). | City of Fort Worth ... | July 14, 2004, July 21, 2004, *The Star Telegram*. | The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | June 23, 2004 ..... | 480596 |
| Tarrant, (Case No. 03–06–2546P) (FEMA Docket No. P7638). | City of Fort Worth ... | June 10, 2004, June 17, 2004, *The Star Telegram*. | The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | May 14, 2004 ..... | 480596 |
| Tarrant, (Case No. 03–06–2694P) (FEMA Docket No. P7638). | City of Fort Worth ... | June 30, 2004, July 7, 2004 *The Star Telegram*. | The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | October 6, 2004 ..... | 480596 |
| Tarrant, (Case No. 04–06–038P) (FEMA Docket No. P7638). | City of Fort Worth ... | August 18, 2004, August 25, 2004, *The Star Telegram*. | The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | July 26, 2004 ..... | 480596 |
| Tarrant, (Case No. 04–06–1188P) (FEMA Docket No. P7638). | City of Fort Worth ... | September 1, 2004, September 8, 2004, *The Star Telegram*. | The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102. | December 8, 2004 .. | 480596 |
| Collin, (Case No. 04–06–1741P) (FEMA Docket No. P764). | City of Fort Worth ... | October 6, 2004, October 13, 2004, *The Frisco Enterprise*. | The Honorable Mike Simpson, Mayor, City of Frisco, 6891 Main Street, Frisco, TX 75034. | July 21, 2004 ..... | 480134 |
| Dallas, (Case No. 03–06–2537P) (FEMA Docket No. P7636). | City of Garland ..... | June 3, 2004, June 10, 2004, *Garland Morning News*. | The Honorable Bob Day, Mayor, City of Garland, 200 N. Fifth Street, Garland, TX 75040. | June 10, 2004 ..... | 485471 |
| Harris, (Case No. 03–06–1393P) (FEMA Docket No. P7638). | Unincorporated Areas. | August 17, 2004, August 24, 2004 *The Houston Chronicle*. | The Honorable Robert Eckels, Judge, Harris County, 1001 Preston, Suite 911, Houston, TX 77002. | July 23, 2004 ..... | 480287 |
| Hays, (Case No. 03–06–1940P), (FEMA Docket No. P7636). | Unincorporated Areas. | April 7, 2004, April 14, 2004, *San Marcos Daily Record*. | The Honorable Jim Powers, Judge Hays County, 111 E. San Antonio Street Suite 300, San Marcos, TX 78666. | March 23, 2004 ..... | 480321 |
| Harris, (Case No. 03–06–2671P) (FEMA Docket No. P7638). | City of Houston ..... | September 2, 2004, September 9, 2004, *The Houston Chronicle*. | The Honorable Bill White, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251. | December 9, 2004 .. | 480296 |
| Tarrant, (Case No. 04–06–657P) (FEMA Docket No. P7636). | City of Hurst ..... | April 7, 2004, April 14, 2004, *The Star Telegram*. | The Honorable William Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054. | March 24, 2004 ..... | 480601 |
| Tarrant, (Case No. 03–06–2672P) (FEMA Docket No. P7638). | City of Hurst ..... | July 21, 2004, July 28, 2004, *The Star Telegram*. | The Honorable William Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054. | July 30, 2004 ..... | 480601 |
| Tarrant, (Case No. 03–06–2875P), (FEMA Docket No. P7638). | City of Hurst ..... | August 24, 2004, August 31, 2004 *The Star Telegram*. | The Honorable Richard Ward, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054. | August 27, 2004, .... | 480601 |
| Tarrant, (Case No. 03–06–1204P), (FEMA Docket No. P7638). | City of Hurst ..... | September 2, 2004, September 9, 2004 *The Star Telegram*. | The Honorable Richard Ward, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054. | December 9, 2004 .. | 480601 |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Tarrant, (Case No. 04–06–858P), (FEMA Docket No. P7640). | City of Hurst ..... | October 1, 2004, October 8, 2004 *The Star Telegram*. | The Honorable Richard Ward, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054. | October 7, 2004 ..... | 480601 |
| Hays, (Case No. 03–06–1940P), (FEMA Docket No. P7636). | City of Kyle ..... | April 7, 2004, April 14, 2004, *The Kyle Eagle*. | The Honorable James Adkins, Mayor, City of Kyle, 300 West Center, Kyle, TX 78640. | March 23, 2004 ..... | 481108 |
| Tarrant, (Case No. 04–06–1017P), (FEMA Docket No. P7638). | City of Mansfield ..... | September 2, 2004, September 9, 2004, *Mansfield News Mirror*. | The Honorable Mel Neuman, Mayor, City of Mansfield, 1200 East Broad Street, Mansfield, TX 76063–0337. | August 17, 2004 ..... | 480606 |
| Collin, (Case No. 03–06–2534P), (FEMA Docket No. P7638). | City of McKinney .... | August 11, 2004, August 18, 2004, *McKinney Courier Gazette*. | The Honorable Bill Whitfield, Mayor, City of McKinney, P.O. Box 517, McKinney, TX 75070. | November 17, 2004 | 480135 |
| Collin, (Case No. 04–06–1002P), (FEMA Docket No. P7640). | City of McKinney .... | October 7, 2004, October 14, 2004, *McKinney Courier Gazette*. | The Honorable Bill Whitfield, Mayor, City of McKinney, 222 N. Tennessee Avenue, McKinney, TX 75069. | January 13, 2005 .... | 480135 |
| Dallas, (Case No. 03–06–2692P), (FEMA Docket No. P7636). | City of Mesquite ..... | March 4, 2004, March 11, 2004, *The Mesquite News*. | The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185. | June 10, 2004 ..... | 485490 |
| Dallas, (Case No. 03–06–1750P), (FEMA Docket No. P7636). | City of Mesquite ..... | May 13, 2004, May 20, 2004, *The Mesquite News*. | The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185. | April 29, 2004 ..... | 485490 |
| Dallas, (Case No. 03–06–2530P), (FEMA Docket No. P7638). | City of Mesquite ..... | July 29, 2004, August 5, 2004, *The Mesquite News*. | The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185. | November 4, 2004 .. | 485490 |
| Fort Bend, (Case No. 03–06–2671P), (FEMA Docket No. P7638). | City of Missouri City | September 2, 2004, September 9, 2004. | The Honorable Allen Owen, Mayor, City of Missouri City, Fort Bend Mirror 1522 Texas Parkway, Missouri City, TX 77489. | December 9, 2004 .. | 480304 |
| Tarrant, (Case No. 04–06–1192P), (FEMA Docket No. P7638). | City of North Richland Hills. | September 16, 2004, September 23, 2004, *The Northeast Tarrant County Morning News*. | The Hon. T. Oscar Trevino, Jr., Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, TX 76182–0609. | August 23, 2004 ..... | 480607 |
| Denton, (Case No. 04–06–1180P), (FEMA Docket No. P7640). | City of Oak Point .... | November 23, 2004, November 30, 2004, *Denton Record Chronicle*. | The Honorable Duane E. Olson, Mayor, City of Oak Point, 100 Naylor Road, Oak Point, TX 75068. | November 9, 2004 .. | 481639 |
| Parker, (Case No. 03–06–1950P), (FEMA Docket No. P7636). | Unincorporated Areas. | March 3, 2004, March 10, 2004, *The Weatherford Democrat*. | The Honorable Mark Riley, Judge, Parker County, 123 North Main Street, Weatherford, TX 76086. | June 9, 2004 ..... | 480520 |
| Collin, (Case No. 03–06–2548P), (FEMA Docket No. P–7638). | City of Plano ..... | August 4, 2004, August 11, 2004, *Plano Star Courier*. | The Honorable Pat Evans, Mayor, City of Plano, 1520 Avenue K, Plano, TX 750086–0358. | August 17, 2004 ..... | 480140 |
| Collin, (Case No. 04–06–027P), (FEMA Docket No. P7638). | City of Plano ..... | September 3, 2004, September 10, 2004, *Plano Star Courier*. | The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086–0358. | December 10, 2004 | 480140 |

| State and county | Location | Dates and names of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Tarrant, (Case No. 03–06–848P), (FEMA Docket No. P7638). | City of Richland ..... | August 18, 2004, August 25, 2004, *The Northeast Tarrant County Morning News*. | The Honorable Nelda Stroder, Mayor, City of Richland Hills, 3200 Diana Drive Richland Hills, TX 76118. | July 20, 2004 ..... | 480608 |
| Williamson, (Case No. 03–06–1540P), (FEMA Docket No. P7640). | City of Round Rock | October 12, 2004, October 19, 2004, *Round Rock Leader*. | The Honorable Nyle Maxwell, Mayor, City of Round Rock, 221 East Main, Round Rock, TX 78664. | January 19, 2005 .... | 481048 |
| Tarrant, (Case No. 04–06–864P), (FEMA Docket No. P7638). | City of Saginaw ..... | July 14, 2004, July 21, 2004, *The Star Telegram*. | The Hon. Frankie Robbins, Mayor, City of Saginaw, P.O. Box 79070, Saginaw, TX 76179. | June 23, 2004 ..... | 480610 |
| Tom Green, (Case No. 03–06–2684P), (FEMA Docket No. P7636). | City of San Angelo | January 16, 2004, January 23, 2004, *San Angelo Standard Times*. | The Honorable J. W. Lown, Mayor, City of San Angelo, San Angelo City Hall, 72 West College Avenue, San Angelo, TX 76903. | December 30, 2003 | 480623 |
| Bexar, (Case No. 03–06–1201P), (FEMA Docket No. P7634). | City of San Antonio | February 19, 2004, February 26, 2004, *San Antonio Express*. | The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, News San Antonio, TX 78283–3966. | May 27, 2004 ..... | 480045 |
| Bexar, (Case No. 03–06–1745P), (FEMA Docket No. P7638). | City of San Antonio | June 16, 2004, June 23, 2004, *San Antonio Express News*. | The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966. | September 22, 2004 | 480045 |
| Bexar, (Case No. 03–06–829P), (FEMA Docket No. P7638). | City of San Antonio | June 30, 2004, July 7, 2004, *San Antonio Express News*. | The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966. | October 6, 2004 ..... | 480045 |
| Bexar, (Case No. 03–06–1947P), (FEMA Docket No. P7638). | City of San Antonio | August 31, 2004, September 7, 2004, *San Antonio Express News*. | The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966. | August 12, 2004 ..... | 480045 |
| Tarrant, (Case No. 04–06–866P), (FEMA Docket No. P7638). | City of Southlake .... | June 23, 2004, June 30, 2004, *The Star Telegram*. | The Hon. Andy Wambsganss, Mayor, City of Southlake, 1400 Main Street Southlake, TX 76092. | June 16, 2004 ..... | 480612 |
| Williamson, (Case No. 03–06–1540P), (FEMA Docket No. P7640). | Unincorporated Areas. | October 13, 2004, October 20, 2004, *Williamson County Sun*. | The Honorable John Doerfler, Judge, Williamson County, 710 Main Street, Suite 201, Georgetown, TX 78626. | January 19, 2005 .... | 481079 |
| Wise, (Case No. 03–06–2058P), (FEMA Docket No. P7638). | Unincorporated Areas. | July 15, 2004, July 22, 2004,*Wise County Messenger*. | The Honorable Dick Chase, Judge, Wise County, P.O. Box 393, Decatur, TX 76231–0393. | October 21, 2004 .... | 481051 |
| Collin, (Case No. 04–06–1470P), (FEMA Docket No. P7640). | City of Wylie ..... | October 20, 2004, October 27, 2004, *The Wylie News*. | The Honorable John Mondy, Mayor, City of Wylie, 2000 State Highway 78 North Wylie, TX 75098. | January 26, 2005 .... | 480759 |
| Wisconsin: Waupaca, (Case No. 04–05–4068P), (FEMA Docket No. P7640). | City of Clintonville ... | September 23, 2004, September 30, 2004, *Tribune Gazette*. | The Honorable Richard Beggs, Mayor, City of Clintonville, 50 10th Street, Clintonville, WI 54929. | September 17, 2004 | 550494 |

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

Dated: May 31, 2005.

**David I. Maurstad,**

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

[FR Doc. 05–11229 Filed 6–6–05; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**RIN 1018–AJ10**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Allium munzii* (Munz's onion)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate 176 acres (ac) (71 hectares (ha)) of Federal land as critical habitat for the Federally endangered *Allium munzii* (Munz's onion) pursuant to the Endangered Species Act of 1973, as amended (Act). The designated critical habitat is within the Cleveland National Forest at Elsinore Peak in western Riverside County, California.

**DATES:** This rule becomes effective on July 7, 2005.

**ADDRESSES:** Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92009 (telephone: 760/431–9440). The final rule, economic analysis (EA), and map will also be available via the Internet at *http://carlsbad.fws.gov*.

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, Carlsbad Fish and Wildlife Office (telephone 760/431–9440; facsimile 760/431–9618).

**SUPPLEMENTARY INFORMATION:**

### Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the ESA, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of conservation resources. The Service's present system for designating critical habitat is driven by litigation rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

### Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 473 species, or 38 percent of the 1,253 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat.

We address the habitat needs of all 1,253 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. In the case of listed plants, such as *Allium munzii*, Section 9 of the Act prohibits any person subject to the jurisdiction of the United States from removing and reducing to possession any such species from areas under Federal jurisdiction; maliciously damaging or destroying any such species on such area; or removing, cutting, digging up, or damaging or destroying any such species on any other area in knowing violation of any law or regulation of any state or in the course of any violation of a State criminal trespass law. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that two courts found our definition of adverse modification to be invalid (March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit, *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, F.3d 434, and the August 6, 2004, Ninth Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*). In response to these decisions, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

### Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits regarding critical habitat designation, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits and to comply with the growing number of adverse court orders. As a result, the Service's own proposals to undertake conservation actions based on biological priorities are significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with almost no ability to provide for additional public participation beyond that minimally required by the Administrative Procedures Act (APA), the Act, and the Service's implementing regulations, or to take additional time for review of comments and information to ensure the rule has addressed all the pertinent issues before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who will suffer adverse impacts from these decisions challenge them. The cycle of litigation appears endless, is very expensive, and in the final analysis provides little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA); all are part of the cost of critical habitat designation. These costs result in minimal benefits to the species that are not already afforded by the protections

of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

**Background**

We intend to discuss only those topics directly relevant to the designation of critical habitat in this final rule. For more information on *Allium munzii*, please refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975), proposed critical habitat rule published in the **Federal Register** on June 4, 2004 (69 FR 31569), and the notice of availability of the draft economic analysis (DEA) and reopening of the public comment period for *Allium munzii* published in the **Federal Register** on December 1, 2004 (69 FR 69878).

**Previous Federal Action**

Please refer to the proposed rule to designate critical habitat for *Allium munzii* (69 FR 31569) and the notice of availability of the draft economic analysis and reopening of the public comment period for *Allium munzii* (69 FR 69878) for more information on previous Federal actions concerning Munz's onion.

**Summary of Comments and Recommendations**

We requested written comments from the public on the proposed designation of critical habitat for *Allium munzii* (69 FR 31569) and the notice of availability of the draft economic analysis and reopening of the public comment period for *Allium munzii* (69 FR 69878). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule.

During the comment period that opened on June 4, 2004, and closed on August 3, 2004, we received 7 comment letters directly addressing the proposed critical habitat designation: 3 from peer reviewers, 1 from a Federal agency, and 3 from organizations or individuals. During the comment period that opened on December 1, 2004, and closed on January 3, 2005, we received 4 comment letters directly addressing the proposed critical habitat designation and the draft economic analysis. Of these latter comments, 1 was from a Federal agency, and 3 were from organizations. One commenter concurred with the designation of critical habitat for *Allium munzii* and 8 commenters recommended modifications to the proposed designation. Comments received were grouped into general issues specifically relating to the proposed critical habitat designation for *Allium munzii* and are addressed in the following summary and incorporated into the final rule as appropriate. We did not receive any requests for a public hearing.

**Peer Review**

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from three of the peer reviewers. The peer reviewers provided additional information, clarifications, and suggestions to improve the final critical habitat rule. These recommendations included clarification of occurrences, improvements to the primary constituent elements, identification of essential occurrences, and correction of factual errors. Two of the peer reviewers recommended that the essential habitat and occurrences within the Western Riverside County Multiple-Species Habitat Conservation Plan (MSHCP) be designated as critical habitat. One of the peer reviewers agreed with the designation of critical habitat at Elsinore Peak and expressed cautious support of the areas excluded within the Western Riverside County MSHCP under section 4(b)(2) of the Act. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for *Allium munzii*, and addressed them in the following summary.

**Peer Reviewer Comments**

*Comment 1.* Two peer reviewers disagreed with our exclusion of critical habitat within the Western Riverside County MSHCP based on our justification of the ''presumed effectiveness of approved and draft habitat conservation plans, in particular, the Western Riverside County MSHCP,'' and their concerns that ''known localities within the jurisdiction of the MSHCP currently have no established reserves, or proposed management procedures for this species.''

*Our Response.* Under section 4(b)(2) of the Act, the ''Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such areas as part of critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.'' We evaluated the benefits of excluding critical habitat against the benefits of including critical habitat within approved Habitat Conservation Plans (HCPs), including the Western Riverside County MSHCP, the Rancho Bella Vista HCP, and the Long-Term Stephen's Kangaroo Rat (SKR) HCP. A major benefit of exclusion is that it will allow us to continue to work with the signatory agencies in Riverside County (for the Western Riverside County MSHCP) in a spirit of cooperation and partnership and to encourage landowners, local jurisdictions, and other entities to work cooperatively with us to develop HCPs in other areas. A possible benefit of including critical habitat on such lands is education about the species and its habitat needs. However, we considered that this educational benefit has largely already been met by the public participation process that occurred in the development of approved HCPs, including the Western Riverside County MSHCP, and therefore, that this would not be a particularly important benefit of critical habitat designation. Maps depicting the distribution and location of *Allium munzii* are widely available to the public as part of the Western Riverside County MSHCP planning process. We have concluded, therefore, that the benefits of excluding critical habitat from such lands exceed the value of including the lands as critical habitat. See additional discussion under ''Exclusions Under Section 4(b)(2) of the Act.''

Our approval of the Western Riverside County MSHCP indicates our strong belief that the plan will be effective in conserving *Allium munzii.* The Western Riverside County MSHCP provides specific conservation objectives to ensure that suitable habitat and known populations of *Allium munzii* will persist. Under the Western Riverside County MSHCP, at least 21,260 ac (8,604 ha) of modeled habitat for *Allium munzii* will be included in the MSHCP Conservation Area. The permittees will implement management and monitoring practices within the Additional Reserve Lands, including surveys for *Allium munzii.* Cooperative management and monitoring are anticipated on public and PQP lands. Surveys for *Allium munzii* will be conducted at least every 8 years to verify occupancy at a minimum of 75 percent of the known locations. If surveys document that the distribution of *Allium munzii* has

declined below this 75 percent threshold, management measures will be triggered, as appropriate, to meet the species-specific objectives. Other management actions described in the MSHCP include addressing competition with non-native plant species, clay mining, off-road vehicle use, and disking activities. Implementation of these management actions will help to avoid and minimize adverse effects to *Allium munzii.* Thus, the Western Riverside County MSHCP establishes reserves and management procedures for *Allium munzii.*

The Western Riverside County MSHCP provides a greater level of management for *Allium munzii* on private lands than would designation of critical habitat on private lands. The designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Section 7(a)(2) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify critical habitat. Critical habitat designation on private (non-Federal) lands would not obligate or trigger any requirement by a private (non-Federal) landowner to manage their lands to conserve *Allium munzii*.

All known occurrences of this species would be protected: (1) By approved HCPs (Rancho Bella Vista and SKR HCPs); (2) on existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) in areas where a conservation strategy authorized through the section 7 consultation process has provided for protection and long-term management of *Allium munzii*. Thus, we have concluded that the exclusion of such lands would not result in the extinction of *Allium munzii*. Please see ''Relationship of Critical Habitat to Approved Habitat Conservation Plans and Other Approved Conservation Strategies'' for a more detailed discussion.

*Comment 2.* Two peer reviewers recommended that critical habitat be designated for additional known occurrences/populations and areas of suitable clay soils. These are: (1) Known occurrences at Harford Springs and Harford Springs County Park and adjacent clay habitat on the Gavilan Plateau (Elemental Occurrence (EO) 2); (2) all of the occurrences on and adjacent to Estelle Mountain (EO 9); (3) an occurrence south of Steele Peak (no element occurrence identified, possibly EO 15); (4) all of the habitat on Elsinore Peak and all localities on Elsinore Peak (EO 13); (5) an occurrence in the Temescal Wash near Indian Wash, and the area between Indian Wash and Horsethief Wash south of DePalma Road in Temescal Canyon (EO3 and EO8); (6) occurrences on the southern flank of Alberhill Mountain (EO 6); (7) occurrences on Bachelor Mountain (EO 12); and (8) an occurrence on North Domenigoni Hills (EO 10).

One of the peer reviewers did not recommend critical habitat for the occurrences at Skunk Hollow (Rancho Bella Vista HCP) (EO 4), Briggs and Scott Roads (EO 14), or Indian Truck Trail and De Palma Roads (Sycamore Creek) (EO 7) because of the small size, fragmentation, and impacts to these populations. The peer reviewers did not provide the EO numbers for these populations and we attempted to match their descriptions with the EO for our response.

*Our Response.* Considered together, the three categories of (1) approved HCPs (Rancho Bella Vista and SKR HCPs); (2) existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii* provide a significant level of conservation for *Allium munzii*. Thus, all of the occurrences of *Allium munzii* within (1) approved HCPs (Rancho Bella Vista and SKR); (2) existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) on lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii*.

Within PQP lands, the species occurs on lands in: (1) The southern border of Harford Springs County Park (owned by the County of Riverside) (EO 2); (2) Barry Jones Wetland Mitigation Bank (previously called the Skunk Hollow Wetland Mitigation Bank) (private lands) (EO 4); (3) Lake Mathews—Estelle Mountain Reserve northwest of the Estelle Mountain summit in the Gavilan Hills (owned by the County of Riverside) (EO 9); (4) Southwestern Riverside County Multi-Species Reserve (SRCMSR) in the north Domenigoni Hills on either side of Old Mine Road (owned by the Metropolitan Water District) (EO 10); (5) SRCMSR lands at Lake Skinner (owned by the Bureau of Land Management and Metropolitan Water District) (EO 11); (6) SRCMSR lands on the south slope of Bachelor Mountain (owned by the Metropolitan Water District) (EO 12); and (7) Elsinore Peak on the Cleveland National Forest (EO 13).

Within proposed conceptual reserve lands, lands specifically targeted to be included within the Reserve, and/or within the Narrow Endemic Plant Species Survey Area, the plant occurs in: (1) Private lands across Ida Leona Road in the Gavilan Hills adjacent to Harford Springs County Park (EO 2); (2) private land immediately adjacent to the Sycamore Creek development, northwest of I–15 and Indian Truck Trail Road, in Temescal Canyon (EO 3 and EO 8); (3) Upper Dawson Canyon in the Gavilan Hills (EO 5); (4) private land on the south side of Alberhill Mountain, west of I–15, in the City of Lake Elsinore (EO 6); (5) private land east of I–15, west of De Palma's Italian Village, between Indian Canyon and Horsethief Canyon (EO7); (6) west of Lindenberger Road, 0.8 miles (mi) south of Scott Road, southeast of Sun City on a 36.3-ac (15 ha) parcel conserved as the result of a conservation strategy approved through the section 7 consultation process regarding a Sempra gas pipeline (Service 2001) and on a 65.5-ac (27 ha) parcel conserved as a result of a conservation strategy approved through the section 7 consultation process associated with the Warmington development (Service 2002) (EO 14); (7) northern boundary of the City of Lake Elsinore, within the North Peak Specific Plan Area on lands purchased and conserved by Riverside County (EO 15); (8) 1.2 mi northeast of the intersection of Lake Street and I–15 (EO 16); (9) land owned by Metropolitan Water District of Southern California on the north slope of Bachelor Mountain (EO 17); (10) Temescal Valley, west of I–15, between Nichols Road and Riverside Drive, on a low hill adjacent to Collier Marsh (Alberhill Marsh); and (11) near Temescal Wash (EO 18).

In addition, at least 21,260 ac (8,604 ha) of modeled habitat for *Allium munzii* will be included in the MSHCP Conservation Area (Service 2004). According to the Western Riverside County MSHCP, at least 13 localities within Temescal Valley and the southwestern portion of Plan Area, including the following Core Areas, are to be included within the MSHCP Conservation Area (County of Riverside 2002): (1) Harford Springs Park (EO 2); and (2) a population on private lands in Temescal Valley (EO 5), Alberhill (EO 6), De Palma Road (EO 7), Estelle Mountain (EO 9), Domenigoni Hills (EO

10), Lake Skinner (EO 11), Bachelor Mountain (EO 12), Elsinore Peak (EO 13), Scott Road (EO 14), North Peak (EO 15), and northeast of Alberhill (EO 16). Populations that are currently on public lands or within preservation areas include Harford Springs Park (about half the plants and habitat) (EO 2) and at Estelle Mountain (EO 7), North Domenigoni Hills (EO 10), Bachelor Mountain (two populations) (EO 11 and EO 12), North Peak (EO 15), and Cleveland National Forest lands at Elsinore Peak (EO 13) (County of Riverside 2002).

The occurrence at the Sycamore Creek development (EO 3 and EO 8) receives management (funded through the homeowners' association; the management plan is to be provided to the resource agencies prior to any construction actions by the developer) as part of a conservation strategy approved through the section 7 consultation process. The occurrence on private lands west of Lindenberger Road (EO 14) receives management as part of a conservation strategy approved through section 7 consultation processes for a Southern California Gas Company gas pipeline and the Warmington development.

Thus, the nine occurrences recommended to be designated as critical habitat by the peer reviewers (EO 2, EO 3, EO 8, EO 6, EO 9, EO 10, EO 12, EO 13, and EO 15) are already conserved (1) within approved HCPs (Rancho Bella Vista and SKR HCPs); (2) on existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) on lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii*. We have excluded these lands, except for the occurrence on U.S. Forest Service lands, under section 4(b)(2) of the Act in this final rule.

*Comment 3.* One peer reviewer noted that the large population of *Allium munzii* on State of California lands immediately adjacent to the Cleveland National Forest lands at Elsinore Peak is subject to increasing levels of off-highway vehicle (OHV) use. The commenter expressed concern that excluding this area from critical habitat may lead to further OHV (and other) damage to this population and would not give the State of California incentive to prevent this impact.

*Our Response.* The Cleveland National Forest requested approval from the State Lands Commission to place barriers on State lands to discourage unauthorized OHV use in this area (U.S. Forest Service 2002). We do not agree that the exclusion of critical habitat from the State lands may lead to further OHV damage or that the designation of critical habitat would give the State an incentive to prevent this activity. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Activities lacking any Federal nexus, such as OHV activity on State lands, would not be affected by the critical habitat designation.

*Comment 4.* One peer reviewer suggested that the Service ''needs to designate areas that are ''critical'' to the species, and review the current management and protection procedures.

*Our Response.* The definition of critical habitat includes areas containing the physical or biological features (1) essential to the conservation of the species and (2) which may require special management considerations or protection. If the physical or biological features are not essential or may not require special management considerations or protection, then the area would not meet the definition of critical habitat. Please see ''Special Management Considerations and Protection'' for a further discussion of this subject.

*Comment 5.* Two peer reviewers (and a public review commenter) questioned the number and description of occurrences of *Allium munzii* described in the proposed rule.

*Our Response.* The proposed rule stated that there are 19 occurrences of *Allium munzii* according to the California Natural Diversity Database (CNDDB) (CNDDB 2004). We have reviewed the CNDDB records to clarify any discrepancies in the number of occurrences of *Allium munzii* (Service 2003). The CNDDB reported 21 element occurrences (EO) (Service 2003). Of these records, EO 1 is extirpated and EO 19 is an error. Thus, we concluded that there were 19 occurrences. Our further review of the CNDDB indicates that EO 20 and EO 21 are older records and have not been recently verified, and EO 3 and EO 8 may represent the same population and should be treated as a single occurrence. Hence, in the final rule, we describe 16 extant populations of *Allium munzii* (see also ''Criteria Used to Identify Critical Habitat'' for a listing of these 16 populations).

*Comments Related to Designation and Exclusion of Critical Habitat*

*Comment 1.* Several commenters disagreed with our exclusion of critical habitat within approved HCPs including the Western Riverside County MSHCP. They stated that we did not provide any scientific or biological reasons for not including critical habitat within the boundaries of HCPs including the Western Riverside County MSHCP.

*Our Response.* We disagree. Please see our response to Peer Reviewer Comment 1 for a detailed explanation.

*Comment 2.* A commenter recommended that critical habitat be expanded to include important populations within HCP areas, including the extensive population on Alberhill, Harford County Park and adjacent lands, and North Peak.

*Our Response.* We disagree. Please see our response to Peer Reviewer Comment 2 for a detailed explanation.

*Comment 3.* A commenter stated that the Cleveland National Forest should not be designated as critical habitat because these lands are within the boundary of the Western Riverside County MSHCP.

*Our Response.* We agree that the Cleveland National Forest lands are within the Western Riverside County MSHCP Plan Area. However, unlike private landowners and local jurisdictions, Federal agencies, such as the U.S. Forest Service, do not receive take authorization for any species covered by the Western Riverside County MSHCP. While lands within the Cleveland National Forest were considered as part of the environmental baseline, the U.S. Forest Service is not a signatory agency to the Western Riverside County MSHCP, nor is it they bound to comply with the regional HCP. Thus, we have only excluded private lands within the Western Riverside County MSHCP from critical habitat designation in this and other final critical habitat designation rules.

*Comments Related to the Economic Analysis of Critical Habitat*

*Comment 1.* We received several comment letters related to the draft economic analysis (DEA) and proposed designation of critical habitat for the Lake Elsinore Advanced Pumped Storage Project (LEAPS).

*Our Response.* We analyzed the information contained in the comment letters, soil maps, aerial photography, and distribution of *Allium munzii* populations along the easternmost edge of the proposed critical habitat unit. No known populations of *Allium munzii* occur within the LEAPS transmission line corridor, and the nearest population is west of the corridor on soils mapped as Bosanko clay (identified as a clay soil in the primary constituent element #1) and Las Posas gravelly loam (identified as a soil series of sedimentary or igneous origin with a clay subsoil in

primary constituent element #1). The soil maps indicate that the LEAPS transmission corridor crosses soils mapped as Cieneba-rock outcrop complex and the available information indicates that *Allium munzii* does not occur on this soil type. Thus, we have not included the LEAPS transmission corridor in the designation of critical habitat in the final rule. Since no critical habitat is being designated within the LEAPS transmission corridor, we did not, and do not need to, consider economic impacts related to the LEAPS project.

*Comment 2.* A commenter stated that the DEA fails to clearly state that critical habitat has no legal implications on private lands and no burden on his/her property absent Federal nexus.

*Our Response.* A description of the legal implications of critical habitat can be found in this Final Rule under ''Effects of Critical Habitat Designation.''

*Comment 3.* We received several comments concerning the scope of the economic analysis. One commenter stated that distributing costs among other endangered species likely to co-exist with *Allium munzii* violates the co-extensive analysis that is required, while another commenter stated that the cost of *Allium munzii* conservation should not include costs associated with the listing of *Allium munzii* or other regulatory requirements (such as NEPA) that afford protection to the species.

*Our Response.* The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Allium munzii.* The Act defines critical habitat to mean those specific areas that are essential to the conservation of the species. The Act also defines conservation to mean the use of all methods and procedures necessary to bring any endangered species or threatened species to the point at which the measures of the Act are no longer necessary. Thus we interpret the Act to mean that the economic analysis should include all of the economic impacts associated with the conservation of the species, which may include some of the effects associated with listing because the species was listed prior to the proposed designation of critical habitat. We note that the Act generally requires critical habitat to be designated at the time of listing, and, that had we conducted an economic analysis at that time, the impacts associated with listing would not be readily distinguishable from those associated with critical habitat designation.

The DEA discusses other relevant regulations and protection efforts for other listed species that include *Allium munzii* and its habitat. In general, the analysis errs conservatively in order to make certain the economic effects have not been missed. It treats as ''co-extensive'' other Federal and State requirements that may result in overlapping protection measures (*e.g.*, California Environmental Quality Act) for the plant. In some cases, however, non-habitat-related regulations will limit land use activities within critical habitat in ways that will directly or indirectly benefit *Allium munzii* or its habitat (*e.g.*, local zoning ordinances). These impacts were not considered to be ''co-extensive'' with *Allium munzii* listing or designation for two reasons. First, such impacts would occur even if *Allium munzii* were not listed. Second, we must be able to differentiate economic impacts solely associated with the conservation of *Allium munzii* and its habitat in order to understand whether the benefit of excluding any particular area from *Allium munzii* critical habitat outweighs the benefit of including the area.

The economic analysis distributes the cost of conserving *Allium munzii* habitat equally among the number of other listed species likely to co-exist with *Allium munzii* as indicated by the historical consultations. None of the past *Allium munzii* consultations focused solely on Munz's onion but rather on other listed animal species co-occurring in the area. Within a biological opinion that covers several species, we are unable to accurately segregate out the cost for an individual species from the rest of the species covered in the biological opinion.

*Comment 5.* A few commenters stated that the DEA failed to address the implications of the *Gifford Pinchot Task Force v. United States Fish and Wildlife Service* (USFWS), 378 F.3d 1059, 1069 (Ninth Circuit 2004) ruling on future *Allium munzii* conservation costs.

*Our Response:* The Service notes that a recent Ninth Circuit judicial opinion, *Gifford Pinchot Task Force* v. *USFWS*, has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. The Service is currently reviewing the decision to determine what effect it (and to a limited extent *Center for Biological Diversity* v. *Bureau of Land Management* (Case No. C–03–2509–SI, N.D. Cal.)) may have on the outcome of consultations pursuant to section 7 of the Act.

*Comment 6.* A commenter stated that additional explanation should be provided concerning the reasons behind the cost variation for the three historical real estate projects involving Service consultation on *Allium munzii.*

*Our Response.* The EA estimates the historical costs associated with the *Allium munzii* conservation efforts on real estate development projects based on information contained within the three past consultations that included *Allium munzii* (Rancho Bella Vista, Sycamore Creek development, and the Warmington Murrieta Scott Road LLC subdivision). Each consultation addressed the impacts of the proposed action not only to *Allium munzii* but also to other listed species. The impacts to each project varied based on the amount of habitat being affected and the degree of impact. In general, projects that had to preserve more habitat had higher economic costs because the land could not be put to its highest economic use.

*Comment 7.* A commenter stated that the DEA overestimates the historical cost associated with the conservation of *Allium munzii* because it inappropriately assumes that the cost affiliated with the conservation of *Allium munzii* is equally weighted with the other covered species when in fact conservation efforts for animal species involve higher costs than plant species.

*Our Response.* While animal species may in fact involve higher level of monitoring and active management efforts, the DEA errs conservatively in order to make certain the past economic effects associated with the conservation of *Allium munzii* have not been understated.

*Comment 8.* A commenter stated that the $30,000 estimate for *Allium munzii*'s portion of the Western Riverside MSHCP preparation cost is an overestimation, because the section in the document addressing the plant is boilerplate rather than compiled from detailed research.

*Our Response.* The DEA estimates the portion of the MSHCP preparation cost attributable to *Allium munzii* by equally distributing the total cost of the MSHCP preparation among 145 species covered by the MSHCP. While other covered species may in fact involve higher level of research and documentation, the DEA errs conservatively in order to make certain economic effects have not been understated. Although this is a simplistic approach for estimating the historical coextensive cost for *Allium munzii*, we do not believe that the error introduced by this method will have a significant effect on our final critical habitat decision.

*Comment 9.* A commenter stated that the DEA fails to acknowledge any benefit of conserving a species that is threatened by extinction from

developments. The same commenter also requested that the final EA incorporate a quantitative estimate of benefits of open space since conservation of *Allium munzii* contributes to overall preservation of open space.

*Our Response.* Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Our approach for estimating economic impacts includes both economic efficiency and distributional effects. The measurement of economic efficiency is based on the concept of opportunity costs, which reflects the value of goods and services foregone in order to comply with the effects of the designation (*e.g.*, lost economic opportunity associated with restrictions on land use). Where data are available, our analyses do attempt to measure the net economic impact. For example, the analysis recognizes the potential for benefits associated with the preservation of open space. It describes that in certain cases real estate development that effectively incorporates the *Allium munzii* habitat set-aside on-site might realize a value premium typically associated with additional open space. Any such premium will offset land preservation costs borne by landowners/developers. However, while this scenario remains a possibility, reliable data revealing the premium that the market places on nearby open space in Southern California is not readily available. Moreover, the value premium associated with habitat preservation is likely to be limited given that recreational uses associated with habitat preserves may be generally restricted to low-impact activities.

The value of open space, along with other ancillary benefits, reflects broader social values, which are not the same as economic impacts. While the Secretary must consider economic and other relevant impacts as part of the final decision-making process under section 4(b)(2) of the Act, the Act explicitly states that it is the government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. Thus we believe that explicit consideration of broader social values for the species and its habitat, beyond the more traditionally defined economic impacts, is not necessary as Congress has already clarified the social importance for us. As a practical matter, we note the difficulty in being able to develop credible estimates of such values as they are not readily observed through typical market transactions.

*Comment 10.* A commenter stated that the DEA should explain how future management costs of *Allium munzii* habitat were estimated given that management requirements have not been clearly identified by the Western Riverside MSHCP/Natural Community Conservation Plans (NCCP).

*Our Response.* The MSHCP budget reveals an average annual management cost of approximately $84 per acre, in 2004 dollars. Because the MSHCP does not list specific management requirements for *Allium munzii*, the Service relies on this overall per-acre cost to estimate future management cost for *Allium munzii.* We believe this to be a reasonable estimate to use in forecasting conservation costs.

*Comment 11.* A commenter stated that, contrary to a statement made in the DEA that not every acre in the habitat contains *Allium munzii* or the primary constituent elements of habitat, the essential habitats all have primary constituent elements by definition.

*Our Response.* This statement has been corrected in the EA.

*Comments From States*

Section 4(i) of the Act states, the Secretary shall submit to the State agency a written justification for her failure to adopt regulations consistent with the State agency's comments or petition. The California Department of Fish and Game (CDFG) did not provide comments on the proposed rule to designate critical habitat for *Allium munzii* or the draft economic analysis for critical habitat for *Allium munzii.* In the case of other proposed rules for critical habitat, CDFG has supported the exclusion of NCCPs/HCPs that covered the particular species of interest. Consistent with their previous comments on other critical habitat rules, we have excluded critical habitat for *Allium munzii* from lands within the Western Riverside County MSHCP and other approved HCPs. No State lands are designated as critical habitat for *Allium munzii.*

## Summary of Changes From Proposed Rule

We are not including critical habitat along the eastern boundary of the Western Riverside County Unit because the area does not contain the primary constituent elements for *Allium munzii.* The soil maps indicate that the LEAPS transmission corridor crosses soils mapped as Cieneba-rock outcrop complex and the available information indicates that *Allium munzii* does not occur on this soil type. Thus, we have not included the LEAPS transmission corridor in the designation of critical habitat in the final rule. This revision has resulted in a reduction from the proposed critical habitat of 227 ac (92 ha) to 176 ac (71 ha) in the final rule.

## Critical Habitat

Critical habitat is defined in section 3 of the Act as (i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary. No specific areas outside the geographical area occupied by *Allium munzii* at the time of listing are designated as critical habitat in this final rule. The area designated as critical habitat (Elsinore Peak in the Cleveland National Forest) was described in the final listing rule (63 FR 54975).

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or

protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species at the time of listing. An area currently occupied by the species but that was not known to be occupied at the time of listing will likely be essential to the conservation of the species and, therefore, will be included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

*Methods*

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available in determining areas that are essential to the conservation of *Allium munzii.* These included data from research and survey observations published in peer-reviewed articles and other documents, regional Geographic Information System (GIS) vegetation, soil, and species coverages (including layers for Riverside County), and data compiled in the CNDDB. In addition, information provided in comments on the proposed critical habitat designation and draft economic analysis were evaluated and considered in the development of the final designation for *Allium munzii.* We designated no areas outside of the geographic area presently occupied by the species.

After all the information about the known occurrences of *Allium munzii* was compiled, we created maps indicating the essential habitat associated with each of the occurrences. We used the information outlined above to aid in this task. The essential habitat was mapped using GIS and refined using topographical and aerial map coverages. These essential habitat areas were further refined by discussing each area in detail with Fish and Wildlife Service biologists familiar with each area.

After creating a GIS coverage of the essential areas, we created legal descriptions of the essential areas. We used a 100-meter grid to establish Universal Transverse Mercator (UTM) North American Datum 27 (NAD 27) coordinates which, when connected, provided the boundaries of the essential areas.

**Primary Constituent Elements**

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent elements or biological and physical features required for *Allium munzii* are derived from the biological needs of the species as described in the background section of the proposed critical habitat rule (69 FR 31569).

*Space for Individual and Population Growth and Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements*

*Allium munzii* is restricted to mesic clay soils in western Riverside County, California, along the southern edge of the Perris basin (primary constituent elements #1 and #2). The clay soils are scattered in a band several miles wide and extending 40 miles from Gavilan Hills to west of Temescal Canyon and Lake Elsinore at the eastern foothills of the Santa Ana Mountains and along the Elsinore Fault Zone to the southwestern foothills of the San Jacinto Mountains near Lake Skinner. Clay soil associations include Altamont, Auld, Bosanko, Claypit and Porterville clay soil types. At least one population (North Domenigoni Hills) was reported by Bramlet in 1991 to be associated with pyroxenite outcrops instead of clay (CNDDB 2003). Rounded cobbles and boulders are embedded within clay, which has a sticky, adobe consistency when wet and large cracks when dry. *Allium munzii* is typically found on the more mesic sites within the clay deposits (Boyd 1988). These mesic areas

within the clay deposits typically support grassland vegetation within a surrounding scrub community. *Allium munzii* occurs at elevations from 984 to 3,511 feet (ft) (300 to 1,070 meters (m)), and on level or slightly sloping lands.

The Western Riverside County Unit contains Bosanko clay soils identified as a clay soil series of sedimentary origin as well as Las Posas gravelly loam (identified as a soil series of sedimentary or igneous origin with a clay subsoil) at a suitable elevation for this species (primary constituent element #1 and #3). This unit is also within open native and non-native grassland plant communities (primary constituent element #1). The soils, aspect, elevation, and plant communities present in this unit provide space for individual and population growth. The soils, aspect, and elevation of the unit (primary constituent element #3) provide food, water, air, light, minerals and other nutritional and physiological requirements for *Allium munzii*.

*Sites for Reproduction, Germination, or Pollination*

*Allium munzii* is typically found in open native grasslands and, increasingly, non-native grasslands, which can be either the dominant community or found in a mosaic with Riversidean sage scrub, scrub oak chaparral, chamise chaparral, coast live oak woodland, or peninsular juniper woodland and scrub (Holland 1986). Based upon the dominant species, the plant communities where *Allium munzii* is found have been further divided into series which include, but are not limited to, California annual grassland, nodding needlegrass, purple needlegrass, foothill needlegrass, black sage, white sage, California buckwheat, California buckwheat-white sage, California sagebrush, California sagebrush-black sage, California sagebrush-California buckwheat, mixed sage, chamise, chamise-black sage, coast live oak, scrub oak, and California juniper (Sawyer and Keeler-Wolf 1994).

A characteristic ''clay soil flora'' is associated with the island-like clay deposits in southwestern Riverside County. This includes herbaceous annuals, such as *Harpagonella palmeri* (Palmer's grappling hook), *Chorizanthe polygonoides* var. *longispina* (knot-weed spine flower), *Achyrachaena mollis*, *Ancistrocarphus filagineus*, *Convolvulus simulans* (small-flowered morning-glory), *Erodium macrophyllum*, and *Microseris doulasii* spp. *Platycarpha* (small-flowered microseris), and herbaceous perennials, such as *Fritillaria biflora* (chocolate lily), *Sanicula bipinnatifida* (purple sanicle), *S. arguta* (snakeroot), *Lomatium utriculatum* (common lomatium), *L. dasycarpum* (lace parsnip), *Dodecatheon clevelandii* (Cleveland's shooting star), *Bloomeria crocea* (goldenstar), *Chlorogalum parviflorum* (soaproot), *Dudleya multicaulis* (many-stemmed dudleya), *Allium haematochiton* (red-skinned onion) and *A. munzii* (Boyd 1988). The plant communities within this unit provide sites for reproduction, germination, or pollination.

*Disturbance, Protection, and the Historical Geographical Distributions*

The area designated as critical habitat is within the Cleveland National Forest (see also *Western Riverside County Unit, Riverside County, California* for a description of this unit). This locality represents the southwesternmost and highest elevation occurrence of *Allium munzii*. The Elsinore Peak population is considered to be the most undisturbed and pristine of any of the known occurrences of this species (Boyd and Mistretta 1991) (primary constituent element #2). This population is estimated to be more than 1,000 plants and is ranked as a top conservation priority by a working group assembled by the California Department of Fish and Game (Mistretta 1993). The Forest Service developed the *Allium munzii* Species Management Guide to ensure that ''National Forest lands are managed to maintain viable populations of all native plants and animals'' (U.S. Forest Service 1992). Thus, this location represents a significant habitat that is protected from disturbance and is within the historical geographical distribution of this species.

*Primary Constituent Elements for Allium munzii*

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that primary constituent elements for *Allium munzii* are:

(1) Clay soil series of sedimentary origin (*e.g.*, Altamont, Auld, Bosanko, Claypit, Porterville), or clay lenses (pockets of clay soils) of such that may be found as unmapped inclusions in other soil series, or soil series of sedimentary or igneous origin with a clay subsoil (*e.g.*, Cajalco, Las Posas, Vallecitos), found on level or slightly sloping landscapes; generally between the elevations of 985 ft and 3,500 ft (300 m and 1,068 m) above mean sea level (AMSL), and as part of open native or non-native grassland plant communities and ''clay soil flora'' which can occur in a mosaic with Riversidean sage scrub, chamise chaparral, scrub oak chaparral, coast live oak woodland, and peninsular juniper woodland and scrub; or

(2) Alluvial soil series of sedimentary or igneous origin (*e.g.*, Greenfield, Ramona, Placentia, Temescal) and terrace escarpment soils found as part of alluvial fans underlying open native or non-native grassland plant communities that can occur in a mosaic with Riversidean sage scrub generally between the elevations of 985 ft and 3,500 ft (300 m and 1,068 m) AMSL, or Pyroxenite deposits of igneous origin found on Bachelor Mountain as part of non-native grassland and Riversidean sage scrub generally between the elevations of 985 ft and 3,500 ft (300 m and 1,068 m) AMSL; and

(3) Clay soils or other soil substrate as described above with intact, natural surface and subsurface structure that have been minimally altered or unaltered by ground-disturbing activities (*e.g.*, disked, graded, excavated, re-contoured); and,

(4) Within areas of suitable clay soils, microhabitats that are moister than surrounding areas because of (A) north or northeast exposure or (B) seasonally available moisture from surface or subsurface runoff.

*All areas designated as critical habitat for Allium munzii* are within the geographic area occupied by the species, were known to be occupied at the time of listing, and contain one or more primary constituent elements (*e.g.*, soil, associated plant community) essential for its conservation.

*Criteria Used To Identify Critical Habitat*

All areas known to support extant populations of *Allium munzii* are considered essential habitat for the species because they include those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. *Allium munzii* is known only from a narrow geographical range and, within that range, is limited to clay soils. Currently 16 populations of this plant are known to exist. Extant populations of *Allium munzii* occur at the following locations: (1) Southern border of Harford Springs County Park and extending onto private lands across Ida Leona Road in the Gavilan Hills (population estimates from surveys between 1986 and 1998 range from 2,000 to 51,000 plants) (EO 2); (2) private land immediately adjacent to the Sycamore Creek development, northwest of I–15 and Indian Truck Trail Road, in Temescal Canyon

(estimate of approximately 300 plants) (EO 3 and 8); (3) Barry Jones Wetland Mitigation Bank (Skunk Hollow Wetland Conservation Bank) (approximately 250 plants) (EO 4); (4) private land on the south flank of Upper Dawson Canyon in the Gavilan Hills (estimate of approximately 2,000 plants) (EO 5); (5) private land on the south side of Alberhill Mountain, west of I–15, in the City of Lake Elsinore (estimate of approximately 7,700 plants) (EO 6); (6) private land east of I–15, west of De Palma's Italian Village, between Indian Canyon and Horsethief Canyon (estimate of approximately 1,000 plants) (EO7); (7) Lake Mathews—Estelle Mountain Reserve northwest of the Estelle Mountain summit in the Gavilan Hills (estimate of approximately 2,000 plants based on a 1986 survey) (EO 9); (8) Southwestern Riverside County Multi-Species Reserve (SRCMSR) in the north Domenigoni Hills on either side of Old Mine Road (estimate of approximately 440 plants) (EO 10); (9) south slope of Bachelor Mountain, along a maintenance road associated with Lake Skinner Dam (population estimates from surveys conducted between 1989 and 1992 range from 200 and 4,400 plants) (EO 11); (10) south slope of Bachelor Mountain, about a mile east of the population described above (#9) (estimate of approximately 150 plants) (EO 12); (11) Elsinore Peak, west of the City of Lake Elsinore, on the Cleveland National Forest and adjacent State of California lands (population estimate of more than 1,000 plants) (EO 13); (12) west of Lindenberger Road, 0.8 miles south of Scott Road, southeast of Sun City on a 36.3-acre (15 ha) parcel and on a 65.5-acre (27 ha) associated with the Warmington development (estimate of approximately 1,000 plants prior to project impacts) (EO 14); (13) northern boundary of the City of Lake Elsinore, within the North Peak Specific Plan Area on lands purchased and conserved by Riverside County (estimate of several thousand plants) (EO 15); (14) private lands northeast of Alberhill, 1.0 miles north of I–15 and 1.2 miles northeast of the intersection of Lake Street and I–15 (estimate of approximately 300 plants) (EO 16); (15) land owned by Metropolitan Water District of Southern California on the north slope of Bachelor Mountain (estimate of 2 plants) (EO 17); and (16) Temescal Valley, west of I–15, between Nichols Road and Riverside Drive, on a low hill adjacent to Collier Marsh (Alberhill Marsh) and near Temescal Wash (population estimate not known) (EO 18).

We are designating critical habitat on lands we have determined were occupied at the time of listing and contain the primary constituent elements and those additional areas found to be essential to the conservation of *Allium munzii*.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. All but one occurrence of *Allium munzii* are in areas subject to: (1) Management plans related to approved HCPs (Rancho Bella Vista and SKR HCPs); (2) existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) conservation strategies approved through the section 7 consultation process that have provided protection, long-term management, and funding to conserve *Allium munzii*.

When determining critical habitat boundaries, we made every effort to avoid designating developed areas such as buildings, paved areas, radio and communication towers, and other structures that lack PCEs for *Allium munzii*. Any such structures inadvertently left inside designated critical habitat boundaries are not considered part of the designated unit. This also applies to the land on which such structures sit directly. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

A brief discussion of the area designated as critical habitat is provided in the description below. Additional detailed documentation concerning the essential nature of this area is contained in our supporting record for this rulemaking.

**Special Management Considerations or Protections**

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protections. As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. Secondly, we then evaluate lands defined by those features to assess whether they may require special management considerations or protection.

As discussed throughout this rule, *Allium munzii* and its habitat are threatened by a number of factors. Threats to those features that define essential habitat (primary constituent elements) are caused by various types of development, dry-land farming activities, off-road vehicle activity, clay mining, and competition with non-native plants. Habitat loss continues to be the greatest threat to *Allium munzii*. It is essential for the survival of this species to protect those features that define the remaining essential habitat, through purchase or special management plans, from irreversible threats and habitat conversion.

The Western Riverside County Unit is entirely on Federal lands within the Cleveland National Forest (Cleveland NF). The Cleveland NF has developed a Species Management Guide for *Allium munzii* (*Allium munzii*) (Guide) (U.S. Forest Service 1992). The Guide, plus subsequent documentation from Cleveland NF (U.S. Forest Service 2002), describes threats to *Allium munzii* from off-road vehicles, competition from non-native plants, wildfire management, development, habitat fragmentation, and species viability. The ongoing and pervasive nature of these threats demonstrates that the PCEs for *Allium munzii* require ongoing special management considerations or protection within this unit. For example, maintaining the integrity of the clay soils (primary constituent elements #1 and #2) to support *Allium munzii* requires the ongoing efforts by the Forest Service to control unauthorized off-road vehicle use and grazing in habitats occupied by *Allium munzii*. Grazing would have unacceptably high impacts on *Allium munzii* through trampling and compaction of the soil, and enhancement of non-native grass species populations (U.S. Forest Service 1992). Protecting surrounding lands from development, grading, and erosion that maintain the mesic microhabitat conditions require continued management oversight by the Forest Service (primary constituent element

#3). In addition, fire management to sustain *Allium munzii* is under Forest Service control.

The Guide includes a large number of management actions designed to reduce these specific threats to *Allium munzii* within the Cleveland NF: (1) Future development at the Elsinore Peak electronic site will be designed to avoid adverse effects to *Allium munzii*; (2) illegal off-road vehicle activity in the Elsinore Peak area of the Trabuco Ranger District and other areas of *Allium munzii* habitat, as needed, will be eliminated through construction of barriers and fencing; (3) future management of the slopes of Elsinore Peak and other areas of *Allium munzii* habitat allows minimal development; (4) fire management of habitat includes a number of specific prescriptions (*e.g.*, related to ''free-burn'' areas, fuelbreaks and fire suppression activities, earth-moving on slopes, location of fire camps, and site rehabilitation after fire; (5) the parcel of land in Section 36 that supports *Allium munzii* will be a high priority target for acquisition in future land exchanges; (6) the Cleveland NF will confer with California Department of Fish and Game and the Service regarding possible outplantings of *Allium munzii* and monitor outplantings; and (7) no new grazing allotments or special use permits for grazing will be issued for the Elsinore Peak area.

The occurrences on non-Federal lands that are: (1) Within approved HCPs (Rancho Bella Vista and SKR HCPs); (2) on existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) on lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii* may require special management considerations or protection. Occurrences within the Western Riverside County MSHCP are threatened by competition with non-native plant species, clay mining, off-road vehicle use, and disking activities. The Western Riverside County MSHCP proposes that the Reserve Managers will manage known and future occurrences of this species to minimize these threats, and the persistence of 75 percent of the known locations will be monitored every 8 years. Other management actions described in the Western Riverside County MSHCP include addressing competition with non-native plant species, clay mining, off-road vehicle use, and disking activities.

The Rancho Bella Vista HCP provides both interim and long-term management to address threats to PCEs from development, invasive plants, trampling and fire. The SKR HCP provides for the establishment of core reserves, adaptive management of the reserve, and management and restoration of habitats for the Stephens' kangaroo rat. The core preserves and management plans reduce threats to the PCEs for Munz's onion by protecting habitat and limiting fragmentation of habitat from future urban and agricultural development; controlling trespass and unauthorized uses of preserve lands by the installation of barriers, gates, signage, and fences; fire management plans including fire break management, fire controls, and fire suppression logistics; and controlling recreation. Protecting habitat will maintain and minimize disturbances to suitable soils and vegetation communities associated with *Allium munzii.* Access and recreation management will protect occurrences of *Allium munzii* from impacts by off-highway vehicles and trampling. The fire management planning will avoid occurrences and maintain the vegetation communities associated with *Allium munzii.*

The occurrence at the Sycamore Creek development (EO 3 and EO 8) was threatened by activities that would disturb or remove vegetation and Altamont clay soils. The occurrence on private lands west of Lindenberger Road (EO 14) was faced with similar threats to vegetation and soil disturbance and removal. Prior to the conservation of this occurrence, this population may have been affected by light grazing and/or dry land farming (CNDDB 2003).

**Critical Habitat Designation**

Designated critical habitat includes *Allium munzii* habitat at a single location in the species' range and is located entirely within Riverside County, California. The majority of essential habitat for this species has been excluded under section 4(b)(2) of the Act. As a result, only Federal lands are designated as critical habitat. Table 1 depicts areas determined to be essential to the *Allium munzii*, lands being excluded from critical habitat pursuant to section 4(b)(2) of the Act, and the approximate area designated as critical habitat for the *Allium munzii* by land ownership.

TABLE 1.—SUMMARY OF ESSENTIAL HABITAT ACREAGE FOR *Allium munzii*

| | Federal* | Local/state | Private | Total |
|---|---|---|---|---|
| Essential habitat | 176 ac (71 ha) | 73 ac (30 ha) | 995 ac (403 ha) | 1,244 ac (503 ha). |
| Excluded under 4(b)(2) | 0 ac (0 ha) | 73 ac (30 ha) | 995 ac (403 ha) | 1,068 ac (433 ha). |
| Designated critical habitat | 176 ac (71 ha) | 0 ac (0 ha) | 0 ac (0 ha) | 176 ac (71 ha). |

* Federal lands include U.S. Forest Service lands.

*Western Riverside County Unit, Riverside County, California (176 ac (71 ha))*

As discussed above, the lands that are: (1) Approved HCPs (Rancho Bella Vista and SKR HCPs); (2) on existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) on lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii* currently, or will, provide for the conservation of all known occurrences of *Allium munzii.* Only the habitat located on U.S. Forest Service lands is designated as critical habitat. This area was occupied at the time of listing, contains the primary constituent elements, is essential to the conservation of the species, requires special management, and the activities of Federal agencies are not covered under the Western Riverside County MSHCP section 10(a)(1)(B) permit. A map of the areas identified as essential habitat can be viewed on our Web site at *http://carlsbad.fws.gov.*

Designated critical habitat is located in the vicinity of Elsinore Peak in the Cleveland National Forest. The easternmost stand of *Allium munzii* at this location is considered to be the most undisturbed and pristine of any of the known occurrences of this species (Boyd and Mistretta 1991). The land identified for this unit of critical habitat supports the primary constituent elements discussed above. The habitat is

characterized by mixed native/non-native grassland and chaparral vegetation. *Allium munzii* occurs primarily in the grassland and the transitional vegetation between the grassland and chaparral. The soils are primarily mapped as Bosanko clay, Cieneba-blasingame-rock outcrop complex, and Cieneba-rock outcrop complex. The stands of *Allium munzii* are associated with mesic microhabitats, such as the mesic exposures on cobble deposits and at the bottom of slopes. This population is estimated at 5,000 plants and is ranked as a top conservation priority by a working group assembled by the California Department of Fish and Game (Mistretta 1993).

This site represents the southwesternmost extent of the range for *Allium munzii.* The habitat at this location is high quality. This site also supports three other species of wild onion, *A. haematochition*, *A. lacunosum*, and *A. peninsulare.* This composition of four *Allium* species at a single location is important to understanding the evolutionary history and divergence of the *Allium* genus in southern California. The southwestern portion of the essential habitat at this site is located on land that will be subject to the terms and conditions of the Western Riverside County MSHCP. All essential habitat on non-Federal lands within the Western Riverside County MSHCP Plan Area is excluded from critical habitat under section 4(b)(2) of the Act. Only the essential habitat that may require special management considerations or protection on Forest Service land is designated as critical habitat.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that its actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Allium munzii* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the *Allium munzii.* Federal activities that, when carried out, may adversely affect critical habitat for the *Allium munzii* include, but are not limited to:

(1) Actions that would permanently alter the function of the underlying clay soil layer to hold and retain water. Damage or alternation of the clay soil layer would eliminate the function of this primary constituent element for providing space for individual and population growth and for normal behavior; water and physiological requirements; and sites for breeding, reproduction, and pollination. Actions that could permanently alter the function of the underlying soil layer to hold and retain water include, but are

not limited to, mining, grading or earthmoving work that disrupts or rips into the soil layer.

(2) Actions that would permanently degrade the plant community or the mesic microhabitats. Degradation of the plant community or microhabitat would reduce the ability of these primary constituent elements to provide space for individual and population growth; water and physiological requirements; and sites for breeding, reproduction, and pollination. Actions that could degrade these elements include, but are not limited to, erosion of sediments from fill material, and soils disturbed by grading, earthmoving work, off-highway vehicle use, grazing, vegetation removal, or road construction within the watershed of the mesic microhabitats.

(3) Any activity that could alter watershed or soil characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface water flow needed to maintain *Allium munzii* habitat. These activities could include, but are not limited to, altering the natural fire regime; development, including road building; livestock grazing; and vegetation manipulation such as clearing or grubbing in the watershed upslope from *A. munzii.*

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities, or any activity funded or carried out by the Department of Transportation or Department of Agriculture that results in discharge of dredged or fill material, or mechanized land clearing of *Allium munzii* habitat.

All lands designated as critical habitat are within the geographical area occupied by the species and are necessary for the conservation of *Allium munzii.* Federal agencies already consult with us on actions that may affect *Allium munzii* to ensure that their actions do not jeopardize the continued existence of the species. Thus, we do not anticipate substantial additional regulatory protection will result from critical habitat designation.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

**Exclusions Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data available after taking into consideration the economic impact, effects to national security, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined, following an analysis, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from designated critical habitat based on economic impacts, effects to national security, or other relevant impacts such as preservation of conservation partnerships, if we determine the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided the action of excluding the area will not result in the extinction of the species.

In our critical habitat designations we have used the provisions outlined in section 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat and those areas which are subsequently finalized (*i.e.*, designated). We have applied the provisions of this section of the Act to lands essential to the conservation of the subject species to evaluate them and either exclude them from final critical habitat or not include them in proposed critical habitat. Lands which we have either excluded from or not included in critical habitat based on those provisions include but are not limited to those covered by: (1) Legally operative HCPs that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (2) draft HCPs that cover the species, have undergone public review and comment, and provide assurances that the conservation measures for the species will be implemented and effective (*i.e.*, pending HCPs); (3) Tribal conservation plans that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (4) State conservation plans that provide assurances that the conservation measures for the species will be implemented and effective; and (5) Service National Wildlife Refuge System Comprehensive Conservation Plans that provide assurances that the conservation measures for the species will be implemented and effective. Within the essential habitat for *Allium munzii*, there are no tribal lands or lands owned by the Department of Defense.

*Relationship of Critical Habitat to Approved Habitat Conservation Plans (HCPs) and Other Approved Conservation Strategies*

Section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. Development of an HCP is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take.

Under section 4(b)(2) of the Act, we have excluded critical habitat from non-Federal lands within: (1) Approved HCPs (Rancho Bella Vista and SKR HCPs); and (2) existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP. We believe the benefits of excluding lands within these legally operative HCPs from the final critical habitat designation will outweigh the benefits of including them.

In addition, we have excluded three areas where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii*. Again, we believe the benefits of excluding these lands from the final critical habitat designation outweigh the benefits of including them. The analysis which led us to the conclusion that the benefits of excluding these areas exceed the benefits of designating them as critical habitat, and will not result in the extinction of the species, follows.

*Allium munzii* is a covered species under the Western Riverside County MSHCP. The Western Riverside County MSHCP has three conservation objectives to conserve and monitor *Allium munzii* populations. First, the MSHCP Conservation Area includes at least 21,260 acres of modeled habitat (grassland, coastal sage scrub, chaparral and peninsular juniper woodland between 300 and 1,000 m in the Riverside Lowlands and Santa Ana Mountains Bioregions). This will

include at least 2,070 acres of clay soils: Altamont (190 acres), Auld (250 acres), Bosanko (600 acres), Claypit (100 acres), and Porterville (930 acres) soils underlying the suitable habitat. Second, the MSHCP Conservation Area includes at least 13 occurrences within Temescal Valley and the southwestern portion of the Plan Area, including the following Core Areas: Harford Springs Park, privately owned EO 5 population in Temescal Valley, Alberhill, De Palma Rd, Estelle Mountain, Domenigoni Hills, Lake Skinner, Bachelor Mountain, Elsinore Peak, Scott Road, North Peak, and northeast of Alberhill (EO 16). Third, as part of the Western Riverside County MSHCP, surveys will be conducted for *Allium munzii* as part of the project review process for public and private projects within the Narrow Endemic Plant Species survey area where suitable habitat is present (see Narrow Endemic Plant Species Survey Area Map, Figure 6–1 of the MSHCP, Volume I). *Allium munzii* located as a result of survey efforts shall be conserved in accordance with procedures described within Section 6.1.3 of the MSHCP, Volume I. In addition, the MSHCP proposes that the Reserve Managers will manage known and future occurrences of this species for competition with non-native plant species, clay mining, off-road vehicle use, and disking activities and that the persistence of 75 percent of the known locations will be monitored every 8 years. Other management actions described in the Western Riverside County MSHCP include addressing competition with non-native plant species, clay mining, off-road vehicle use, and disking activities. This management will help maintain *Allium munzii* populations and habitat.

The Rancho Bella Vista HCP provides both interim and long-term management for *Allium munzii*. Interim management actions were initiated upon approval of the HCP and included the maintenance of existing access controls, cleanup of conserved habitat areas where unauthorized trash dumping occurred, development of an interim management plan, and implementation of project-specific impact minimization and mitigation. Long-term management included transfer of the open space to an approved management agency, assessment of exotic plants, access control, development of a fire management plan and public information programs and materials, monitoring of sensitive plants and animals, and providing annual monitoring reports to the Service.

The SKR HCP provides for the establishment of core reserves, adaptive management of the core reserves to ensure the permanent conservation, preservation, restoration of SKR and SKR habitats, and limiting projects within the core reserves. While these lands were conserved for the Stephens' kangaroo rat, the core preserves and management plans also provide a conservation benefit to *Allium munzii* by reducing threats to PCEs by ground disturbance, alteration of vegetation, and invasive plants.

We have excluded three areas where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii*. The strategy for the Sycamore Creek Development includes avoidance, preservation, and relocation of Altamont clay soils within an area protected by a conservation easement, and interim and long-term management and funding. To address effects to *Allium munzii*, the conservation strategy includes measures to avoid and preserve 18.3 acres of Altamont clay soils on site in the conservation easement; relocate additional clay soils from the development area to the conservation easement for the purposes of restoring *Allium munzii* and Riversidean sage scrub; release additional clay soils for passive recolonization through removal of the paved surface of De Palma Road; relocate occupied clay soils within areas proposed for development to the wildlife corridor and/or other suitable conserved habitat; provide a funding mechanism to provide management of the on site conservation areas for *Allium munzii*; and prohibit the planting of invasive plant species adjacent to the corridor. The strategy for Southern California Gas Company includes the acquisition of a 36.3-acre site to conserve habitat for *Allium munzii* that includes 24.5 acres of Riversidean sage scrub and 11.82 acres of agricultural land, funding of a management endowment that assures the management of the 36.32-acres conservation area in perpetuity, and a preliminary and long-term management plan. The strategy for the Warmington Project includes avoidance and on-site conservation of the known occurrence of *Allium munzii* and adjacent potential habitat and the transfer of this 65.5-acre parcel of land to Riverside County Parks for protection and management. We concurred with the U.S. Army Corps of Engineers that the proposed project would not adversely affect *Allium munzii* because the applicant agreed to protect and conserve the known occurrence of *Allium munzii* and adjacent potential habitat in the south-central, 65.5-acre portion of the proposed site. In addition, Riverside County Parks has agreed to protect and manage this parcel for conservation.

(1) Benefits of Inclusion

A benefit of including an area as critical habitat designation is the education of landowners and the public regarding the potential conservation value of these areas. The inclusion of an area as critical habitat may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved for *Allium munzii*. The public outreach and environmental impact reviews required under NEPA for the Rancho Bella Vista and SKR HCPs and Western Riverside County MSHCP provided significant opportunities for public education regarding the conservation of the areas occupied by *Allium munzii*. For instance, the Western Riverside County MSHCP identifies specific populations of *Allium munzii* for conservation. Therefore, we believe the education benefits which might arise from a critical habitat designation have largely already been generated as a result of the significant outreach for the Rancho Bella Vista and SKR HCPs and Western Riverside County MSHCP. Moreover, in our final listing rule (63 FR 54975), we noted that, where the species occurs, landowners are aware of its presence and status since all occurrences were known, including the populations on Forest Service land in the Cleveland National Forest, Harford Springs County Park, and lands managed by the Riverside County Habitat Conservation Agency.

The areas excluded are currently occupied by the species. If these areas were designated as critical habitat, any actions with a Federal nexus that might adversely modify the critical habitat would require a consultation with us, as explained above, in the section of this notice entitled ''Effects of Critical Habitat Designation.'' However, inasmuch as this area is currently occupied by the species, consultation for activities with a Federal nexus which might adversely impact the species, including habitat modification, would be required even without the critical habitat designation.

The Western Riverside County MSHCP provides a greater level of management for *Allium munzii* on private lands than would designation of critical habitat on private lands. Thus, consultation for Federal activities that

might adversely impact the species would be required even without the critical habitat designation. Moreover, inclusion of these non-Federal lands as critical habitat would not necessitate additional management and conservation activities that exceed the approved HCPs and their implementing agreements. The lands conserved by conservation strategies approved through the section 7 consultation process have no further Federal discretionary action and critical habitat would not result in the reinitiation of a section 7 consultation.

In summary, we believe that designating critical habitat on any non-Federal lands that are: (1) Within approved HCPs; (2) on existing PQP lands, proposed conceptual reserve design lands, and on lands targeted for conservation within the Western Riverside County MSCHP; and (3) on lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii* would provide little additional Federal regulatory benefits for the species. Under the *Gifford Pinchot* decision, critical habitat designations may provide benefits to recovery of a species different than was previously believed, but it is not possible to quantify this at present. Because the excluded areas are occupied by the species, there must be consultation with the Service over any action with a Federal nexus that may affect these populations. The additional educational benefits that might arise from critical habitat designation have been largely accomplished through the process of public review and comment on the environmental impact documents which accompanied the development of the Rancho Bella Vista and SKR HCPs and Western Riverside County MSHCP.

(2) Benefits of Exclusion

The exclusion of critical habitat from non-Federal lands that are: (1) Within approved HCPs (Rancho Bella Vista and SKR HCPs); (2) on existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) on lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii* would benefit permit holders and landowners because they would avoid any additional regulatory costs related to complying with the critical habitat designation. Since most of the occurrences of *Allium munzii* on non-Federal lands are within the three categories stated immediately preceding, available funding would be directed towards conservation rather than toward complying with critical habitat requirements that would not provide the species with additional benefits. Excluding these lands from critical habitat would ensure that funding remains available for implementation, rather than spending limited resources on ensuring compliance with the regulatory requirements potentially triggered by a critical habitat designation that would not be likely to provide additional benefit to the species.

We also believe that excluding these lands, and thus helping landowners avoid the additional costs that would result from the designation, will foster continued cooperation and partnership needed for implementation, and also that it will contribute to a more positive climate for HCPs and other active conservation measures that provide greater conservation benefits than would result from designation of critical habitat. In our final listing rule (63 FR 54975), we noted that the designation of critical habitat on lands owned by the Riverside County Habitat Conservation Agency would not change the way those lands are managed or require specific management actions to take place, and designation could be detrimental because of potential landowner misunderstandings about the real effects of critical habitat designation on private lands.

(3) The Benefits of Exclusion Exceed the Benefits of Inclusion

We do not believe that the benefits from the designation of critical habitat for lands we have decided to exclude—a limited educational benefit and very limited regulatory benefit, which are largely otherwise provided for, as discussed above—exceed the benefits of exclusion that would allow for the avoidance of increased regulatory costs and would provide little or no benefit and a potential reduction in available implementation funding for conservation actions with partners.

We also believe that excluding these lands, and thus helping landowners avoid the additional costs that would result from the designation, will contribute to a more positive climate for HCPs and other active conservation measures which provide greater conservation benefits than would result from designation of critical habitat. We therefore find that the benefits of excluding these areas from this designation of critical habitat outweigh the benefits of including them in the designation.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of the three categories—(1) lands within approved HCPs (Rancho Bella Vista and SKR HCPs); (2) existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii*—will not result in extinction of the species since these lands will be conserved and managed for the benefit of *Allium munzii*. Any actions with a Federal nexus that might adversely affect *Allium munzii* must undergo a consultation with the Service under the requirements of section 7 of the Act. The exclusions leave these protections unchanged. In addition, as discussed above, there are a substantial number of HCPs and other active conservation measures underway for the species, which provide greater conservation benefits than would result from a designation. There is accordingly no reason to believe that these exclusions would result in extinction of the species.

**Economic Analysis**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on December 1, 2004 (69 FR 69878). We accepted comments on the draft analysis until January 3, 2005.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Allium munzii*. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding

particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be coextensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis because they are considered to be part of the regulatory and policy baseline.

Only U.S. Forest Service lands at Elsinore Peak within the Cleveland National Forest were designated as critical habitat in the final rule. The economic analysis projected $33,849 in cost impacts from 2005 to 2025 from the designation of critical habitat on U.S. Forest Service lands. The analysis estimated that the future costs associated with conservation efforts for *Allium munzii* (prescribed burning, fence replacement, fencing electric tower site, and monitoring) by the U.S. Forest Service was $26,146. The administrative cost to the U.S. Forest Service associated with future section 7 consultations was estimated at $7,704. All other lands identified as essential habitat in the proposed rule were not designated as critical habitat in the final rule. No lands were excluded from critical habitat based on the economic impact under section 4(b)(2) of the Act.

The final economic analysis and supporting documents are included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (see **ADDRESSES** section) or for downloading from the Internet at *http://carlsbad.fws.gov*.

## Required Determinations

### *Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect *Allium munzii*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

The draft economic analysis (September 22, 2004) predicted potential costs for both lands included in the final designation and proposed for exclusion. In this final designation, as in the proposed designation, only U.S. Forest Service lands at Elsinore

Peak within the Cleveland National Forest were designated as critical habitat in the final rule; all other lands, namely private lands, have been excluded. Based on this analysis, it was determined that the total future impacts cost of the critical habitat designation to the Forest Service is $33,849, and the cost of past impacts is $9,101. In addition, it was projected that the Forest Service would incur an additional $7,704 in administrative costs for project modifications to forest management activities, such as access control (fencing and gating) and prescribed burning for *Allium munzii* conservation efforts.

The special permit holders for the electric tower site include Riverside County, Spectrasite Communications, Inc., Comcast Corporation, and Elsinore Peak Facility Corporation. Of the four special permit holders, Elsinore Peak Facility Corporation is the only small entity. With annual revenue of $150,000, the potential impact to this small business is $250 to $1,000 (in 1 year) and represents 0.2 to 0.4 percent of the revenue. No significant impact to small entities will likely result from this final designation of critical habitat. As such, we are certifying that this designation of critical habitat would not result in a significant impact on a substantial number of small entities and that a regulatory flexibility analysis is not required.

*Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)*

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

*Executive Order 13211*

On May 18, 2001, the President issued Executive Order 13211 with respect to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for *Allium munzii* is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required. We have not designated critical habitat on U.S. Forest Service lands that fall within the LEAPS corridor. Our analysis indicates that the primary constituent elements are not present along the easternmost boundary of the proposed critical habitat unit and, therefore, those lands have not been designated as critical habitat.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, or permits or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Allium munzii* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

*Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Allium munzii.*

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit [*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).]

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of *Allium munzii.* Therefore, designation of critical habitat for *Allium munzii* has not been designated on Tribal lands.

**References Cited**

A complete list of all references cited herein, as well as others, is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

**Author**

The primary authors of this notice are the Carlsbad Fish and Wildlife Office staff (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as follows:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.12(h), revise the entry for *Allium munzii* under ''FLOWERING PLANTS'' to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| FLOWERING PLANTS | | | | | | | |
| * | * | * | * | * | * | | * |
| *Allium munzii* | Munz's onion | U.S.A. (CA) | Liliaceae-Lily | E | 650 | 17.96(a) | NA |
| * | * | * | * | * | * | | * |

■ 3. In § 17.96, amend paragraph (a) by adding an entry for *Allium munzii* in alphabetical order under Family Liliaceae to read as follows:

**§ 17.96 Critical habitat—plants.**

(a) *Flowering plants.*

* * * * *

Family Liliaceae: *Allium munzii* (Munz's onion)

(1) Critical habitat unit for *Allium munzii* is depicted for Riverside County, California, on the map below.

(2) The primary constituent elements of critical habitat for *Allium munzii* are:

(i) Clay soil series of sedimentary origin (*e.g.*, Altamont, Auld, Bosanko, Claypit, Porterville), or clay lenses (pockets of clay soils) of such that may be found as unmapped inclusions in other soil series, or soil series of sedimentary or igneous origin with a clay subsoil (*e.g.*, Cajalco, Las Posas, Vallecitos), found on level or slightly sloping landscapes, generally between the elevations of 985 ft and 3,500 ft (300 m and 1,068 m) above mean sea level (AMSL), and as part of open native or non-native grassland plant communities and ''clay soil flora'' that can occur in a mosaic with Riversidean sage scrub, chamise chaparral, scrub oak chaparral, coast live oak woodland, and peninsular juniper woodland and scrub; or

(ii) Alluvial soil series of sedimentary or igneous origin (*e.g.*, Greenfield, Ramona, Placentia, Temescal) and terrace escarpment soils found as part of alluvial fans underlying open native or non-native grassland plant communities that can occur in a mosaic with Riversidean sage scrub generally between the elevations of 985 ft and 3,500 ft (300 m and 1,068 m) AMSL, or Pyroxenite deposits of igneous origin found on Bachelor Mountain as part of non-native grassland and Riversidean sage scrub generally between the elevations of 985 ft and 3,500 ft (300 m and 1,068 m) AMSL; and

(iii) Clay soils or other soil substrate as described above with intact, natural surface and subsurface structure that have been minimally altered or unaltered by ground-disturbing activities (*e.g.*, disked, graded, excavated, re-contoured); and,

(iv) Within areas of suitable clay soils, microhabitats that are moister than surrounding areas because of (A) north or northeast exposure or (B) seasonally available moisture from surface or subsurface runoff.

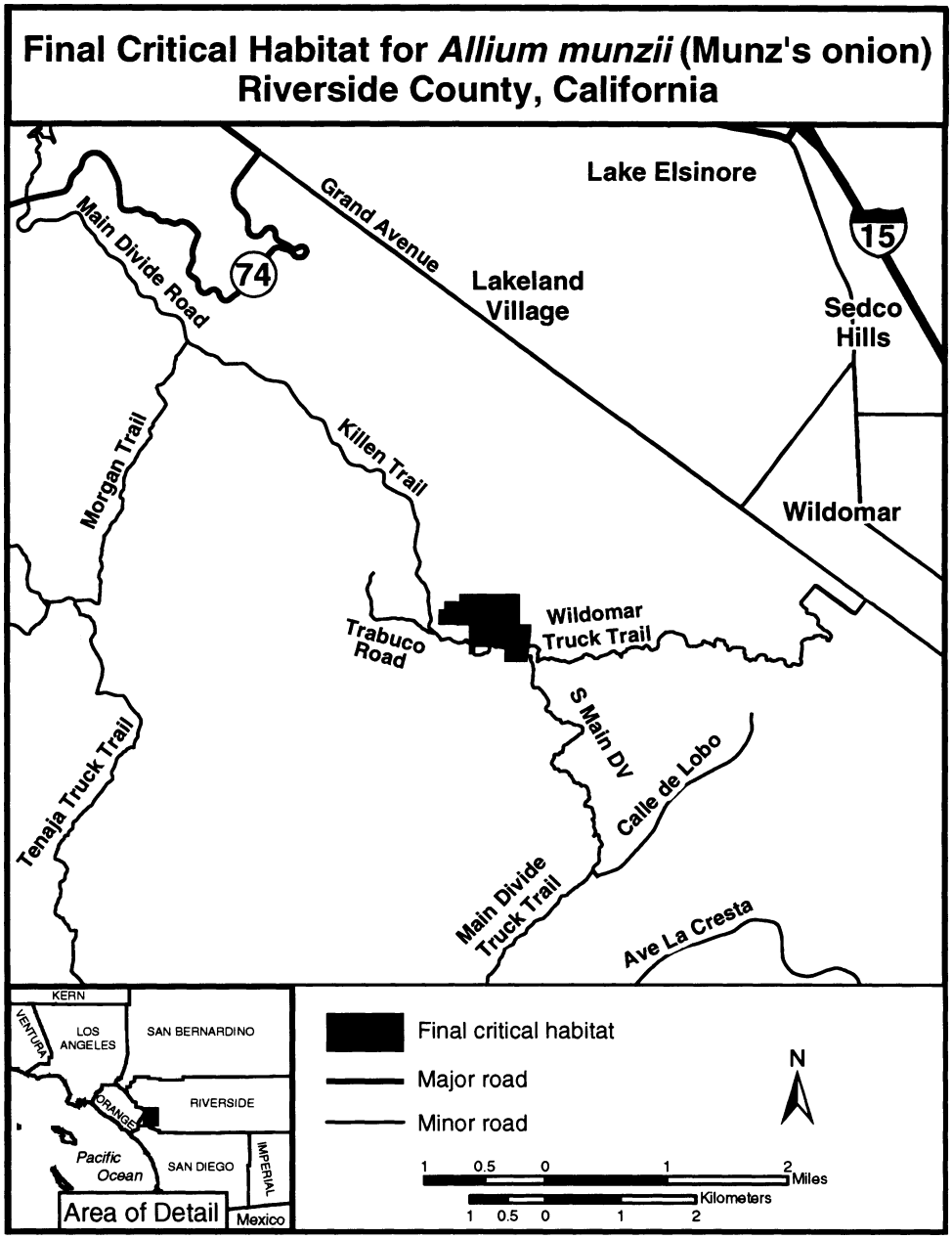
(3) Critical habitat for *Allium munzii* does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airport runways, radio and communication towers, and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat unit for *Allium munzii* is described below.

(i) Map Unit 1: Riverside County, California. From USGS 1:24,000 quadrangle map Wildomar, California, land bounded by the following UTM 11 NAD27 coordinates (E, N): 467900, 3718200; 468700, 3718200; 468700, 3717800; 468850, 3717800; 468850, 3717700; 468800, 3717300; 468500, 3717300; 468500, 3717500; 468100, 3717500; 468100, 3717400; thence east to the U.S. Forest Service, Cleveland National Forest boundary at y-coordinate 3717400; thence northwest following the U.S. Forest Service, Cleveland National Forest boundary to y-coordinate 371800; thence east to 467700, 3718000; 467700, 3718100; 467900, 3718100; returning to 467900, 3718200.

(ii) Note: Map of critical habitat unit follows:

BILLING CODE 4310–55–P



Dated: May 31, 2005.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 05–11167 Filed 6–6–05; 8:45 am]

BILLING CODE 4310–55–C

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 050209033–5033–01; I.D. 053105G]**

**RIN 0648–AS97**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Trip Limit Reduction for Gulf of Mexico Grouper Fishery

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

**ACTION:** Temporary rule; inseason action.

**SUMMARY:** NMFS reduces the combined trip limit for the commercial shallow-water and deep-water grouper fisheries in the exclusive economic zone of the Gulf of Mexico to 7,500 lb (3,402 kg) per trip. The intended effect of trip limit reduction is to moderate the rate of harvest of the available quotas and, thereby, reduce the adverse social and economic effects of derby fishing, enable more effective quota monitoring, and reduce the probability of overfishing.

**DATES:** Effective 12:01 a.m., local time, June 9, 2005, through December 31, 2005, unless changed by further notification in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Phil Steele, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Phil.Steele@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) that was prepared by the Gulf of Mexico Fishery Management Council. This FMP was approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Regulations at 50 CFR 622.44(g)(1)(ii) require NMFS to reduce the commercial trip limit for Gulf deep-water and shallow-water grouper, combined, to 7,500 lb (3,402 kg) if on or before August 1 more than 50 percent of either the shallow-water grouper quota or red grouper quota is reached or is projected to be reached. Based on current statistics, NMFS has determined more than 50 percent of the 5.31 million-lb (2.41 million-kg) commercial quota for red grouper will be reached on June 8, 2005. Accordingly, NMFS is reducing the combined trip limit for deep-water grouper (misty grouper, snowy grouper, yellowedge grouper, warsaw grouper, and speckled hind) and shallow-water grouper (black grouper, gag, red grouper, yellowfin grouper, scamp, yellowmouth grouper, rock hind, and red hind) to 7,500 lb (3,402 kg) per trip in the Gulf of Mexico exclusive economic zone effective 12:01 a.m., local time, on June 9, 2005, through December 31, 2005, unless changed by further notification in the **Federal Register**.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.44(g)(1)(ii) and is exempt from review under Executive Order 12866.

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

Dated: June 1, 2005.

**Alan D. Risenhoover,**

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

[FR Doc. 05–11290 Filed 6–2–05; 2:30 pm]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**[Docket No. 050317076–5145–02; I.D. 030405C]**

**RIN 0648–AT01**

## Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specifications and General Category Effort Controls

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

**ACTION:** Final rule.

**SUMMARY:** NMFS announces the final initial 2005 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established domestic fishing categories and to set General category effort controls. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** The final rule is effective July 7, 2005 through May 31, 2006.

**ADDRESSES:** Supporting documents, including the environmental assessment (EA), final Regulatory Flexibility Act analysis, and regulatory impact review, are available by sending your request to Dianne Stephan, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr., Gloucester, MA 01930; Fax: 978–281–9340. These documents are also available from the HMS Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hmspg.html* or at the Federal e-Rulemaking Portal: *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dianne Stephan at (978) 281–9260 or email *Dianne.Stephan@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under

the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA).

**Background**

Background information about the need for the final initial BFT quota specifications and General category effort controls was provided in the preamble to the proposed rule (70 FR 14630, March 23, 2005), and is not repeated here. By this rule, NMFS announces the final initial BFT quota specifications and General category effort controls. In the proposed rule, comments were specifically requested on options to remain below the ICCAT recommended school BFT provision implemented at 50 CFR 635.27(a)(2) which requires that the proportion of school landings to overall U.S. landings remain below a four-year average of eight-percent. The final rule attempts to balance concerns regarding the eight-percent provision with requests for additional quota, higher retention limits, and longer seasons. NMFS will allocate the full proposed school BFT quota for the 2005 fishing year, and make inseason adjustments as necessary. In addition, NMFS may implement inseason adjustments to retention limits and seasons as discussed under the Comments and Responses section (Comment 4) below. Several comments regarding early retention limits and a late season Southern area fishery for the General category were also received, and are addressed under Comment 5.

**Changes From Proposed Rule**

Updated landings estimates for the 2004 fishing year were available for several BFT fishery categories, which affected quota allocations for 2005 in the Reserve and Longline categories, and are incorporated in this rule. Total additional landings of 36.7 mt in the Longline category occurred since the landings for the proposed rule were analyzed. These landings occurred in the subcategories as follows: 2.7 mt additional landings in the north (outside of the Northeast Distant area (NED)) and 34.0 mt additional in the south. The quota available for the 2005 fishing year in each of the Longline subcategories is 51.6 mt in the north (outside the NED), 64.7 mt in the NED, and 72.1 mt in the south. In addition, new information regarding the dead discards in the 2004 longline fishery showed that the Longline category had exceeded the 68 mt dead discard allowance by 3.8 mt, according to preliminary estimates for calendar year (CY) 2004. Pursuant to 50 CFR 635.27(a)(9)(iv), any dead discard overage must be subtracted from the category in which it occurred. Thus, the overall Longline category quota is reduced by 40.5 mt (36.7 mt + 3.8 mt) to a total of 188.4 mt and the Reserve category is reduced by 7.8 mt to account for the previously estimated dead discard underage for 2004.

Data became available since analyses for the proposed rule showing additional landings in the Angling category of 5.7 mt for the 2004 fishing year. Since data available for the proposed rule indicated that the Angling category had over-harvested the 2004 quota, the Reserve category for the 2005 fishing year was reduced by 5.7 mt in this final rule to account for the additional Angling category landings.

**2005 Final Initial Quota Specifications**

In accordance with the 2002 ICCAT quota recommendation, the ICCAT recommendation regarding the dead discard allowance, the 1999 HMS fishery management plan (1999 FMP) percentage shares for each of the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(9)(ii), NMFS establishes final initial quota specifications for the 2005 fishing year as follows: General category—908.3 mt; Harpoon category—90.0 mt; Purse Seine category—530.0 mt; Angling category—288.6 mt; Longline category—188.4 mt; and Trap category—3.8 mt. Additionally, 45.9 mt are allocated to the Reserve category for inseason adjustments, including potentially providing for a late season General category fishery, or to cover scientific research collection and potential overharvest in any category except the Purse Seine category.

Based on the above initial specifications, the Angling category quota of 288.6 mt is further subdivided as follows: School BFT 117.2–mt, with 45.1 mt to the northern area (north of 39°18′ N. latitude), 50.4 mt to the southern area (south of 39°18′ N. latitude), plus 21.7 mt held in reserve; large school/small medium BFT 164.8–mt, with 77.8 mt to the northern area and 87.0 mt to the southern area; and large medium/giant BFT–6.6 mt, with 2.2 mt to the northern area and 4.4 mt to the southern area.

The 2002 ICCAT recommendation includes an annual 25 mt set-aside quota to account for bycatch of BFT related to directed longline fisheries in the NED. This set-aside quota is in addition to the overall incidental longline quota to be subdivided in accordance to the North/South allocation percentages mentioned below. Thus, the Longline category quota of 188.4 mt is subdivided as follows: 51.6 mt to pelagic longline vessels landing BFT north of 31° N. latitude and 72.1 mt to pelagic longline vessels landing BFT south of 31° N. latitude, and 64.7 mt (39.7 mt from 2004 + 25.0 mt for 2005) to account for bycatch of BFT related to directed pelagic longline fisheries in the NED.

**General Category Effort Controls**

For the last several years, NMFS has implemented General category time-period subquotas to increase the likelihood that fishing would continue throughout the entire General category season. The subquotas are consistent with the objectives of the 1999 FMP and are designed to address concerns regarding the allocation of fishing opportunities, to assist with distribution and achievement of optimum yield, to allow for a late season fishery, and to improve market conditions and scientific monitoring.

The regulations implementing the 1999 FMP divide the annual General category quota into three time-period subquotas as follows: 60 percent for June-August, 30 percent for September, and 10 percent for October-January. These percentages would be applied to the adjusted 2005 coastwide quota for the General category of 908.3 mt, minus 10.0 mt reserved for the New York Bight set-aside fishery. Therefore, of the available 898.3 mt coastwide quota, 539.0 mt would be available in the period beginning June 1 and ending August 31, 2005; 269.5 mt would be available in the period beginning September 1 and ending September 30, 2005; and 89.8 mt would be available in the period beginning October 1, 2005, and ending January 31, 2006.

In addition to time-period subquotas, NMFS also has implemented General category restricted fishing days (RFDs) to extend the General category fishing season. The RFDs are designed to address the same issues addressed by time-period subquotas and provide additional fine scale inseason flexibility. For the 2005 fishing year, NMFS establishes a series of solid blocks of RFDs to extend the General category for as long as possible through the October through January time-period.

Therefore, persons aboard vessels permitted in the General category are prohibited from fishing, including catch-and-release and tag-and-release, for BFT of all sizes on the following days while the fishery is open: all Fridays, Saturdays, and Sundays from November 18, 2005, through January 31, 2006, and Thursday, November 24, 2005, inclusive. These RFDs are implemented to improve distribution of fishing opportunities during the late

season without increasing BFT mortality.

**Comments and Responses**

*Comment 1:* Many commenters supported the quota allocation in the proposed rule and the timing of the proposed rule and comment period relative to the start of the BFT season. One commenter stated that each category should be responsible for its overages and underages in future years.

*Response:* The final rule implements the proposed quota allocation, with minor modifications to account for minor additional recreational landings and minimal landings under experimental fishing permits, and a minor adjustment for dead discards. NMFS intends to publish annual specifications with enough notice and sufficient information so constituents can plan for the BFT fishing year. When setting annual specifications, NMFS strives to ensure each category's overages and underages are applied within the same category. However, transfer of quota among categories is provided for in regulations at 50 CFR 635.27(a)(8). In general, NMFS may choose to transfer quota among categories to maximize fishing opportunities and help achieve optimum yield in BFT fisheries, while this valuable stock undergoes rebuilding.

*Comment 2:* Some commenters supported the proposed RFDS while others did not. The commenters that supported the RFDs recognized that the RFDs would serve several purposes, including maximizing the market value of the catch by distributing the available quota over a longer time period and allowing the charter/headboat and recreational fleets the opportunity to fish without the presence of the commercial fleet. Commenters who opposed the RFDs noted that the RFDs would disadvantage non-resident commercial fishermen since they may have to pay for lodging or docking during non-fishing days and that some General category fishermen are only able to fish on the weekends. Commenters opposed to the RFDs also stated that waiving RFDs during previous fisheries had occasionally been untimely, and that weather would serve to moderate the landings for the last subperiod. A commenter also asked that the RFD for Thanksgiving be removed so that fishermen could have the option to fish.

*Response:* The final rule maintains the following schedule of RFDs, as proposed: Fridays, Saturdays, and Sundays between November 18 and January 31 and Thursday, November 24. The purpose of the RFDs is to assist with distribution and achievement of optimum yield, and to extend the late season General category fishery. NMFS recognizes that three day consecutive RFDs could negatively impact non-resident fishermen. The intent of the configuration of the RFDs is to separate the commercial and recreational fisheries temporally (*i.e.* General category fishes Monday through Thursday, Angling category fishes Friday through Sunday) in order to improve conditions on the fishing grounds for both fisheries. Market value of BFT is expected to increase as a result of spreading the fishery out over the late season, and could mitigate any potential extra costs of non-resident fishermen for boat dockage and overnight fees. General category fishermen with situations such as other full time jobs on Monday through Friday may need to make other arrangements such as taking annual leave in order to fish during weekdays.

NMFS recognizes that the weather is unpredictable during this time period of the fishery (*i.e.* November 18 through January 31), and that poor weather conditions may limit participation without the need for additional RFDs during this part of the season. Should BFT landings and catch rates during the late season fishery merit the waiving of RFDs, under 50 CFR 635.23(a)(4), NMFS may adjust the daily retention limits with a minimum three day notification to fishermen.

Thanksgiving (November 24, 2005) and other holidays during November through January for 2005–6 are maintained as RFDs to provide fishermen the opportunity to spend holidays with family or friends without disadvantaging them in the fishery. Providing U.S. holidays (*i.e.* November 24, December 24–25, December 31 and January 1) as RFDs is a new approach for management of the General category fishery, and may be re-evaluated in future years based on experience gained from this year's fishery. In this year's fishery, holidays other than Thanksgiving happen to occur on Friday, Saturday, or Sunday, which have been established as RFDs for other purposes. Thus, the evaluation of providing holidays will rest on the experience of Thanksgiving day for 2005. As discussed above, RFDs can be waived as the season progresses if warranted by conditions in the fishery.

*Comment 3:* Several commenters stated a need to change the way BFT recreational landings are counted. Commenters stated that landings estimates in recent years were much higher than what seemed to be more reasonable estimates from prior years. Several commenters requested that a tail-tag program similar to the landings programs in place in North Carolina and Maryland be implemented on a coastwide basis. A commenter noted that real-time recreational landings estimates are necessary for inseason adjustments to keep the recreational fishery open during the entire season and from exceeding its quota. Similar comments regarding the need for improvement to HMS recreational landings statistics were presented by the HMS Advisory Panel during a March 2005 meeting.

*Response:* NMFS collects recreational landings data for HMS through the following three programs: (1) Large Pelagics Survey (LPS); (2) Automated Landing Reporting System (ALRS), and (3) comprehensive tagging of recreationally landed BFT in the states of Maryland and North Carolina. Each of these programs has limitations, and none of them provides real-time data on a coastwide basis, but they are the best data available. NMFS considers improving recreational landings data for HMS to be a high priority, and continues to investigate options for improving the reliability and utility of these data. Specifically, an ad hoc committee of NMFS scientists was formed to review the 2002 and 2003 methods and estimates of U.S. recreational fishery landing of BFT, white marlin, and blue marlin reported by NMFS to ICCAT to verify that the reported estimates were the most accurate that could be made with available data. A report stating the Committee's findings was released in December 2004. Based on the findings of this report, and consultations with the contractor that performs the LPS, methods of fish measurement and length/weight conversion will be further scrutinized. Proposals to implement an Atlantic-wide tail-tag monitoring program remain under discussion among coastal states and within NMFS and include issues regarding specifics of logistics, implementation, and establishment of partnerships with coastal states.

*Comment 4:* Many comments regarding the 2005 recreational season were received; most in response to the agency's request for comments on addressing ICCAT's eight-percent provision for school size BFT as set forth in 50 CFR 635.27(a)(2). In addition, a joint letter from several recreational advocacy groups outlined specific bag limits and season requests for the 2005 recreational fishing year, and several other commenters requested that sufficient quota be available for the

southern area recreational fishery, and that it be extended in time beyond that available in previous years. The comments regarding the eight-percent tolerance provision received included support of a limit of one school size BFT per vessel per day and support of a one fish (any size category) limit per vessel per day. Shifting some of the quota into the large school/small medium subquota was supported by one commenter but not by another because of concern over increasing pressure on spawning fish. Several commenters suggested harvesting the entire school allotment for the next two years during 2005. Several other commenters expressed concern over postponing action to limit school size catches until 2006 and any other actions that could jeopardize a school size fishery in 2006. A commenter opposed completely prohibiting the catch of school size BFT in 2005 since it could negatively impact the charter industry. One commenter proposed use of a bonus tag system for additional harvest for vessels with a bonus tag and another commenter suggested that the recreational fishery be closed after October.

*Response:* To balance concerns regarding the eight-percent ICCAT provision with requests for more quota, higher retention limits and longer seasons, and to ensure that the Angling category does not exceed the school size subquota set forth in 50 CFR 635.27(a)(2), the final action maintains the proposed allocation of 117.2 mt in the school subquota. NMFS is considering several scenarios for season openings/closings and potential adjustments to Angling category retention limits. However, inseason establishment of retention limits and seasons per 50 CFR 635.23(b)(3) and 635.28(a)(3), respectively, takes into consideration information that is only available as the season progresses, including but not limited to catch rates and the availability of fish on the fishing grounds, and are accomplished during the season via inseason actions. Potential inseason adjustments to retention limits and seasons are being considered by NMFS, and are provided here to assist for constituent planning purposes. However, these adjustments are only potentially being considered for implementation, and may be adjusted based on incoming data as the season progresses. Retention limits under consideration include raised retention limits for the CHB fishery early in the season as well as during the month of September, and access for all recreational vessels to the large school/small medium size classes (47 up to 73 inches) from October 1, 2005 through March 15, 2006, after which the fishery may close. The limits under consideration would be in addition to the one trophy fish per year for Angling category vessels. The intent of this planned recreational season is to provide fishermen recreational opportunities throughout the geographic range of the fish and for the season to extend slightly longer than the average fishery for recent prior years. Establishing a bonus tag program is outside the scope of this action and may be considered as part of the ongoing research into the recreational data programs.

*Comment 5:* Several individuals commented on management of the General category, including requests from several commenters that a multiple fish retention limit be established for the start of the 2005 season. A commenter requested that any underage from the June through August subquota not be rolled over but moved to the reserve category for harvest by the southern area fishery. Several commenters requested that 150 mt be available for the southern area fishery and one commenter asked that 10.5 percent of any quota transferred to the General category from another category during an inseason action be moved into the third subperiod quota. Another commenter requested that the subperiod percentages in the General category remain the same. One commenter stated that the southern area fishery should be closed since it appears to be negatively impacting the traditional New England fishery.

*Response:* Similar to the Angling category season and retention limits discussed above in the previous response, seasonal management of the General category takes into account time-sensitive information such as current catch rates, among other information, and retention limits are established with inseason actions per 50 CFR 635.23(a)(4), respectively. Potential inseason adjustments to retention limits are being considered by NMFS, and are provided here to assist for constituent planning purposes. However, these adjustments are only potentially being considered for implementation, and may be adjusted based on incoming data as the season progresses. NMFS is considering setting a two fish retention limit for the General category early in the season and adjusting this to one fish per vessel per day after September 1. The increased retention limit early in the season is being considered in expectation of low landings rates during June through August and the availability of a large amount of quota for the fishing year. Should catch rates accelerate, NMFS has the ability to responsively adjust the retention limit in order to ensure availability of quota throughout the range of the fishery. Unused quota in General category time periods is traditionally rolled over from one time period to the next; however, 50 CFR 635.27(a)(8) does allow the transfer of quotas among subcategories and § 635.27(a)(7) identifies specific criteria that must be considered. Any actual transfers between subcategories or categories may be addressed in subsequent actions. NMFS continues to be aware of the interests of Southern area fishermen, particularly off North Carolina, for some limited but fixed General category quota allocation. In the past several years, NMFS has endeavored and succeeded in meeting this request and will continue to do so in 2005. NMFS is considering several alternatives for restructuring General category subquotas in the consolidated HMS FMP (68 FR 40907, July 9, 2003) currently under development to provide a long-term, codified solution to quota allocation for the December to January timeframe.

*Comment 6:* Several commenters requested that more notice be given for opening and closing of seasons so that participants and other affected businesses (*e.g.*, tackle shops) have more planning opportunities. One commenter requested a fixed opening date for the southern area fishery. Another commenter requested the General category fishery be kept open until the entire quota is harvested.

*Response:* NMFS inseason management of the BFT fishery attempts to balance the constituents' need to plan business affairs and recreational activities with maximizing responsiveness to the changing availability of fish stocks, changes in regional fishery participation, and enforcement of regulations and administrative requirements. For example, establishing fixed opening and/or closing dates provides a certain degree of predictability; however, the availability of BFT on the fishing grounds is not predictable. In addition, daily landings of fisheries that vary based on fleet size, weather, and fish availability are unpredictable in nature, and a fixed closing date could result in quota overages or underages. NMFS will continue to strive to provide sufficient notification of season openings, closings, and retention limit adjustments while maximizing fishing opportunities within the bounds of the established BFT fishery management program.

*Comment 7:* Several commenters requested that NMFS investigate the effect of the herring fishery and the abundance of dogfish on the BFT catch and fishery in New England.

*Response:* NMFS recognizes the importance of considering ecosystem interactions in fishery management planning, and addresses ecosystem management as one of the goals of the NMFS Strategic Plan. The agency continues to work toward integrating an ecosystem approach into fishery management practices. Currently, Atlantic herring is managed under a separate FMP by the New England Fishery Management Council (NEFMC) and spiny dogfish is managed by the Mid-Atlantic Fishery Management Council (MAFMC). The Atlantic herring FMP is being amended, and a public hearing document is expected to be available in the near future. An amendment to the spiny dogfish FMP was initiated several years ago and is currently under development. A framework action to increase the time period for fishery specifications is currently underway, by the NEFMC and MAFMC jointly. Little information is available regarding the interaction between these three fisheries. As council and NMFS FMPs are amended, NMFS will continue to evaluate the information available regarding this issue.

*Comment 8:* Several commenters opposed establishing two-tiered retention limits that allow charter/headboat operators to retain more fish than other Angling category vessels. Another commenter supported a higher retention limit for charter/headboats during the fall season of one fish for every four to six passengers. One commenter suggested that charter/headboat limits vary with the size of the fish (*e.g.*, keep a greater number of smaller fish and fewer large fish).

*Response:* Angling category and CHB retention limits for the 2005 fishing year is discussed in the response to Comment 4. Establishment of retention limits is regularly addressed by inseason actions during the fishing year. NMFS regulations at 50 CFR 635.23(b)(3) explicitly provide for retention limits within the Angling category based upon vessel type, including differentiation of bag limits for private, charterboat and headboat vessels. Differentiation has been used in past actions based on the different and unique practices of each respective vessel type.

*Comment 9:* One individual stated that there should be more public meetings where fishermen can provide input, and that anecdotal information should be better incorporated into the management process. Several commenters were dissatisfied with the locations of the public hearings, and stated that none were available to recreational fishermen between Gloucester, MA and Morehead City, NC. Another commenter stated that commercial fishermen should be excluded from the fishery management process.

*Response:* The Magnuson-Stevens Act and ATCA specifically provide for the involvement of the public and fishery participants (commercial and recreational) in the Federal fishery management process. NMFS provided several opportunities for commenting on this rulemaking, including publications requesting comments at the proposed rule state and a total of two public hearings on April 8 and April 11, 2005. Rulemaking background documents were made available by request and on several internet websites. Public hearings are scheduled based on anticipated attendance and distribution of user groups, and may be limited by the constraints of both time and funding. NMFS is interested in receiving feedback about potential locations for future public hearings relative to this topic. Please see the Addresses section for suggestion submissions.

*Comment 10:* One commenter requested that the purse seine category be eliminated. Several commenters requested that the size limit for the General category be reduced, while one commenter requested that it be increased. A commenter requested that the minimum size in the young school size category be increased, and that the commercial sector quota be cut by five percent across the board. Another commenter requested that BFT quotas be cut by 50 percent this year and 10 percent per year on a continuing basis. The commenter opposed the allowance of 68 mt of dead discards in the BFT fishery,

*Response:* This final rule is designed to provide for the fair and efficient harvest of the BFT quota that is allocated to the United States by ICCAT and is consistent with ATCA and the Magnuson-Stevens Act. This action establishes BFT quotas based on a 2002 ICCAT recommendation, which includes a dead discard allowance, subdivided among the U.S. domestic fishing fleet categories according to percentages established by the 1999 FMP and implemented in NMFS regulations at 50 CFR 635.27(a). The remaining requested actions are all outside the scope of this action and would require changes to the 1999 FMP, implementing regulations, and/or ICCAT recommendations. These issues are not currently being considered in the development of the amendment to the 1999 FMP.

*Comment 11:* Several commenters indicated that NMFS is only concerned about management of the commercial fishery. Another commenter believed that recreational fishermen should be allowed to sell fish.

*Response:* The Magnuson-Stevens Act, 1999 FMP, and implementing regulations all explicitly recognize the value of both commercial and recreational fisheries, and identify the promotion of domestic commercial and recreational fisheries, under sound conservation and management principles. This final rule is consistent with all applicable law including the Magnuson-Stevens Act, and the 1999 FMP. Recreational anglers are prohibited from selling BFT subject to NMFS' intent to manage the commercial and recreational sectors of the BFT fishery under different objectives, as indicated in the 1999 FMP. Implementing regulations at 50 CFR 635.4(d)(2) strictly prohibit the sale of Atlantic HMS caught on board vessels holding an HMS Angling permit. The General category fishery is an open-access commercial fishery, and permits in this category are available to any fisherman that submits a complete application package. Allowing recreational fishermen to sell fish is outside the scope of this rulemaking.

## Classification

These final specifications and General category effort controls are published under the authority of the Magnuson-Stevens Act and ATCA. The AA has determined that the regulations contained in this rule are necessary to implement the recommendations of ICCAT and to manage the domestic Atlantic HMS fisheries, and are consistent with the Magnuson-Stevens Act and National Standards.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule. No comments were received on the IRFA concerning the economic impact of this final rule that would change the conclusions of the IRFA. One comment stated that the RFDs in the proposed rule could negatively impact non-resident fishermen. As discussed in the IRFA and Final Regulatory Flexibility Analysis (FRFA), this potential impact could be mitigated by the potential increased value of landings dispersed over a greater time period as a result of the RFDs. A summary of the FRFA is provided below.

The analysis for the FRFA assesses the impacts of the various alternatives on the vessels that participate in the BFT fisheries, all of which are considered small entities. In order to do this, NMFS estimated the average impact that the selected alternative to establish the 2005 BFT quota for all domestic fishing categories would have on individual categories and the vessels within those categories.

As mentioned above, the 2002 ICCAT recommendation increased the BFT quota allocation to 1,489.6 mt, to be redistributed to the domestic fishing categories based on the allocation percentages established in the 1999 FMP, as well as a set-aside quota of 25 mt to account for incidental catch of BFT related to directed longline swordfish fisheries and other regulated tuna (bigeye, albacore, yellowfin, and skipjack) fisheries in the NED. Both these quota modifications were established in the 2003 and 2004 specifications. In 2004, the annual gross revenues from the commercial BFT fishery were approximately $5.2 million. There are approximately 9,500 vessels that are permitted to land and sell BFT under four BFT quota categories (including charter/headboat vessels). The commercial categories and their 2004 gross revenues are General ($4,346,814), Harpoon ($317,104), Purse seine ($231,791), and Longline ($305,180). The analysis for the FRFA assumes that each vessel within a category will have similar catch and gross revenues. While this may not be true, the analyses are sufficient to show the relative impact of the various selected alternatives on vessels.

For the allocation of BFT quota among domestic fishing categories, NMFS analyzed a no action alternative and Alternative two (selected alternative) which would implement the 2002 ICCAT recommendation. NMFS considered a third alternative that would have allocated the 2002 ICCAT recommendation in a manner other than that designated in the 1999 FMP that was meant to address issues regarding specific set-asides and allocations for fishing groups which are not currently considered in the 1999 FMP. However, since the third alternative could have resulted in a defacto sub-period quota reallocation, an FMP amendment would be necessary for its implementation, and it was not further analyzed. In a concurrent rulemaking, the development of the consolidated HMS FMP has been initiated (68 FR 40907, July 9, 2003) to consider sub-period quota allocations in the BFT fishery, among other things.

As noted above, Alternative two would implement the 2002 ICCAT recommendation in accordance with the 1999 FMP and consistent with ATCA. Under ATCA, the United States is obligated to implement ICCAT-approved quota recommendations. The selected alternative would apply this quota and have positive impacts for fishermen. The no action alternative would keep the quota at pre-2002 ICCAT recommendation levels (*i.e.*, 77.6 mt less) and would not be consistent with the purpose and need for this action and the 1999 FMP. It would maintain economic impacts to the United States and to local economies at a distribution and scale similar to 2002 or recent prior years, but would deny fishermen additional fishing opportunities as recommended by the 2002 ICCAT recommendation and as mandated by ATCA. This alternative was rejected because it was inconsistent with ATCA, the 1999 FMP, and the purpose and need for this action.

Alternative two also included consideration of several options for reducing catch of school bluefin tuna, including: (1) Taking no action until 2006; (2) reallocating all or a portion of the 2005 school subquota to the large school/small medium subquota for 2005; (3) maintaining the default Angling category retention limit of one fish per vessel per day for the entire 2005 season; or (4) prohibiting landing of school BFT in 2005 and carrying over the subquota to 2006. During the public comment period, comment was specifically sought on these options. Because of limited economic data regarding recreational HMS fisheries, economic impacts of the various options cannot be quantified. However, the options that include some reduction in school BFT landings in 2005 (Options 2, 3 and 4) could have minor negative economic impacts for 2005. Any modest economic impacts to charter/headboat or recreational fisheries as a result of option 2 could be mitigated by the shift of quota to the large school/small medium subquota. In addition, the apparent recent increase in school BFT landings could indicate an increase in abundance of young BFT, some of which could be recruited into the large school/small medium size class in 2005, thus mitigating any reduction in school BFT from Options 2 or 4. Impacts from Option 3 are less likely to be mitigated by shifts in quota or abundance since the one fish retention limit would be in place for the entire season, and the small retention limit could have greater impacts on charter/headboat fisheries than the other options. Options 2, 3, and 4 were rejected because each was more likely to have negative impacts on the 2005 fishing year as describe above than Option 1. Under Option 1, the selected alternative, there would be few negative impacts in the coming fishing year compared to the other alternatives; however, more severe measures may be required to reduce school harvest in 2006. NMFS intends to use inseason actions to the extent possible to adjust retention limits and moderate the catch of school BFT during the 2005 fishing year to maximize fishing opportunities and mitigate impacts in 2005 and 2006.

For the General category effort controls, two alternatives were considered: The selected alternative to designate RFDs according to a schedule published in the initial BFT specifications and the no action alternative (no RFDs published with the initial specifications, but implemented during the season as needed). In the past, when catch rates have been high, the use of RFDs (selected alternative) has had positive economic consequences by avoiding oversupplying the market and extending the season as late as possible. Implementing RFDs to extend the late season may have negative economic impacts to northern area fishermen who choose to travel to the southern area during the late season fishery. Travel and lodging costs may be greater if the season were extended over a greater period of time as indicated under the selected alternative. Those additional costs could be mitigated if the ex-vessel price of BFT stays high. Without RFDs, travel costs may be less because of a shorter season; however, the market could be oversupplied and ex-vessel prices could fall. Despite the possible negative impacts, extending the season as late as possible would enhance the likelihood of increasing participation by southern area fishermen, increase access to the fishery over a greater range of the fish migration, and is expected to provide better than average ex-vessel prices with an overall increase in gross revenues.

The no action alternative would not implement any RFDs with publication of the initial specifications but rather would use inseason management authority established in the 1999 FMP to implement RFDs during the season, should catch rates warrant. This alternative is most beneficial during a season of low catch rates and would have positive economic consequences if slow catch rates were to persist. Overall, the season would regulate itself and fishermen could choose when to fish or not based on their own preferences. However, even with low catch rates and

no RFDs, this alternative was rejected because it is unlikely that there will be enough quota in the General category to sustain an extended late season commercial handgear fishery off south Atlantic states.

The action would not result in additional reporting, recordkeeping, compliance, or monitoring requirements for the public. This final rule has also been determined not to duplicate, overlap, or conflict with any other Federal rules.

NMFS prepared an EA for this final rule, and the AA has concluded that there would be no significant impact on the human environment with implementation of this final rule. The EA presents analyses of the anticipated impacts of these regulations and the alternatives considered. A copy of the EA and other analytical documents prepared for this proposed rule, are available from NMFS via the Federal e-Rulemaking Portal (*see* **ADDRESSES**).

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

This final rule contains no new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

On September 7, 2000, NMFS reinitiated formal consultation for all HMS commercial fisheries under section 7 of the Endangered Species Act. A Biological Opinion (BiOp), issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NMFS jurisdiction. This BiOp also concluded that the continued operation of the purse seine and handgear fisheries may adversely affect, but is not likely to jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. NMFS has implemented the reasonable and prudent alternative (RPA) required by this BiOp.

Subsequently, based on the management measures in several proposed rules, a new BiOp on the Atlantic pelagic longline fishery was issued on June 1, 2004. The 2004 BiOp found that the continued operation of the fishery was not likely to jeopardize the continued existence of loggerhead, green, hawksbill, Kemp's ridley, or olive ridley sea turtles, but was likely to jeopardize the continued existence of leatherback sea turtles. The 2004 BiOp identified RPAs necessary to avoid jeopardizing leatherbacks, and listed the Reasonable and Prudent Measures (RPMs) and terms and conditions necessary to authorize continued take as part of the revised incidental take statement. On July 6, 2004, NMFS published a final rule (69 FR 40734) implementing additional sea turtle bycatch and bycatch mortality mitigation measures for all Atlantic vessels with pelagic longline gear onboard. NMFS is working on implementing the other RPMs in compliance with the 2004 BiOp. On August 12, 2004, NMFS published an advance notice of proposed rulemaking (69 FR 49858) to request comments on potential regulatory changes to further reduce bycatch and bycatch mortality of sea turtles, as well as comments on the feasibility of framework mechanisms to address unanticipated increases in sea turtle interactions and mortalities, should they occur. NMFS will undertake additional rulemaking and non-regulatory actions, as required, to implement any management measures that are required under the 2004 BiOp. The measures in this action are not expected to have adverse impacts on protected species. Although the 2002 ICCAT recommendation increased the BFT quota, which may result in a slight increase in effort, NMFS does not expect this slight increase to alter current fishing patterns. Any option to reduce mortality of school BFT are expected to have negligible ecological impacts and not adversely impact protected species. The specific action to allocate additional BFT quota to the Longline category would not alter current impacts on threatened or endangered species. The action would not modify fishing behavior or gear type, nor would it expand fishing effort because BFT are only allowed to be retained incidentally. Thus, the action would not be expected to change previously analyzed endangered species or marine mammal interaction rates or magnitudes, or substantially alter current fishing practices or bycatch mortality rates.

The area in which this action will occur has been identified as Essential Fish Habitat (EFH) for species managed by the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, the Caribbean Fishery Management Council, and the HMS Management Division of the Office of Sustainable Fisheries at NMFS. NMFS does not anticipate that this action will have any adverse impacts to EFH and, therefore, no consultation is required.

NMFS has determined that the actions in this final rule are consistent to the maximum extent practicable with the enforceable policies of the coastal states in the Atlantic, Gulf of Mexico, and Caribbean that have Federally approved coastal zone management programs under the Coastal Zone Management Act (CZMA). The rule establishing quota specifications and effort controls was submitted to the responsible state agencies for their review under section 307 of the CZMA on March 23, 2005. As of May 6, 2005, NMFS has received five responses, all concurring with NMFS' consistency determination. Because no responses were received from other states, their concurrence is presumed.

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

Dated: June 1, 2005.

**Rebecca Lent,**

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

[FR Doc. 05–11208 Filed 6–1–05; 5:01 pm]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**[I.D. 052405D]**

## Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

**ACTION:** Temporary rule; inseason retention limit adjustment.

**SUMMARY:** NMFS has determined that the Atlantic bluefin tuna (BFT) General and Charter/Headboat Permit category daily retention limits should be adjusted for the 2005 fishing year, which begins on June 1, 2005 and ends May 31, 2006. The adjustment will allow maximum utilization of the General category June through August time-period subquota, and will enhance recreational BFT fishing opportunities aboard Charter/Headboat vessels in the early portion of the season. Therefore, NMFS increases the daily BFT retention limits to provide enhanced commercial General category

and recreational Charter/Headboat fishing opportunities in all areas without risking overharvest of the General and Angling category quotas. The final initial 2005 BFT Specifications and General category effort controls are provided in a separate **Federal Register** document.

**DATES:** The effective dates for the BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Brad McHale, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

## Daily Retention Limits

TABLE 1.—EFFECTIVE DATES

| Permit category | Effective dates | Areas | BFT size class limit |
|---|---|---|---|
| General | June 1 through June 5, 2005, inclusive | All | One BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger. |
| | June 6 through August 31, 2005, inclusive | All | Two BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger. |
| | September 1, 2005, through January 31, 2006, inclusive. | All | One BFT per vessel per day/trip, measuring 73 inches (185) CFL or larger. |
| Charter/Headboat | June 1–16, 2005, inclusive | All | One BFT per vessel per day/trip, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL. |
| | June 17 through July 31, 2005, inclusive | All | Three BFT per vessel per day/trip, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL. Of the three BFT, a maximum of two BFT are allowed per vessel per day/trip measuring 27 to less than 47 inches (69 to less that 119 cm) CFL. |
| | August 1, 2005, through May 31, 2006, inclusive | All | One BFT per vessel per day/trip, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL. |
| Angling | June 1, 2005, through May 31, 2006, inclusive | All | One BFT per vessel per day/trip, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL. |

## Adjustment of General Category Daily Retention Limits

Under 50 CFR 635.23(a)(4), NOAA Fisheries may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on Restricted Fishing Days) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Starting on June 1, 2005, the default commercial General category daily retention limit at 50 CFR 635.23(a)(2), will apply at one large medium or giant BFT (measuring 73 inches curved fork length (CFL)) or greater per vessel per day/trip. This retention limit applies to permitted HMS Charter/Headboat vessels (when commercially fishing under the General category) and General category permitted vessels.

NOAA Fisheries has been continuing to receive information from fishermen regarding the start of the season and requests for an increase of the retention limit in the General category starting as close as possible to the start of the fishery on June 1 and for increased recreational Charterboat limits mid June to end of July. Fishermen have indicated that, if the action is not conducted expeditiously, at the opening of the season, then a subsector of General category fishermen (particularly in northern New England) will lose the opportunity to enjoy the increased fishing opportunities while the fish are briefly offshore in the Gulf of Maine and northern New England fishing areas.

Therefore, NOAA Fisheries adjusts the General category daily retention limit June 6 through August 31, 2005, inclusive, to two large medium or giant BFT, measuring 73 inches (185 cm) CFL or greater, per vessel per day/trip. The default retention limit of one BFT greater than 73 inches will apply through June 5, 2005 inclusive, and the retention limit will revert back to the default on September 1, 2005. It is highly likely that with a combination of the default bag limit of one BFT starting on September 1, 2005, and the large amount of General category quota, that there will be sufficient quota for a full general category season extending into the winter months and for southern area fishermen on an order of magnitude of recent prior years.

## Adjustment of HMS Charter/Headboat Permit Category Daily Retention Limits

Starting on June 1, 2005, the default recreational daily retention limit at 50 CFR 635.23(b), will apply at one school, large school or small medium BFT (measuring 27 inches to less than 73 inches curved fork length (CFL)) per vessel per day/trip. This retention limit applies to permitted HMS Charter/Headboat vessels (when recreationally fishing under the Angling category) and to HMS Angling permitted vessels. These regulations also allow for adjustment to the daily retention limit to provide for maximum utilization of the quota over the longest possible period of time. NOAA Fisheries may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit or vice versa. Such adjustments to the retention limits may be applied separately for persons aboard specific vessel types, such as private vessels, headboats, and charter boats.

NOAA Fisheries has recently received more information from charter operators and recreational industry leaders related to recreational BFT fishing opportunities in the mid-Atlantic area. Among other matters, NOAA Fisheries has learned about a tuna tournament starting on June 17, 2005, and concerns regarding how the default one BFT retention limit might negatively impact charterboat operations early in the season particularly in tournaments where higher limits will attract more participants. Charterboat operators have requested an increased retention limit, and expressed concern that a recreational retention limit of less than three or four BFT per vessel per day/trip

does not provide reasonable fishing opportunities for charter/headboats, which carry multiple fee-paying passengers. Fishermen have also emphasized that an early season retention limit adjustment should be announced as soon as possible so that Charterboat operators have sufficient time to announce and plan the scheduling of trips. Another consideration is the need to ensure the United States meets ICCAT's recommendation regarding quota allocation and specifically regarding the catch of school BFT to no more than eight percent by weight of the total domestic landings quota over each four-consecutive-year period. The 2005 fishing year is the third year in the current accounting period. This multi-year block quota approach provides NOAA Fisheries with the flexibility to enhance fishing opportunities and to collect information on a broad range of BFT size classes.

Over the past several weeks HMS staff have received information related to retention limit adjustments for a variety of recreational fishing sectors along the entire Atlantic coast and for the duration of the 2005 fishing year. HMS staff have considered this information as well as issues raised at the HMS Advisory Panel meeting held in March 2005 and received from public comment on the proposed initial 2005 BFT specifications (70 FR 14630, March 23, 2005). The final initial specifications are currently in preparation and take into account recently available estimates of total recreational landings from the 2004 fishing year. These analyses show that a modest increase in the daily retention limit, of limited duration, is feasible without risking overharvest of available quota for the early part of the 2005 recreational season.

Thus, NOAA Fisheries adjusts the daily BFT retention limit, in all areas, for vessels permitted in the HMS Charter/Headboat category, effective June 17 through July 31, 2005, inclusive, to three BFT per vessel per day/trip, consisting of BFT measuring 27 to less than 73 inches (69 to less than 185 cm) CFL in the school, large school, or small medium size classes. Of the three BFT, a maximum of two school BFT are allowed per vessel per day/trip, measuring 27 to less than 47 inches (69 to less than 119 cm) CFL.

Effective August 1, 2005, the default daily recreational retention limit at 50 CFR 635.23(b) will apply in all areas, for all vessels fishing under the recreational angling quota and regulations. However, NOAA Fisheries is also aware of the needs of a late summer or September Charterboat fishery and will consider the possibility of again providing a modest retention limit adjustment closer to that time frame based on several factors, including but not limited to, the landings and quota data as well as other fishery information gathered from the monitoring programs discussed below, experience of this early season retention limit adjustment, information from fishermen and the public regarding fishing opportunities, and the availability of migrating BFT.

For privately owned and operated recreational vessels, permitted in the HMS Angling category, the daily recreational retention limit will remain at one school, large school, or small medium BFT measuring 27 to less than 73 inches (69 to less than 185 cm) CFL, per vessel per day/trip effective June 1, 2005 through May 31, 2006, inclusive.

**Monitoring and Reporting**

NMFS selected the daily recreational retention limits and their duration after examining previous fishing year catch and effort rates, receiving public comment, and analyzing the available quota for the 2005 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports, the Automated Landings Reporting System, state harvest tagging programs in North Carolina and Maryland, and the Large Pelagics Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or, to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260 for updates on quota monitoring and retention limit adjustments. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Landings Reporting System via toll-free phone at (888) 872–8862; or the Internet *http://www.nmfspermits.com*; or, if landed in the states of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North Carolina by calling (800) 338–7804, and in Maryland by calling (410) 213–1531.

**Classification**

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action. NOAA Fisheries published proposed initial 2005 BFT specifications (70 FR 14630) on March 23, 2005, and solicited public comment through 4/18/2005. NOAA Fisheries specifically requested comment on options to achieve the ICCAT recommended four-year average 8 percent tolerance on harvest of school BFT. Numerous comments were received on this issue as well as a wide range of topics, including inseason management measures for the General and Angling categories throughout the 2005 fishing year. NOAA Fisheries is in the process of publishing the final initial specifications.

Since the end of the comment period to the present day, the HMS Management Division has continued to receive more information refining its understanding of both the commercial and recreational sectors' specific needs regarding retention limits early in the season. HMS staff recent calculations from the specifications process show that there is sufficient quota for an increase in the General category retention limit from the start of the season. Prior experience from the past several years also leads us to predict that the General category season will start slowly and an adjustment of the retention limit will be necessary to maximize fishing opportunities on the June through August subquota and minimize excessive rollovers of quota into the October subquota category. The data also show that a limited increase in the angling retention limit is possible for the recreational Charterboat fleet while minimizing risks of exceeding the ICCAT allocated quota and the school limit recommendation.

Delays in increasing the retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than one BFT per day and would further exacerbate the problem of quota rollovers, or lack of booked charters. Limited opportunities to access the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend upon catching the available quota within the time periods designated in the HMS FMP, or depend on multiple BFT retention limits to attract individuals to book charters. For both the General and the recreational sectors, an adjustment to the retention limits needs to be done

as close to the start of the season on June 1 as possible for the impacted sectors to benefit from the adjustment and for fishermen who only have access to the fishery at the beginning of the season to not be precluded from early season fishing opportunities.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (*i.e.*, current, default retention limit is one fish per vessel/trip but this action relaxes that limit and allows retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: June 1, 2005.

**Alan D. Risenhoover,**

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

[FR Doc. 05–11207 Filed 6–1–05; 5:02 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 041110317–4364–02; I.D. 053105F]**

## Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

**ACTION:** Temporary rule; inseason quota transfer.

**SUMMARY:** NMFS announces that it has approved the request of the State of North Carolina to transfer 82,774 lb (37,546 kg) of commercial summer flounder quota to the States of Maine, Connecticut, New York, and Maryland, and the Commonwealth of Massachusetts, in accordance with the Atlantic States Marine Fisheries Commission (ASMFC) Addendum XV to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

**DATES:** Effective June 2, 2005 through December 31, 2005, unless NMFS publishes a superseding document in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mike Ruccio, Fishery Management Specialist, (978) 281–9104, FAX (978) 281–9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The ASMFC adopted Addendum XV to the FMP in November 2004. The Addendum is being implemented under the adaptive management and framework procedures that are part of the FMP. Addendum XV establishes a program, for 2005 and 2006, that allocates the increase in commercial summer flounder quota (from the 2004 amount) differently than the existing allocation scheme, in order to reduce the amount of fish that must be discarded as bycatch in the commercial fishery in states with relatively low summer flounder quotas. The transfer of quota from donor states will allow recipient states to marginally increase trip limits, thereby decreasing the amount of summer flounder discarded at sea.

The final rule implementing Amendment 5 to the FMP that was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.100(d). The Regional Administrator is required to consider the criteria set forth in § 648.100(d)(3) in the evaluation of requests for quota transfers or combinations. The Regional Administrator has reviewed those criteria and approved the quota transfer requests submitted by the State of North Carolina.

Consistent with Addendum XV, North Carolina, a designated ''donor state,'' has voluntarily employed the quota transfer provisions of the FMP to transfer a total of 82,774 lb (37,546 kg) to be allocated as follows: Maine 1,639 lb (743 kg); Connecticut 22,917 lb (10,395 kg); New York 17,085 lb (7,750 kg); Maryland 23,153 lb (10,502 kg); and Massachusetts--17,980 lb (8,156 kg) (see Table 1).

TABLE 1. SUMMER FLOUNDER COMMERCIAL QUOTA TRANSFERS

| | Amount Transferred | | 2005 Quota[1] | | 2005 Revised Quota | |
|---|---|---|---|---|---|---|
| State | lb | kg | lb | kg | lb | kg |
| North Carolina | -82,774 | -37,546 | 4,680,519 | 2,123,089 | 4,597,745 | 2,085,537 |
| Maine | 1,639 | 743 | 9,820 | 4,454 | 11,459 | 5,198 |
| Massachusetts | 17,980 | 8,156 | 1,191,519 | 540,473 | 1,209,499 | 548,629 |
| Connecticut | 22,917 | 10,395 | 423,396 | 192,052 | 446,313 | 202,448 |
| New York | 17,085 | 7,750 | 1,387,434 | 629,336 | 1,404,519 | 637,090 |
| Maryland | 23,153 | 10,502 | 365,381 | 165,737 | 388,534 | 176,239 |

[1] Reflects quotas as published on May 24, 2005 (70 FR 29645), inclusive of previous Addendum XV and ''safe harbor'' transfers.

### Classification

This action is taken under 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: June 1, 2005.

**Alan D. Risenhoover,**

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

[FR Doc. 05–11289 Filed 6–2–05; 2:30 pm]

**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 70, No. 108
Tuesday, June 7, 2005

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

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1405

**RIN 0560–AH35**

### Collection of State Commodity Assessments

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule, if adopted, would provide that the Commodity Credit Corporation (CCC) will deduct from marketing assistance loan proceeds an amount equal to any assessment required under State or Federal law to be paid by a producer who markets the commodity, or by the first purchaser of the commodity. This discretionary action is authorized by Public Law 108–470.

**DATES:** Comments on this rule must be received on or before July 7, 2005 in order to be assured of consideration. Comments received after that date may be considered to the extent practicable.

**ADDRESSES:** The Commodity Credit Corporation (CCC) invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *E-Mail:* Send comments to *Kimberly_Graham@wdc.usda.gov.*
- *Fax:* Submit comments by facsimile transmission to (202) 690–3307.
- *Mail:* Send comments to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, Room 4095-S, 1400 Independence Avenue, SW., Washington, DC 20250–0512.
- *Hand Delivery or Courier:* Deliver comments to the above address.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095-S, 1400 Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available on the PSD home page at *http://www.fsa.usda.gov/dafp/psd.* All comments will become a matter of public record, including the name, mailing address, and e-mail address of the commenting party.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Graham, 202–720–9154, email: *Kimberly.Graham@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

### Background

Many States have enacted statutes that provide for the levy of assessments with respect to marketings of agricultural commodities. The assessments, generally, are paid by the producer of the commodity or by the first purchaser of the commodity. Similarly, there are a limited number of assessments collected pursuant to Federal statutes. Both the State and Federal assessments are used to increase domestic and international demand of the commodity through a variety of activities including product promotion; consumer information; and research related to product improvement, safety, health and production technology. In most instances, the collection of the assessment occurs at the point of the first marketing of the commodity.

When the first State assessments were authorized, CCC commodity loans were non-recourse loans that could be satisfied through either of two ways: the payment of the principal amount of the loan plus accrued interest; or through the forfeiture to CCC of the commodity which had been pledged as collateral for the loan. Accordingly, if the market price of the commodity exceeded the amount necessary to repay the loan, it was to the producer's advantage to redeem the loan collateral. Conversely, when market prices were below the loan rate, it would be more advantageous for the producer to forfeit the loan collateral to CCC. In those instances when there were prolonged periods of low prices, CCC would acquire substantial quantities of commodities as opposed to the commodity being marketed in the marketplace by the producer. This resulted in a situation where there were reduced collections of commodity assessments since the commodity was not marketed. In order to alleviate some of these concerns, CCC agreed in many instances to collect these assessments when CCC price support loans were disbursed, and in order to assure that the producer received the Congressionally-mandated level of price support obtained through the nonrecourse loan, the State was required to agree to refund the assessment to the producer if requested.

Beginning with changes by Congress in the late 1980's, the repayment mechanism for most CCC commodity loans was changed in order to eliminate the acquisition of large stocks of commodities by CCC. This change, generally, allowed producers to repay loans at the lesser of the normal redemption price (loan principal plus interest) or the market price as determined by CCC. These types of loans are referred to as ''marketing assistance loans.'' As a result of these changes, CCC now obtains minimal quantities of commodities as forfeitures. Thus, CCC determined that it was no longer prudent to enter into agreements to collect assessments at loan making since the commodities were being marketed, thus assessments were being collected when the commodity entered the market. In reviewing whether the assessment collection activities of CCC were still needed, it also became clear to CCC that there was no clear statutory authority for the reduction in the loan rate that occurred as a result of the collection activity. Accordingly, CCC ceased to enter into new agreements to collect such assessments. Recently, as a part of a wider examination of its loan-making actions, CCC found that in crop year 2003 only 112 of 37,246 farm-stored loans with a principal amount of $25,000 or less were satisfied by forfeiture to CCC (0.30 percent).

In order to remove any questions regarding the authority of CCC to engage in the collection of commodity program assessments, Public Law 108–470 was enacted, which provides:

(a) Collection From Marketing Assistance Loans.—The Secretary of Agriculture may collect commodity assessments from the proceeds of a marketing assistance loan for a producer if the assessment is required to be paid by the producer or the first purchaser of a commodity pursuant to a State law or

pursuant to an authority administered by the Secretary. This collection authority does not extend to a State tax or other revenue collection activity by a State.

(b) Collection Pursuant to Agreement.—The collection of an assessment under the subsection (a) shall be made as specified in an agreement between the Secretary of Agriculture and the State requesting the collection.

In proposing to implement Public Law 108–470, CCC considered its past experience in collecting such assessments and the magnitude of commodity forfeitures to CCC. Accordingly, the provisions of the proposed rule are substantially similar to the process used in the past by CCC.

With respect to the collection of State assessments, the major provisions of the proposed rule are: (1) A request for CCC to engage in the collection activity must initially be submitted by the Governor of the State; (2) such request must identify the entity that the Governor has designated to enter into the collection agreement with CCC; (3) a statement from the Attorney General, at any time prior to final execution of the agreement, that the agreement is in compliance with applicable State laws and the provisions of section 1(a) of Public Law 108–470; (4) collection of the assessment, as requested by the Governor, may be at either the time the marketing assistance loan is disbursed to the producer or at the time of forfeiture of the commodity to CCC, but not both; and (5) the State agrees to indemnify CCC for any costs incurred in collecting the assessment, including costs relating to resolution of disputes arising from the requested collection of the assessment.

With respect to assessments collected under Federal statutes, the proposed rule provides that collections will be made as provided in such manner as may be agreed upon by CCC and the entity to whom the Secretary has delegated responsibility to otherwise engage in collection activities.

**Executive Order 12866**

This proposed rule is issued in conformance with Executive Order 12866, was determined to be not significant, and has not been reviewed by the Office of Management Budget.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule.

**Environmental Assessment**

The environmental impacts of this proposed rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is categorically excluded. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

**Executive Order 12988**

This proposed rule has been reviewed in accordance with Executive Order 12988. If a final rule is published for the subject of this proposed rule, that rule will preempt State laws that are inconsistent with the final rule. Before any legal action may be brought regarding a determination under this rule, the administrative appeal provisions set forth at 7 CFR parts 11 and 780 must be exhausted.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

**Unfunded Mandates Reform Act of 1995**

The rule contains no Federal mandates under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, Local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Paperwork Reduction Act**

Section 1601(c) of the 2002 Act provides that the promulgation of regulations and the administration of title I of the 2002 Act shall be made without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act). Accordingly, these regulations and the forms and other information collection activities needed to administer the program authorized by these regulations are not subject to review by OMB under the Paperwork Reduction Act.

**Executive Order 12612**

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

**Federal Assistance Programs**

The title and number of the Federal assistance program found in the Catalog of Federal Domestic Assistance to which this final rule applies are Commodity Loans and Loan Deficiency Payments, 10.051.

**List of Subjects in 7 CFR Part 1405**

Agricultural commodities, Feed grains, Grains, Loan programs-agriculture, Oilseeds, Price support programs, Reporting and record keeping requirements.

For the reasons set out in the preamble, 7 CFR part 1405 is proposed to be amended as follows:

## PART 1405—LOANS, PURCHASES, AND OTHER OPERATIONS

1. The authority citation continues to read as follows:

**Authority:** 7 U.S.C. 1515; 7 U.S.C. 7991(e); 15 U.S.C. 714b and 714c.

2. Amend part 1405 by adding § 1405.9 to read as follows:

### § 1405.9 Commodity assessments.

(a) CCC will deduct from the proceeds of a marketing assistance loan an amount equal to the amount of an assessment otherwise required to be remitted to a State agency under a State statute by the producer of the commodity pledged as collateral for such loan or by the first purchaser of such commodity subject to the requirements of paragraph (b) of this section.

(1) The assessment will be collected in one of the following ways, as requested by the State, but not both:

(i) When the proceeds of the loan are disbursed, or;

(ii) When the commodity pledged as collateral for the loan is forfeited to CCC, in which case CCC will collect from the producer the amount of the assessment submitted by CCC to the State.

(2) CCC will deduct from the proceeds of a marketing assistance loan an amount equal to the amount of an assessment otherwise authorized to be remitted to a Federally authorized entity under a Federal statute by the producer of the commodity pledged as collateral for such loan or the first purchaser of such commodity in the manner agreed to by CCC and the entity to whom the Secretary of Agriculture has authorized to collect such assessments.

(b) CCC will collect commodity assessments authorized under a State statute when:

(1) The Governor of the State has:

(i) Requested that the assessment be collected;

(ii) Identified whether the assessment is to be collected at the time the loan proceeds are disbursed or at the time the commodity is forfeited to CCC; and

(iii) Identified the person who may enter into an agreement with CCC that sets forth the obligations of the State and CCC with respect to the collection of the assessment;

(2) The Attorney General of the State, or a person authorized to act on behalf of the Attorney General, has provided to CCC an opinion that the collection activity is authorized by State law and otherwise complies with the provisions of section 1(a) of Public Law 108–470;

(3) The agreement described in paragraph (c) of this section has been executed by the appropriate State official and CCC.

(c) CCC will enter into an agreement with an authorized State official to collect commodity assessments when the actions set forth in paragraphs (b)(1) and (2) of this section have been completed. Such agreement will contain the obligations and responsibilities of the State and CCC. All such agreements will include provisions that provide:

(1) The State will indemnify CCC for any costs incurred in the collection of the assessment including costs incurred with respect to resolution of disputes arising from the requested collection of the assessment;

(2) A producer may request from the State a refund of the assessment collected from the producer's marketing assistance loan;

(3) The agreement may be terminated by either party upon 30 days notice.

Signed in Washington, DC, on May 25, 2005.

**James R. Little,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 05–11199 Filed 6–6–05; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2001–NM–152–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; DC–8–50 Series Airplanes; DC–8–61 Airplanes; DC–8–61F Airplanes; DC–8–71 Airplanes; and DC–8–71F Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws a notice of proposed rulemaking (NPRM) that proposed revision of an existing airworthiness directive (AD). The existing AD applies to certain McDonnell Douglas airplanes. That NPRM would have extended the compliance time for the follow-on inspection after accomplishment of the modification required by the existing AD. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has approved an alternative method of compliance for the existing AD using a new version of the service bulletin that provides an acceptable level of safety. Accordingly, the proposed rule is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to revise an existing airworthiness directive (AD), applicable to certain McDonnell Douglas transport category airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on January 30, 2003 (68 FR 4727). The NPRM proposed to revise AD 2001–06–02, amendment 39–12149, to extend the compliance time from ''within 32,000 flight hours'' to ''within 32,000 landings'' for the follow-on inspection after accomplishment of the terminating modification required by AD 2001–06–02. That action was prompted by data indicating that extending the compliance time for the follow-on inspection would provide an acceptable level of safety.

### Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, we have approved McDonnell Douglas Service Bulletin DC8–57–090, Revision 6, dated April 9, 2002, as an alternative method of compliance with AD 2001–06–02. Revision 6 provides data indicating that extending the compliance time for the follow-on inspection required by AD 2001–06–02 to ''within 32,000 landings'' provides an acceptable level of safety.

### FAA's Conclusions

Since we approved Revision 6 as an alternative method of compliance with AD 2001–06–02, we have determined that it is unnecessary to revise AD 2001–06–02 to extend the compliance time of the follow-on inspection to the terminating action. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

### Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2001–NM–152–AD, published in the **Federal Register** on January 30, 2003 (68 FR 4727), is withdrawn.

Issued in Renton, Washington, on May 27, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–11257 Filed 6–6–05; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF HOMELAND SECURITY**

**Bureau of Customs and Border Protection**

**DEPARTMENT OF THE TREASURY**

**19 CFR Part 146**

**RIN 1505–AB27**

## Expanded Weekly Entry Procedure for Foreign Trade Zones

**AGENCY:** Customs and Border Protection, Homeland Security; Treasury.

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** This document withdraws a notice of proposed rulemaking published in the **Federal Register** by Customs and Border Protection (CBP) on July 25, 2002, which proposed to amend the CBP Regulations in accordance with the Trade and Development Act of 2000 to expand the weekly entry procedures for foreign trade zones. Public comment on the proposed rulemaking was solicited. Commenters uniformly expressed concern that the proposed rule limited weekly entry procedures to consumption entries, and that amendments to the regulations were unnecessary because the law was self-effectuating. After careful consideration, CBP has decided to withdraw the proposed rulemaking pending assessment of a more comprehensive regulatory scheme for weekly entry procedures from foreign trade zones.

**DATES:** The effective date of this withdrawal is June 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** William G. Rosoff, Chief, Duty and Refund Determination Branch, Office of Regulations and Rulings, Customs and Border Protection, Tel. (202) 572–8807.

**SUPPLEMENTARY INFORMATION:**

### Background

*Prior NPRM*

On July 25, 2002, Customs and Border Protection (CBP) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (67 FR 48594) proposing changes to part 146 of the CBP Regulations (19 CFR part 146). Part 146 pertains to the documentation and recordkeeping requirements governing, among other things, the admission of merchandise into a foreign trade zone, its manipulation, manufacture, storage, destruction, or exhibition while in the zone, and its entry or removal from the zone. The proposed changes were intended to implement amendments to that part's underlying statutory authority (19 U.S.C. 1484) as effected by section 410 of the Trade and Development Act of 2000 (the ''Act''), (Pub. L. 106–200, 114 Stat. 251).

*Amendments to 19 U.S.C. 1484 Effected by the Act*

Section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), sets forth the procedures generally governing the entry of imported merchandise for customs purposes.

Section 410 of the Act amended 19 U.S.C. 1484 by adding a new paragraph (i) that provided for an expanded weekly entry procedure for foreign trade zones under limited circumstances. Specifically, section 1484(i):

- Expanded the weekly entry system beyond its previous coverage to allow all merchandise (other than merchandise the entry of which is prohibited by law or for which the filing of an entry summary is required before the merchandise is released from customs custody) withdrawn from a foreign trade zone during any 7-day period, to be the subject of a single estimated entry or release.
- Provided that merchandise falling within this expanded procedure is eligible for treatment as a single estimated entry or release of merchandise for purposes of the merchandise processing fee that CBP assesses on importers in order to offset administrative costs incurred in processing imported merchandise that is formally entered or released. *See* 19 U.S.C. 58c(a)(9)(A).
- Authorized the Secretary of the Treasury to require that foreign trade zone operators or users employ a CBP-approved electronic data interchange system to file entries and pay applicable duties, fees, and taxes with respect to the entries.

*Proposed Conforming Amendments to § 146.63(c) of the CBP Regulations*

Section 146.63 of the CBP Regulations (19 CFR 146.63) sets forth the procedures applicable to consumption entries from a foreign trade zone. Section 146.63(c) pertains to weekly consumption entries, and is limited to merchandise that is manufactured or otherwise changed in a zone within 24 hours of physical transfer from the zone for consumption.

In the July 25, 2002, **Federal Register** document, CBP proposed amendments to § 146.63(c) to reflect the terms of newly amended 19 U.S.C. 1484(i). In this regard, it was proposed to amend § 146.63(c) to expand the weekly entry procedures applicable to foreign trade zones to include merchandise involved in activities other than exclusively assembly-line type production operations. Additionally, pursuant to 19 U.S.C. 1484 (i)(2)(A)(i) and (ii), it was proposed that all weekly entry procedures covering estimated removals of merchandise from a foreign trade zone for any consecutive 7-day period, and the associated entry summaries, would have to be filed exclusively through the Automated Broker Interface with duties, fees and taxes scheduled for payment through the Automated Clearinghouse. The proposed rulemaking also provided that the estimated weekly entry or release would be treated as a single entry or release for purposes of assessing merchandise processing fees under 19 U.S.C. 58c(a)(9)(A).

### Discussion of Comments

Fifty-seven comments were received from Foreign Trade Zone users, operators, municipalities and brokers in response to the solicitation of comments. All were critical of the proposed rule. Most commenters objected to the issuance of proposed regulations because, in their view, the legislation was self-implementing and no regulations were necessary to give the law effect. The commenters were also uniformly critical of the proposed rule's limitation to consumption entries, and expressed the view that the Act was intended to permit the use of weekly entry procedures for other types of entries (*i.e.*, zone-to-zone transfers, transfer for transportation and transportation for exportation).

### Withdrawal of Proposal

In view of the comments received, and following further consideration of the matter, CBP has determined to withdraw the notice of proposed rulemaking that was published in the **Federal Register** (67 FR 48594) on July 25, 2002. CBP will continue to assess the feasibility of a more comprehensive regulatory scheme for zone removals in cooperation with interested members of the public.

**Robert C. Bonner,**

*Commissioner, Bureau of Customs and Border Protection.*

Approved: June 2, 2005.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 05–11261 Filed 6–6–05; 8:45 am]

BILLING CODE 4820–02–P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[CGD14–04–116]**

**RIN 1625–AA87 (Formerly 1625–AA00)**

## Security Zones; Oahu, Maui, HI, and Kauai, HI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is issuing a supplement to our notice of proposed rulemaking (NPRM) published on May 20, 2004 (69 FR 29114). The NPRM underwent further Coast Guard review after its comment period that produced revisions significant enough to merit this supplement to our original proposal. This supplement is intended to announce the revisions and reopen the comment period.

The Coast Guard proposes to make changes to existing permanent security zones in designated waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, Hawaii. These revised security zones are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature and will extend from the surface of the water to the ocean floor. Some of the revised security zones would be continuously activated and enforced at all times, while others would be activated and enforced only during heightened threat conditions. Entry into these Coast Guard security zones while they are activated and enforced would be prohibited unless authorized by the Captain of the Port.

**DATES:** Comments and related material must reach the Coast Guard on or before August 8, 2005.

**ADDRESSES:** You may mail comments and related material to Commanding Officer, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819–4398. Sector Honolulu maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are available for inspection and copying at Coast Guard Sector Honolulu, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant (Junior Grade) Quincey Adams, U.S. Coast Guard Sector Honolulu at (808) 842–2600.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD14–04–116), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. To provide additional notice, we will publicize this supplemental proposal in the Local Notice to Mariners, available at the following Web site: *http://www.navcen.uscg.gov/1nm/d14.*

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Honolulu at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we would hold one at a time and place announced by separate notice in the **Federal Register**.

### Regulatory History

On May 20, 2004, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Security Zones: Oahu, Maui, Hawaii and Kauai, Hawaii,'' in the **Federal Register** (69 FR 29114). We received five letters commenting on the proposed rule. No public meeting was requested, and none was held. The comment period on that proposed rule ended July 19, 2004, but the comment period has been reopened because we are seeking comments on this SNPRM.

### Background and Purpose

The terrorist attacks against the United States that occurred on September 11, 2001, have emphasized the need for the United States to establish heightened security measures in order to protect the public, ports and waterways, and the maritime transportation system from future acts of terrorism or other subversive acts. The terrorist organization Al Qaeda and other similar groups remain committed to conducting armed attacks against U.S. interests, including civilian targets within the United States. Accordingly, the President has continued the national emergencies he declared following the attacks (67 FR 58317, September 13, 2002)(continuing national emergency with respect to terrorist attacks); (68 FR 55189, September 22, 2003)(continuing national emergency with respect to persons who commit, threaten to commit, or support acts of terrorism). Pursuant to the Magnuson Act, 50 U.S.C. 191, *et seq.*, the President also has found that the security of the United States is and continues to be endangered by the September 11, 2001 attacks (E.O. 13272, 67 FR 56215, September 3, 2002). National security and intelligence officials warn that future terrorist attacks are likely.

In response to this threat, on April 25, 2003, the Coast Guard established permanent security zones in designated waters surrounding the Hawaiian Islands (68 FR 20344, April 25, 2003). These security zones have been in operation for more than 2 years. We have conducted periodic review of port and harbor security procedures and considered the oral feedback that local vessel operators gave to Coast Guard units enforcing the zones. In response, the Coast Guard is proposing to continue most of the current security zones, but to reduce the size and scope of some of the zones to afford acceptable protection to critical assets and maritime infrastructure while minimizing the disruption to maritime commerce and the inconvenience to small entities.

This proposed rule would create permanently-existing security zones in the waters surrounding the islands of Oahu, Maui, Kauai, and Hawaii. Specifically, 13 permanent security zones would affect the following locations and facilities: (1) Honolulu Harbor, Oahu; (2) Honolulu Harbor General Anchorages B, C, and D, Oahu; (3) Kalihi Channel and Keehi Lagoon, Oahu; (4) Honolulu International Airport, North Section, Oahu; (5) Honolulu International Airport, South Section, Oahu; (6) Barbers Point Offshore Moorings, Oahu; (7) Barbers Point Harbor, Oahu; (8) Kahului Harbor, Maui; (9) Lahaina, Maui; (10) Hilo Harbor, Hawaii; (11) Kailua-Kona Harbor, Hawaii; (12) Nawiliwili Harbor, Lihue, Kauai; and (13) Port Allen, Kauai. When activated and enforced by the Captain of the Port or his or her representative, persons and vessels must not enter these security zones without the express permission of the Captain of the Port.

**Discussion of Comments and Changes**

In response to our initial proposed rule published on May 20, 2004, the Coast Guard received five letters. Two letters from the State of Hawaii are in favor of the rulemaking and contained no objections. One letter from a maritime association is also in favor with no objections. These three letters recognize the need for the security zones and reiterate the Coast Guard's reasons for proposing them, raising no additional issues. The remaining two letters raise issues that are discussed below.

A letter from a Hawaii-based oil company is in favor of the proposed changes to the security zones, but suggests that the Coast Guard include a provision allowing such companies to submit an advance transportation schedule to the Captain of the Port that would permit fuel barges to conduct transit and fuel-transfer operations in port within a large cruise ship (LCS) security zone under normal circumstances. The letter also states that there should be more explicit language assuring minimal interruption of businesses that conduct routine operations in the commercial harbors when the Maritime Security (MARSEC) Level is not elevated.

*Coast Guard Response:* For these security zones to be effective in safeguarding ports, facilities, and vessels from acts of terrorism and sabotage, the Captain of the Port must have access to accurate and timely information regarding current vessel traffic in any designated security zone. Paragraph 165.1407(c)(2) in the proposed rule below specifically authorizes the public to employ either oral or written means to request permission to enter and operate within a designated security zone. This proposed rule does not preclude the submission of an accurate operating schedule as a means of obtaining permission to enter the security zones created by this rule. Any party desiring to submit a schedule in writing to the Captain of the Port for approval may call the Sector Honolulu Command Center at (808) 842–2600. Approval of such requests would be at the discretion of the Captain of the Port.

The final letter commenting on the proposed changes to existing security zones is from a maritime association and raises three separate issues:

*Issue 1:* The letter comments that, because the port facilities in Hilo, Kahului, and Nawiliwili Harbors are essentially within 100 yards of each other, the security zone around a large cruise ship moored at one of those facilities would preclude the simultaneous use of that harbor by any other vessel, especially the tugs and barges that frequently transit the area. The comment emphasizes that tug and barge operations are the main ''life line'' of the outlying islands, and that LCS traffic is expected to increase, with no increase in facilities, so the security zones around these ships will soon have an even greater negative impact on such operations.

*Coast Guard Response:* The proposed security zones would not preclude simultaneous use of a harbor when an LCS is moored at one of the facilities. We acknowledge that the proposed security zones around large cruise ships occasionally may cause inconvenience to other vessels and operators within the immediate area because they would have to get permission before entering those zones. We do not agree, however, that this inconvenience is unreasonable considering the benefits provided by the security zones.

With their high profile and passenger-carrying capacity, large cruise ships are attractive targets for acts of sabotage and terrorism, particularly when they are stationary at a pier or mooring. Nevertheless, in response to this comment, we have considered reducing the size of the zones around stationary LCSs, but we determined that an effective security zone must be large enough to allow security personnel to identify and respond to potential threats. Moreover, any person affected by the security zone around a large cruise ship may request permission to enter and transit the zone by contacting the Sector Honolulu Command Center via VHF channel 16 (156.8 Mhz) or phone: (808) 842–2600. Operators who frequently operate in the vicinity of a security zone would have the option of submitting a written schedule for advance approval to minimize any potential disruption.

*Issue 2:* The letter comments that the language in the NPRM about security zones around large cruise ships and designated enforcement zones is confusing, as is much of the other terminology, and certain paragraphs of the proposed rule should be reworded.

*Coast Guard Response:* We agree and have extensively revised both the wording and organization of our proposed rule. We separated the zones by island and gave each of the four islands a separate section in the CFR. This change allows us to focus the proposed regulation paragraphs on LCS zones for the islands of Maui, Kauai, and Hawaii, because the LCS zones are proposed for those islands only; none are proposed for Oahu. This change also allows us to focus the regulation and notice paragraphs in the Oahu CFR section on the three Oahu zones there that are enforced only upon a rise in the MARSEC level or when the Captain of the Port has determined there is a heightened risk of a transportation security incident.

As for wording changes, we inserted the word ''activated'' several times to help discern when certain security zones would be enforced. It is important to note, however, that these proposed security zones would be permanently established, and that the word ''activated'' is only meant to distinguish whether the permanently-established zone is subject to enforcement. We made numerous similarly non-substantive wording changes for this supplemental NPRM that do not change the meaning or intent of our initial proposed rule but hopefully improve the clarity of the proposed rule in response to this letter.

*Issue 3:* The letter suggests removing the Honolulu International Airport Security Zone from Category 1 (zones subject to enforcement at all times) and placing it in Category 2 (zones subject to enforcement only during heightened threat conditions, as provided in this proposed rule). This area is planned for future ocean recreation expansion and it should not be continuously and permanently removed from public use. Alignment with the adjacent Keehi Lagoon Security Zone (Category 2) would preserve public use of the entire Keehi Lagoon area for future recreational and commercial improvements.

*Coast Guard Response:* The security zone nearest Honolulu International Airport in particular must remain a Category 1 zone because all major airports are possible terrorist targets. The Category 1 designation of this area is specifically meant to protect the Honolulu International Airport, as well as all the aircraft and people working or transiting the facility. Designating this area a Category 2 zone would compromise security by removing the continuous waterside buffer around the airport afforded by the Category 1 designation. Those wishing to enter the zone, however, would only need to seek and obtain prior approval. The Captain of the Port would not manage security zones solely based on possible future scenarios but rather adjust as appropriate to the current threat situation so security can be maintained while minimizing disruption to commercial and recreational traffic.

The comments received affected this proposal to the extent described above, but we have made additional

substantive changes to the NPRM published on May 20, 2004 (69 FR 29114) that necessitated this supplemental notice. We are now proposing an additional security zone, described in this proposed rule, § 165.1407(a)(4)(ii), as *Honolulu International Airport, South Section*. This new security zone, encompassing Honolulu Harbor anchorages B, C, and D, would be a Category 2 zone, subject to enforcement only in times of raised MARSEC levels or other threats. We have determined there is a need to propose this zone to create an additional protective buffer around the airport when necessary.

The separately-designated *Honolulu Harbor Anchorages B, C, and D* security zone would remain the same as in our initial proposed rule: Limited to the waters extending 100 yards in all directions from vessels over 300 gross tons anchored there. The 100-yard security zone around those vessels would still be activated and enforced at all times regardless of whether an emerging threat has necessitated the additional activation and enforcement of the encompassing *Honolulu International Airport, South Section* security zone proposed for increased airport protection.

The name of the *Honolulu International Airport* security zone in our initial proposed rule is changed in this proposal to *Honolulu International Airport, North Section*, § 165.1407(a)(4)(i), to distinguish it from the *Honolulu International Airport, South Section* proposal. The *Honolulu International Airport, North Section* security zone would remain a Category 1 zone, enforced and activated at all times, extending only about 800 yards offshore from the airport, the minimal distance required for low-level security conditions.

We also propose to eliminate an unnecessary notification requirement that was in our initial proposed rule. We have determined that the best public notification of the presence of an LCS security zone is the presence of the LCS itself, which would be obvious to operators well before they reach the 100-yard zone. Therefore, while we may use other notification methods, like a broadcast notice to mariners, the requirement to make such other notification is not in this proposal.

Additionally, in the paragraphs of our proposed rule that address permission to transit a security zone, we have now included language that eliminates the need for seaplane operators to get Coast Guard permission while they are in compliance with established Federal Aviation Administration regulations regarding flight-plan approval. We have determined that this change is necessary to limit the communications that pilots would have to make when transiting the zones.

We have also revised our penalty paragraphs so that they are limited to referencing the statutes (33 U.S.C. 1232 and 50 U.S.C. 192) that provide violation penalties. This change would eliminate the need to amend those paragraphs every time the penalty statutes are amended.

Other changes from our initial proposed rule include the addition of the words ''or hundredths'' in § 165.1407(a) to more accurately describe how security-zone coordinates are expressed, and an update of Sector Honolulu's contact information to reflect recent changes.

**Discussion of Proposed Rule**

Due to national security interests, these proposed security zones are necessary for the protection of the public, port facilities, and waterways of the Hawaiian Islands. The security zones would be located in the waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, Hawaii. These zones would vary in size and shape depending on the location and the protective scope of the zone. All zones, however, would extend from the surface of the water to the ocean floor.

The security zones would consist of two categories: (1) Those security zones that are subject to enforcement at all times, and (2) those security zones that are subject to enforcement only upon the occurrence of an event specified in this rule. Whenever a security zone is subject to enforcement, persons and vessels would be prohibited from entering them without the express permission of the Captain of the Port.

The first category, designated waters where security zones are subject to enforcement at all times, would include security zones in Honolulu Harbor, 33 CFR 165.1407(a)(1); Honolulu International Airport, North Section, § 165.1407(a)(4)(i); and the Barbers Point Offshore Moorings, § 165.1407(a)(5) (Tesoro Single Point Mooring and the Chevron Conventional Buoy Mooring).

The second category, designated waters where the security zones are subject to enforcement only upon the occurrence of a specific event, would consist of the security zones located at Kalihi Channel and Keehi Lagoon, Oahu, § 165.1407(a)(3); Honolulu International Airport, South Section, § 165.1407(a)(4)(ii); Barbers Point Harbor, Oahu, § 165.1407(a)(6); and the large cruise ship (LCS) security zones.

An LCS security zone would be enforced around the LCS itself when it enters one of the geographic locations (a harbor, for example) described in the proposed rule. Each zone would encompass the waters extending 100 yards in all directions from each LCS. These zones would be created in the following locations: Kahului Harbor, Maui, § 165.1408(a)(1); Lahaina, Maui, § 165.1408(a)(2); Hilo Harbor, Hawaii, § 165.1409(a)(1); Kailua-Kona, Hawaii, § 165.1409(a)(2); Nawiliwili Harbor, Lihue, Kauai, § 165.1410(a)(1); and Port Allen, Kauai, § 165.1410(a)(2).

Security zones in the Honolulu Harbor Anchorages B, C, and D, § 165.1407 (a)(2), would be enforced around any vessel in excess of 300 gross tons anchored within one of those designated anchorage areas. The security zones would extend 100 yards in all directions from any such vessel.

The security zones at Kahului Harbor, Maui; Nawiliwili Harbor, Lihue, Kauai; Port Allen, Kauai; and Hilo Harbor, Hawaii, would be subject to enforcement upon the occurrence of a specific event, namely, the arrival of an LCS, as defined in this proposed rule, at the harbor. The security zone would extend 100 yards in all directions from the LCS while it is transiting the harbor. When the LCS is anchored, position-keeping, or moored, the security zone would remain fixed, extending 100 yards in all directions from the vessel.

The security zones at Lahaina Harbor, Maui and Kailua-Kona Harbor, Hawaii, would be subject to enforcement when an LCS comes within 3 nautical miles of the harbor and would extend out 100 yards in all directions from the vessel. The 100-yard security zone around each LCS would be activated and enforced regardless of whether the cruise ship is underway, moored, position-keeping, or anchored, and would continue in effect until such time as the vessel departs the harbor and the 3-mile enforcement area.

The security zones at Kalihi Channel and Keehi Lagoon, Oahu and Barbers Point Harbor, Oahu, would be subject to enforcement only upon the occurrence of one of the following events:

1. Whenever the Maritime Security (MARSEC) level, as defined in 33 CFR part 101, is raised to 2 or higher; or,

2. Whenever the Captain of the Port, after considering all available facts, determines that there is a heightened risk of a transportation security incident or other serious maritime incident, including but not limited to any incident that may cause loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

For the security zones at Kalihi Channel and Keehi Lagoon, Oahu and Barbers Point Harbor, Oahu, the Captain of the Port would cause notice of either of these two enforcement-triggering events to be published in the **Federal Register**. The Captain of the Port would use actual notice, local notice to mariners, and broadcast notice to mariners to advise the public when these security zones are subject to enforcement. By the same means, the Captain of the Port would also cause notice of suspension of enforcement of these security zones to be made.

The Captain of the Port would also use local notice to mariners and broadcast notice to mariners to announce the enforcement of security zones around vessels more than 300 gross tons anchored in Honolulu Harbor Anchorages B, C or D. Notice of enforcement of an LCS security zone adjacent to the islands of Maui, Kauai or Hawaii would be provided by the presence of the LCS itself.

Entry into the security zones in this proposed rule while they are subject to enforcement would be prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu, Hawaii. The Captain of the Port or his or her representatives would enforce these security zones. The Captain of the Port may be assisted by other federal or state agencies to the extent permitted by law.

For all seaplane traffic entering or transiting the security zones, a seaplane's compliance with all Federal Aviation Administration (FAA) regulations regarding flight-plan approval would be deemed adequate permission to transit the waterway security zones described in this section. No communication between the aircraft and the Coast Guard would be necessary upon compliance with FAA regulations regarding the flight plan.

These security zones would be established pursuant to the authority of the Magnuson Act, 50 U.S.C. 191, *et seq.*, and regulations promulgated by the President under Title 33, Part 6 of the Code of Federal Regulations. Vessels or persons violating this section would be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

In addition to revising security zones, this proposed rule also would remove an existing security zone located at General Anchorage A, current 33 CFR 165.1407(a)(1), in the vicinity of Honolulu Harbor and entrance channel.

## Regulatory Evaluation

This proposed 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.

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the short duration of most of the zones and the limited geographic area affected by them.

## Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. While we are aware that many affected areas have small commercial entities, including canoe and boating clubs and small commercial businesses that provide recreational services, we anticipate that there will be little or no impact to these small entities due to the narrowly tailored scope of these proposed security zones.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (Junior Grade) Quincey Adams, U.S. Coast Guard Sector Honolulu, at (808) 842–2600. 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 proposed 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 proposed 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 proposed rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## Taking of Private Property

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

## Civil Justice Reform

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

## Indian Tribal Governments

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

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have 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, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation.

**List of Subjects 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reports and record keeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 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. Revise § 165.1407 to read as follows:

### § 165.1407 Security Zones; Oahu, HI.

(a) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones that are activated and enforced subject to the provisions in paragraph (c) of this section. All coordinates below are expressed in degrees, minutes, and tenths or hundredths of minutes.

(1) *Honolulu Harbor.* All waters of Honolulu Harbor and Honolulu entrance channel commencing at a line between entrance channel buoys no. 1 and no. 2, to a line between the fixed day beacons no. 14 and no. 15 west of Sand Island Bridge.

(2) *Honolulu Harbor Anchorages B, C, and D.* All waters extending 100 yards in all directions from each vessel in excess of 300 gross tons anchored in Honolulu Harbor Anchorage B, C, or D, as defined in 33 CFR 110.235(a).

(3) *Kalihi Channel and Keehi Lagoon, Oahu.* All waters of Kalihi Channel and Keehi Lagoon beginning at Kalihi Channel entrance buoy no. 1 and continuing along the general trend of Kalihi Channel to day beacon no. 13, thence continuing on a bearing of 332.5°T to shore, thence east and south along the general trend of the shoreline to day beacon no. 15, thence southeast to day beacon no. 14, thence southeast along the general trend of the shoreline of Sand Island, to the southwest tip of Sand Island at 21°18.0′ N/157°53.05′ W, thence southwest on a bearing of 233°T to Kalihi Channel entrance buoy no. 1.

(4) *Honolulu International Airport.* (i) *Honolulu International Airport, North Section.* All waters surrounding Honolulu International Airport from 21°18.25′ N/157°55.58′ W, thence south to 21°18.0′ N/157° 55.58′ W, thence east to the western edge of Kalihi Channel, thence north along the western edge of the channel to day beacon no. 13, thence northwest at a bearing of 332.5°T to shore.

(ii) *Honolulu International Airport, South Section.* All waters near Honolulu International Airport from 21°18.0′ N/157°55.58′ W, thence south to 21°16.5′ N/157°55.58′ W, thence east to 21°16.5′ N/157°54.0′ W (the extension of the western edge of Kalihi Channel), thence north along the western edge of the channel to 21°18.0′ N/157°53.92′ W (Kalihi Channel buoy ''5''), thence west to 21°18.0′ N/157°55.58′ W.

(5) *Barbers Point Offshore Moorings.* All waters around the Tesoro Single Point and the Chevron Conventional Buoy Moorings beginning at 21°16.43′ N/158°06.03′ W, thence northeast to 21°17.35′ N/158°3.95′ W, thence southeast to 21°16.47′ N/158°03.5′ W, thence southwest to 21°15.53′ N/158°05.56′ W, thence north to the beginning point.

(6) *Barbers Point Harbor, Oahu.* All waters contained within the Barbers Point Harbor, Oahu, enclosed by a line drawn between Harbor Entrance Channel Light 6 and the jetty point day beacon at 21°19.5′ N/158°07.26′ W.

(b) *Definitions.* As used in this section, *MARSEC Level 2 or Maritime Security Level 2* means, as defined in 33 CFR 101.105, the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a transportation security incident.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones described in this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives.

(2) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at Command Center telephone number (808) 842–2600 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of Port, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819, or faxed to (808) 842–2622. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives. For all seaplane traffic entering or transiting the security zones, a seaplane's compliance with all Federal Aviation Administration regulations regarding flight-plan approval is deemed adequate permission to transit the waterway security zones described in this section.

(d) *Enforcement and suspension of enforcement of certain security zones.* (1) The security zones in paragraphs (a)(3) (Kalihi Channel and Keehi Lagoon, Oahu), (a)(4)(ii) (Honolulu International Airport, South Section), and (a)(6) (Barbers Point Harbor, Oahu)

of this section will be enforced only upon the occurrence of one of the following events—

(i) Whenever the Maritime Security (MARSEC) level, as defined in 33 CFR part 101, is raised to 2 or higher; or

(ii) Whenever the Captain of the Port, after considering all available facts, determines that there is a heightened risk of a transportation security incident or other serious maritime incident, including but not limited to any incident that may cause a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

(2) A notice will be published in the **Federal Register** reporting when events in paragraph (d)(1)(i) or (d)(1)(ii) of this section have occurred.

(3) The Captain of the Port of Honolulu will cause notice of the enforcement of the security zones listed in paragraph (d)(1) of this section and notice of suspension of enforcement to be made by appropriate means to affect the widest publicity, including the use of broadcast notice to mariners and publication in the local notice to mariners.

(e) *Informational notices.* The Captain of the Port will cause notice of the presence of security zones created by paragraph (a)(2) of this section, Honolulu Harbor Anchorages B, C, and D, to be made by appropriate means to affect the widest publicity, including the use of broadcast notice to mariners and publication in the local notice to mariners.

(f) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the rules in this section.

(g) *Waiver.* The Captain of the Port, Honolulu may waive any of the requirements of this section for any vessel or class of vessels upon his or her determination that application of this section is unnecessary or impractical for the purpose of port and maritime security.

(h) *Penalties.* Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

3. Add § 165.1408 to read as follows:

**§ 165.1408 Security Zones; Maui, HI.**

(a) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones that are activated and enforced subject to the provisions in paragraph (c) of this section:

(1) *Kahului Harbor, Maui.* All waters extending 100 yards in all directions from each large cruise ship in Kahului Harbor, Maui, HI or within 3 nautical miles seaward of the Kahului Harbor COLREGS DEMARCATION (See 33 CFR 80.1460). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position-keeping, or moored.

(2) *Lahaina, Maui.* All waters extending 100 yards in all directions from each large cruise ship in Lahaina, Maui, whenever the LCS is within 3 nautical miles of Lahaina Light (LLNR 28460). The security zone around each LCS is activated and enforced whether the cruise ship is underway, moored, position-keeping, or anchored, and will continue in effect until such time as the LCS departs Lahaina and the 3-mile enforcement area.

(b) *Definitions.* As used in this section, *Large cruise ship* or *LCS* means a passenger vessel over 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones created by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. When authorized passage through an LCS security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. No person is allowed within 100 yards of a large cruise ship that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(2) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LCS security zone in order to ensure navigational safety.

(3) Persons desiring to transit the areas of the security zones in this section may contact the Captain of the Port at Command Center telephone number (808) 842–2600 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of Port, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819, or faxed to (808) 842–2622. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives. For all seaplane traffic entering or transiting the security zones, compliance with all Federal Aviation Administration regulations regarding flight-plan approval is deemed adequate permission to transit the waterway security zones described in this section.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the rules in this section.

(e) *Waiver.* The Captain of the Port, Honolulu may waive any of the requirements of this section for any vessel or class of vessels upon his or her determination that application of this section is unnecessary or impractical for the purpose of port and maritime security.

(f) *Penalties.* Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

4. Add § 165.1409 to read as follows:

**§ 165.1409 Security Zones; Hawaii, HI.**

(a) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones that are activated and enforced subject to the provisions in paragraph (c) of this section:

(1) *Hilo Harbor, Hawaii.* All waters extending 100 yards in all directions from each large cruise ship in Hilo Harbor, Hawaii, HI or within 3 nautical miles seaward of the Hilo Harbor COLREGS DEMARCATION (See 33 CFR 80.1480). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position-keeping, or moored.

(2) *Kailua-Kona, Hawaii.* All waters extending 100 yards in all directions from each large cruise ship in Kailua-Kona, Hawaii, whenever the LCS is within 3 nautical miles of Kukailimoku Point. The 100-yard security zone around each LCS is activated and enforced whether the LCS is underway, moored, position-keeping, or anchored and will continue in effect until such time as the LCS departs Kailua-Kona and the 3-mile enforcement area.

(b) *Definitions.* As used in this section, *Large cruise ship* or *LCS* means a passenger vessel over 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones created by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. When authorized passage through an LCS security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. No person is allowed

within 100 yards of a large cruise ship that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(2) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LCS security zone in order to ensure navigational safety.

(3) Persons desiring to transit the areas of the security zones in this section may contact the Captain of the Port at Command Center telephone number (808) 842–2600 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of Port, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819, or faxed to (808) 842–2622. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives. For all seaplane traffic entering or transiting the security zones, compliance with all Federal Aviation Administration regulations regarding flight-plan approval is deemed adequate permission to transit the waterway security zones described in this section.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the rules in this section.

(e) *Waiver.* The Captain of the Port, Honolulu may waive any of the requirements of this section for any vessel or class of vessels upon his or her determination that application of this section is unnecessary or impractical for the purpose of port and maritime security.

(f) *Penalties.* Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

5. Add § 165.1410 to read as follows:

**§ 165.1410 Security Zones; Kauai, HI.**

(a) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones that are activated and enforced subject to the provisions in paragraph (c) of this section:

(1) *Nawiliwili Harbor, Lihue, Kauai.* All waters extending 100 yards in all directions from each large cruise ship in Nawiliwili Harbor, Kauai, HI or within 3 nautical miles seaward of the Nawiliwili Harbor COLREGS DEMARCATION (*See* 33 CFR 80.1450). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position-keeping, or moored.

(2) *Port Allen, Kauai.* All waters extending 100 yards in all directions from each large cruise ship in Port Allen, Kauai, HI or within 3 nautical miles seaward of the Port Allen COLREGS DEMARCATION (*See* 33 CFR 80.1440). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position-keeping, or moored.

(b) *Definitions.* As used in this section, *Large cruise ship* or *LCS* means a passenger vessel over 300 feet in length that carries passengers for hire.

(c) *Regulations.* (1) Under 33 CFR 165.33, entry into the security zones created by this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. When authorized passage through an LCS security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. No person is allowed within 100 yards of a large cruise ship that is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(2) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within an LCS security zone in order to ensure navigational safety.

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at Command Center telephone number (808) 842–2600 or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of Port, U.S. Coast Guard Sector Honolulu, Sand Island Access Road, Honolulu, Hawaii 96819, or faxed to (808) 842–2622. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representatives. For all seaplane traffic entering or transiting the security zones, compliance with all Federal Aviation Administration regulations regarding flight-plan approval is deemed adequate permission to transit the waterway security zones described in this section.

(d) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the rules in this section.

(e) *Waiver.* The Captain of the Port, Honolulu may waive any of the requirements of this section for any vessel or class of vessels upon his or her determination that application of this section is unnecessary or impractical for the purpose of port and maritime security.

(f) *Penalties.* Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: May 23, 2005.

**C.D. Wurster,**

*Rear Admiral, U.S. Coast Guard, Commander, Fourteenth Coast Guard District.*

[FR Doc. 05–11168 Filed 6–6–05; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### 42 CFR Part 50

**RIN 0906–AA69**

### Simplification of the Grant Appeals Process

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Pursuant to 42 CFR part 50, subpart D, the Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS), has provided an informal level of appeal on those grant related disputes subject to the departmental appeal procedures codified at 45 CFR Part 16. HHS is proposing to amend 42 CFR part 50, subpart D, to remove HRSA from the list of agencies to which these informal appeal procedures apply. This would permit aggrieved HRSA grantees direct access to the Departmental Grant Appeals Board and that Board's original jurisdiction.

**DATES:** Written comments must be received on or before August 8, 2005.

**ADDRESSES:** You may submit comments, identified by RIN number 0906–AA69, by any of the following methods:

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

2. Submit written comments by mail to the attention of Gail Lipton, Director, Division of Grants Policy, Room 11A–55, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

3. E-mail: *glipton@hrsa.gov.*

4. FAX: 301–443–5461.

**FOR FURTHER INFORMATION CONTACT:** Gail Lipton, 301–443–6509.

**SUPPLEMENTARY INFORMATION:** When HHS first established its Departmental Grant Appeals Board (now the Departmental Appeals Board), there was no provision for the Department's subordinate agencies to first review the disputed actions of officials prior to appeal at the Departmental level. However, it quickly became apparent that a number of disputes could, and would, be resolved quickly by informal means if the grantees' complaints were surfaced to management levels within the HHS subordinate agencies. As a result, the regulations at 45 CFR part 16 were revised to permit subordinate agencies to interpose an ''informal'' level of appeal prior to submission of an appeal to the Departmental Appeals Board. Various agencies in the Public Health Service (which has since been reorganized) chose to institute an intermediate informal review process as is currently described in 42 CFR part 50, subpart D. The intermediate level of appeal provided these agencies with an opportunity to relatively quickly and economically reverse erroneous decisions, or to reassure grantees that a decision adverse to them was indeed an ''agency'' decision. At the time these regulations were instituted, this informal process was of significant benefit to both grantees and the subordinate agencies. Based on the lessons learned from this process and other means, HRSA instituted a policy of reviewing carefully the adverse determinations of their employees prior to permitting them to be issued so as to avoid erroneous determinations which would be subject to reversal upon appeal at the informal level. HRSA believes that it has reached the point where the adverse determinations being issued in recent years generally represent the Agency's best judgment.

HHS therefore believes that, for HRSA and its grantees, this information process is no longer of benefit, and the cost in time and expense to the grantee is no longer warranted. Consequently, HHS is proposing to amend 42 CFR part 50, subpart D, to remove HRSA from the list of agencies to which the regulations apply. As a result, under this proposal, grantees wishing to appeal HRSA's eligible adverse determinations would be entitled to appeal such determinations directly to the Departmental Appeals Board.

**Executive Order 12866**

Executive Order (EO) 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits. We have determined that the rule is not a significant regulatory action under Section 3(f) of the EO and does not require an assessment of the potential costs and benefits under section 6(a)(3) of that EO. Under the EO, the Office of Management and Budget (OMB) has exempted it from review. This regulation was reviewed by OMB.

**Regulatory Flexibility**

The Regulatory Flexibility Act (5 U.S.C. Chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. We have determined that this is not a ''major'' role under this Act and therefore does not require a regulatory flexibility analysis. The elimination of the informal appeals process will represent a cost savings for aggrieved HRSA grantees regardless of whether the organizations are large or small entities, as the affected grantees will now have direct access to the Departmental Appeals Board to petition for reconsideration of adverse findings rather than first presenting their cases to an informally constituted HRSA review committee. As a result, aggrieved grantees will only incur costs related to the preparation and presentation of their petitions to the Departmental Appeals Board, and not the costs which might be incurred for preparation and submission to both an ad-hoc committee and the Departmental Appeals Board.

**Unfunded Mandates**

The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by States, local or tribal governments, or by the private sector of $100 million or more in any given year. This rule does not have cost implications for the economy of $100 million or more, nor otherwise meet the criteria for a major rule under Executive Order 12291, and therefore does not require a regulation impact analysis.

**Executive Order 13132**

Executive Order 13132 requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. In the event that this rule may have such implications, we solicit comment from State and local government officials.

**Executive Order 13175**

Executive Order 13175 requires the Department to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' Although it is not clear that the proposed rule will have tribal implications, we solicit comment on this proposed rule from tribal officials.

**Paperwork Reduction Act**

There are no new paperwork requirements subject to OMB approval under the Paperwork Reduction Act of 1995.

**List of Subjects in 42 CFR Part 50**

Administrative practice and procedure, Grant programs—health, Health care.

**Elizabeth M. Duke,**

*Administrator, Health Resources and Services Administration.*

Approved: May 27, 2005.

**Michael O. Leavitt,**

*Secretary of Health and Human Services.*

For the reasons set forth in the preamble, the Department proposes to amend subpart D of part 50 of Title 42 of the Code of Federal Regulations as follows:

## PART 50—[AMENDED]

## Subpart D—Public Health Service Grant Appeals Procedure

1. The authority citation for Part 50, Subpart D, continues to read as follows:

**Authority:** Sec. 215, Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); 45 CFR 16.3(c).

2. Section 50.402 is revised to read as follows:

### § 50.402 To what programs do these regulations apply?

This subpart applies to all grant and cooperative agreement programs, except block grants, which are administered by the National Institutes of Health. The Centers for Disease Control and Prevention, the Agency for Toxic Substances and Disease Registry; the Food and Drug Administration; and the Office of the Assistant Secretary for Public Health and Sciences. For purposes of this regulation, these entities are hereinafter referred to as ''agencies.''

[FR Doc. 05–11262 Filed 6–6–05; 8:45 am]

BILLING CODE 4165–15–M

# Notices

Federal Register
Vol. 70, No. 108
Tuesday, June 7, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research, Education, and Extension Service Proposed Revised Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Cooperative State Research, Education, and Extension Service (CSREES) is requesting public comment on the proposed revised Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds [64 FR 19242–19248]. These guidelines prescribe the procedures to be followed by the eligible institutions receiving Federal agricultural research and extension formula funds under the Hatch Act of 1887, as amended (7 U.S.C. 361a *et seq.*); sections 3(b)(1) and (c) of the Smith-Lever Act of 1914, as amended (7 U.S.C. 343 (b)(1) and (c)); and sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 and 3222). The recipients of these funds are commonly referred to as the 1862 land-grant institutions and 1890 land-grant institutions, including Tuskegee University and West Virginia State University. CSREES also is requesting public comment on the revision of a previously approved information collection (OMB No. 0524–0036) associated with these guidelines.

**DATES:** Written comments are invited from interested individuals and organizations. To be considered in the formulation of the guidelines, comments must be received on or before July 7, 2005.

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

*Mail:* Planning and Accountability, Office of the Administrator; CSREES–USDA; Mail Stop 2214; 1400 Independence Avenue, SW.; Washington, DC 20250–2214.

*Hand Delivery:* Planning and Accountability, Office of the Administrator; CSREES–USDA; Room 1314; 800 9th Street, SW.; Washington, DC 20024.

*Email:* bhewitt@csrees.usda.gov.

*Fax:* 202–720–4730 to the attention of Bart Hewitt.

**FOR FURTHER INFORMATION CONTACT:** Mr. Bart Hewitt; Program Analyst, Planning and Accountability, Office of the Administrator; CSREES–USDA; Washington, DC 20250; at 202–720–5623, 202–720–7714 (fax) or via electronic mail at bhewitt@csrees.usda.gov.

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) that implement the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection and recordkeeping requirements imposed by the implementation of these guidelines have been submitted to OMB as a revision of Information Collection No. 0524–0036, Reporting Requirements for State Plans of Work for Agricultural Research and Extension Formula Funds. These requirements will not become effective prior to OMB approval. The eligible institutions will be notified upon this approval.

*Title:* Reporting Requirements for State Plans of Work for Agricultural Research and Extension Formula Funds.

*Summary:* The purpose of this collection of information is to implement the requirements of section 7 of the Hatch Act of 1887, as amended (7 U.S.C. 361g); section 4 of the Smith-Lever Act, as amended (7 U.S.C. 343); and section 1444(d) and section 1445(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended (7 U.S.C. 3221(d) and 3222(c)), which require that before funds may be provided to a State or eligible institution under these Acts a plan of work must be submitted by the proper officials of the State or eligible institution, as appropriate, and approved by the Secretary of Agriculture.

*Need for the Information:* The Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Public Law 105–185, amended the Hatch Act of 1887, Smith-Lever Act, and sections 1444 and 1445 of NARETPA to require plans of work to be received and approved by CSREES prior to the distribution of funding authorized under these Acts. This collection of information will satisfy the plan-of-work reporting requirements as imposed by these Acts. This collection of information includes three parts: (1) The submission of a 5-Year Plan of Work; (2) the submission of an annual update of the 5-Year Plan of Work, and (3) the submission of the Annual Report of Accomplishments and Results for the 5-Year Plan of Work.

1. The first two collections of information are required in order to satisfy the above amendments to the Acts that authorize the distribution of agricultural research and extension formula funds to States and eligible institutions. In addition to a description of planned programs, the 5-Year Plan of Work must include information on how critical short-term, intermediate, and long-term agricultural issues in the State will be addressed in research and extension programs; how the State or eligible institution has developed a process to consult users of agricultural extension and research in the identification of critical agricultural issues in the State and the development of programs and projects targeting these issues (also referred to as stakeholder input); how the State or eligible institution has made efforts to identify and collaborate with other universities and colleges that have a unique capacity to address the identified agricultural issues in the State and the extent of current and emerging efforts (including the regional and/or multistate efforts) to work with these institutions; the manner in which research and extension, including research and extension activities funded other than through formula funds, will cooperate to address the critical issues in the State, including activities to be carried out separately, sequentially, or jointly; and for extension, the education and outreach programs already underway to convey available research results that are pertinent to a critical agricultural

issue, including efforts to encourage multicounty cooperation in the dissemination of research information.

Section 103(e) of AREERA (7 U.S.C. 7613(e)) also required, effective October 1, 1999, that a merit review process be established at the 1862 land-grant institutions and 1890 land-grant institutions in order to obtain agricultural research and extension formula funds. The 5-Year Plan of Work includes a section for the description of the merit review process to ensure that such a process is in place prior to the distribution of agricultural research and extension formula funds.

Sections 104 and 105 of AREERA also amended the Hatch Act and Smith-Lever Act to require that a specified amount of the agricultural research and extension formula funds be expended for multistate activities and that a description of these activities be reported in the plan of work. Section 204 of AREERA further amended the Hatch Act and Smith-Lever Act to require that a specified amount of the agricultural research and extension formula funds be expended for activities that integrate cooperative research and extension and that a description of these activities be included in the plan of work. Two components of the 5-Year Plan of Work submission have been included to meet these additional requirements.

2. The second collection of information will be an annual update to the 5-Year Plan of Work. This will be required to add an additional year to the continuous 5-Year Plan of Work and add any substantive change to planned programs or a significant change in funding as outlined in the proposed guidelines.

3. The third collection of information will be the Annual Report of Accomplishments and Results. This will be based on the 5-Year Plan of Work, and will assist CSREES in ensuring that federally supported and conducted research and extension activities are accomplished in accordance with the management principles set forth under section 102(d) of AREERA (7 U.S.C. 7612(d)). These principles require that to the maximum extent possible, CSREES shall ensure that federally supported research and extension activities are accomplished in a manner that integrates agricultural research, extension, and education functions to better link research to technology transfer and information dissemination activities; encourages regional and multistate programs to address relevant issues of common concern and to better leverage scarce resources; and achieves agricultural research, extension, and education objectives through multi-institutional and multifunctional approaches and by conducting research at facilities and institutions best equipped to achieve these objectives.

CSREES is proposing to request the 5-Year Plan of Work, the annual update of the 5-Year Plan of Work, and the Annual Report of Accomplishments and Results for the 5-Year Plan of Work in a web-based electronic format to comply with the Government Paperwork Elimination Act (GPEA). CSREES also is proposing to incorporate the recommendations from the USDA Office of Inspector General (OIG) Audit No. 13001–3–Te, CSREES Implementation of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) in the plan-of-work process. Currently, in the FY 2000–2004 Plan of Work and Annual Report of Accomplishments and Results and the FY 2005–2006 Plan of Work Update and Annual Report of Accomplishments and Results, institutions are submitting their reports via e-mail in WordPerfect file format, Microsoft Word file format, or ASCII file format. CSREES also is in the process of developing a ''One-Solution'' for reporting for all CSREES grant programs including those covered in the 5-Year Plan of Work. A ''One-Solution'' integrated reporting system will be more streamlined and effective, eliminate duplicative reporting, and provide additional program and fiscal accountability while reducing the overall burden hours for reporting. The web-based system developed for the plan of work process will be made part of the ''One Solution'' product at the appropriate time. Moreover, currently, in the FY 2000–2004 Plan of Work and Annual Report of Accomplishments and Results and the FY 2005–2006 Plan of Work Update and Annual Report of Accomplishments and Results, institutions are submitting their reports around the five original USDA Government Performance and Results Act (GPRA) goals established for FY 2000. CSREES is proposing that institutions submit their reports around established Knowledge Areas and the Logic Model.

*Respondents:* Respondents will be the 57 1862 land-grant institutions and the 18 1890 land-grant institutions, including Tuskegee University and West Virginia State University, who will provide a 5-Year Plan of Work; and will report on the accomplishments and results of this plan of work annually to CSREES.

*Estimate of Burden:* The amendments to AREERA require a plan of work for funds that are distributed on an annual basis. To reduce the burden on respondents, CSREES proposes to provide a web-based input system for the 5-Year Plan of Work and subsequent Annual Report of Accomplishments and Results.

The total reporting and recordkeeping requirements for the submission of the 5-Year Plan of Work is estimated at 560 hours per response.

*Estimated Number of Respondents:* 75.

*Estimated Number of Responses:* 150.

*Estimated Total Annual Burden on Respondents:* 84,000 hours.

*Frequency of Responses:* Once every five years.

The total reporting and recordkeeping requirement for the Annual Update to the 5-Year Plan of Work is estimated at 56 hours per response.

*Estimated Number of Respondents:* 75.

*Estimated Number of Responses:* 150.

*Estimated Total Annual Burden on Respondents:* 8,400 hours.

*Frequency of Responses:* Annually.

The total annual reporting and recordkeeping requirements for the ''Annual Report of Accomplishments and Results'' is estimated at 288 hours per response.

*Estimated Number of Respondents:* 75.

*Estimated Number of Responses:* 150.

*Estimated Total Annual Burden on Respondents:* 43,200 hours.

*Frequency of Responses:* Annually.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of 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. Comments may be sent to: CSREES–USDA; Planning and Accountability, Office of the Administrator; Mail Stop 2214; 1400 Independence Avenue, SW., Washington, DC 20250–2214 by August 11, 2005 or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20502. Reference should be made to the volume, page, and date of this **Federal Register** publication.

## Background and Purpose

The Cooperative State Research, Education, and Extension Service (CSREES) proposes to implement the following revised Guidelines for State Plans of Work for the Agricultural Research and Extension Formula Funds which implement the plan-of-work reporting requirements enacted in the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Public Law 105–185.

These proposed guidelines incorporate some of the recommendations from the USDA Office of Inspector General (OIG) Audit Report No. 13001–3–Te, CSREES Implementation of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), which was published on August 16, 2004. In an earlier **Federal Register** notice [69 FR 6244–6248], CSREES amended the guidelines to the State Plans of Work to allow for the submission of an interim FY 2005–2006 Plan of Work in order for CSREES to consider the audit recommendations as well as develop a viable electronic option for compliance with the Government Paperwork Elimination Act (GPEA). This notice proposes this electronic option through a web-based data entry system which will reduce the reporting burden to the institutions while providing more accountability over agricultural research and extension formula funds.

These guidelines also propose eliminating the reporting by the five national goals, *i.e.*, the reporting centered around State identified planned program areas, and using newly established Knowledge Areas (KAs). It is anticipated that these reporting changes will eliminate burden to the institutions while providing opportunities for more effective and efficient reports on program accountability.

Pursuant to the plan of work requirements enacted in the Agricultural Research, Extension, and Education Reform Act of 1998, the Cooperative State Research, Education, and Extension Service hereby proposes to revise the Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds as follows:

## Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds

### Table of Contents

I. Preface and Authority
II. Submission of the 5-Year Plan of Work
A. General
1. Planning Option
2. Periord Covered
3. Projected Resources
4. Submission and Due Date
5. Definitions
B. Components of the 5-Year Plan of Work
1. Planned Programs
a. Format
b. Program Logic Model
c. Program Descriptions
2. Stakeholder Input Process
3. Program Review Process
a. Merit Review
b. Scientific Peer Review
c. Reporting Requirement
4. Multistate Research and Extension Activities
a. Hatch Multistate Research
b. Smith-Lever Multistate Extension
c. Reporting Requirement
5. Integrated Research and Extension Activities
C. Five-Year Plan of Work Evaluation by CSREES
1. Schedule
2. Review Criteria
3. Evaluation of Multistate and Integrated Research and Extension Activities
III. Annual Update of the 5-Year Plan of Work
A. Applicability
B. Reporting Requirement
IV. Annual Report of Accomplishments and Results
A. Reporting Requirement
B. Format

## I. Preface and Authority

Sections 202 and 225 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Public Law 105–185, enacted amendments requiring all States and 1890 institutions receiving formula funds authorized under the Hatch Act of 1887, as amended (7 U.S.C. 361a *et seq.*), the Smith-Lever Act, as amended (7 U.S.C. 341 *et seq.*), and sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended (7 U.S.C. 3221 and 3222), to prepare and submit to the Cooperative State Research, Education, and Extension Service (CSREES) a plan of work for the use of those funds.

While the requirement for the Hatch Act and Smith-Lever Act funds applies to the States, CSREES assumes that in most cases the function will be performed by the 1862 land-grant institution in the States. The only ''eligible institutions'' to receive formula funding under sections 1444 and 1445 of NARETPA are the 1890 land-grant institutions and Tuskegee University and West Virginia State University. Therefore, these guidelines refer throughout to ''institutions'' to include both the 1862 and 1890 land-grant institutions, including Tuskegee University and West Virginia State University.

Further, these guidelines require a plan of work that covers both research and extension. Although the District of Columbia receives extension funds under the District of Columbia Postsecondary Education Reorganization Act, Public Law 93–471, as opposed to the Smith-Lever Act, CSREES has determined that it should be subject to the plan of work requirements imposed under these guidelines except where expressly excluded.

All the requirements of AREERA with regard to agricultural research and extension formula funds were considered and were incorporated in these plan of work guidelines including descriptions of the following: (1) The critical short-term, intermediate, and long-term agricultural issues in the State and the current and planned research and extension programs and projects targeted to address the issues; (2) the process established to consult with stakeholders regarding the identification of critical agricultural issues in the State and the development of research and extension projects and programs targeted to address the issues; (3) the efforts made to identify and collaborate with other colleges and universities that have a unique capacity to address the identified agricultural issues in the State and the extent of current and emerging efforts (including regional and multistate efforts) to work with those other institutions; (4) the manner in which research and extension, including research and extension activities funded other than through formula funds, will cooperate to address the critical issues in the State, including the activities to be carried out separately, sequentially, or jointly; and (5) for extension, the education and outreach programs already underway to convey available research results that are pertinent to a critical agricultural issue, including efforts to encourage multicounty cooperation in the dissemination of research information.

These guidelines also take into consideration the requirement in section 102(c) of AREERA for the 1862, 1890, and 1994 land-grant institutions receiving agricultural research, extension, and education formula funds to establish a process for receiving stakeholder input on the uses of such funds. This stakeholder input requirement, as it applies to research and extension at 1862 and 1890 land-grant institutions, has been incorporated as part of the plan of work process.

The requirement of section 103(e) of AREERA also is addressed in these plan of work guidelines. This section requires that the 1862, 1890, and 1994 land-grant institutions establish a merit review process, prior to October 1, 1999, in order to obtain agricultural research,

extension, and education funds. These were established by all institutions in the FY 2000–2004 5-Year Plan of Work. For purposes of these guidelines applicable to formula funds, a description of the merit review process must be restated, and if applicable, the merit review process must be re-established for extension programs funded under sections 3(b)(1) and (c) of the Smith-Lever Act and under section 1444 of NARETPA, and for research programs funded under sections 3(c)(1) and (2) of the Hatch Act (commonly referred to as Hatch Regular Formula Funds) and under section 1445 of NARETPA. Section 104 of AREERA amended the Hatch Act of 1887 also to stipulate that a scientific peer review process (that also would satisfy the requirements of a merit review process under section 103(e)) be established for research programs funded under section 3(c)(3) of the Hatch Act (commonly referred to as Hatch Multistate Research Funds). As previously stated, a description of these program review processes must be restated, and if applicable, these review processes must be re-established in order for the institutions to obtain agricultural research and extension formula funds. Consequently, a description of the merit review and scientific peer review process has been included as a requirement in the submission of the 5-Year Plan of Work.

These plan of work guidelines also require reporting on the multistate and integrated research and extension programs. Section 104 of AREERA amended the Hatch Act of 1887 to redesignate the Hatch regional research funds as the Hatch Multistate Research Fund, specifying that these funds be used for cooperative research employing multidisciplinary approaches in which a State agricultural experiment station, working with another State agricultural experiment station, the Agricultural Research Service, or a college or university, cooperates to solve the problems that concern more than one State. Section 105 of AREERA amended the Smith-Lever Act to require that each institution receiving extension formula funds under sections 3(b) and (c) of the Smith-Lever Act expend for multistate activities in FY 2000 and thereafter a percentage that is at least equal to the lesser of 25 percent or twice the percentage of funds expended by the institution for multistate activities in FY 1997. Section 204 of AREERA amended both the Hatch and Smith-Lever Acts to require that each institution receiving agricultural research and extension formula funds under the Hatch Act and sections 3(b) and (c) of the Smith-Lever Act expend for integrated research and extension activities in FY 2000 and thereafter a percentage that is at least equal to the lesser of 25 percent or twice the percentage of funds expended by the institution for integrated research and extension activities in FY 1997. These sections also required that the institutions include in the plan of work a description of the manner in which they will meet these multistate and integrated requirements. These were included as part of the FY 2000–2004 5-Year Plan of Work and the established baselines remain in effect for the 5-Year Plan of Work beginning with FY 2007 and do not need to be re-established.

These applicable percentages apply to the Federal agricultural research and extension formula funds only. Federal formula funds that are used by the institution for a fiscal year for integrated activities may also be counted to satisfy the multistate activities requirement.

The multistate and integrated research and extension requirements do not apply to formula funds received by American Samoa, Guam, Micronesia, Northern Marianas, Puerto Rico, and the Virgin Islands. Since the Smith-Lever Act is not directly applicable, the multistate and integrated extension requirements do not apply to extension funds received by the District of Columbia, except to the extent it voluntarily complies.

The amendments made by sections 105 and 204 of AREERA also provide that the Secretary of Agriculture may reduce the minimum percentage required to be expended by the institution for multistate and integrated activities in the case of hardship, infeasibility, or other similar circumstance beyond the control of the institution. In April 2000, CSREES issued separate guidance on the establishment of the FY 1997 baseline percentages for multistate activities and integrated activities, on requests for reduction in the required minimum percentage, and on reporting requirements. These baselines were set and continue to be the baselines for the Plans of Work and Annual Reports of Accomplishments and Results.

Also included in these guidelines are instructions on how to report on the annual accomplishments and results of the planned programs contained in the 5-Year Plan of Work, information on the evaluation of accomplishments and results, and information on when and how to update the 5-Year Plan of Work if necessary.

## II. Submission of the 5-Year Plan of Work

### *A. General*

1. Planning Option

This document provides guidance for preparing the plan of work with preservation of institutional autonomy and programmatic flexibility within the Federal-State Partnership. The plan of work is a 5-year prospective plan that covers the initial period of FY 2007 through FY 2011, with the submission of annual updates to the 5-Year Plan of Work to add an additional year to the plan each year. The 5-Year Plans of Work may be prepared for an institution's individual functions (*i.e.*, research or extension activities), for an individual institution (including the planning of research and extension activities), or for state-wide activities (a 5-year research and/or extension plan of work for all the eligible institutions in a State). Each 5-Year Plan of Work must reflect the content of the program(s) funded by Federal agricultural research and extension formula funds and the required matching funds. This 5-Year Plan of Work must describe how the program(s) addresses critical short-term, intermediate, and long-term agricultural issues in a State.

2. Period Covered

The initial 5-Year Plan of Work should cover the period from October 1, 2007, through September 30, 2011.

3. Projected Resources

The resources that are allocated for various planned programs in the 5-Year Plan of Work, in terms of human and fiscal measures, should be included and projected over the next five years. The baseline for the institution's or State's plan (for five years) should be the Federal agricultural research and extension formula funds for FY 2005 (and used for all five years) and the appropriate matching requirement for each fiscal year. During the course of the 5-Year Plan of Work, if the baseline for the formula funds changes by more than 10 percent in one year or by 20 percent or more cumulatively during the 5-year period, a revised 5-Year Plan of Work should be submitted in the annual update the following fiscal year.

4. Submission and Due Date

The 5-Year Plan of Work must be submitted by April 1, 2006, to the Planning and Accountability Unit, Office of the Administrator, of the Cooperative State Research, Education, and Extension Service (CSREES); U.S. Department of Agriculture. These will be submitted electronically via a web-

based data input system for the Plan of Work and Annual Report of Accomplishments and Results provided by CSREES.

5. Definitions

For the purpose of implementing the Guidelines for State Plans of Work for Agricultural Research and Extension Formula Funds, the following definitions are applicable:

Activities means either research projects or extension programs.

Agricultural issues means all issues for which research and extension are involved, including, but not exclusive of, agriculture, natural resources, nutrition, community and resource development, and social issues such as youth development, etc.

Formula funds for the purposes of the plan of work guidelines means funding provided by formula to 1862 land-grant institutions under section 3 of the Hatch Act of 1887, as amended (7 U.S.C. 361a) and sections 3(b)(1) and (c) of the Smith-Lever Act, as amended (7 U.S.C. 343(b)(1) and (c)) and to the 1890 land-grant institutions under sections 1444 and 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221 and 3222).

Formula funds for the purposes of stakeholder input means the funding by formula to the 1862 land-grant institutions and 1890 land-grant institutions covered by these plan of work guidelines as well as the formula funds provided under the McIntire-Stennis Cooperative Forestry Research Program (16 U.S.C. 582, *et seq.*), the Animal Health and Disease Research Program (7 U.S.C. 3195), and the education payments made to the 1994 land-grant institutions under section 534(a) of Public Law 103–382 (7 U.S.C. 301 note).

Integrated or joint activities means jointly planned, funded, and interwoven activities between research and extension to solve problems. This includes the generation of knowledge and the transfer of information and technology.

Merit review means an evaluation whereby the quality and relevance to program goals are assessed.

Multi-institutional means two or more institutions within the same or different States or territories that will collaborate in the planning and implementation of programs.

Multistate means collaborative efforts that reflect the programs of institutions located in at least two or more States or territories.

Multi-disciplinary means efforts that represent research, education, and/or extension programs in which principal investigators or other collaborators from two or more disciplines or fields of specialization work together to accomplish specified objectives.

Outcome indicator means an assessment of the results of a program activity compared to its intended purpose.

Output indicator means a tabulation, calculation, or recording of activity of effort expressed in quantitative or qualitative manner which measures the products or services produced by the planned program.

Planned programs means collections of research projects or activities and/or extension programs or activities.

Program Logic Model means the conceptual tool for planning and evaluation which displays the sequence of actions that describe what the science-based program is and will do ‘‘ how investments link to results. Included in this depiction of the program action are six core components:

1. *Identification of the national problem, need, or situation that needs to be addressed by the program:* The conceptual model will delineate the steps that are planned, based on past science and best theory, to achieve outcomes that will best solve the identified national problems and meet the identified needs.

2. *Assumptions:* The beliefs we have about the program, the people involved, and the context and the way we think the program will work. These science-based assumptions are based on past evaluation science findings regarding the effects and functioning of the program or similar programs, program theory, stakeholder input, etc.

3. *External Factors:* The environment in which the program exists includes a variety of external factors that interact with and influence the program action. Evaluation plans for the program should account for these factors, which are alternative explanations for the outcomes of the program other than the program itself. Strong causal conclusions about the efficacy of the program must eliminate these environmental factors as viable explanations for the observed outcomes of the program.

4. *Inputs:* The resources, contributions, and investments that are provided for the program. This includes Federal, State, and local spending, private donations, volunteer time, etc.

5. *Outputs:* The activities, services, events, and products that are intended to lead to the program's outcomes in solving national problems by the causal chain of events depicted in the logic model. These activities and products are posited to reach the people who are targeted as participants or the audience or beneficiaries of the program.

6. *Outcomes:* The planned results or changes for individuals, groups, communities, organizations, communities, or systems. These include short term, medium term, and long term outcomes in the theorized chain of causal events that will lead to the planned solution of the identified national problems or meet national needs. These can be viewed as the public's return on its investment, *i.e.*, the value-added to society in the benefits it reaps from the program.

Program review means either a merit review or a scientific peer review.

Scientific peer review means an evaluation performed by experts with scientific knowledge and technical skills to conduct the proposed work whereby the technical quality and relevance to program goals are assessed.

Seek stakeholder input means an open, fair, and accessible process by which individuals, groups, and organizations may have a voice, and one that treats all with dignity and respect.

Stakeholder is any person who has the opportunity to use or conduct agricultural research, extension, and education activities in the State.

Under-served means individuals, groups, and/or organizations whose needs have not been addressed in past programs.

Under-represented means individuals, groups, and/or organizations especially those who may not have participated fully including, but not limited to, women, racial and ethnic minorities, persons with disabilities, limited resource clients, and small farm owners and operators.

*B. Components of the 5-Year Plan of Work*

1. Planned Programs

Beginning with the FY 2007–2011 5-Year Plan of Work, the Planned Programs will no longer be arranged around the five National Goals established for the FY 2000–2004 5-Year Plan of Work, nor will they be identified by the previously established Key Themes. Planned programs will be centered around State-identified planned program areas and CSREES newly established Knowledge Areas (KAs).

a. *Format.* As mentioned under the Planning Options section, an institution or State may opt to submit independent plans for the various units (*e.g.*, 1862 research) or an integrated plan which includes all units in the institution or State.

b. *Program Logic Model.* Regardless of the option chosen, the 5-Year Plan of Work should be reported in the appropriate format, each of which identifies planned programs that the State decides upon. Each Planned Program the State decides upon will be formatted around the Program Logic Model in this web-based Plan of Work data entry system. This is a nationally recognized method and used extensively by planning and evaluation specialists to display the sequence of actions that describe what the program is and will do and how investments link to results. It is commonly used by many State Cooperative Extension Services.

c. *Program Descriptions.* Program descriptions presented for a planned program will be formatted around the Program Logic Model and include the following data entry screens:

1. *Name of Program.* The State-designated title for a State Research and/or Extension Program. This is in contrast to a project title. A research program may consist of several research projects. Examples of Programs may include, but not be exclusive of: 4-H and Youth, Pest Management, Animal Genomics, Natural Resources, Economics and Commerce, etc.

2. *Classification of Program.* Up to ten different classification codes and their respective percentage of effort may be used to classify the knowledge areas covered in each State program.

3. *Situation and Priorities.* This component should discuss the critical agricultural issues within the State that were identified and are being targeted by this planned program. This component may also reference the stakeholder input which identified the critical agricultural issue in the State and the need for the targeted research and/or extension program.

a. Identify the internal and external linkages that include activities identified as integrated, multidisciplinary, multi-institutional, and/or multistate. This component may also address any efforts made to identify and collaborate with other colleges and universities that have a unique capacity to address the identified agricultural issues within the State and the extent of current and emerging efforts (including regional efforts) to work with those institutions. Within this planning component, discussion should be made regarding the efficiencies achieved through these internal and external linkages both in the use of resources and/or in the ability to solve critical agricultural issues.

b. Identify the set of stakeholders, customers, and/or consumers for which the program is intended. The 5-Year Plan of Work should address the institution's commitment to facilitating equality of service and ease of access to all research and extension programs and services and to meeting the needs of under-served and under-represented individuals, groups, and/or organizations.

c. Describe education and outreach programs that are already underway to convey the research results that are pertinent to the critical agricultural issue identified in the ''Statement of Issue.'' This planning component applies only to those 5-Year Plans of Work incorporating extension activities of the 1862 and/or 1890 land-grant institutions.

4. *Expected Duration of the Program.* A data check box will ask you to express the program duration as short-term (one year or less), intermediate (one to five years), or long-term (over five years).

5. *Inputs.* The resources, contributions, investments that go into the program. The Web-based software will include formula dollars, matching dollars, and other funds budgeted, and estimated FTEs. AREERA requires that this component may not only include the amount of Federal agricultural research and/or extension formula funds and matching funds allocated to this planned program, but also the manner in which funds, other than formula funds, will be expended to address the critical issues being targeted by this planned program.

6. *Outputs.* The activities, services, events and products that reach people who participate or who are targeted. These outputs are intended to lead to specific outcomes. The Web-based data entry system will include standard performance measures such as number of persons targeted (direct and indirect contacts), number and type of patents awarded, as well as state-generated target performance measures.

7. *Outcomes.* The direct results, benefits, or changes for individuals, groups, communities, organizations, or systems. Examples include changes in knowledge, skill development, changes in behavior, capacities or decision-making, and policy development. Outcomes can be short-term, medium-term, or long-term achievements. Short-term outcomes refer to changes in learning. Medium-term outcomes refer to changes in action. Long-term outcomes refer to changes in conditions. Outcomes may be positive, negative, neutral, intended, or unintended. Impact in this model refers to the ultimate consequence or effects of the program (for example, increased economic security or improved air quality). In this model, impact is synonymous with the long-term outcome of your goal. It is at the farthest right on the logic model graphic. Impact refers to the ultimate, long-term changes in social, economic, civic, or environmental conditions. In common usage impact and outcomes are often used interchangeably.

The Web-based software will include standard performance measures, such as number of persons adopting a technology or practice or dollars saved or generated, and will allow for state-generated target performance measures.

8. *Assumptions.* The beliefs we have about the program, the people involved, and the context and the way we think the program will work. The Web-based data entry system will require a short discussion on the assumptions that underlie and influence the program decisions made. Assumptions are principles, beliefs, ideas about the problem or situation, the resources and staff, the way the program will operate, what the program expects to achieve, the knowledge base, the external environment, the internal environment, the participants and how they learn, their behavior, motivations, etc.

9. *External Factors.* The environment in which the program exists includes a variety of external factors that interact with and influence the program action. External factors include the cultural milieu, the climate, economic structure, housing patterns, demographic patterns, background and experiences of program participants, media influence, changing policies and priorities. These external factors may have a major influence on the achievement of outcomes. They may affect a variety of things including program implementation, participants and recipients, the speed and degree to which change occurs, staffing patterns, and resources available. A program is affected by and affects these external factors.

2. Stakeholder Input Process

Section 102(c) of AREERA requires the 1862 land-grant institutions, 1890 land-grant institutions, and 1994 land-grant institutions receiving agricultural research, extension, and education formula funds from CSREES to establish a process for stakeholder input on the uses of such funds. CSREES has separately promulgated regulations to implement this stakeholder input requirement. This was published on February 8, 2000, in the **Federal Register** (7 CFR Part 3418).

As a component of the 5-Year Plan of Work, each institution must report on the (a) actions taken to seek stakeholder input that encourages their participation; (b) a brief statement of the

process used by the recipient institution to identify individuals and groups who are stakeholders and to collect input from them; and (c) a statement of how collected input was considered. This report will be required annually and may be submitted with the Annual Report of Accomplishments and Results. This component will satisfy the reporting requirements imposed by the separately promulgated regulations on stakeholder input.

In the Web-based software, CSREES will provide check lists with the commonly reported actions taken to seek stakeholder input, the process used to identify stakeholders and collect input from them and how the input was considered, and will allow for additional information in each section in the form of a narrative.

3. Program Review Process

a. *Merit Review.* Effective October 1, 1999, each 1862 land-grant institution and 1890 land-grant institution must have established a process for merit review in order to obtain agricultural research or extension formula funds. This was established in the FY 2000–2004 5-Year Plan of Work by all institutions.

b. *Scientific Peer Review.* A scientific peer review is required for all research funded under the Hatch Act Multistate Research Fund. For such research, this scientific peer review will satisfy the merit review requirement specified above.

c. *Reporting Requirement.* As a component of the 5-year Plan of Work, each institution, depending on the type of program review required, will provide a description of the merit review process or scientific peer review process established at their institution. This description should include the process used in the selection of reviewers with expertise relevant to the effort and appropriate scientific and technical standards.

4. Multistate Research and Extension Activities

a. *Hatch Multistate Research.* Effective October 1, 1998, the Hatch Multistate Research Fund replaced the Hatch Regional Research Program. The Hatch Multistate Research Fund must be used for research employing multidisciplinary approaches to solve research problems that concern more than one State. For such research, State agricultural experiment stations must partner with another experiment station, the Agricultural Research Service, or another college or university.

b. *Smith-Lever Multistate Extension.* Effective October 1, 1999, the cooperative extension programs at the 1862 land-grant institutions must have expended up to 25 percent of their formula funds provided under sections 3(b)(1) and (c) of the Smith-Lever Act for activities in which two or more State extension services cooperate to solve problems that concern more than one State. As required by law, CSREES has worked with each 1862 land-grant institution to identify the amount each institution expended for multistate extension activities for FY 1997. For FY 2000 and thereafter, cooperative extension programs must commit two times their FY 1997 baseline percentage or 25 percent, whichever is less, for multistate activities. Institutions should describe the contributions of extension staff and programs toward impacts rather than describe the programs. Each participating State or territory must be a collaborator towards objectives and involved in the outcomes. Evidence of the proposed collaboration must be provided in the 5-Year Plan of Work submitted by each State. This planning is documented through formal agreements, letters of memorandums, contracts, or other instruments that provide primary evidence that a multistate relationship exists.

c. *Reporting Requirements.* The 5-Year Plan of Work should include a description of the Multistate Research, where applicable, and Multistate Extension programs as specified above and these programs must be reported consistently across the units of an institution as well as with the 5-Year Plan of Work of the cooperating State(s) or State institutions. These descriptions should be reported in the Planned Programs section of the 5-Year Plan of Work. A table will be provided by the web-based software for reporting dollars expended each year on these activities.

5. Integrated Research and Extension Activities

a. Effective October 1, 1999, up to 25 percent of all funds provided under section 3 of the Hatch Act and under section 3(b)(1) and (c) of the Smith-Lever Act must have been spent on activities that integrate cooperative research and extension. As required by law, CSREES has worked with each 1862 land-grant institution to establish the institution's baseline for integrated research and extension activities for FY 1997. For FY 2000 and thereafter, 1862 land-grant institutions must have committed twice the FY 1997 baseline percentage or 25 percent, whichever is less, for integrated activities. Integration may occur within the State or between units within two or more States. Integrated programming must be reported in the 5-Year Plan of Work and be reported consistently across the units of the institutions as well as with the 5-Year Plan of Work submitted by cooperating State(s). Federal formula funds used by a State for integrated activities may also be counted to satisfy the multistate research and the multistate extension activity requirements. The requirements of this section apply only to the Federal funds.

b. *Reporting Requirements.* The 5-Year Plan of Work should include a description of the Integrated Research and Extension programs as specified above and these programs must be reported consistently across the units of an institution as well as with the 5-Year Plan of Work of the cooperating State(s) or State institutions. These descriptions should be reported in the Planned Programs section of the 5-Year Plan of Work. A table will be provided by the Web-based software for reporting dollars expended each year on these activities.

*C. 5-Year Plan of Work Evaluation by CSREES*

1. Schedule

CSREES will evaluate all 5-Year Plans of Work. The 5-Year Plans of Work will either be accepted by CSREES without change or returned to the institution with clear and detailed recommendations for its modification. The submitting institution(s) will be notified by CSREES of its determination within 90 days (review to be completed in 60 days with communications to the institutions allowing a 30-day response) of receipt of the document. Adherence to the Plan of Work schedule by the recipient institution is critical to assuring the timely allocation of funds by CSREES. Five-Year Plans of Work accepted by CSREES will remain in effect for five years and will be publicly available in a CSREES database. CSREES will notify all institutions of the need for a new 5-Year Plan of Work at least one year prior to the plan's expiration on September 30.

2. Review Criteria

CSREES will evaluate the 5-Year Plans of Work to determine if they address agricultural issues of critical importance to the State; identify the alignment and realignment of programs to address those critical issues; identify the involvement of stakeholders in the planning process; give attention to under-served and under-represented populations; indicate the level of Federal formula funds in proportion to all other funds at the director or administrator level; provide evidence of multistate, multi-institutional, and

multidisciplinary and integrated activities; and identify the expected outcomes and impacts from the proposed 5-Year Plan of Work.

3. Evaluation of Multistate and Integrated Research and Extension Activities

CSREES will use the Annual Reports of Accomplishments and Results to evaluate the success of multistate, multi-institutional, and multidisciplinary activities and joint research and extension activities in addressing critical agricultural issues identified in the 5-Year Plans of Work. CSREES will use the following evaluation criteria: (1) Did the planned program address the critical issues of strategic importance, including those identified by the stakeholders? (2) Did the planned program address the needs of under-served and under-represented populations of the State(s)? (3) Did the planned program describe the expected outcomes and impacts? and (4) Did the planned program result in improved program effectiveness and/or efficiency?

## III. Annual Update of the 5-Year Plan of Work

*A. Applicability*

An annual update to the 5-Year Plan of Work is required each year to add an additional year to the Plan.

*B. Reporting Requirement*

The update to the 5-Year Plan of Work should be submitted on April 1 prior to the beginning of the next Plan of Work fiscal year (which begins on October 1 of each year).

## IV. Annual Report of Accomplishments and Results

*A. Reporting Requirement*

The 5-Year Plan of Work for a reporting unit, institution, or State should form the basis for annually reporting its accomplishments and results. This report will be due on or before April 1 each year with the first report being due on April 1, 2008, for FY 2007. This report should be submitted using the same Web-based data entry system used for the submission of the 5-Year Plan of Work. The Web-based data entry system will mirror and include data entered by the land-grant institution in the 5-Year Plan of Work.

*B. Format*

This annual report should include the relevant information related to each component of the program of the 5-Year Plan of Work. Accomplishments and results reporting should involve two parts. First, institutions should submit an annual set of impact statements linked to sources of funding. Strict attention to just the preceding year is not expected in all situations. Some impact statements may need to cover ten or more years of activity. Focus should be given to the benefits received by targeted end-users. Second, institutions should submit annual results statements based on the indicators of the outputs and outcomes for the activities undertaken the preceding year in the Program Logic Model for each program. These should be identified as short-term, intermediate, or long-term critical issues in the 5-Year Plan of Work. Attention should be given to highlighting multistate, multi-institutional, and multidisciplinary and integrated activities, as appropriate to the 5-Year Plan of Work.

Done at Washington, DC, this 31st day of May 2005.

**Joseph J. Jen,**

*Under Secretary, Research, Education, and Economics.*

[FR Doc. 05–11280 Filed 6–6–05; 8:45 am]

BILLING CODE 3410–22–P

---

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### South Kona Watershed, Hawaii County, HI

**AGENCY:** Natural Resources Conservation Service.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** Pursuant to section 102(2) (C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the South Kona Watershed, Hawaii County, Hawaii.

**FOR FURTHER INFORMATION CONTACT:** Lawrence T. Yamamoto, State Conservationist, Natural Resources Conservation Service, 300 Ala Moana Blvd., Rm. 4–118, PO Box 50004, Honolulu, Hawaii 96850–0050, Telephone: (808) 541–2600 ext. 105.

**SUPPLEMENTARY INFORMATION:** The preliminary feasibility study of this federally assisted action indicates that the project may cause significant local, regional and national impacts on the environment. As a result of these findings, Lawrence T. Yamamoto, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns alleviating agriculture water shortages and providing a stable, adequate, and affordable supply of agricultural water to farmers and other agricultural producers in the South Kona District of the Island of Hawai'i. Alternatives under consideration to reach these objectives include a full build-out alternative involving the installation of twelve wells on private and public lands that would provide the agricultural area of South Kona with 12 million gallons of supplemental irrigation water per day; a three-well alternative that would supply 3 million gallons a day to address near-term irrigation needs in the project area; a two well alternative that would supply 2 million gallons of supplemental irrigation water a day for near-term irrigation needs; and the no action alternative, which will consider no change to the current irrigation water sources for the watershed.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Meetings will be held at Yano Hall, County of Hawaii Department of Parks and Recreation, 82–6156 Mamalahoa Highway, Captain Cook, County of Hawaii on Tuesday, June 21, 2005 from 1–3 p.m. and at MacFarms of Hawaii, Picker Shed 89–406 Mamalohoa Hwy. at the 84 mile mark, from 6–8 p.m. to determine the scope of the evaluation of the proposed action. Further information on the proposed action or the scoping meeting may be obtained from Lawrence T. Yamamoto, State Conservationist, at the above address or telephone number.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: May 23, 2005.

**Lawrence T. Yamamoto,**

*State Conservationist for Hawaii & Director for the Pacific Basin Area.*

[FR Doc. 05–11268 Filed 6–6–05; 8:45 am]

BILLING CODE 3410–16–M

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### South Kona Watershed, Hawaii County, Hawaii

**AGENCY:** Natural Resources Conservation Service.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the South Kona Watershed, Hawaii County, Hawaii.

**FOR FURTHER INFORMATION CONTACT:** Lawrence T. Yamamoto, State Conservationist, Natural Resources Conservation Service, 300 Ala Moana Blvd., Rm. 4–118, PO Box 50004, Honolulu, Hawaii 96850–0050, Telephone: (808) 541–2600 ext. 105.

**SUPPLEMENTARY INFORMATION:** The preliminary feasibility study of this federally assisted action indicates that the project may cause significant local, regional and national impacts on the environment. As a result of these findings, Lawrence T. Yamamoto, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The project concerns alleviating agriculture water shortages and providing a stable, adequate, and affordable supply of agricultural water to farmers and other agricultural producers in the South Kona District of the Island of Hawai'i. Alternatives under consideration to reach these objectives include a full build-out alternative involving the installation of twelve wells on private and public lands that would provide the agricultural area of South Kona with 12 million gallons of supplemental irrigation water per day; a three-well alternative that would supply 3 million gallons a day to address near-term irrigation needs in the project area; a two well alternative that would supply 2 million gallons of supplemental irrigation water a day for near-term irrigation needs; and the no action alternative, which will consider no change to the current irrigation water sources for the watershed.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Meetings will be held at Yano Hall, County of Hawaii Department of Parks and Recreation, 82–6156 Mamalahoa Highway, Captain Cook, County of Hawaii on Tuesday, June 21, 2005 from 1–3 p.m. and at MacFarms of Hawaii, Picker Shed 89–406 Mamalohoa Hwy. at the 84 mile mark, from 6–8 p.m. to determine the scope of the evaluation of the proposed action. Further information on the proposed action or the scoping meeting may be obtained from Lawrence T. Yamamoto, State Conservationist, at the above address or telephone number.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: May 23, 2005.

**Lawrence T. Yamamoto,**

*State Conservationist for Hawaii & Director for the Pacific Basin Area.*

[FR Doc. 05–11281 Filed 6–6–05; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–838]**

### Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission: Certain Softwood Lumber Products From Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 7, 2005.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on Certain Softwood Lumber Products from Canada for the period May 1, 2003, to April 30, 2004 (the POR). We preliminarily determine that sales of subject merchandise made by Abitibi–Consolidated Inc. (Abitibi), Buchanan Lumber Sales Inc. (Buchanan), Canfor Corporation (Canfor), Tembec Inc. (Tembec), Tolko Industries Ltd. (Tolko), Weldwood of Canada Limited (Weldwood), West Fraser Mills Ltd. (West Fraser), and Weyerhaeuser Company (Weyerhaeuser), have been made below normal value. In addition, based on the preliminary results for these respondents selected for individual review, we have preliminarily determined a weighted–average margin for those companies that requested, but were not selected for, individual review. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price and constructed export price, and the normal value. Furthermore, requests for review of the antidumping order for the following thirteen companies were withdrawn: Age Cedar Products, Anderson Wholesale, Inc., Bay Forest Products Ltd., Coast Forest & Lumber Assoc., Coast Lumber, Inc., Duluth Timber Company, Les Produits Forestiers Latierre, North Pacific, Usine Sartigan Inc., Council of Forest Industries, Specialites G.D.S. Inc., BC Veneer Products Ltd., and Edge Grain Forest Products. Because the withdrawal requests were timely and there were no other requests for review of the companies, we are rescinding the review for these companies. See 19 CFR 351.213(d)(i). Interested parties are invited to comment on these preliminary results and partial rescission.

**FOR FURTHER INFORMATION CONTACT:** Daniel O'Brien or Constance Handley, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1376 or (202) 482–0631, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 3, 2004, the Department published a notice of opportunity to request an administrative review of this order. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 69 FR 24117, (May 3, 2004). On May 28, 2004, in accordance

with section 751(a) of the Tariff Act of 1930 (the Act) and 19 CFR 351.213(b), the Coalition for Fair Lumber Imports (the Coalition), a domestic interested party in this case, requested a review of producers/exporters of certain softwood lumber products. Also, between May 3, and June 2, 2004, Canadian producers requested a review on their own behalf or had a review of their company requested by a U.S. importer.

On June 30, 2004, the Department published a notice of initiation of administrative review of the antidumping duty order on certain softwood lumber products from Canada, covering the POR. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 39409 (June 30, 2004).1[1]

The Department received requests for review from more than 400 companies. Accordingly, in July 2004, in advance of issuing antidumping questionnaires, the Department issued to all companies pursuing an administrative review, a letter requesting total quantity and value of subject merchandise exported to the United States during the POR. Companies were required to submit their responses to the Department by July 22, 2004. In addition, we received comments from interested parties on the respondent selection process, which included proposed methodologies.

Upon consideration of the information received with respect to respondent selection, on August 23, 2004, the Department selected as mandatory respondents the eight largest exporters/producers of subject merchandise during the POR: Abitibi, Buchanan, Canfor, Tembec, Tolko, Weldwood, West Fraser, and Weyerhaeuser. *See Memorandum from James Kemp, International Trade Compliance Analyst, to Jeffrey May, Deputy Assistant Secretary, regarding Selection of Respondents* (August 23, 2004) *(Selection of Respondents Memorandum). See also Selection of Respondents* section below.

On August 24, 2004, the Department issued sections A, B, C, D, and E of the antidumping duty questionnaire to the selected respondents. The respondents submitted their initial responses to the antidumping questionnaire from September through December of 2004. After analyzing these responses, we issued supplemental questionnaires to the respondents to clarify or correct the initial questionnaire responses. We received timely responses to these questionnaires.

**Partial Rescission**

On July 22, 2004, Specialites G.D.S. Inc. withdrew its request for administrative review and on September 9, 2004, BC Veneer Products Ltd., and Edge Grain Forest Products withdrew their requests for administrative review of the antidumping duty order. On July 7, 2004, the Coalition, with respect to Age Cedar Products, Anderson Wholesale, Inc., Bay Forest Products Ltd., Coast Forest & Lumber Assoc., Coast Lumber, Inc., Duluth Timber Company, Les Produits Forestiers Latierre, North Pacific, Usine Sartigan Inc., and Council of Forest Industries, also withdrew its request for administrative reviews of the antidumping duty order. Because the requests were timely filed, *i.e.*, within 90 days of publication of the Initiation Notice, and because there were no other requests for review of the above–mentioned companies, we are rescinding the review with respect these companies in accordance with 19 CFR 351.213(d)(1). The Coalition also withdrew its request with regard to Buchanan Distribution Inc., Les Produits Forestiers Temrex, and Usine St. Alphonse, Inc. Les Produits Forestiers Temrex Usine St. Alphonse, Inc. is, in fact, a single entity, although it appeared as two entities in the June 30, 2004, initiation notice pursuant to the Coalition's request. Buchanan Distribution Inc. and Les Produits Forestiers Temrex Usine St. Alphonse, Inc. are, respectively, affiliated and collapsed with Buchanan and Tembec, and, therefore they continue to be covered by the review.

**Scope of the Order**

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger–jointed, of a thickness exceeding six millimeters;

(2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed;–2

(3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger–jointed; and (4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Softwood lumber products excluded from the scope:

- trusses and truss kits, properly classified under HTSUS 4418.90
- I–joist beams
- assembled box spring frames
- pallets and pallet kits, properly classified under HTSUS 4415.20
- edge–glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- properly classified complete door frames.
- properly classified complete window frames
- properly classified furniture

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- *Box–spring frame kits*: if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius–cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to

[1] This notice was further amended. See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 69 FR 45010 (July 28, 2004); see also Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 69 FR 52857 (August 30, 2004).

make a particular box–spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.

- *Radius–cut box–spring-frame components*, not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1'' or less in actual thickness, up to 8'' wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog–eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.

- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln–drying, planing to create smooth–to-size board, and sanding; and 2) if the importer establishes to CBP's satisfaction that the lumber is of U.S. origin.
- *Softwood lumber products contained in single family home packages or kits*,[2] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

(A) The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

(B) The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

(C) Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

(D) The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

(E) The following documentation must be included with the entry documents:

- a copy of the appropriate home design, plan, or blueprint matching the entry;
- a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
- a listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
- in the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box–spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non–subject status based on U.S. country of origin will be treated as non–subject U.S.-origin merchandise under the countervailing duty order, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[3] The presumption of non–subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

**Selection of Respondents**

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department the discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known exporters/producers of subject merchandise, this provision permits the Department to review either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

Responses to the Department's information request were received July 13 through July 27, 2004. After consideration of the data submitted, and the complexities unique to this proceeding, as well as the resources available to the Department, we determined that it was not practicable in this review to examine all known exporters/producers of subject merchandise. We found that given our resources, we would be able to review the eight exporters/producers with the greatest export volume, as identified above. For a more detailed discussion of respondent selection in this review, *See Selection of Respondents Memorandum*. We received a written request from one company[4] to be included as a voluntary respondent in this review.

**Collapsing Determinations**

The Department's regulations provide for the treatment of affiliated producers as a single entity where: (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (2) the

[2] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days. We also instructed importers to retain and make available for inspection specific documentation in support of each entry.

[3] *See* the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B–099 of the main Commerce Building.

[4] In this proceeding, we received a written request from Riverside Forest Products (June 24, 2004) to be a voluntary respondent. As all the mandatory respondents participated, we were unable to accommodate this request.

Department concludes that there is a significant potential for the manipulation of price or production.[5] In identifying a significant potential for the manipulation of price or production, the Department may consider such factors as: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[6] These factors are illustrative, and not exhaustive.

Canfor and Slocan merged operations on April 1, 2004. On December 20, 2004, the Department determined that the post–merger Canfor is the successor–in-interest to both the pre–merger Canfor and Slocan. *See Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 67 FR 75921 (December 20, 2004). For the purposes of these preliminary results, we have calculated three separate margins: one each for Canfor and Slocan individually for the eleven months of the POR prior to April 1, 2004, and a third margin for the post–merger Canfor for April 2004. The resulting cash deposit rate is a weighted average of the three calculated margins. In addition, Canfor purchased Daaquam Lumber Inc. (Daaquam) on May 27, 2003. Daaquam functions as an independent subsidiary within Canfor Corporation. Canfor reported all sales of lumber produced by the former Daaquam facilities during the POR. For purposes of this review, we considered only those sales made after the date of purchase. Finally, Canfor reported the sales of its affiliates Lakeland Mills Ltd. and The Pas Lumber Company Ltd.[7]

In addition, respondents reported, in their questionnaire responses, the sales of certain affiliated companies. Abitibi reported the sales of subject merchandise produced by its affiliates Produits Forestiers Petit Paris, Inc., Produits Forestiers La Tuque, Inc., and Societe en Commandite Scierie Opticiwan. Buchanan reported the sales of its affiliates Atikokan Forest Products Ltd., Long Lake Forest Products Inc., Nakina Forest Products Limited, Buchanan Distribution Inc., Buchanan Forest Products Ltd., Great West Timber Ltd., Dubreuil Forest Products Ltd., Northern Sawmills Inc., and McKenzie Forest Products Inc. Buchanan was excused from reporting the sales of the subject merchandise produced by its affiliate, Solid Wood Products Inc. Tembec reported the sales of Les Industries Davidson, Inc.[8] as well as Tembec affiliates Marks Lumber Ltd., Temrex Limited Partnership, and 791615 Ontario Limited (Excel Forest Products). Tolko was excused from reporting the sales of Gilbert Smith Forest Products, Ltd., although (Gilbert Smith) continues to be collapsed with Tolko.[9] Weldwood reported the sales of its affiliated reseller Weldwood Sales Incorporated (WSI) in its questionnaire response. In addition, Weldwood reported sales from joint venture mills that it operates. These operations are Babine Forest Products Company, Decker Lake Forest Products Limited, and Houston Forest Products Company. Weldwood also reported sales of subject merchandise from Sunpine Forest Products Limited, a subsidiary of Sunpine Incorporated, which is a subsidiary of Weldwood. West Fraser reported the sales of its affiliates West Fraser Forest Products Inc. (WFFP) and Seehta Forest Products Ltd. Weyerhaeuser reported the sales of its affiliate Weyerhaeuser Saskatchewan Ltd. Upon review of the questionnaire responses, we determined that the affiliates discussed above were properly collapsed with the respective respondent companies for the purposes of this review.

The Department excused individual respondents from reporting the sales of specific merchandise or sales by certain affiliates during this review. These specific reporting exemptions were granted to the companies because the sales were determined to be a relatively small percentage of total U.S. sales, burdensome to the company to report and for the Department to review, and would not materially affect the results of this review.[10]

**Treatment of Sales Made on a Random–Lengths Basis**

All of the respondents made a portion of their sales during the POR on a random–length[11] (also referred to as a mixed–tally) basis. Information on the record indicates that the respondents negotiate a single per–unit price for the whole tally with the customer, but that they take the composition of lengths in the tally into account when quoting this price. The price on the invoice is the blended (*i.e.*, average) price for the tally. Therefore, the line–item price on the invoice to the customer does not reflect the value of the particular product, but rather the average value of the combination of products.

Sections 772(a) and (b) and 773(a)(1)(B)(i) of the Act direct the Department to use the price at which the product was sold in determining export price (EP), constructed export price (CEP), and normal value (NV). In this case, the price at which the products were sold is the total amount on the invoice. The respondents' choice to divide that price evenly over all products on the invoice represents an arbitrary allocation which is not reflective of the underlying value of the individual products within the tally. However, with the exception of Weldwood and West Fraser, the respondents do not keep track of any underlying single–length prices in such a way that they can ''deconstruct'' or reallocate the prices on the invoice to more properly reflect the relative differences in the market value of each unique product that were taken into account in determining the total invoice price.

[5] See 19 CFR 351.401(f)(1).

[6] See 19 CFR 351.401(f)(2).

[7] Canfor continues to be collapsed with its affiliate Skeena Cellulose. However, Canfor was excused from reporting sales of its affiliates because of their low volume. We note that in the last review Canfor was collapsed with its affiliates Howe Sound Pulp and Paper Limited Partnership (Howe Sound). In the current review, Canfor reported that Howe Sound had sold all of its lumber-producing equipment. Therefore, we have removed Howe Sound from the Canfor Group.

[8] Tembec purchased the shares of Davidson on November 5, 2001, and as of December 27, 2003, Davidson became a division of Tembec. The Davidson Division's financial results have been fully consolidated in Tembec's financial statements for the entirety of the POR. Therefore, we are no longer listing Davidson separately as part of the Tembec Group.

[9] We note that in the first administrative review, Tolko's affiliate Compwood Products Ltd. (Compwood) was listed as part of the Tolko Group. Tolko has not been collapsed with Compwood, a laminated beam producer. Rather Tolko has reported sales to Compwood as sales to an affiliated party.

[10] *See Memorandum from James Kemp, David Neubacher, and Ashleigh Batton to Susan Kuhbach, regarding Individual Reporting Exemption Requests of Certain Respondent Companies* (October 7, 2004); *see also Memorandum from James Kemp, David Neubacher, and Ashleigh Batton to Susan Kuhbach, regarding Individual Reporting Exemption Requests of Buchanan Lumber Sales Ltd., West Fraser Mills Ltd., and Weyerhaeuser Company* (October 19, 2004); *see also Memorandum from Ashleigh Batton and Shane Subler to Susan Kuhbach regarding Buchanan Lumber Sales Ltd. and Weldwood of Canada Limited Individual Reporting Exemption Requests* (November 1, 2004); *see also Memorandum from Ashleigh Batton to Susan Kuhbach regarding Individual Reporting Exemption Request for Buchanan Lumber Sales Ltd.* (December 13, 2004).

[11] For the purposes of this review, we are defining a random-length sale as any sale which contains multiple lengths, for which a blended (*i.e.*, average) price has been reported.

For all companies except Weldwood and West Fraser, for purposes of these preliminary results, we reallocated the total invoice price of sales made on a random–lengths basis, where possible, using the average relative values of company–specific, market–specific single–length sales made within a two-week period (*i.e.*, one week on either side) of the tally whose price is being reallocated. If no such sales were found, we looked in a four-week period (*i.e.*, two weeks on either side of the sale). We note that a single–length-sale match must be available for each line item in the tally in order to perform a reallocation based on relative price. If there were not single–length sales for all items in the tally within a four-week period, we continued to use the reported price as neutral facts available, pursuant to section 776(a)(1) of the Act. For Weldwood and West Fraser, we used the reported length–specific prices. This methodology was fully described in detail during the last administrative review. *See Notice of Final Results of Antidumping Duty Administrative Review and Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada,* 69 FR 75921 (December 20, 2004) and accompanying Issues and Decision Memorandum at comment 5.

**Fair Value Comparisons**

We compared the EP or the CEP, as applicable, to the NV, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales in the U.S. and comparison markets of products that were identical with respect to the following characteristics: product type, species, grade group, grade, dryness, thickness, width, length, surface, trim and processing type. Where we were unable to compare sales of identical merchandise, we compared products sold in the United States with the most similar merchandise sold in the comparison markets based on the characteristics of grade, dryness, thickness, width, length, surface, trim and processing type,[12] in this order of priority. Consistent with prior segments of this proceeding, we did not match across product type, species or grade group. Where there were no appropriate comparison–market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773(a)(4) of the Act. We generally relied on the date of invoice as the date of sale. Consistent with the Department's practice, where the invoice was issued after the date of shipment, we relied on the date of shipment as the date of sale.

**Export Price and Constructed Export Price**

In accordance with section 772 of the Act, we calculated either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States.

Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act.

For all respondents, we calculated EP and CEP, as appropriate, based on prices charged to the first unaffiliated customer in the United States. We found that all of the respondents made a number of EP sales during the POR. These sales are properly classified as EP sales because they were made outside the United States by the exporter or producer to unaffiliated customers in the United States prior to the date of importation.

We also found that each respondent made CEP sales during the POR. Some of these sales involved softwood lumber sold from U.S. reload or through vendor–managed inventory (VMI) locations. Because such sales were made by the respondent after the date of importation, the sales are properly classified as CEP sales. In addition, Weldwood, West Fraser, and Weyerhaeuser made sales to the United States through U.S. affiliates.

We made company–specific adjustments as follows:

(A) *Abitibi*

Abitibi made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Abitibi to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record. We calculated a CEP for sales made by Abitibi to the U.S. customer through VMI or reload centers after importation into the United States. EP and CEP were based on the packed, delivered, ex–mill, and free–on-board (FOB) reload center prices, as applicable.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include freight incurred in transporting merchandise to reload and VMI centers, as well as freight to the U.S. customer, warehousing, brokerage and handling, and inland insurance. We also deducted any billing adjustments, discounts, and rebates.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.*, credit expenses) and imputed inventory carrying costs. Abitibi did not report any other indirect selling expenses incurred in the United States. In accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. *See Memorandum from Saliha Loucif to the File, regarding Abitibi's Analysis for the Preliminary Results* (May 31, 2005) (*Abitibi's Preliminary Calculation Memorandum*).

(B) *Buchanan*

Buchanan made both EP and CEP transactions during the POR. We calculated an EP for sales where the merchandise was sold directly by Buchanan to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts on the record. We calculated a CEP for sales made by Buchanan to the U.S. customer through reload centers after importation into the United States. EP and CEP were based on the packed, delivered, ex–mill, FOB mill, and FOB reload center prices, as applicable.

We made deductions from starting prices for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include freight incurred in transporting merchandise to reload centers, freight to the U.S. customer,

[12] We note that Tembec requested that the Department revise the model match criteria to include a new length category for nine-foot lumber. While Tembec submitted some information on stud prices, it did not address all categories of nine-foot lumber for which it was requesting a change. Further, none of the other interested parties requested that nine-foot lumber be treated differently than that size of lumber had been treated in the investigation or first review, nor did they break out sales of nine-foot lumber. While Tembec argued that its sales of nine-foot lumber were unique and deserved distinctive treatment, we note that published prices also exist for seven-foot six-inch studs, which continue to be grouped with other studs of similar length. Therefore, for purposes of the current review we have continued to use the length categories established in the underlying investigation.

warehousing, brokerage, and a movement variance. We also deducted any discounts from the starting price, and added any billing adjustments and other miscellaneous charges/credits.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses, (*e.g.*, credit expenses) and imputed inventory carrying costs. In accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. *See Memorandum from Ashleigh Batton to the File, regarding Buchanan's Analysis for the Preliminary Results* (May 31, 2005) *(Buchanan's Preliminary Calculation Memorandum).*

(C) *Canfor*

Canfor made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Canfor to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record. We calculated a CEP for sales made by Canfor to the U.S. customer through VMI or reload centers after importation into the United States. EP and CEP were based on the packed, delivered, ex–mill, FOB mill, and FOB reload center prices, as applicable.

From its sales locations in the United States and Canada, Canfor made sales of Canfor–produced merchandise that had been commingled with lumber from other producers. Canfor provided a weighting factor to determine the quantity of Canfor–produced Canadian merchandise for all sales. We are using the weighting factors to estimate the volume of Canfor–produced merchandise included in each sale.

In some cases, the other producers knew or had reason to know that the merchandise purchased by Canfor was destined for the United States. For example, Canfor occasionally purchased merchandise from another producer and had the producer arrange freight from the producer's mill in Canada to the customer in the United States. We did not include such sales in our margin calculations. In other situations, Canfor purchased merchandise and the producer shipped it to U.S. reload centers, VMI locations, or to Canfor USA where it was commingled with lumber produced by Canfor. While the producer had knowledge that these sales were destined for the United States, Canfor was unable to link the purchases of lumber with a specific sale to the unaffiliated customer. Therefore, Canfor developed the weighting factor to determine, based on inventory location and control–number and the percentage of lumber at the specific inventory location and control–number, the percentage of lumber at the inventory location that was produced by Canfor. We are multiplying the weighting factor by the quantity of lumber in each sale to estimate the volume of Canfor–produced merchandise in each sale in the United States and home market, and to eliminate the estimated non–Canfor produced merchandise.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include freight incurred in transporting merchandise to reload centers or VMI locations, as well as freight to the U.S. customer, warehousing, brokerage and handling, and miscellaneous movement charges. We also deducted any discounts and rebates from the starting price.

In addition to these adjustments, for CEP sales, in accordance with section 772(d)(1) of the Act, we adjusted the starting price by the amount of direct selling expenses and revenues (*e.g.*, credit expenses and interest revenue). We further reduced the starting price by the amount of indirect selling expenses incurred in the United States. Additionally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. Canfor reported a limited number of sales of purchased lumber for which the producer did not have knowledge that the lumber was destined for the United States. Because the lumber was very small in quantity and separately identifiable, we removed it from our calculation. Finally, we made additional corrections to the U.S. sales data based upon our findings at verification. *See Memorandum from Daniel O'Brien and David Neubacher to the File, regarding Canfor's Analysis for the Preliminary Results* (May 31, 2005) *(Canfor's Preliminary Calculation Memorandum).*

(D) *Tembec*

Tembec made both EP and CEP transactions during the POR. We calculated an EP for sales where the merchandise was sold directly by Tembec to the first unaffiliated purchaser in the United States prior to importation. We calculated a CEP for sales made by Tembec to the U.S. customer through U.S. reload facilities or through VMI facilities. EP and CEP were based on the packed, delivered, FOB mill, FOB reload/VMI center and FOB destination prices, as applicable.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include freight incurred in transporting merchandise to Canadian reload centers and Canadian warehousing expenses, as well as freight to the U.S. customer or reload facility, U.S. warehousing expenses, and U.S. brokerage. We also deducted from the starting price any discounts and rebates.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.*, credit expenses) and indirect selling expenses. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. *See Memorandum from Saliha Loucif to the File, regarding Tembec's Analysis for the Preliminary Results* (May 31, 2005) *(Tembec's Preliminary Calculation Memorandum).*

(E) *Tolko*

Tolko made both EP and CEP transactions. We calculated EP for sales where the merchandise was sold directly by Tolko to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record. We calculated CEP for sales made by Tolko to the U.S. customer through VMI or reload centers after importation into the United States. EP and CEP were based on the packed, delivered, ex–mill, FOB mill, and FOB reload center prices, as applicable.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include freight incurred in transporting merchandise to reload centers or VMI locations, as well as freight to the U.S. customer, warehousing, brokerage and handling, and miscellaneous movement charges. We also deducted any discounts and rebates from the starting price.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.*, credit expenses, warranty expenses) and imputed inventory carrying costs. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount for profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. *See Memorandum from Daniel Alexy to the File, regarding Tolko's Analysis for the*

*Preliminary Results* (May 31, 2005) *(Tolko's Preliminary Calculation Memorandum).*

(D) *Weldwood*

Weldwood made both EP and CEP transactions. We calculated an EP for sales in which the merchandise was sold directly by Weldwood to the first unaffiliated purchaser in the United States prior to importation, and in which CEP was not otherwise warranted based on the facts of the record. We calculated a CEP for sales made by WSI to the U.S. customer through reload centers after importation into the United States. EP and CEP were based on the ex–mill, carriage paid to reload (CPT reload), and delivered prices, as applicable.

In accordance with section 772(c)(2)(A) of the Act, we reduced the starting price to account for movement expenses. These included the net freight expenses incurred in transporting merchandise to reload centers, net freight to the U.S. customer, and U.S. brokerage. We also deducted early payment discounts, credit or debit adjustments, and other relevant price adjustments from the starting price.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.*, credit expenses) and imputed inventory carrying costs. In accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. Finally, we made additional corrections to the U.S. sales data based upon our findings at verification. *See Memorandum from Shane Subler to the File, regarding Weldwood's Analysis for the Preliminary Results* (May 31, 2005) *(Weldwood's Preliminary Results Calculation Memorandum).*

(E) *West Fraser*

West Fraser made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by West Fraser to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record. We calculated a CEP for sales made by WFFP to the U.S. customer through VMI or reload centers after importation into the United States. EP and CEP were based on the packed, delivered, ex–mill, and FOB reload center prices, as applicable.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include freight incurred in transporting merchandise to reload centers and to VMI customers, freight to the U.S. customer, warehousing, and U.S. and Canadian brokerage. We also deducted any discounts and rebates from the starting price.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses, (*e.g.*, credit expenses) and imputed inventory carrying costs. Finally, in accordance with section 772(d)(3) of the Act, we deducted an amount of profit allocated to the expenses deducted under sections 772(d)(1) and (2) of the Act. *See Memorandum from David Neubacher to the File, regarding West Fraser's Analysis for the Preliminary Results* (May 31, 2005) *(West Fraser's Preliminary Calculation Memorandum).*

(F) *Weyerhaeuser*

Weyerhaeuser made both EP and CEP transactions. We calculated an EP for sales where the merchandise was sold directly by Weyerhaeuser to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record. We calculated a CEP for sales made by Weyerhaeuser to the U.S. customer through reload centers, VMIs, and Weyerhaeuser's affiliated reseller Weyerhaeuser Building Materials (WBM) after importation into the United States. EP and CEP were based on the packed, delivered, or FOB prices.

From its sales locations in the United States and Canada, Weyerhaeuser made sales of merchandise which had been commingled with that of other producers. Weyerhaeuser provided a weighting factor to determine the quantity of Weyerhaeuser–produced Canadian merchandise for these sales. We are multiplying the weighting factor by the quantity of lumber in each U.S. and home market sale to estimate the volume of Weyerhaeuser–produced merchandise in each transaction and to eliminate the estimated non–Weyerhaeuser-produced merchandise from our margin calculation.

In some cases, the other producers knew or had reason to know that the merchandise purchased by Weyerhaeuser was destined for the United States. For example, Weyerhaeuser routinely purchased merchandise and arranged freight from the producer's mill in Canada to the customer in the United States. We did not include such sales in our margin calculations. In other situations, Weyerhaeuser purchased merchandise and shipped it to U.S. warehouses where it was commingled with lumber produced by Weyerhaeuser. While the producer had knowledge that these sales were destined for the United States, Weyerhaeuser was unable to link the purchases with the specific sale to the unaffiliated customer. Therefore, Weyerhaeuser developed a second weighting factor to determine the quantity of the sale for which the third–party producer did not know, or have reason to know, that the merchandise was destined for the United States. We are multiplying the weighting factor by the quantity of lumber in each U.S. sale to estimate the volume of merchandise for which the producer did not have knowledge of destination in each transaction. We included this quantity in our margin calculation and excluded the estimated volume for which the producer did have knowledge of U.S. destination.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include freight to U.S. and Canadian warehouses or reload centers, warehousing expense in Canada and the United States, brokerage and handling, and freight to the final customer. We also deducted from the starting price any discounts, billing adjustments, and rebates.

In accordance with section 772(d)(1) of the Act, for CEP sales, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including indirect selling expenses and direct selling expenses (*e.g.*, credit expenses). Additionally, in accordance with section 772(d)(3) of the Act, we deducted an amount for CEP profit. *See Memorandum from Constance Handley to the File, regarding Weyerhaeuser's Analysis for the Preliminary Results* (May 31, 2005) *(Weyerhaeuser's Preliminary Calculation Memorandum).*

**Normal Value**

A. *Selection of Comparison Markets*

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The Act contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. We

found that all eight respondents had viable home markets for lumber.

To derive NV, we made the adjustments detailed in the Calculation of Normal Value Based on Home–Market Prices and Calculation of Normal Value Based on Constructed Value, sections below.

B. *Cost of Production Analysis*

Because the Department found in the most recently completed segment of the proceeding at the time the questionnaire was sent (*i.e.*, the investigation), that five[13] of the respondents made sales in the home market at prices below the cost of producing the merchandise and excluded such sales from NV, the Department determined that there were reasonable grounds to believe or suspect that softwood lumber sales were made in Canada at prices below the cost of production (COP) in this administrative review for those five respondents. See section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a COP inquiry for such respondents.

On December 21, 2004, the Coalition made an allegation of sales below the cost of production (COP) with respect to Weldwood. We found that the Coalition's allegation provided the Department with a reasonable basis to believe or suspect that sales in the home market have been made at prices below the COP by Weldwood. Accordingly, we initiated an investigation to determine whether Weldwood's home market sales of certain softwood lumber products were made at prices below the COP during the POR. *See Memorandum from Shane Subler to Susan Kuhbach, regarding Allegation of Sales Below Cost of Production for Weldwood* (January 26, 2005).

Furthermore, during the first administrative review, we determined to disregard sales made by Buchanan and Tolko that were below the cost of production. In accordance with section 773(b)(2)(A)(i) of the Act, the Department initiated a COP inquiry to determine whether Buchanan and Tolko made home–market sales at prices below their respective COPs during this POR.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted–average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses, selling expenses, packing expenses and interest expenses.

2. Cost Methodology

In our section D questionnaire, we solicited information from the respondents that allows for a value–based cost allocation methodology for wood and sawmill costs (*i.e.*, those costs presumed to be joint costs), including by–product revenue. We allowed for the value allocation to cover species, grade, and dimension (*i.e.*, thickness, width and length). For production costs that are separately identifiable to specific products (*e.g.*, drying or planing costs), we directed parties to allocate such costs only to the associated products using an appropriate allocation basis (*e.g.*, MBF). In allocating wood and sawmill costs (including by–product revenue) based on value, costs associated with a particular group of co–products were to be allocated only to those products (*i.e.*, wood costs of a particular species should only be allocated to that species).

Further, we directed the parties to use weighted–average world–wide prices in deriving the net realizable values (NRV) used for the allocation. We used world–wide prices to ensure that all products common to the joint production process, not just those sold in a particular market, are allocated their fair share of the total joint costs. Finally, we directed the parties to perform the value allocation on the mill/facility level, using the company–wide weighted–average world–wide NRV for the specific products produced at the mill, along with the mill–specific production quantities.

Consistent with our methodology in the first administrative review, we requested that the respondents break out the random–length sales separately from length–specific sales and to develop a two–tiered allocation method. First, we directed the respondents to perform the price–based cost allocation (including the random–length-tally sales) without regard to length. Second, we directed them to allocate the resulting product costs into length–specific costs. In performing the second step, we set out a hierarchy when looking for surrogate sales as allocation factors: 1) length–specific sales of the identical product; 2) length–specific sales of products that are identical to the product except for width; and 3) length–specific sales of products identical to the product except for NLGA grade equivalent. For purposes of these preliminary results, we have used the programs and calculations provided by respondents except in the case of West Fraser and Weldwood. For West Fraser and Weldwood, this step was not necessary due to their ability to provide length–specific sales data. *See Treatment of Sales Made on a Random–Lengths Basis* section above. In addition, we excluded the price of purchased and resold lumber from our calculation of the respondent's per unit product costs.[14]

3. Individual Company Adjustments

We relied on the COP data submitted by each respondent in its cost questionnaire response, except in specific instances where based on our review of the submissions and our verification findings, we believe that an adjustment is required, as discussed below.

For the calculation of general and administrative (G&A) expenses for all companies, we did not include the legal fees which were paid directly by the company to its legal counsel and consultants associated with the AD and CVD proceedings. However, we included the fees paid to the provincial associations because none of the companies was able to substantiate that these payments were for legal representation associated with the AD and CVD proceedings.

In accordance with section 773(f)(1) of the Act, for companies that had inter–divisional byproduct transactions where the transfer price was significantly higher than an arm's–length market price, we adjusted the transfer price to the market price. For companies that had byproduct transactions with affiliates where the transfer price was higher than the market price, we adjusted the transfer price to the market price in accordance with section 773(f)(2) of the Act.

(A) *Abitibi*

1) We adjusted Abitibi's byproduct offset for wood chip revenue in British Columbia to reflect the average market price it obtained from unaffiliated parties.
2) We included in Abitibi's G&A expense rate calculation the goodwill impairment that was written of in its normal books and records. Additionally, we excluded the plant closure costs.
3) Because Abitibi reported net financing income, we included zero financing costs.

*See Memorandum from Michael Harrison to Neal M. Halper regarding Abitibi's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results* (May 31, 2005).

(B) *Canfor*

[13] Abitibi, Tembec, West Fraser, Weyerhaeuser, and Canfor. As discussed above, during the investigation, Canfor and Slocan merged as of April 1, 2004. Both companies had sales which were disregarded because they were below the cost of production.

[14] W knowledge that the product was for export to the United States. e note that the vast majority of purchased lumber was excluded from our sales analyses as the producer had.

1) We adjusted the Pas' byproduct offset for wood chip revenue in British Columbia to reflect the average market price it obtained from unaffiliated parties.
2) We increased Canfor's reported cost of manufacturing (COM) to reflect arm's length prices of contract logging performed by affiliated parties in accordance with section 773(f)(2) of the Act.
3) For the Lakeland entity, we reclassified the ''other income'' items from financial expenses to G&A expenses.
4) For the Canfor entity, we excluded the gain on sales of land from the G&A expense rate calculation. We also included in G&A certain wood paneling division costs which related to the general operations of the company. In addition, we included costs associated with maintenance and downtime that had been excluded.
5) For the Slocan entity, we identified a startup adjustment related to the Mackenzie Mill in the first administrative review. We included the adjustment in our cost calculations for this review.
6) Because Canfor reported net financing income, we included zero financing costs.

*See Memorandum from Gina K. Lee to Neal M. Halper regarding Canfor's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results* (May 31, 2005).

(C) *Tembec*

1) We used Tembec's unconsolidated financial statements of the lumber–producing entities to calculate the G&A expense rate. We included the impairment of goodwill and write down of fixed assets in the G&A expenses.
2) Because Tembec reported net financing income, we included zero financing costs.
3) We adjusted Tembec's province specific byproduct offset for wood chip revenue to reflect the average market price it obtained from unaffiliated parties.
4) We excluded Tembec's claimed byproduct offset for the whole log chip revenues because whole log chipping is not a byproduct of lumber production.
5) We adjusted the reported variable wood costs to reflect the cost of external log sales.

*See Cost Memorandum from Sheikh Hannan to Neal Halper regarding Tembec's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results* (May 31, 2005).

(D) *Tolko*

1) We increased Tolko's reported wood costs to reflect arm's length prices of logs purchased from affiliated parties in accordance with section 773(f)(2) of the Act.
2) We revised Tolko's financial expense calculation. Due to the claimed proprietary nature of the adjustment, we discuss this more fully in the calculation memo cited below.

*See Memorandum from Nancy M. Decker to Neal M. Halper regarding Tolko's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results* (May 31, 2005).

(E) *Weldwood*

1) We used Weldwood's submitted cost file that allocates the timberland units' log costs to the sawmills based on the average log cost from each timberland.
2) We revised the planer cost of one mill to account for trim loss on rough lumber inter–company sales and to reclassify certain planer costs.
3) We revised the variable drying cost of three mills to account for drying expenses related to inter–company sales of dried rough lumber.
4) We revised the variable planing costs of two mills to include freight expenses incurred on inter–company sales.
5) Weldwood allocated certain wood chip revenue to one location. We reallocated this revenue to the sawmills that produced the wood chips.

*See Memorandum from Mark Todd to Neal Halper regarding Weldwood's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results* (May 31, 2005).

(G) *West Fraser*

1) Because West Fraser reported net financing income, we included zero financing costs.
2) We excluded the gain on the sale of a sawmill unit from the G&A expense rate calculation.

*See Memorandum from James Balog to Neal Halper regarding West Fraser's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results* (May 31, 2005).

(H) *Weyerhaeuser*

1) We revised the Weyerhaeuser's reported wood costs for the British Columbia Coastal timberland units to reflect a value–based cost allocation for logs transferred to the sawmills. We used the cost database which Weyerhaeuser provided at our request that reflects the alternative value–based log costing methodology.
2) We adjusted Weyerhaeuser's byproduct offset for wood chip revenue in British Columbia to reflect the average market price it obtained from unaffiliated purchasers.
3) We excluded from the G&A expense rate calculation the costs related to closure of the company's production facilities.
4) We disallowed certain offsets to G&A expenses, the identity of which is proprietary. We discuss these items more fully in the calculation memo cited below.

*See Memorandum from Ernest Gziryan to Neal Halper regarding Weyerhaeuser's Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results* (May 31, 2005).

4. Test of Home–Market Sales Prices

We compared the adjusted weighted–average COP for each respondent to its home–market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model–specific basis, we compared the revised COP to the home–market prices, less any applicable movement charges, export taxes, discounts and rebates.

5. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to the POR average COP, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below–cost sales. For all respondents, we found that more than 20 percent of the home–market sales of certain softwood lumber products

within an extended period of time were made at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below–cost sales and used the remaining sales as the basis for determining normal value, in accordance with section 773(b)(1) of the Act. For those U.S. sales of softwood lumber for which there were no useable home–market sales in the ordinary course of trade, we compared EPs or CEPs to the CV in accordance with section 773(a)(4) of the Act. *See Calculation of Normal Value Based on Constructed Value* section below.

C. *Calculation of Normal Value Based on Home–Market Prices*

We determined price–based NVs for each company as follows. For all respondents, we made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and we deducted movement expenses consistent with section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made adjustments, in accordance with section 351.410(e), for indirect selling expenses incurred on comparison–market or U.S. sales where commissions were granted on sales in one market but not in the other (the ''commission offset''). Specifically, where commissions were granted in the U.S. market but not in the comparison market, we made a downward adjustment to NV for the lesser of (1) the amount of the commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the comparison market. If commissions were granted in the comparison market but not in the U.S. market, we made an upward adjustment to NV following the same methodology. Company–specific adjustments are described below.

(A) *Abitibi*

We based home–market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for inland freight, warehousing expenses, insurance, discounts, rebates, and billing adjustments. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home–market sales (*e.g.*, credit expenses) and adding U.S. direct selling expenses (*e.g.*, credit expenses). For comparisons made to CEP sales, we deducted home–market direct selling expenses. *See Abitibi's Preliminary Calculation Memorandum*.

(B) *Buchanan*

We based home–market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price by the amount of billing adjustments, early payment discounts, and movement expenses including inland freight, warehousing, miscellaneous movement charges, and a movement variance. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home–market sales (*e.g.*, credit expenses). For comparisons to CEP sales, we deducted home market selling expenses.

(C) *Canfor*

Canfor commingled self–produced with purchased lumber in home–market sales in the same manner as it did in U.S. sales, as described in the previous section. We used Canfor's weighting factor to determine the percentage of lumber in the commingled sales that was supplied by other producers. We did not include these quantities when calculating the weight–averaged home–market prices for comparison to EP or CEP.

We based home–market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price by the amount of billing adjustments, early payment discounts, rebates, interest revenue, and movement expenses (including inland freight, warehousing, and miscellaneous movement charges). For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home–market sales (*e.g.*, credit and warranty expenses) and adding U.S. direct selling expenses (*e.g.*, credit, advertising, and warranty expenses). For comparisons made to CEP sales, we deducted home–market direct selling expenses and revenue. In addition, we made adjustments to the home–market prices based upon our findings at verification. *See Canfor's Preliminary Calculation Memorandum*.

(D) *Tembec*

We based home–market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for billing adjustments, early payment discounts, rebates, interest revenue, freight from the mill to the reload center or VMI, reload center expenses and freight to the final customer. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses for home–market sales (*e.g.*, credit expenses) and adding U.S. direct selling expenses (*e.g.*, credit expenses). For comparisons made to CEP sales, we deducted home–market direct selling expenses. *See Tembec's Preliminary Calculation Memorandum*.

(E) *Tolko*

We based home–market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price by the amount of billing adjustments, and movement expenses including inland freight, warehousing, and miscellaneous movement charges. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home–market sales (*e.g.*, credit and warranty expenses) and adding U.S. direct selling expenses (*e.g.*, credit and warranty expenses). For comparisons made to CEP sales, we deducted home–market direct selling expenses. *See Tolko's Preliminary Calculation Memorandum*.

(F) *Weldwood*

We based home–market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for credit and debit adjustments, early payment discounts, net inland freight to the reload, and net inland freight to customers. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home–market sales and adding U.S. direct selling expenses (*e.g.*, credit expenses). For comparisons made to CEP sales, we deducted home–market direct selling expenses. In addition, we made adjustments to the home–market prices based upon our findings at verification. *See Weldwood's Preliminary Calculation Memorandum*.

(G) *West Fraser*

We based home–market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for early payment discounts, inland freight to the warehouse, warehousing expenses, special charges, inland freight to customers, freight rebates, and fuel surcharges. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home–market sales and adding U.S. direct selling expenses (*e.g.*, credit expenses). For comparisons made to CEP sales, we deducted home–market direct selling expenses. *See West Fraser's Preliminary Calculation Memorandum*.

(H) *Weyerhaeuser*

Weyerhaeuser commingled self–produced with purchased lumber in home–market sales in the same manner as it did in U.S. sales, as described in the previous section. We used Weyerhaeuser's weighting factor to

determine the percentage of lumber in the commingled sales that was supplied by other producers. We did not include these quantities when calculating the weight–averaged home–market prices for comparison to EP or CEP.

We based home–market prices on the packed prices to unaffiliated purchasers in Canada. We adjusted the starting price for discounts, rebates, billing adjustments, freight to the warehouse/reload center, warehousing expenses, freight to the final customer, and direct selling expenses including minor remanufacturing performed at Softwood Lumber Business (SWL) reloads and WBM locations. For comparisons made to EP sales, we made COS adjustments by deducting direct selling expenses incurred for home–market sales (*e.g.*, credit expenses) and adding U.S. direct selling expenses (*e.g.*, credit expenses). For comparisons made to CEP sales, we deducted home–market direct selling expenses.

D. *Calculation of Normal Value Based on Constructed Value*

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison–market sales, NV may be based on CV. Accordingly, for those models of softwood lumber products for which we could not determine the NV based on comparison–market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on the CV.

Section 773(e) of the Act provides that the CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A expenses, profit, and U.S. packing costs. For each respondent, we calculated the cost of materials and fabrication based on the methodology described in the *Cost of Production Analysis* section, above. We based SG&A expenses and profit for each respondent on the actual amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act. We used U.S. packing costs as described in the *Export Price* section, above.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home–market sales from, and adding U.S. direct selling expenses to, CV. For comparisons to CEP, we made COS adjustments by deducting from CV direct selling expenses incurred on home–market sales.

E. *Level of Trade/CEP Offset*

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting–price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting–price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from each respondent about the marketing stages involved in the reported U.S. and comparison–market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying LOTs for EP and comparison–market sales, we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar.

In this review, we determined the following, with respect to the LOT and CEP offset, for each respondent.

(A) *Abitibi*

Abitibi reported three channels of distribution. The first channel of distribution (channel 1) included direct sales from Canadian mills or reload centers to customers. The second channel of distribution (channel 2) consisted of direct sales from Canadian reload centers to customers. The third channel of distribution (channel 3) consisted of VMI/consignment sales made to large retailers, distributors, building materials manufacturers and other large lumber producers. We compared selling functions in each of these three channels of distribution and found that the sales process, freight services and inventory maintenance activities were similar. Accordingly, we preliminarily determine that home–market sales in these three channels of distribution constitute a single LOT.

In the U.S. market, Abitibi had both EP and CEP sales. Abitibi reported EP sales to end–users and distributors through two channels of distribution for its direct sales from Canadian mills (channel 1) or from Canadian reload centers to customers (channel 2). Abitibi reported the same selling functions for these two channels of distribution. Therefore, we consider that channels of distribution for EP sales during the review constitute a single LOT. Moreover, we preliminary determine that this EP LOT is identical to the home–market LOT.

With respect to CEP sales, Abitibi reported sales through two channels of distribution. The first (channel 3) included direct sales from U.S. reload centers to customers. The second (channel 4) consisted of VMI/consignment sales made to large retailers, distributors, building materials manufacturers and other large lumber producers. The selling functions related to freight arrangements and inventory maintenance for these two channels of distribution were not significantly different and, therefore, we preliminary determine there is only one CEP LOT.

Abitibi's sales to end–users and distributors in the home–market and in the U.S. market do not involve significantly different selling functions. Abitibi's Canadian–based services for CEP sales were similar to the single home–market LOT with respect to sales process and warehouse/inventory maintenance. Because we are finding the LOT for CEP sales to be similar to the home–market LOT, we are making no LOT adjustment or CEP offset. See section 773(a)(7)(A) of the Act.

(B) *Buchanan*

Buchanan reported multiple channels of distribution in the home market, with six categories of unaffiliated customers. Buchanan made sales to customers in Canada via the affiliated sales agent, Buchanan Lumber Sales, Inc. (BLS), direct from the mill, through a reload yard, or it made use of resellers in certain instances. We compared selling functions in each of these channels of distribution and found that the sales process and freight services were similar. Accordingly, we preliminarily determine that home–market sales in these channels of distribution constitute a single LOT.

In the U.S. market, Buchanan had both EP and CEP sales. Buchanan reported EP sales to end–users and distributors, via the affiliated sales agent BLS, through multiple channels of distribution, including mill–direct sales, sales that traveled through reload facilities, and sales made via resellers. These EP channels of distribution do not significantly differ from the channels of distribution in the home market. Because the sales process and freight services were similar, we preliminarily determine that EP sales in these five channels of distribution constitute a single LOT, and therefore that this EP LOT is identical to the home–market LOT.

With respect to CEP sales, Buchanan reported those sales that traveled through a U.S. reload yard. Consequently, we preliminary find a single CEP LOT. In determining whether separate LOTs exist between U.S. CEP sales and home–market sales, we examined the selling functions in the distribution chains and customer categories reported in both markets. In our analysis of LOTs for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

Buchanan's sales in the home and U.S. markets do not involve significantly different selling functions. Buchanan's Canadian–based services for its CEP sales were similar to the single home–market LOT with respect to sales process and freight arrangements. Because we are finding the LOT for CEP to be similar to the home–market LOT, we are making no LOT adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(C) *Canfor*

Canfor reported four channels of distribution in the home market in its September 28, 2004, section A response, with seven customer categories. However, in accordance with the Department's instructions, Canfor added a fifth channel of distribution to each market for sales of remanufactured lumber, thereby reporting five channels of distribution in the home market. The first channel of distribution (channel 1) includes sales where merchandise was shipped directly from one of Canfor's sawmills to a Canadian customer. The second channel of distribution (channel 2) consists of sales made through reload centers, where merchandise was shipped from the primary mill through one or more lumber–handling and inventory yards before delivery to the end customer. The third channel of distribution (channel 3) includes sales made pursuant to VMI programs. The fourth channel of distribution (channel 4) includes sales made by Lakeland without Sinclar's assistance to employees or local lumber yards in the Prince George, British Columbia, area.

We compared the selling functions in these five channels of distribution and found that they differed only slightly in that certain services were provided for VMI customers that were not provided to other channels including: inventory management, education on environmental issues, and in–store training. Also, office wholesalers (wholesalers that do not hold inventory), one of Canfor's customer categories, only purchased lumber through channel 1. In addition, home centers requested custom packing, wrapping, and bar coding. With respect to the sales process, freight and delivery services, custom–packing services, providing technical information, inspecting quality claims, and participating in trade shows, the sales to all customer categories in all channels were similar in all respects. Accordingly, we preliminarily determine that home–market sales in these five channels of distribution constitute a single LOT.

In the U.S. market, Canfor had both EP and CEP sales. Canfor reported the same first three channels of distribution for U.S. sales as it did for home market sales: The first channel of distribution (channel 1) includes sales where merchandise was shipped directly from one of Canfor's sawmills to a U.S. customer. The second channel of distribution (channel 2) consists of sales made through reload centers, where merchandise was shipped from the primary mill through one or more lumber–handling and inventory yards before delivery to the end customer. The third channel of distribution (channel 3) includes sales made pursuant to VMI programs. Canfor's fourth channel of distribution was for sales made through trading activity on the Chicago Mercantile Exchange. As noted above, in accordance with Department instructions, Canfor added a fifth channel of distribution to the each market for sales of remanufactured lumber. In addition, also in accordance with the Department's instructions, Canfor added a sixth U.S. channel of distribution for U.S. sales made out of Canadian reload locations. Canfor made EP sales, therefore, through channels 1, 4, 5, and 6. Moreover, these four EP channels of distribution do not significantly differ from the channels of distribution in the home market. Accordingly, we preliminarily determine that EP sales in these four channels of distribution constitute a single LOT and that this EP LOT is identical to the home–market LOT.

With respect to CEP sales, Canfor reported that these sales were made through channels 2 (U.S. reload facilities), 3 (VMI customers), and 5 (sales made through remanufacturers). The selling functions performed for these three channels of distribution were not significantly different in terms of freight arrangements and inventory management; therefore, we preliminary determine there is only one CEP LOT.

In determining whether separate LOTs exist between U.S. CEP sales and home–market sales, we examined the selling functions in the distribution chains and customer categories reported in both markets. In our analysis of LOTs for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

Canfor's sales in the home and U.S. markets do not involve significantly different selling functions. Canfor's Canadian–based services for its CEP sales were similar to the single home–market LOT with respect to sales process and inventory management. Because we are finding the LOT for CEP sales to be similar to the home–market LOT, we are making no LOT adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(D) *Tembec*

Tembec reported four channels of distribution applicable to both markets. The first channel of distribution (channel 1) included direct sales from the mill to customers which included sales to wholesalers who took title to but not physical possession of the lumber and resold it to end–users. The second channel of distribution (channel 2) consisted of sales which were shipped through a reload center en route to the customer. The third channel of distribution (channel 3) consisted of sales made through VMIs located in Canada or the United States. The fourth (channel 4), consisted of sales where the customer picked–up the merchandise.

We found that the first three home–market channels of distribution were similar with respect to both the sales process and freight services. While channel 4 sales did not receive freight arrangement, it was the same as the other channels in terms of sales process. We do not consider arrangement of freight alone to rise to the level of a separate LOT. Accordingly, we preliminarily determine that home–market sales in these four channels of distribution constitute a single LOT.

In the U.S. market, Tembec had both EP and CEP sales. Tembec reported EP sales to end–users and distributors through the channels 1, 2, and 4. These three channels of distribution, as they apply to EP sales, do not differ from the three channels of distribution in the home market. Because the sales process, freight services (for channels 1 and 2) and inventory maintenance were similar, we preliminarily determine that EP sales in these three channels of distribution constitute a single LOT and that this EP LOT is identical to the home–market LOT.

With respect to CEP sales, Tembec reported that these sales were made through two channels of distribution (2 and 3), and consisted of U.S. sales that either pass through a U.S. reload center en route to the customer, or go to a VMI. The selling functions related to freight and delivery for these two channels of distribution were not significantly different and, therefore, we preliminary determine there is only one CEP LOT.

In determining whether separate LOTs exist between U.S. CEP sales and home–market sales, we examined the selling functions in the distribution chains and customer categories reported in both markets. In our analysis of LOTs for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

Tembec's sales to end–users and distributors in the home market and in the U.S. market do not involve significantly different selling functions. Tembec's Canadian–based services for CEP sales were similar to the single home–market LOT with respect to sales process and freight arrangements. Because we are finding that the LOT for CEP sales to be similar to the home–market LOT, we are making no LOT adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(E) *Tolko*

Tolko reported two channels of distribution in the home market. The first channel of distribution (channel 1) included direct sales made by Tolko's North American Lumber Sales and Tolko Brokerage divisions from Tolko's Canadian mill production and may have been shipped either directly or through a reload center to customers. The second channel of distribution (channel 2) consisted of sales made principally by Tolko Brokerage and TDS divisions from inventory locations that contained softwood lumber produced by Tolko and various suppliers. We compared the sales process in each channel of distribution and found that the selling functions were similar for each channel. Accordingly, we preliminarily determine that home–market sales in these channels of distribution constitute a single LOT.

In the U.S. market, Tolko had both EP and CEP sales. Tolko reported EP sales to U.S. customers through one channel of distribution. Similar to the home market, this channel included direct sales made by Tolko's North American Lumber sales and Tolko Brokerage divisions from Tolko's Canadian mill production and were shipped either directly or through a reload center to customers. Because the sales processes in this channel of distribution were similar, we preliminarily determine that there is a single EP LOT and that this EP LOT is identical to the home–market LOT.

With respect to CEP sales, Tolko reported these sales through two channels of distribution. The first (channel 2), included sales by Tolko's North American Lumber Sales and Tolko Brokerage divisions from U.S. inventory reload centers to customers. The second (channel 3), consisted of sales made to U.S. companies pursuant to VMI contracts. The selling functions, including freight arrangements and order processing, for these two channels of distribution were not significantly different and, therefore, we preliminary determine there is only one CEP LOT.

In determining whether separate LOTs exist between U.S. CEP sales and home–market sales, we examined the selling functions in the distribution chains and customer categories reported in both markets. In our analysis of LOTs for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

Tolko's Canadian–based services for its CEP sales were similar to the single home–market LOT with respect to sales process and inventory management. Because we are finding the LOT for CEP sales to be similar to the home–market LOT, we are making no LOT adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(F) *Weldwood*

Weldwood reported three channels of distribution and four customer categories in the home market. The first channel of distribution, channel 1, consists of sales from a mill directly to customers. The second channel of distribution, channel 2, comprises sales from a Canadian reload to customers. The third channel of distribution, channel 3, consists of sales through a VMI program. Although we found differences in the level of inventory maintenance and inventory management performed for the different channels, the three channels are similar with respect to the overall sales process, packing, freight services, invoicing, warranty claims, the granting of credit or debit adjustments, and the granting of early payment discounts. Accordingly, we preliminary determine that home market sales in these three channels of distribution constitute a single LOT.

In the U.S. market, Weldwood made both EP and CEP sales. Weldwood reported EP sales to three customer categories through two channels of distribution, mill direct sales and sales through Canadian reloads. Although we found differences in the level of inventory maintenance performed for the different channels, the channels are similar with respect to the overall sales process, packing, freight services, invoicing, warranty claims, the granting of credit or debit adjustments, and the granting of early payment discounts. Therefore, we preliminarily determine that EP sales through the two channels of distribution constitute a single LOT. Further, we do not find that the selling functions for Weldwood's single home market LOT differ significantly from the selling functions for the LOT for EP sales. Therefore, we preliminarily determine that home market sales and EP sales are at an identical LOT.

With respect to CEP sales, Weldwood's third channel of distribution, channel 3, comprises sales to customers through WSI, an affiliate of the International Paper Company (IP), Weldwood's parent company during the POR. WSI's only purpose was to hold inventory at U.S. reload locations. It had no facilities or employees in the United States. Weldwood made these sales from unaffiliated reload centers in the United States. All selling activities were performed by Weldwood sales personnel located in Canada.

In determining whether separate LOTs exist between U.S. CEP sales and home–market sales, we examined the selling functions in the distribution chains and customer categories reported in both markets. In our analysis of LOTs for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

Weldwood reported that all selling expenses for CEP sales are incurred in Canada. Further, Weldwood claimed that its Canadian–based services for CEP sales are the same as the services it performs for home market sales through a Canadian reload. *See* Weldwood's January 14, 2005, section A questionnaire response at A–28 through A–31;[15] *see* also Weldwood's March 10, 2005, sections A, B, and C supplemental questionnaire response at Appendix SA–5. Because all selling functions performed for CEP sales are similar to the selling functions of the home market LOT, we are making no LOT adjustment or CEP offset. *See* section 773(a)(7)(A) of the Act.

(G) *West Fraser*

West Fraser reported four channels of distribution in the home market. The first channel of distribution (channel 1) included sales made directly to end–users and distributors from a mill or origin reload. The second channel of distribution (channel 2) consisted of sales made to end–users and distributors through VMI programs. The third channel of distribution (channel 3) consisted of sales made to end–users and distributors through unaffiliated inventory locations. The fourth channel of distribution (channel 4) consisted of sales made to end–users and distributors from the Seehta mill through an origin reload. We compared these four channels of distribution and found that, while selling functions differed slightly with respect to the arrangement of freight and delivery for origin reload centers in channel 2 and the office handling sales in channel 3, all four channels were similar with respect to sales process, packing, freight services, inventory services, warranty services, and early payment discount services. Accordingly, we found that home–market sales in these three channels of distribution constitute a single LOT.

In the U.S. market, West Fraser had both EP and CEP sales. For EP sales, West Fraser reported one channel of distribution. This channel of distribution only included sales made directly to end–users and distributors from a mill or origin reload. The channel of distribution for EP sales does not differ from the first channel of distribution within in the home market, except with respect to paper processing services in connection with brokerage and handling. Therefore, as both the above home and U.S. market channel of distribution are comparable in terms of selling functions, delivery and customer categories, the EP channel of distribution LOT is similar to the single home market LOT.

With respect to CEP sales, West Fraser had two channels of distribution (channel 2 and 3). Both channels of distribution included sales to end–users and distributors through West Fraser's subsidiary, WFFP. The company WFFP is incorporated in the United States and was specifically created to act as the importer of record and hold title to lumber sold in the United States. It has no facilities or employees in the United States. The second channel of distribution (channel 2) does not differ from the second channel of distribution within the home market, except with respect to paper processing services in connection with brokerage and handling. For the third channel of distribution (channel 3), sales were made from unaffiliated destination reload centers in the United States by sales people located in Canada.

In determining whether separate LOTs exist between U.S. CEP sales and home–market sales, we examined the selling functions in the distribution chains and customer categories reported in both markets. In our analysis of LOTs for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

West Fraser's Canadian–based services for its CEP sales include order–taking, invoicing and inventory management. West Fraser's Canadian sales agents occasionally arrange for reload center excess storage and freight from U.S. destination reload centers to unaffiliated end users. Any services occurring in the United States are provided by the unaffiliated reload centers, which are paid a fee by West Fraser. These expenses have been deducted from the CEP starting price as movement expenses.

West Fraser's sales to end–users and distributors in the home market and its CEP sales in the U.S. market do not involve significantly different selling functions. Specifically, the CEP LOT was similar to the single home–market LOT with respect to sales process and inventory maintenance. Therefore, we are making no LOT adjustment or CEP offset. See section 773(a)(7)(A) of the Act.

(H) *Weyerhaeuser*

Weyerhaeuser reported seven channels of distribution in the home market, with seven customer categories.[16] The channels of distribution are: 1) mill–direct sales; 2) VMI sales; 3) mill–direct sales made through WBM; 4) sales made out of inventory by WBM; 5) SWL and B.C. Coastal Group's (BCC) sales through Canadian reloads; 6) BCC's sales through processing facilities; and 7) WBM cross dock sales.[17] To determine whether separate LOTs exist in the home market, we examined the selling functions, the chain of distribution, and the customer categories reported in the home market.

For each of its channels of distribution, Weyerhaeuser's selling functions included invoicing, freight arrangement, product training, marketing and promotional activities, advanced shipping notices, and order status information. Weyerhaeuser's sales made out of inventory by WBM (channel 4) appear to involve substantially more selling functions, and to be made at a different point in the chain of distribution than mill–direct sales. WBM functions as a distributor for BCC and SWL, and operates as a reseller for unaffiliated parties. WBM operates a number of customer service centers (CSC) throughout Canada where it provides local sales offices and just–in-time inventory (JIT) service for its customers. Generally, BCC and SWL make the sale to WBM, after which the merchandise is sold to the final customer by WBM's local sales force. Freight must be arranged to the WBM inventory location and then to the final customer. CSCs will also engage in minor further manufacturing to fill a customer order, if the desired product is not in inventory. Additionally, WBM sells from inventory through its trading group locations (TGs).

WBM also sells on a mill–direct basis (channel 3) but does not provide the JIT service for such transactions. Therefore, we do not consider mill–direct sales made through WBM to be at a separate LOT from mill–direct sales made by SWL and BCC. Additionally, we compared sales invoiced from Canadian reloads (channel 5) and sales made from BCC's processing mills (channel 6) to the mill direct sales and found that the selling activities did not differ to the degree necessary to warrant separate LOTs. Our analysis of cross dock sales (channel 7) indicates that they are most similar to WBM's warehouse sales. The specialized nature of these sales

[15] The January 14, 2005, section A response refers to the rebracketed version of Weldwood's original section A response that was submitted on September 28, 2004.

[16] Weyerhaeuser also reported a customer category for employee sales in the home market. However, we removed these sales from the margin calculation and LOT analysis.

[17] Even though there are only seven channels of distribution in the home market, Weyerhaeuser designated cross dock sales as channel eight in the questionnaire response and accompanying database.

requires additional services that direct sales do not. Like WBM warehouse sales, cross dock merchandise is usually part of a JIT order and is shipped from a mill to an inventory location. Even though the merchandise may not be commingled or unpacked, it often enters the warehouse and requires additional services for two freight segments and loading and unloading. Therefore, we consider cross dock sales to be at the same LOT as WBM warehouse sales.

Sales made through VMI arrangements (channel 2) also appear to involve significantly more selling activities than mill–direct sales. SWL has a designated sales team responsible for VMI sales which works with the customers to develop a sales volume plan, manages the flow of products and replenishing process, and aligns the sales volume plan with Weyerhaeuser's production plans. It also offers extra services such as bar coding, cut–in-two, half packing, and precision end trimming.

We analyzed Weyerhaeuser's customer categories in relation to the channels of distribution and application of selling functions. Each channel services multiple customer categories with channels 1, 2, 3, 4, 5, and 7 serving at least six customer categories. We found there were not significant differences in the application of selling functions by customer and instead the activities depended on the channel of distribution. Therefore, customer category is not a useful indicator of LOT for Weyerhaeuser's home market sales.

Because VMI, WBM inventory, and WBM cross dock sales involve significantly more selling functions than the mill–direct sales, we consider them to be at a more advanced LOT for purposes of the preliminary results. While the selling activities for VMI, WBM inventory, and cross dock sales are not identical, the principal selling activity for all three is JIT inventory maintenance. Thus, we consider them to be at the same LOT. Accordingly, we find that there are two LOTs in the home market, mill–direct (HM1) (encompassing channels 1, 3, 5, and 6) and VMI, WBM sales out of inventory, and cross dock sales (HM2) (encompassing channels 2, 4, and 7).

Weyerhaeuser reported eight channels of distribution in the U.S. market, with eight customer categories. The channels of distribution are: 1) mill–direct sales; 2) VMI sales; 3) WBM direct sales; 4) WBM U.S. inventory sales; 5) SWL sales through U.S. reloads; 6) SWL and BCC sales through Canadian reloads; 7) sales from BCC's processing facilities; and 8) WBM cross dock sales. In determining whether separate LOTs existed between U.S. and home market sales, we examined the selling functions, the chain of distribution, and customer categories reported in the U.S. market.

With regard to the mill–direct sales to the United States (channels 1 and 3), Weyerhaeuser has the same selling activities as it does for mill–direct sales in Canada. Likewise, we consider sales invoiced from Canadian reloads (channel 6) and sales made from BCC processing mills (channel 7) to be at the same LOT as the direct sales. Therefore, where possible, we matched the U.S. mill–direct sales (U.S.1) (encompassing channels 1, 3, 6, and 7) to the Canadian mill–direct sales (HM1). The other channels consist of CEP sales as addressed below.

Weyerhaeuser's Canadian selling functions for VMI sales to the United States (channel 2) include the similar selling functions performed for home market VMI sales, as described above, except that the sales are managed by SWL Western in the United States. As a result, the selling functions, with the exception of arranging freight to the VMI locations, are performed in the United States. Therefore, after the deduction of U.S. expenses and profit, we find that the U.S. VMI sales (U.S.1) are made at the same LOT as home market direct sales (HM1), and we have matched them accordingly in the margin program.

SWL's sales through U.S. reloads (channel 5) also appear to have selling functions performed in Canada and the United States. While Weyerhaeuser states that it maintains JIT inventory for its U.S. customers at these reloads, many of the selling functions are managed by SWL Western in the United States. After the deduction of U.S. expenses and profit, these sales do not appear to be at a different point in the chain of distribution than mill–direct sales in Canada. Therefore, for purposes of the preliminary results, we consider SWL's sales through U.S. reloads to be at the same LOT as its mill–direct sales (U.S.1 and HM1), and we have matched them accordingly.

With regard to WBM's U.S. inventory sales (channel 4) significant selling activities occur in the United States, such as maintaining local sales offices and JIT, and arranging freight to the final customer. The selling functions performed in Canada are the same selling functions performed for mill–direct sales. Therefore, after the deduction of U.S. expenses and profit, we find that WBM's U.S. inventory sales are at the same LOT as mill–direct sales (U.S.1 and HM1), and we have matched them accordingly. We found that cross dock sales (channel 8) were most similar to WBM warehouse sales and, as such, designated them at the same LOT (*i.e.*, U.S.1.)

As was the case with Canadian sales, each U.S. channel of distribution services multiple customer categories. Channels 1–5 have buyers from at least five customer categories. The other three channels have two to four customer categories each but also realized significantly fewer sales during the POR. We found there were not significant differences in the application of selling functions by customer and instead the activities depended on the channel of distribution. Therefore, customer category is not a useful indicator of LOT for Weyerhaeuser's U.S. sales.

Because we found a pattern of consistent price differences between LOTs, where we matched across LOTs, we made an LOT adjustment under section 773(a)(7)(A) of the Act.

**Currency Conversion**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank.

**Preliminary Results of Review**

As a result of this review, we preliminarily determine that the following weighted–average margins exist for the period May 1, 2003, through April 30, 2004:

| Producer | Weighted–Average Margin (Percentage) |
|---|---|
| Abitibi (and its affiliates Abitibi–Consolidated Company of Canada, Produits Forestiers Petit Paris Inc., Societe en Commandite Scierie Opitciwan, Produits Forestiers La Tuque Inc.) ..... | 2.53 |

| Producer | Weighted–Average Margin (Percentage) |
|---|---|
| Buchanan (and its affiliates Atikokan Forest Products Ltd., Long Lake Forest Products Inc., Nakina Forest Products Limited,[18] Buchanan Distribution Inc., Buchanan Forest Products Ltd., Great West Timber Ltd., Dubreuil Forest Products Ltd., Northern Sawmills Inc., McKenzie Forest Products Inc., Buchanan Northern Hardwoods Inc., Northern Wood, and Solid Wood Products Inc.) | 2.49 |
| Canfor[19]* (and its affiliates Canadian Forest Products, Ltd., Daaquam Lumber Inc., Lakeland Mills Ltd., The Pas Lumber Company Ltd., and Skeena Cellulose) | 1.42 |
| Tembec (and its affiliates Marks Lumber Ltd., 791615 Ontario Limited (Excel Forest Products), Produits Forestiers Temrex Limited Partnership[20]) | 3.16 |
| Tolko (and its affiliate Gilbert Smith Forest Products Ltd.) | 3.22 |
| Weldwood | 5.62 |
| West Fraser (and its affiliates West Fraser Forest Products Inc., and Seehta Forest Products Ltd. | 0.51 |
| Weyerhaeuser (and its affiliate Weyerhaeuser Saskatchewan Ltd.) | 4.74 |

[18] We note that Nakina Forest Products Limited is a division of Long Lake Forest Products, Inc, an affiliate of Buchanan Lumber Sales.

[19] We note that this margin reflects a weighted-average of Canfor's and Slocan's respective margins. See *Collapsing Determinations* section above.

[20] We note that Produits Forestiers Temrex Limited Partnership is the same entity as the company Produits Forestiers Temrex Usine St. Alphonse, Inc. included in the July 1, 2003, initiation notice. *See Notice of Initiation of Antidumping Duty Administrative Review,* 68 FR 39059 (July 1, 2003).

**REVIEW–SPECIFIC AVERAGE RATE APPLICABLE TO THE FOLLOWING COMPANIES:**

| Producer | Weighted-Average Margin (Percentage) |
|---|---|
| 2 by 4 Lumber Sales Ltd. | |
| 605666 BC Ltd. | |
| 9027–7971 Quebec Inc. (Scierie Marcel Dumont). | |
| 9098–5573 Quebec Inc. (K.C.B. International). | |
| AFA Forest Products Inc. | |
| A. L. Stuckless & Sons Limited. | |
| AJ Forest Products Ltd. | |
| Alexandre Cote Ltee. | |
| Allmac Lumber Sales Ltd. | |
| Allmar International. | |
| Alpa Lumber Mills Inc. | |
| American Bayridge Corporation. | |
| Apex Forest Products, Inc. | |
| Apollo Forest Products Limited. | |
| Aquila Cedar Products Ltd. | |
| Arbutus Manufacturing Limited. | |
| Ardew Wood Products, Ltd. | |
| Armand Duhamel & Fils Inc. | |
| Ashley Colter (1961) Limited. | |
| Aspen Planers Ltd. | |
| Associated Cedar Products. | |
| Atco Lumber. | |
| Atlantic Pressure Treating Ltd. | |
| Atlantic Warehousing Limited. | |
| Atlas Lumber (Alberta) Ltd. | |
| AWL Forest Products. | |
| B & L Forest Products Ltd. | |
| Bakerview Forest Products Inc. | |
| Bardeaux et Cedres St–Honore Inc. (Bardeaux et Cedres). | |
| Barrett Lumber Company. | |
| Barrette–Chapais Ltee. | |
| Barry Maedel Woods & Timber. | |
| Bathurst Lumber (Division of UPM–Kymmene Miramichi Inc.). | |
| Beaubois Coaticook Inc. | |
| Blackville Lumber (Division of UPM–Kymmene Miramichi Inc.). | |
| Blanchette et Blanchette Inc. | |
| Bloomfield Lumber Limited. | |
| Bois Cobodex (1995) Inc. | |
| Bois Daaquam Inc. | |
| Bois De L'Est F.B. Inc. | |
| Bois Granval G.D.S. Inc. | |
| Bois Kheops Inc. | |
| Bois Marsoui G.D.S. Inc. | |
| Bois Neos Inc. | |
| Bois Nor Que Wood Inc. | |
| Boisaco Inc. | |
| Boscus Canada Inc. | |
| Boucher Forest Products Ltd. | |
| Bowater Canadian Forest Products Inc. | |
| Bowater Incorporated. | |
| Bridgeside Forest Industries, Ltd. | |
| Bridgeside Higa Forest Industries Ltd. | |
| Brittainia Lumber Company Limited. | |
| Brouwer Excavating Ltd. | |
| Brunswick Valley Lumber. | |
| Buchanan Lumber. | |
| Busque & Laflamme Inc. | |
| BW Creative Wood. | |
| Byrnexco Inc. | |
| C. E. Harrison & Son Ltd. | |
| Caledon Log Homes (FEWO). | |
| Caledonia Forest Products Ltd. | |
| Cambie Cedar Products Ltd. | |
| Canadian Lumber Company Ltd. | |
| Cando Contracting Ltd. | |
| Canex International Lumber Sales Ltd. | |
| CanWel Building Materials Ltd. | |
| CanWel Distribution Ltd. | |
| Canyon Lumber Company Ltd. | |
| Cape Cod Wood Siding Inc. | |
| Cardinal Lumber Manufacturing & Sales Inc. | |

| Producer | Weighted-Average Margin (Percentage) |
|---|---|
| Careau Bois Inc. | |
| Carrier & Begin Inc. | |
| Carrier Forest Products Ltd. | |
| Carrier Lumber Ltd. | |
| Carson Lake Lumber. | |
| Cattermole Timber. | |
| CDS Lumber Products. | |
| Cedarland Forest Products Ltd. | |
| Cedrico Lumber Inc. (Bois d'Oeuvre Cedrico Inc.). | |
| Central Cedar, Ltd. | |
| Centurion Lumber Manufacturing (1983) Ltd. | |
| Chaleur Sawmills. | |
| Chasyn Wood Technologies Inc. | |
| Cheminis Lumber Inc. | |
| Cheslatta Forest Products Ltd. | |
| Chisholm's (Roslin) LTd. | |
| Choicewood Products Inc. | |
| City Lumber Sales and Services Limited. | |
| Clair Industrial Dev. Corp. Ltd. | |
| Clermond Hamel Ltee. | |
| Coast Clear Wood Ltd. | |
| Colonial Fence Mfg. Ltd. | |
| Columbia Mills Ltd. | |
| Comeau Lumber Limited. | |
| Commonwealth Plywood Company Ltd. | |
| Cooper Creek Cedar Ltd. | |
| Cottles Island Lumber Co. Ltd. | |
| Cowichan Lumber Ltd. | |
| Crystal Forest Industries Ltd. | |
| Curley Cedar Post & Rail. | |
| Cushman Lumber Company Inc. | |
| D. S. McFall Holdings Ltd. | |
| Dakeryn Industries Ltd. | |
| Deep Cove Lumber. | |
| Delco Forest Products. | |
| Delta Cedar Products. | |
| Devlin Timber Company (1992) Limited. | |
| Devon Lumber Co. Ltd. | |
| Doman Forest Products Limited. | |
| Doman Industries Limited. | |
| Doman Western Lumber Ltd. | |
| Domexport Inc. | |
| Domtar Inc. | |
| Downie Timber Ltd. | |
| Dunkley Lumber Ltd. | |
| E. Tremblay Et. Fils Ltee. | |
| Eacan Timber Canada Ltd. | |
| Eacan Timber Limited. | |
| Eacan Timber USA Ltd. | |
| East Fraser Fiber Co. Ltd. | |
| Eastwood Forest Products Inc. | |
| Ed Bobocel Lumber 1993 Ltd. | |
| Edwin Blaikie Lumber Ltd. | |
| Elmira Wood Products Limited. | |
| Elmsdale Lumber Company Ltd. | |
| ER Probyn Export Ltd. | |
| Errington Cedar Products. | |
| Evergreen Empire Mills Incorporated. | |
| EW Marketing. | |
| F.L. Bodogh Lumber Co. Ltd. | |
| Falcon Lumber Limited. | |
| Faulkner Wood Specialties Limited. | |
| Federated Co–operatives Limited. | |
| Fenclo Ltee. | |
| Finmac Lumber Limited. | |
| Fontaine Inc., J. A. and its affiliates Fontaine et fils Inc., Bois Fontaine Inc., Gestion Natanis Inc., Les Placements Jean–Paul Fontaine Ltee. Forex Log & Lumber. | |
| Forstex Industries Inc. | |
| Forwest Wood Specialties Inc. | |
| Fraser Pacific Forest Products Inc. | |
| Fraser Pacific Lumber Company. | |
| Fraser Papers Inc. | |
| Fraser Pulp Chips Ltd. | |
| Frasierview Cedar Products Ltd. | |
| Frontier Mills Inc. | |
| G.D.S. Valoribois Inc. | |
| Galloway Lumber Co. Ltd. | |
| Gerard Crete & Fils Inc. | |
| Gestofor Inc. | |
| Gogama Forest Products. | |
| Goldwood Industries Ltd. | |
| Gorman Bros. Lumber Ltd. | |
| Great Lakes MSR Lumber Ltd. | |
| Greenwood Forest Products. | |
| Groupe Lebel. | |
| H. A. Fawcett & Son Limited. | |
| H. J. Crabbe & Sons Ltd. | |
| Haida Forest Products Ltd. | |
| Hainesville Sawmill Ltd. | |
| Harrison's Home Building Centers. | |
| Harry Freeman & Son Ltd. | |
| Hefler Forest Products Ltd. | |
| Hi–Knoll Cedar Inc. | |
| Hilmoe Forest Products Ltd. | |
| Hoeg Brothers Lumber Ltd. | |
| Holdright Lumber Products Ltd. | |
| Hudson Mitchell & Sons Lumber Inc. | |
| Hughes Lumber Specialties Inc. | |
| Hyak Specialty Wood Products Ltd. | |
| Industrial Wood Specialties. | |
| Industries G.D.S. Inc. | |
| Industries Perron Inc. | |
| Interior Joinery Ltd. | |
| International Forest Products Ltd. | |
| Isidore Roy Limited. | |
| Ivis Wood Products. | |
| Ivor Forest Products Ltd. | |
| J & G Logworks. | |
| J. A. Turner & Sons (1987) Limited. | |
| J.D. Irving, Ltd. | |
| J.S. Jones Timber Ltd. | |
| Jackpine Engineered Wood Products. | |
| Jackpine Forest Products Ltd. | |
| Jackpine Group of Companies. | |
| Jamestown Lumber Company Limited. | |
| Jasco Forest Products Ltd. | |

| Producer | Weighted-Average Margin (Percentage) |
|---|---|
| Jeffery Hanson. | |
| Julimar Lumber Co. Limited. | |
| Kenora Forest Products Ltd. | |
| Kent Trusses Ltd. | |
| Kenwood Lumber Ltd. | |
| Kispiox Forest Products. | |
| Kitwanga Lumber Co. Ltd. | |
| Kruger, Inc. | |
| La Crete Sawmills Ltd. | |
| Lakeburn Lumber Limited. | |
| Lamco Forest Products. | |
| Landmark Structural Lumber. | |
| Landmark Truss & Lumber Inc. | |
| Langely Timber Company Ltd. | |
| Langevin Forest Products, Inc. | |
| Lattes Waska Laths Inc. | |
| Lawsons Lumber Company Ltd. | |
| Lazy S Lumber. | |
| Lecours Lumber Co. Limited. | |
| Ledwidge Lumber Co., Ltd. | |
| Leggett & Platt (B.C.) Ltd. | |
| Leggett & Platt Inc. | |
| Leggett & Platt Ltd. | |
| Les Bois d'Oeuvre Beaudoin & Gauthier Inc. | |
| Les Bois S &P Grondin Inc. | |
| Les Chantiers Chibougamau Ltee. | |
| Les Produits Forestiers D. G. Ltee.. | |
| Les Produits Forestiers Dube Inc. | |
| Les Produits Forestiers F.B.M. Inc. | |
| Les Produits Forestiers Maxibois Inc. | |
| Les Produits Forestiers Miradas Inc(Miradas Forest Products Inc.). | |
| Les Scieries Du Lac St–Jean Inc. | |
| Les Scieries Jocelyn Lavoie Inc. | |
| Leslie Forest Products Ltd. | |
| Lignum Ltd. | |
| Lindsay Lumber Ltd. | |
| Liskeard Lumber Limited. | |
| Littles Lumber Ltd. | |
| Lonestar Lumber Inc. | |
| Louisiana Pacific Corporation. | |
| Lousiana Malakwa. | |
| LP Canada Ltd. | |
| LP Engineered Wood Products Ltd. | |
| Lulumco Inc. | |
| Lyle Forest Products Ltd. | |
| M & G Higgins Lumber Ltd. | |
| M. L. Wilkins & Son Ltd. | |
| MacTara Limited. | |
| Maibec Industries Inc. (Industries Maibec Inc.). | |
| Manitou Forest Products Ltd. | |
| Maple Creek Saw Mills Inc. | |
| Marcel Lauzon Inc. | |
| Marine Way. | |
| Mary's River Lumber. | |
| Marwood Inc. | |
| Marwood Ltd. | |
| Materiaux Blanchet Inc. | |
| Max Meilleur et Fils Ltee.. | |
| McCorquindale Holdings Ltd. | |
| McNutt Lumber Company Ltd. | |
| Mercury Manufacturing Inc. | |
| Meunier Lumber Company Ltd. | |
| MF Bernard Inc. | |
| Mid America Lumber. | |
| Mid Valley Lumber Specialties Ltd. | |
| Midway Lumber Mills Ltd. | |
| Mill & Timber Products Ltd. | |
| Millar Western Forest Products Ltd. | |
| Millco Wood Products Ltd. | |
| Miramichi Lumber Products. | |
| Mobilier Rustique (Beauce) Inc. | |
| Monterra Lumber Mills Limited. | |
| Mountain View Specialty Reload Inc. | |
| Murray A Reeves Forestry Limited. | |
| Murray Bros. Lumber Company Limited. | |
| N. F. Douglas Lumber Limited. | |
| Nechako Lumber Co., Ltd. | |
| Newcastle Lumber Co. Inc. | |
| New West Lumber. | |
| Nexfor Inc. | |
| Nexfor Norbord. | |
| Nicholson and Cates Limited. | |
| Nickel Lake Lumber. | |
| Norbord Industries Inc. | |
| Norbord Juniper and Norbord's sawmills at La Sarre Senneterre Quebec. | |
| NorSask Forest Products Inc. | |
| North American Forest Products. | |
| North American Forest Products Ltd (Division Belanger). | |
| North Atlantic Lumber Inc. | |
| North Enderby Distribution Ltd (N.E. Distribution). | |
| North Enderby Timber Ltd. | |
| North Mitchell Lumber Co. Ltd., Saran Cedar. | |
| North Shore Timber Ltd. | |
| North Star Wholesale Lumber Ltd. | |
| Northchip Ltd. | |
| Northland Forest Products Ltd. | |
| Olav Haavaldsrud Timber Company Limited. | |
| Olympic Industries Inc. | |
| Optibois Inc. | |
| P.A. Lumber & Planning Limited. | |
| Pacific Lumber Company. | |
| Pacific Lumber Remanufacturing Inc. | |
| Pacific Northern Rail Contractors Corp. | |
| Pacific Specialty Wood Products Ltd. (formerly Clearwood Industries Ltd.). | |
| Pacific Wood Specialties. | |
| Pallan Timber Products Ltd. | |
| Palliser Lumber Sales Ltd. | |
| Pan West Wood Products Ltd. | |
| Paragon Ventures Ltd. (Vernon Kiln and Millwork, Ltd. and 582912 BC, Ltd.). | |

| Producer | Weighted-Average Margin (Percentage) |
|---|---|
| Parallel Wood Products Ltd. | |
| Pastway Planing Limited. | |
| Pat Power Forest Products Corporation. | |
| Patrick Lumber Company. | |
| Paul Fontaine Ltee.. | |
| Paul Vallee Inc. | |
| Paul Vallee. | |
| Peak Forest Products Ltd. | |
| Pharlap Forest Products Inc. | |
| Pheonix Forest Products Inc. | |
| Pleasant Valley Remanufacturing Ltd. | |
| Pope & Talbot, Inc. | |
| Porcupine Wood Products Ltd. | |
| Portbec Forest Products Ltd. (Les Produits Forestiers Portbec Ltee.). | |
| Portelance Lumber Capreol Ltd. | |
| Power Wood Corp. | |
| Precibois Inc. | |
| Preparabois (2003) Inc. | |
| Prime Lumber Limited. | |
| Pro Lumber Inc. | |
| Produits Forestiers P. Proulx Inc. | |
| Promobois G.D.S. Inc. | |
| Quadra Wood Products Ltd. | |
| R. Fryer Forest Products Limited. | |
| Raintree Forest Products Inc. | |
| Raintree Lumber Specialties Ltd. | |
| Ramco Lumber Ltd. | |
| Redtree Cedar Products Ltd. | |
| Redwood Value Added Products Inc. | |
| Rembos Inc. | |
| Rene Bernard Inc. | |
| Ridgewood Forest Products Ltd. | |
| Rielly Industrial Lumber Inc. | |
| Riverside Forest Products Limited. | |
| Rocam Lumber Inc. (Bois Rocam Inc.). | |
| Rojac Cedar Products Inc. | |
| Rojac Enterprises Inc. | |
| Roland Boulanger & Cie Ltee. | |
| Russell White Lumber Limited. | |
| Sauder Moldings, Inc. (Ferndale). | |
| Sauder Industries Limited. | |
| Schols Cedar Products. | |
| Scierie A&M St–Pierre Inc. | |
| Scierie Adrien Arseneault Ltee. | |
| Scierie Alexandre Lemay & Fils Inc. | |
| Scierie Chaleur. | |
| Scierie Dion et Fils Inc. | |
| Scierie Gallichan Inc. | |
| Scierie Gauthier Ltee.. | |
| Scierie La Patrie, Inc. | |
| Scierie Landrienne Inc. | |
| Scierie Lapointe & Roy Ltee.. | |
| Scierie Leduc, Division of Stadacona Inc. | |
| Scierie Nord–Sud Inc. (North–South Sawmill Inc.). | |
| Scierie P.S.E. Inc. | |
| Scierie St. Elzear Inc. | |
| Scierie Tech Inc. | |
| Scieries du Lac St. Jean Inc. | |
| Selkirk Specialty Wood Ltd. | |
| Sexton Lumber. | |
| Seycove Forest Products Limited. | |
| Seymour Creek Cedar Products Ltd. | |
| Shawood Lumber Inc. | |
| Sigurdson Bros. Logging Company Ltd. | |
| Silvermere Forest Products Inc. | |
| Sinclar Enterprises Ltd.*. | |
| South Beach Trading Inc. | |
| South River Planing Mills Inc. | |
| South–East Forest Products Ltd. | |
| Spray Lake Sawmills (1980) Ltd. | |
| Spruce Forest Products Ltd. | |
| Spruce Products Ltd. | |
| St. Anthony Lathing Ltd. | |
| Stag Timber. | |
| Standard Building Products Ltd. | |
| Still Creek Forest Products Ltd. | |
| Stuart Lake Lumber Co. Ltd. | |
| Stuart Lake Marketing Inc. | |
| Sunbury Cedar Sales Ltd. | |
| Suncoast Lumber & Milling. | |
| Sundance Forest Industries. | |
| SWP Industries Inc. | |
| Sylvanex Lumber Products Inc. | |
| Taiga Forest Products. | |
| Tall Tree Lumber Company. | |
| Tarpin Lumber Incorporated. | |
| Taylor Lumber Company Ltd. | |
| Teal Cedar Products Ltd. | |
| Teal–Jones Group. | |
| Teeda Corp. | |
| Terminal Forest Products Ltd. | |
| T.F. Specialty Sawmill. | |
| TFL Forest Ltd. | |
| Timber Ridge Forest Products. | |
| TimberWorld Forest Products Inc. | |
| T'loh Forest Products Limited. | |
| Top Quality Lumber Ltd. | |
| T. P. Downey & Sons Ltd. | |
| Treeline Wood Products Ltd. | |
| Triad Forest Products. | |
| Twin Rivers Cedar Products Ltd. | |
| Tyee Timber Products Ltd. | |
| Uneeda Wood Products. | |
| Uniforet Inc. | |
| Uniforet Scierie–Pate. | |
| Vancouver Specialty Cedar Products. | |
| Vanderhoof Specialty Wood Products. | |
| Vandermeer Forest Products (Canada) Ltd. | |
| Vanderwell Contractors (1971) Ltd. | |
| Vanport Canada, Co.. | |
| Vernon Kiln and Millwork, Ltd. | |
| Visscher Lumber Inc. | |
| W. C. Edwards Lumber. | |
| W. I. Woodtone Industries Inc. | |
| Welco Lumber Corporation. | |
| Wentworth Lumber Ltd. | |

| Producer | Weighted-Average Margin (Percentage) |
|---|---|
| Werenham Forest Products. | |
| West Bay Forest Products & Manufacturing Ltd. | |
| West Can Rail Ltd. | |
| West Chilcotin Forest Products Ltd. | |
| West Hastings Lumber Products. | |
| Western Cleanwood Preservers Ltd. | |
| Western Commercial Millwork Inc. | |
| Western Wood Preservers Ltd. | |
| Weston Forest Corp. | |
| West–Wood Industries. | |
| White Spruce Forst Products Ltd. | |
| Wilfrid Paquet & Fils Ltee. | |
| Wilkerson Forest Products Ltd. | |
| Williams Brothers Limited. | |
| Winnipeg Forest Products, Inc. | |
| Woodko Enterprises, Ltd. | |
| Woodland Forest Products Ltd. | |
| Woodline Forest Products Ltd. | |
| Woodtone Industries Inc. | |
| Woodwise Lumber Ltd. | |
| Wynndel Box & Lumber Co. Ltd. | |
| Zelensky Bros. Forest Products ..... | 2.44 |

* We note that, during the POR, Sinclar Enterprises Ltd. (Sinclar) acted as an affiliated reseller for Lakeland, an affiliate of Canfor. In this review, we reviewed the sales of Canfor and its affiliates; therefore, Canfor's weighted–average margin applies to all sales produced by any member of the Canfor Group and sold by Sinclar. As Sinclar also separately requested a review, any sales produced by another manufacturer and sold by Sinclar will receive the ''Review–Specific Average'' rate.

Please note that the names of the companies are listed above exactly as they will be included in instructions to CBP. Any alternate names, spellings, affiliated companies or divisions will not be considered or included in any instructions to CBP unless they are brought to the attention of the Department in a case brief. There will be no exceptions.

**Disclosure**

The Department will disclose calculations performed in accordance with 19 CFR 351.224(b).

**Public Hearing**

An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, the parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

**Assessment**

Upon completion of this administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. We will calculate importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. For the companies requesting a review, but not selected for examination and calculation of individual rates, we will calculate a weighted–average assessment rate based on all importer–specific assessment rates excluding any which are *de minimis* or margins determined entirely on adverse facts available. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer.

**Cash Deposit Requirements**

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of Certain Softwood Lumber Products From Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate listed above for each specific company will be the rate established in the final results of this review, except if a rate is less than 0.5 percent, and therefore *de minimis*, the cash deposit will be zero; (2) for the non–selected companies we will calculate a weighted–average cash deposit rate based on all the company–specific cash deposit rates, excluding *de minimis* margins or margins determined entirely on adverse facts available; (3) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (4) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (5) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 11.54, the ''All Others'' rate calculated in the Department's recent determination under section 129 of the Uruguay Round Agreement Act. *See Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products from Canada*, 70 FR 22636 (May 2, 2005). These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary 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 entities during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2005.

**Susan H. Kuhbach,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–2885 Filed 6–6–05; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–830]**

### Stainless Steel Plate in Coils from Taiwan; Preliminary Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Eastwood or Jill Pollack, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–3874 or (202) 482–4593, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 3, 2004, the Department of Commerce (the Department) published in the **Federal Register** (69 FR 24117) a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel plate in coils from Taiwan for the period May 1, 2003, through April 30, 2004. In accordance with 19 CFR 351.213(b)(1), on May 28, 2004, the petitioners (*i.e.*, Allegheny Ludlum Corp., United Auto Workers Local 3303, Zanesville Armco Independent Organization, the United Steelworkers of America, and AFL–CIO/CLC) requested a review of this order with respect to the following producers/exporters: Chain Chon Industrial Co., Ltd. (Chain Chon), Chang Mien Industries Co., Ltd., Chien Shing Stainless Steel Co., Ltd., China Steel Corporation, East Tack Enterprise Co., Goang Jau Shing Enterprise Co., Ltd., PFP Taiwan Co., Ltd., Shing Shong Ta Metal Ind. Co., Ltd., Sinkang Industries, Ltd., Ta Chen Stainless Pipe Ltd. (Ta Chen), Tang Eng Iron Works Co., Ltd., Yieh Loong Enterprise Co., Yieh Mau Corp., Yieh Trading Co., and Yieh United Steel Corp (YUSCO).

The Department initiated an administrative review on stainless steel plate in coils from Taiwan in June 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 39409 (June 30, 2004). We issued questionnaires to the producers/exporters named by the petitioners in October 2004.

In October and November 2004, the following companies informed the Department that they had no shipments or entries of subject merchandise during the period of review (POR): Chain Chon, Ta Chen and YUSCO. We reviewed data from U.S. Customs and Border Protection (CBP) and attempted to confirm that there were no entries of subject merchandise from any of these companies. We also confirmed with CBP data that none of the other companies named by the petitioners in their request for review had entries of subject merchandise during the POR. However, initial CBP data showed that Ta Chen had potential entries of subject merchandise during the POR. Therefore, on November 1, 2004, we requested entry documentation from CBP for Ta Chen's entries. Our examination of the entry documentation appeared to confirm Ta Chen's claim and we informed the petitioners of our intent to rescind this administrative review with respect to Ta Chen in December 2004.

On December 21, 2004, the petitioners requested that the Department extend the deadline for the preliminary results by 120 days in accordance with 19 CFR 351.213(h)(2). On January 28, 2005, we extended the deadline for the preliminary results of this review until no later than May 31, 2005. *See Stainless Steel Plate in Coils From Taiwan; Notice of Extension of Time Limits for Preliminary Results in Antidumping Duty Administrative Review*, 70 FR 5610 (Feb. 3, 2005).

Further, on January 21, 2005,[1] the petitioners claimed that the information received from CBP and placed on the record of this proceeding showed that Ta Chen did have entries of subject merchandise during the POR, contrary to Ta Chen's assertion that it had no such entries. The petitioners submitted additional comments on this issue on February 11, 2005, and March 11, 2005. Ta Chen responded to the petitioners' comments on January 31, 2005, and February 22, 2005.

In April 2005, we received additional documentation on Ta Chen's entries from CBP. After reviewing the documents and considering the comments of the parties, we preliminarily determine that Ta Chen did not have entries of subject merchandise during the POR. *See* the May 31, 2005, memorandum from Elizabeth Eastwood to Louis Apple entitled, ''Analysis of Entries by Ta Chen Stainless Steel Pipe Co. Ltd. in the 2003–2004 Antidumping Duty Administrative Review on Stainless Steel Plate in Coil from Taiwan'' for further discussion.

### Scope of the Order

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 Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219110030, 7219110060, 7219120006, 7219120021, 7219120026, 7219120051, 7219120056, 7219120066, 7219120071, 7219120081, 7219310010, 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 merchandise subject to this order is dispositive.

### Rescission of Review

Because none of the companies for which we initiated this administrative review had shipments of subject merchandise during the POR, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are preliminarily rescinding this review of the antidumping duty order on stainless steel plate in coils from Taiwan for the period of May 1, 2003, through April 30, 2004.

Interested parties may submit comments for consideration in the Department's final results not later than 30 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all

[1] We note that while the petitioners originally submitted comments on this date, the Department rejected this filing because it was improperly bracketed. The petitioners submitted a properly bracketed version of their comments on February 2, 2005.

interested parties on the Department's service list in accordance with 19 CFR 351.303(f). The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of the preliminary results, and will publish these results in the **Federal Register**. This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 31, 2005.

**Susan H. Kuhbach,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–2886 Filed 6–6–05; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A–489–501)**

### Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** In response to a request by domestic interested parties, Allied Tube and Conduit Corporation (''Allied Tube'') and Wheatland Tube Company (''Wheatland''), the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube (''welded pipe and tube'') from Turkey. This review covers the following two producers/exporters of the subject merchandise: (1) the Yücel Group (''Yücel''), which includes Çayirova Boru Sanayi ve Ticaret A.S. (''Çayirova'') and its affiliate, Yücel Boru Ithalat–Ihracat ve Pazarlama A.S. and (2) the Borusan Group (''Borusan''). We preliminarily determine that both Yücel and Borusan made sales below normal value (''NV''). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties based on the difference between the export price (''EP'') and the NV.

**EFFECTIVE DATE:** June 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Christopher Hargett, George McMahon, or Martin Claessens, at (202) 482–4161, (202) 482–1167, or (202) 482–5451, respectively; AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 15, 1986, the Department published in the **Federal Register** the antidumping duty order on welded pipe and tube from Turkey. *See* 51 FR 17784 (May 15, 1986). On May 3, 2004, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 24117 (May 3, 2004). On May 28, 2004, in accordance with 19 CFR 351.213(b), domestic interested parties Allied Tube and Wheatland requested a review of Yücel and Borusan.

On June 30, 2004, the Department published a notice of initiation of administrative review of the antidumping duty order on welded pipe and tube from Turkey, covering the period May 1, 2003, through April 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 39409 (June 30, 2004). On November 1, 2004, the Department extended the deadline for the preliminary results until no later than May 31, 2005. *See Certain Welded Carbon Steel Pipe and Tube from Turkey: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 63366 (November 1, 2004).

On August 4, 2004, the Department sent an antidumping duty administrative review questionnaire to Yücel.[1] In the cover letter, the Department erred in asking Yücel to respond to section D of the questionnaire. In its questionnaire response, Yücel reported section D data. Subsequently, on January 6, 2005, a Department official spoke with counsel for Yücel about the error, and counsel for Yücel decided to leave the section D information on the record. Counsel for Yücel stated that he was amenable to leaving the cost data on the record without prejudice to Yücel's rights vis-à-vis the requirement of a cost allegation. *See* Memorandum to The File dated January 6, 2005.

We conducted a sales verification of Yücel's questionnaire responses from April 4 through April 8, 2005.

### Scope of the Order

The products covered by this order include circular welded non–alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or galvanized, painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load–bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil country tubular goods, boiler tubing, cold–drawn or cold–rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

### Verification

As provided in section 782(i)(3) of the Tariff Act of 1930, as amended (''the Act''), we verified the information provided by Yücel. We used standard verification procedures, including an examination of the relevant sales and financial records. Our verification results are detailed in the company–specific verification report placed in the case file in the Central Records Unit (''CRU''), room B–099 of the main Department building. We made minor revisions to certain sales and cost data based on verification findings with the

[1] The questionnaire consists of sections A (general information), B (sales in the home market or to third countries), C (sales to the United States), D (cost of production/constructed value), and E (cost of further manufacturing or assembly performed in the United States).

exception of warranties, discussed below. *See* the Yücel Verification Report, May 25, 2005, and Calculation Memorandum, May 31, 2005, in the CRU.

**Product Comparisons**

We compared the EP to the NV, as described in the *Export Price* and *Normal Value* sections of this notice. In accordance with section 771(16) of the Act, we first attempted to match contemporaneous sales of products sold in the United States and comparison market that were identical with respect to the following characteristics: (1) grade; (2) nominal pipe size; (3) wall thickness; (4) surface finish; (5) end finish. When there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar merchandise based on the characteristics listed above in order of priority listed.

**Export Price**

Because both Yücel and Borusan sold subject merchandise directly to the first unaffiliated purchaser in the United States prior to importation, and constructed export price methodology was not otherwise warranted based on the record facts of this review, in accordance with section 772(a) of the Act, we used EP as the basis for all of Yücel's and Borusan's sales.

We calculated EP using, as starting price, the packed, delivered price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made the following deductions from the starting price (gross unit price), where appropriate: foreign inland freight from the mill to warehouse to port, foreign brokerage and handling, international freight, marine insurance, and other related charges. In addition, we added duty drawback to the starting price, having found preliminarily that such an adjustment was warranted under the standard two–prong test. *See Allied Tube and Conduit Corp. v. United States*, Slip Op. 05–56 (May 12, 2005).

**Normal Value**

*A. Selection of Comparison Market*

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared both Yücel's and Borusan's volume of home–market sales of the foreign like product to their respective volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because both Yücel's and Borusan's aggregate volume of home–market sales of the foreign like product were greater than five percent of their respective company's aggregate volume of U.S. sales of the subject merchandise, we determined that each home market was viable. We calculated NV as noted in the ''Calculation of NV Based on Comparison Market Prices'' and ''Calculation of NV Based on Constructed Value'' sections of this notice.

*B. Cost of Production (''COP'') Analysis*

Because the Department disregarded sales below the COP in the last completed review of Borusan, we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Borusan in the home market. *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 65 FR 48843 (August 11, 2004) (''*Final Results, Turkey*'').

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of Borusan's costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (''SG&A'') and the cost of all expenses incidental to packing and preparing the foreign like product for shipment.

2. Test of Comparison Market Sales Prices

We compared the weighted–average COP figures to home–market sales of the foreign like product as required by section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product–specific basis, we compared the COP to the home–market prices, less any applicable movement charges, rebates, discounts, packing, and direct selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we do not disregard any below–cost sales of that product because we determine that the below–cost sales were not made in ''substantial quantities.'' We found that, for certain products, more than 20 percent of Borusan's home–market sales were sold at prices below the COP. Further, we found that the prices for these sales did not permit the recovery of all costs within a reasonable period of time. We therefore excluded these sales from our analysis and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

*C. Calculation of NV Based on Comparison Market Prices*

For Borusan, for those comparison products for which there were sales at prices above the COP, we based NV on home–market prices. No allegation was submitted that Yücel made sales below the COP; and therefore, we did not conduct a sales–below-cost test on Yücel's sales. In these preliminary results, for Borusan, we were able to match all U.S. sales to contemporaneous sales, made in the ordinary course of trade, of either an identical or a similar foreign like product, based on matching characteristics. For Yücel, we based NV on home–market prices. For U.S. sales that we could not appropriately match to contemporaneous home–market sales, we used constructed value. For both Borusan and Yücel, we calculated NV based on free on board (''FOB'') mill/warehouse or delivered prices to unaffiliated customers, or prices to affiliated customers which were determined to be at arm's length (*see* discussion below regarding these sales). We made deductions, where appropriate, from the starting price for discounts, rebates, inland freight, and pre–sale warehouse expense. Additionally, we added billing adjustments and interest revenue. In accordance with section 773(a)(6) of the Act, we deducted home–market packing costs and added U.S. packing costs.

In accordance with section 773(a)(6)(C)(iii) of the Act, we adjusted for differences in the circumstances of sale (''COS''). These circumstances included differences in imputed credit expenses and other direct selling expenses. We also made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and for differences in the level of trade (*see* discussion below regarding level of trade). Calculation of NV Based on Constructed Value (''CV'')

For Yücel, when we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum

of the cost of manufacturing (''COM'') of the product sold in the United States, plus amounts for SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred by Yücel in connection with the production and sale of the foreign like product in the comparison market.

For price–to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

**Adverse Facts Available**

In accordance with section 776(a)(2) of the Act, the Department has determined that the use of facts available is appropriate for the treatment of warranty expenses for purposes of determining the preliminary results for the subject merchandise sold by Yücel. Section 776(a)(2) of the Act provides: If an interested party (A) withholds information that has been requested by the administrating authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and the manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title. Moreover, section 776(b) of the Act provides that: If the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, the administering authority, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of the party in selecting from among the facts otherwise available.

Yücel failed to report warranty expenses properly in the home market and did not provide such information by the deadlines for the submission of the information or in the form and the manner requested. The Department gave Yücel several opportunities to report warranty expenses properly in the WARRH data field. Specifically, the Department issued Yücel two supplemental questionnaires in addition to the initial sections A–C of the questionnaire. Despite these opportunities, the Department discovered at verification that Yücel failed to report warranties to certain customers in its original submissions. In addition, the Department found that the original data reported by Yücel included warranties for customers that were not identified in the database (*i.e.*, customers to whom Yücel did not sell subject merchandise in the home market during the POR). Yücel had the opportunity and ability to report warranty expenses properly; however, it failed to do so in the initial questionnaire response and subsequent supplemental questionnaire responses.

Although Yücel presented the correction to home–market warranty expenses at the onset of verification, the Department did not verify this information. In accordance with Department practice, Yücel's verification outline clearly states the following: ''{p}lease note that verification is not intended to be an opportunity for submitting new factual information. New information will be accepted at verification only when (1) the need for that information was not evident previously, (2) the information makes minor corrections to information already on the record, or (3) the information corroborates, supports, or clarifies information already on the record.'' See Yücel's Verification Outline, dated March 25, 2005, at page 2.

Based on the fact that Yücel repeatedly reported incorrectly its warranty expense data until the beginning of verification, the Department is rejecting Yücel's belated correct reporting of warranty expenses. *See* Yücel's Verification Report, dated May 31, 2005, in the CRU.

As stated by the U.S. Court of Appeals for the Federal Circuit (''CAFC''), ''if a respondent 'fails to provide {requested} information by the deadlines for submission,' Commerce shall fill in the gaps with 'facts otherwise available.' The focus of subsection (a) is respondent's failure to provide information. The reason for the failure is of no moment. As a separate matter, subsection (b) permits Commerce to 'use an inference that is adverse to the interests of {a respondent} in selecting from among the facts otherwise available,' only if Commerce makes the separate determination that the respondent 'has failed to cooperate by not acting to the best of its ability to comply.' The focus of subsection (b) is respondent's failure to cooperate to the best of its ability, not its failure to provide requested information.'' *See Nippon Steel Corporation vs. United States*, 37 F. 3d 1373 (August 8, 2003) (''*Nippon Steel*'').

In *Nippon Steel*, the CAFC held that ''the statutory mandate that a respondent act to the 'best of its ability' requires the respondent to do the maximum it is able to do.'' *See Nippon Steel*, 337 F.3d at 1382.

Yücel's actions fell well below the standard of doing the maximum it was able to do. It failed to properly evaluate and submit the requested information in its initial questionnaire response, and failed twice more despite specific follow–up questioning by the Department. Indeed, Yücel's untimely presentation of requested information regarding warranties at the beginning of verification demonstrated that it would have been able to provide the Department with the information requested, if it had exercised the requisite effort. However, Yücel's failure to do so by the deadlines for submission demonstrates it did not act to the best of its ability.

Therefore, pursuant to section 776(a)(2) of the Act, the Department has determined that the use of facts available is appropriate with respect to Yücel's warranty expenses in the home market. Pursuant to section 776(b)(3) of the Act, we have used an adverse inference by not accepting Yücel's warranty expenses in the home market.

**Arm's–Length Sales**

We included in our analysis Yücel's and Borusan's home–market sales to affiliated customers only where we determined that such sales were made at arm's–length prices, *i.e.*, at prices comparable to prices at which Yücel and Borusan, respectively, sold identical merchandise to their unaffiliated customers. Each respondent's sales to affiliates constituted less than five percent of overall home–market sales. To test whether the sales to affiliates were made at arm's–length prices, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

**Level of Trade**

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (''SAA'') accompanying the Uruguay Round Agreements Act, at 829–831 (*see* H.R. Doc. No. 316, 103d Cong., 2d Sess. 829–831 (1994)), to the extent practicable, the Department calculates NV based on sales at the same level of trade (''LOT'') as U.S. sales, either EP or CEP. When the Department is unable to find sale(s) in the comparison market at the same LOT as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different LOTs. The NV LOT is that of the starting–price sales in the home market. To determine whether home–market sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In implementing these principles, we examined information from each respondent regarding the marketing stages involved in the reported home–market and EP sales, including a description of the selling activities performed by each for each channel of distribution. We determined that with respect to Yücel's sales, there was one home market LOT and one U.S. LOT, and with respect to Borusan's sales, there were two home–market LOTs and one U.S. LOT.

For home–market sales, we found that Yücel sold mill–direct, FOB, without the use of a selling agent. In some cases, Yücel arranged for freight; however, the purchaser took possession of the merchandise upon loading in all cases. No additional services were undertaken by Yücel.

Yücel's U.S. sales were made at only one LOT. Selling functions were limited to maintaining stock until full container loads were produced, and arranging for shipment of the merchandise to the United States. Yücel's U.S. sales were made–to-order, with title passing to the purchaser when the goods passed the ship's rail. No other sales activities were undertaken by Yücel.

Because Yücel's sales functions in each market were nearly identical, we have determined that the LOT in each market is the same and therefore have made no LOT adjustments in comparing its U.S. and home–market sales.

With regard to Borusan, we examined information from the respondent on the marketing stages involved in the reported home–market and EP sales, including a description of the selling activities performed by Borusan for each channel of distribution. Consistent with the prior reviews of this respondent, we determined that with respect to Borusan's sales, there were two home–market LOTs and one U.S. LOT (*i.e.*, the EP LOT). *See Final Results, Turkey*, 65 FR 48843. For home–market sales, we found that Borusan's back–to-back sales by affiliated resellers and mill–direct sales comprised one LOT. We found that Borusan's inventory sales by affiliated resellers warranted a separate LOT. Back–to-back sales by affiliated resellers are sales by Borusan through an affiliated selling agent. Such sales are very similar to mill–direct sales; however, the affiliated agent arranges for freight. The affiliated agent does not take possession of the merchandise; it is transferred directly from the mill to the final customer. For mill–direct sales, Borusan provided customer advice, product information and technical services, warranty services, and advertising. For back–to-back sales by affiliated resellers, the resellers engage in marketing activities and make freight arrangements, and warranty services are provided by the mill. For inventory sales by affiliated resellers, the resellers have a sales staff that sells Borusan products out of the reseller's warehouse. Those resellers maintain such warehouses, provide product information, and customer advice. Warranty services for these sales were provided by the mill.

The first main difference between Borusan's inventory sales by affiliated resellers and Borusan's mill–direct and back–to-back sales is off–site warehouse maintenance and operation. Borusan's affiliated resellers that sell from inventory operate their own warehouses. Second, for its back–to-back and mill–direct sales, Borusan transfers the title of the merchandise directly and immediately to the first unaffiliated customer, but Borusan cannot perform such a transfer of title in its sales out–of-inventory by affiliated resellers. Last, Borusan provides discounts for both mill–direct and back–to-back sales, but provides only very limited discounts for inventory sales.

Borusan's U.S. sales were made at only one LOT. The selling functions for U.S. sales included customer advice and product information, warranty services, and freight and delivery arrangements. Borusan's sales to the United States were not made out of warehouses. This LOT is most similar to the first LOT in the home market (mill–direct and back–to-back sales).

Where possible, we compared U.S. sales to sales at the identical home–market LOT mill–direct sales and back–to-back affiliated reseller sales. If no match was available at the same LOT, we compared sales at the U.S. LOT to sales at the second home–market LOT.

To determine whether an LOT adjustment was warranted, we examined the prices of comparable product categories, net of all adjustments, between sales at the two home–market LOTs we had designated. We found a pattern of consistent price differences between sales at these LOTs.

In making the LOT adjustment, we calculated the difference in prices between the two home–market LOTs. Where U.S. sales were compared to home–market sales at a different LOT, we adjusted the home–market price by the amount of this calculated difference.

**Currency Conversion**

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Business Information Services.

Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. The benchmark rate is defined as the rolling average of the rates for the past 40 business days. When we determine that a fluctuation existed, we generally utilize the benchmark rate instead of the daily rate, in accordance with established practice.

**Date of Sale**

In the home market, Yücel reported its date of sale based on the invoice date. However, for sales to the United States, Yücel reported its date of sale based on the ''order confirmation date,'' which Yücel refers to as its ''contract date.'' Yücel indicated that its ''order confirmation'' constitutes the acceptance of an offer made by its U.S. customers which was made in the form of a purchase order. *See* Yücel's supplemental questionnaire response dated February 24, 2005, at pages 24–25. During verification, Yücel reported that it confirms orders via e–mail and that

Yücel maintains a file that documents the order confirmations for each of its sales to the United States. At verification, the Department attempted to corroborate this claim by verifying a sample of the order confirmations, which would enable a comparison to the reported shipment sale dates. However, Yücel was unable to produce all the e–mail confirmations requested by the Department and Yücel was unable to substantiate its claim that order confirmation date (''contract date'') was representative of the date on which the material terms of sale were finalized. Therefore, for purposes of the preliminary results, we have used the invoice date reported by Yücel as the basis for Yücel's U.S. date of sale.

**Preliminary Results of Review**

As a result of this review, we preliminarily determine that the following margins exist for the period May 1, 2003, through April 30, 2004:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| Yücel | 12.11 |
| Borusan | 0.86 |

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* section 351.224(b) of the Department's regulations. Interested parties are invited to comment on the preliminary results. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with each argument: (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on a diskette. Any interested party may request a hearing within 30 days of publication of this notice. *See* section 351.310(c) of the Department's regulations. If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from publication of this notice.

**Assessment**

Pursuant to section 351.212(b) of the Department's regulations, the Department calculated an assessment rate for each importer of subject merchandise. Upon completion of this review, the Department will instruct CBP to assess antidumping duties on all entries of subject merchandise by those importers. We have calculated each importer's duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total calculated entered value of examined sales. Where the assessment rate is above *de minimis*, the importer–specific rate will be assessed uniformly on all entries made during the POR.

**Cash Deposit Requirements**

The following cash deposit rates will be effective upon publication of the final results of this administrative review for all shipments of welded pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rates are less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 14.74 percent, the ''All Others'' rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations 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 the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: May 27, 2005.

**Holly A. Kuga,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–2887 Filed 6–6–05; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(C–122–839)**

### Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain softwood lumber products from Canada for the period April 1, 2003, through March 31, 2004. If the final results remain the same as these preliminary results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties as detailed in the ''Preliminary Results of Review'' section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

**EFFECTIVE DATE:** June 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Moore at (202) 482–3692, or Robert Copyak at (202) 482–2209, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 22, 2002, the Department published in the **Federal Register** (67 FR 36070) the amended final affirmative countervailing duty (CVD) determination and CVD order on certain softwood lumber products from Canada (67 FR 37775, May 30, 2002). On May 3, 2004, the Department published a notice of opportunity to request an administrative review of this CVD order.

*See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 24117 (May 3, 2004). The Department received requests that it conduct an aggregate review from, among others, the Coalition for Fair Lumber Imports Executive Committee (petitioners) and the Government of Canada (GOC), as well as requests for review covering an estimated 263 individual companies.[1] On June 25, 2004, we initiated the review covering the period April 1, 2003, through March 31, 2004. *See* 69 FR 39409.

On July 30, 2004, we determined to conduct this administrative review on an aggregate basis consistent with section 777A(e)(2)(B) of the Tariff Act of 1930, as amended (the Act). *See* the memorandum to James J. Jochum, Assistant Secretary for Import Administration, from Jeffrey May, Deputy Assistant Secretary for Import Administration, entitled, ''Methodology for Conducting the Review,'' dated July 30, 2004, which is a public document on file in the Central Records Unit (CRU) in room B–099 of the main Commerce building. The Department further determined that it was not practicable to conduct any form of company–specific review. *Id.*

On September 8, 2004, we issued our initial questionnaire to the GOC as well as to the Provincial Governments of Alberta (GOA), British Columbia (GOBC), Manitoba (GOM), New Brunswick (GONB), Newfoundland (GON), Nova Scotia (GONS), Ontario (GOO), Prince Edward Island (GOPEI), Quebec (GOQ), and Saskatchewan (GOS).

On September 30, 2004, we extended the period for completion of these preliminary results until May 31, 2005, pursuant to section 751(a)(3)(A) of the Act. *See Certain Softwood Lumber Products From Canada: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review*, 69 FR 58394 (September 30, 2004).

On November 22, 2004, the GOC, GOA, GOBC, GOM, GONB, GON, GONS, GOO, GOPEI, GOQ, and GOS submitted their initial questionnaire responses.

From February through May 2005, we issued a series of supplemental questionnaires to the GOC, GOBC, GOA, GOS, GOM, GOO, GOQ, GONS, and GONB. The Federal and Provincial Governments of Canada responded to all supplemental questionnaires in a timely manner.

Pursuant to 19 CFR 351.301, the deadline for interested parties to submit factual information is 140 days after the last day of the anniversary month. However, both petitioners' and the Canadian parties requested that the Department extend this due date. After a series of extensions, we established that the deadline for interested parties to submit factual information would be March 2, 2005. Accordingly, the due date for submitting rebuttal and/or clarifying information was extended to March 15, 2005. Both petitioners and the Canadian parties submitted factual information by the March 2 and March 15 deadlines.

**Period of Review**

The period of review (POR) for which we are measuring subsidies is April 1, 2003, through March 31, 2004.

**Scope of the Review**

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger–jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger–jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

As specifically stated in the Issues and Decision Memorandum accompanying the *Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002) (*see* comment 53, item D, page 116, and comment 57, item B–7, page 126), available at www.ia.ita.doc.gov, drilled and notched lumber and angle cut lumber are covered by the scope of this order.

The following softwood lumber products are excluded from the scope of this order provided they meet the specified requirements detailed below:

(1) *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.

(2) *Box–spring frame kits*: if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius–cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.

(3) *Radius–cut box–spring-frame components*, not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

(4) *Fence pickets* requiring no further processing and properly classified under HTSUS heading 4421.90.70, 1'' or less in actual thickness, up to 8'' wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog–eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.

(5) *U.S. origin lumber* shipped to Canada for minor processing and

[1] Of these 263 company-specific requests, 116 were for zero/*de minimis* rate reviews under 19 CFR 351.213(k)(1).

imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln–drying, planing to create smooth–to-size board, and sanding, and 2) if the importer establishes to the satisfaction of CBP that the lumber is of U.S. origin.

(6) *Softwood lumber products contained in single family home packages or kits*,[2] regardless of tariff classification, are excluded from the scope of this order if the importer certifies to items 6 A, B, C, D, and requirement 6 E is met:

A. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

B. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, sub floor, sheathing, beams, posts, connectors, and if included in the purchase contract, decking, trim, drywall and roof shingles specified in the plan, design or blueprint.

C. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

D. Softwood lumber products entered as part of a single family home package or kit, whether in a single entry or multiple entries on multiple days, will be used solely for the construction of the single family home specified by the home design matching the entry.

E. For each entry, the following documentation must be retained by the importer and made available to CBP upon request:

i. A copy of the appropriate home design, plan, or blueprint matching the entry;

ii. A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

iii. A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

iv. In the case of multiple shipments on the same contract, all items listed in E(iii) which are included in the present shipment shall be identified as well.

Lumber products that CBP may classify as stringers, radius cut box–spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.45.90, 4421.90.70.40, and 4421.90.97.40.

Finally, as clarified throughout the course of the investigation, the following products, previously identified as Group A, remain outside the scope of this order. They are:

1. Trusses and truss kits, properly classified under HTSUS 4418.90;
2. I–joist beams;
3. Assembled box spring frames;
4. Pallets and pallet kits, properly classified under HTSUS 4415.20;
5. Garage doors;
6. Edge–glued wood, properly classified under HTSUS item 4421.90.98.40;
7. Properly classified complete door frames;
8. Properly classified complete window frames;
9. Properly classified furniture.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non–subject status based on U.S. country of origin will be treated as non–subject U.S.-origin merchandise under the countervailing duty order, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[3] The presumption of non–subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

**Subsidies Valuation Information**

*Allocation Period*

In the underlying investigation and pursuant to 19 CFR 351.524(d)(2), the Department allocated, where applicable, all of the non–recurring subsidies provided to the producers/exporters of subject merchandise over a 10-year average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. *See Notice of Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Determination: Certain Softwood Lumber Products From Canada*, 66 FR 43186 (August 2001) (*Preliminary Determination*); *see also Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002) (*Final Determination*). No interested party challenged the 10-year AUL derived from the IRS tables. Thus, in this review, we have allocated, where applicable, all of the non–recurring subsidies provided to the producers/exporters of subject merchandise over a 10-year AUL.

**Recurring and Non–Recurring Benefits**

The Department has previously determined that the sale of Crown timber by Canadian provinces confers countervailable benefits on the production and exportation of the subject merchandise under 771(5)(E)(iv) of the Act because the stumpage fees at which the timber is sold are for less than adequate remuneration. *See, e.g.*, ''Recurring and Non–Recurring Benefits'' section of the March 21, 2002, Issues and Decision Memorandum the accompanied the *Final Determination (Final Determination Decision Memorandum); see also Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 69 FR 33204 (June 14, 2004) (*Preliminary Results of 1st Review*). For the reasons described in the program sections, below, the Department continues to find that Canadian provinces sell Crown timber for less than adequate remuneration to softwood lumber producers in Canada. Pursuant to 19 CFR 351.524(c)(1), subsidies conferred by the government provision of a good or service normally involve recurring benefits. Therefore, consistent with our regulations and past practice, benefits conferred by the provinces' administered Crown stumpage programs

[2] To ensure administrability, we clarified the language of exclusion number 6 to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

[3] *See* the scope clarification message (# 3034202), dated February 3, 2003, to CBP, regarding treatment of U.S. origin lumber on file in the CRU.

have, for purposes of these preliminary results, been expensed in the year of receipt.

In this review the Department is also investigating other programs that involve the provision of grants to producers and exporters of subject merchandise. Under 19 CFR 351.524, benefits from grants can either be classified as providing recurring or non–recurring benefits. Recurring benefits are expensed in the year of receipt, while grants providing non–recurring benefits are allocated over time corresponding to the AUL of the industry under review. However, under 19 CFR 351.524(b)(2), grants which provide non–recurring benefits will also be expensed in the year of receipt if the amount of the grant under the program is less than 0.5 percent of the relevant sales during the year in which the grant was approved (referred to as the 0.5 percent test). We have preliminarily determined to expense all grants under non–stumpage programs in the year of receipt.

**Benchmarks for Loans and Discount Rate**

In selecting benchmark interest rates for use in calculating the benefits conferred by the various loan programs under review, the Department's normal practice is to compare the amount paid by the borrower on the government provided loans with the amount the firm would pay on a comparable commercial loan actually obtained on the market. *See* section 771(5)(E)(ii) of the Act; 19 CFR 351.505(a)(1) and (3)(i). However, because we are conducting this review on an aggregate basis and we are not examining individual companies, for those programs requiring a Canadian dollar–denominated, short–term or long–term benchmark interest rate, we used for these preliminary results the national average interest rates on commercial short–term or long–term Canadian dollar–denominated loans as reported by the GOC.

The information submitted by the GOC was for fixed–rate short–term and long–term debt. For short–term debt, the GOC provided monthly weight–averaged short–term interest rates based on the prime business rate, small and medium enterprise (SME) rate, three-month corporate paper rate, and one-month bankers' acceptance rate, as reported by the Bank of Canada. For long–term debt, the GOC provided quarterly implied rates calculated from long–term debt and the interest payments made on long–term debt as reported by Statistics Canada (STATCAN). Based on these rates, we derived simple averaged POR rates for both short–term and long–term debt.

Some of the reviewed programs provided long–term loans to the softwood lumber industry with variable interest rates instead of fixed interest rates. Because we were unable to gather information on variable interest rates charged on commercial loans in Canada, we have used as our benchmark for those variable loans the rate applicable to long–term fixed interest rate loans for the POR as reported by the GOC.

**Aggregate Subsidy Rate Calculation**

As noted above, this administrative review is being conducted on an aggregate basis. We have used the same methodology to calculate the country–wide rate for the programs subject to this review that we used in the *Final Determination and Notice of Final Results of Countervailing Duty Administrative Review and Rescission of Certain Company–Specific Reviews: Certain Softwood Lumber Products from Canada*, 69 FR 75917 (December 20, 2004) (*Final Results of 1st Review*).

**Provincial Crown Stumpage Programs**

For stumpage programs administered by the Canadian provinces subject to this review, we first calculated a provincial subsidy rate by dividing the aggregate benefit conferred under each specific provincial stumpage program by the total stumpage denominator calculated for that province. For further information regarding the stumpage denominator, *see* ''Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates'' section, below. As required by section 777A(e)(2)(B) of the Act, we next calculated a single country–wide subsidy rate. To calculate the country–wide subsidy rate conferred on the subject merchandise from all stumpage programs, we weight–averaged the subsidy rate from each provincial stumpage program by the respective provinces' relative shares of total exports to the United States during the POR. As in *Final Determination* and the *Final Results of the 1st Review*, these weight–averages of the subject merchandise do not include exports from the Maritime Provinces or sales of companies excluded from the countervailing duty order.[4] We then summed these weight–average subsidy rates to determine the country–wide rate for all provincial Crown stumpage programs.

**Other Programs**

We also examined a number of non–stumpage programs administered by the Canadian Federal Government and certain Provincial Governments in Canada. To calculate the country–wide rate for these programs, we used the same methodology employed in the first administrative review. For federal programs that were found to be specific because they were limited to certain regions, we calculated the countervailable subsidy rate by dividing the benefit by the relevant denominator (*i.e.*, total production of softwood lumber in the region or total exports of softwood lumber to the United States from that region), and then multiplying that result by the relative share of total softwood exports to the United States from that region. For federal programs that were not regionally specific, we divided the benefit by the relevant country–wide sales (*i.e.*, total sales of softwood lumber, total sales of the wood products manufacturing industry (which includes softwood lumber), or total sales of the wood products manufacturing and paper industries).

For provincial programs, we calculated the countervailable subsidy rate by dividing the benefit by the relevant sales amount for that province (*i.e.*, total exports of softwood lumber from that province to the United States, total sales of softwood lumber in that province, or total sales of the wood products manufacturing and paper industries in that province). That result was then multiplied by the relative share of total softwood exports to the United States from that province.

Where the countervailable subsidy rate for a program was less than 0.005 percent, the program was not included in calculating the country–wide countervailing duty rate.

**Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates[5]**

1. Aggregate Numerator and Denominator

As noted above, the Department is determining the stumpage subsidies to the production of softwood lumber in Canada on an aggregate basis. The methodology employed to calculate the *ad valorem* subsidy rate requires the use of a compatible numerator and denominator. In the final results of the first review, the Department explained that in the numerator of the net subsidy rate calculation, the Department

[4] The Maritime provinces are Nova Scotia, New Brunswick, Newfoundland, and Prince Edward Island.

[5] The denominators used for non-stumpage programs are discussed below in the individual program write-ups.

included only the benefit from those softwood Crown logs that entered and were processed by sawmills during the POR (*i.e.*, logs used in the lumber production process). *See* ''Denominator'' section of the December 13, 2004, Issues and Decision Memorandum that accompanied the Final Results of 1st Review (Final Results of 1st Review Decision Memorandum). Accordingly, the denominator used for the final calculation included only those products that result from the softwood lumber manufacturing process. *Id.* For purposes of these preliminary results, we continue to calculate the numerator and denominator using the approach adopted in the final results of the first review.[6]

Consistent with the Department's previously established methodology, we included the following in the denominator: softwood lumber, including softwood lumber that undergoes some further processing (so–called ''remanufactured'' lumber), softwood co–products (*e.g.*, wood chips and sawdust) that resulted from softwood lumber production at sawmills, and residual products produced by sawmills that were the result of the softwood lumber manufacturing process, specifically, softwood fuelwood and untreated softwood ties.

We would have included in the denominator those softwood co–products produced by lumber remanufacturers that resulted from the softwood lumber manufacturing process. However, the GOC failed to separate softwood co–products that resulted from the softwood lumber manufacturing process of lumber remanufacturers from those resulting from the myriad of other production processes performed by producers in the remanufacturing category that have nothing to do with the production of subject merchandise. Lacking the information necessary to determine the value of softwood co–products that resulted from the softwood lumber manufacturing process of lumber remanufacturers during the softwood lumber manufacturing process, we have preliminarily determined not to include any softwood co–product values from the non–sawmill category. *See Final Results of 1st Review Decision Memorandum* at Comment 16.

2. Adjustments to Account for Companies Excluded from the Countervailing Duty Order

In the investigation, we deducted from the denominator sales by companies that were excluded from the countervailing duty order. The Department has since also concluded expedited reviews for a number of companies, pursuant to which a number of additional companies have been excluded from the countervailing duty order. *See Final Results of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products from Canada: Notice of Final Results of Countervailing Duty Expedited Reviews*, 68 FR 24436, (May 7, 2003); *see also Notice of Final Results of Countervailing Duty Expedited Reviews of the Order on Certain Softwood Lumber from Canada*, 69 FR 10982 (March 9, 2004). In the final results of the first review, we removed the sales of companies excluded from the countervailing duty order from the relevant sales denominators of our country–wide rate calculations. *See* ''Excluded Companies'' section of the *Final Results of 1st Review Decision Memorandum*.

In its case briefs submitted for consideration in the final results of the first review, the GOC argued for the first time in that proceeding that, for the numerator and denominator to match, the Department must also reduce the numerator to account for any *de minimis* benefits received by the excluded companies.[7] *See, e.g.*, Final Results of 1st Review Decision Memorandum at Comment 15. We agreed with the GOC in principle. *Id.* However, because the GOC first raised the issue in its case briefs, the Department was unable to solicit the information from the excluded Canadian parties regarding the appropriate numerator. Thus, we placed the exclusion calculations from the underlying investigation and expedited reviews on the record of the first review. *Id.* We then multiplied the countervailable volumes of logs and lumber reported by the excluded companies by each subject provinces' weight–average unit benefit. The resulting products were then removed from provincial stumpage benefit of each of the corresponding province. *See Final Results of 1st Review Decision Memorandum* at Comment 15.

In the current review, we requested benefit and sales data, on an aggregate basis for each province, as they pertained to the excluded companies during the POR. \ page 2 of our April 8, 2005 supplemental questionnaire. The GOC, GOO, and GOQ responded that they did not have the requested POR sales data. *See* page 2 of the GOC's April 28, 2005 questionnaire response. Regarding the benefit information we requested, the GOQ and GOO stated that the excluded companies in their respective provinces did not harvest Crown timber during the POR. The GOC stated the same with respect to the excluded companies in the Yukon Territories. *Id.* at page 6. The GOC, GOO and GOQ further claimed they did not have any information regarding the volume of lumber and/or Crown logs purchased by the excluded companies during the POR.

Pursuant to our prior practice and, as discussed above, we have deducted the sales of all companies excluded from the countervailing duty order from the relevant sales denominators used to calculate the country–wide subsidy rates. Because we lack POR sales data from the excluded companies, we have, consistent with our approach in the final results of first review, indexed the excluded companies' sales data to the POR using province–specific lumber price indices obtained from STATCAN. We then subtracted the indexed sales data of the excluded companies from the corresponding provincial denominators. *See Preliminary Results of 1st Review*, 69 FR at 33207 and the ''Excluded Companies'' section of the *Final Results of 1st Review Decision Memorandum*.

Because the Canadian parties have stated that the excluded companies did not acquire Crown timber during the POR and because they have not provided any other additional benefit data from the companies, we have not adjusted the aggregate numerator data from the relevant provinces.

3. Pass–through

In the first administrative review, the Canadian parties claimed that a portion of the Crown timber processed by sawmills was purchased by the mills in arm's–length transactions with independent harvesters. The Canadian parties further claimed that such transactions must not be included in the subsidy calculation unless the Department determines that the benefit to the independent harvester passed through to the lumber producers. In the first review, we determined that Alberta, British Columbia (B.C.), Manitoba, Ontario, and Saskatchewan each failed

[6] In the case of Alberta and British Columbia, it was necessary to derive the volume of softwood Crown logs that entered and were processed by sawmills during the POR (*i.e.*, logs used in the lumber production process). Our methodology for deriving those volumes is described in the Calculation of Provincial Benefits section of these preliminary results.

[7] Though excluded from the countervailing duty order, many companies involved in the exclusion and/or expedited review processes received *de minimis* levels of countervailable benefits.

to substantiate this claim. *See Preliminary Results of 1st Review*, 69 FR at 33208, 33209 and Comments 10 and 11 of the *Final Results of 1st Review Decision Memorandum*.

The basis of our determination in the first administrative review was that transactions cannot be considered arm's–length transactions if they are characterized by limitations that constrain buyers and sellers of harvested Crown timber or other conditions that render those sales ineligible for the pass–through analysis. The limitations and other conditions we identified include (1) government–imposed appurtenancy and local processing requirements; (2) government–mandated wood supply agreements; (3) the structure of certain log purchase agreements; (4) fiber exchanges between Crown tenure holders; and (5) the payment of Crown stumpage fees by sawmills for logs purchased from independent harvesters. Thus, the starting point of our analysis was to examine whether in these log sale transactions the ability of a buyer or seller to bargain freely with whomever they chose was encumbered by government mandates or other conditions that render those sales not at arm's–length or otherwise ineligible for the pass–through analysis. If a transaction was conducted under the constraint(s) of one or more of these factors, we determined that it was not conducted at arm's–length or otherwise is ineligible for a pass–through analysis, and no adjustment to the stumpage calculation was warranted. For example, where we found that the sawmills paid the Crown for stumpage fees for logs acquired from so–called independent harvesters, no pass–through analysis was warranted because any benefits go directly to the sawmill. *Id.*

In anticipation of a similar claim in this administrative review, we requested in the initial questionnaire that each of the Canadian provinces report, by species, the volume and value of Crown logs sold by independent harvesters to unrelated parties during the POR. *See e.g.*, page III–22 of the Department's September 8, 2004, initial questionnaire. In response to the Department's original questionnaire, the Canadian parties provided two sets of information for us to analyze. The GOA, GOBC, British Columbia Lumber Trade Counsel (BCLTC), and GOO each provided an ''aggregate'' claim (with accompanying information) of the amount of Crown timber that was obtained by the sawmills through arm's–length transactions. The Ontario Lumber Manufacturers Association (OLMA) also provided company–specific transaction data and supporting information for us to analyze with respect to Ontario and Manitoba. Regarding Quebec, the GOQ asserted that the Department would have to conduct a pass–through analysis before it included any softwood log volumes harvested under Forest Management Contracts (FMCs) and Forest Management Agreements (FMAs).[8]

We have reviewed and considered all of the information provided on the record of this administrative review. We determine that none of the provinces or parties provided any new information regarding their aggregate claims which warrants a change in or departure from the methodology we used in the first administrative review. As in the first administrative review, we determine that Alberta, B.C., Manitoba, Ontario, and Saskatchewan each failed to provide the information necessary to demonstrate that the transactions included in their respective ''aggregate'' claims were in fact conducted at arm's length. Consistent with our determination in the first administrative review, we also determine that no pass–through analysis is warranted for many of the transactions, *e.g.*, where the sawmill paid the stumpage fee directly to the Crown, and for fiber exchanges between Crown tenure holders. We therefore preliminarily determine that changes to the subsidy calculation based on the provinces' ''aggregate'' claims are not warranted.

However, for purposes of these preliminary results, we preliminarily determine that, based our analysis of the company–specific data and information provided by the OLMA, a reduction in the Ontario subsidy benefit is warranted. Our analysis and preliminary findings with respect to these claims are detailed, by province, below.

*a. Alberta*

In the first review, the GOA claimed that the numerator of Alberta's provincial subsidy rate calculation should be reduced to account for fair–market, arm's length sales of Crown logs between unrelated parties. The GOA based its claim on a survey of TDA transactions that was conducted by a private consulting firm hired by the GOA. *See Preliminary Results of 1st Review*, 69 FR at 33208. In the final results of the first review, the Department found that it is common for sawmills in Alberta to enter into agreements where a tenure–holding independent harvester will supply timber to the sawmills but the sawmill will pay the stumpage directly to the GOA. *Id.*; see also *Final Results of 1st Review Decision Memorandum* at Comment 11. Accordingly, we found that in such transactions, known as ''delegation of signing authority'' or SA agreements, any stumpage benefit would go directly to the sawmill paying the stumpage fee, just as if the sawmill were drawing from its own tenure and contracting out for harvesting and hauling services. We therefore found that the GOA failed to substantiate that the volumes in the TDA survey were free of any volumes associated with SA agreements and, thus, the GOA's pass–through claim was not warranted. *Id.*

In the current review, we stated that for any pass–through claim, the GOA had to provide a breakdown by species of the total volume and value that it claims did not pass–through to the purchasing sawmill. *See* page III–22 of our September 8, 2004 questionnaire. We also instructed the GOA not to include in its pass–through claim any purchases for which the mills paid the stumpage fee to the Crown. *Id.*

The GOA claimed in its initial questionnaire response that ''at least by 1.7 million cubic meters of softwood logs were purchased by Alberta mills in arm's length, cash only transactions with unrelated parties.'' *See* page XII–1 and AB–S–76 of the GOA's November 22, 2004 questionnaire response. As in the first review, the GOA based its contention on the TDA survey, as updated for the POR. We note that the updated TDA survey and the GOA's questionnaire responses do not indicate whether the volumes it analyzed were subject to SA agreements. *See* page 45 of the GOA's April 8, 2005 supplemental questionnaire response.

In fact, regarding the TDA survey, the GOA stated that ''Alberta does not have access to the detailed information on log sales collected on a company–by-company basis by the independent private consultant . . .'' hired by the GOA to conduct the TDA survey. *See* page XII–2 of the GOA's November 22, 2004 questionnaire response.

Given the GOA's failure to indicate whether the sales in the TDA survey were made pursuant to SA agreements, and the GOA's statement that it lacked access to company–specific data collected by the consultant it hired to conduct the TDA survey, we asked the GOA to respond to the pass–through

[8] The GOM and GOS did not claim that their sawmills purchased Crown logs in arm's length transactions. *See* page MB–69 of the GOM's November 22, 2004 questionnaire response and page SK–99 of the GOS's November 22, 2004 questionnaire response. Therefore, we have preliminarily concluded that a pass-through analysis is not warranted for Manitoba and Saskatchewan.

questions contained in our initial questionnaire without reliance on the TDA survey. *See* page 9 of our March 16, 2005 supplemental questionnaire. In particular, we instructed the GOA to:

> . . . breakout all data on arm's length log transactions and include information regarding the volume, value, species, corporate affiliations of the parties subject to the transaction, {as well as} a chart identifying whether or not the transaction is subject to a delegation of signing authority (SA) agreement.

*Id.* The GOA responded that it did not maintain or collect such information as any part of its normal function and that it had no means on its own to respond to our pass–through questions aside from the TDA survey. *See* page 45 of the GOA's April 8, 2005 supplemental questionnaire response.

In our subsequent supplemental questionnaire, we noted the GOA's claims regarding its inability to respond to our pass–through questions without reliance on the TDA survey and pointed out that in the concurrent Section 129 proceeding the GOA was, indeed, able to report company–specific data separate from the TDA survey in response to the same pass–through questions.[9] We therefore asked the GOA to provide in this review the same type of company–specific data, updated for the POR. *See* page 2 of the Department's April 21, 2005 supplemental questionnaire. In response to our request for company–specific pass–through information that was not reliant on the TDA survey, the GOA answered that the Province ''does not keep the information requested here'' and it reiterated its assertion that the Department should conduct its pass–through analysis for Alberta using the TDA survey. *See* page 2 of its May 2, 2005 questionnaire response.

The GOA further stated that, ''in an effort to provide some additional information,'' it contacted PricewaterhouseCoopers LLP (PwC) to provide a ''limited'' update of the survey that was included in the pass–through claim the GOA made in the context of the Section 129 proceeding. *Id.* PWC performed this update of the Section 129 data using information held by the GOA on volumes of section 80/81 wood purportedly transferred to tenure–holding sawmills from unrelated parties. *Id.*

In regard to the volume represented in the TDA survey, we note that the GOA failed to indicate whether the sales in the TDA survey were made pursuant to SA agreements and the GOA explained that it lacks access to the underlying company–specific data. Regarding the claimed lack of access, the GOA has been unable or unwilling to demonstrate that it made reasonable efforts to obtain the necessary company–specific data. Consequently, we preliminarily find that we are unable to rely on the TDA survey as a basis for the GOA's pass–through claim.

Regarding the data supplied by the PwC, we note that, by the GOA's own admission, the data constitutes a ''limited'' survey population and, thus, does not reflect the total volumes included in the pass–through claim made by the GOA in this review. *See* page 2 and Exhibit AB–S–102 of the GOA's May 2, 2005 supplemental questionnaire response. Further, the information from PwC does not include any documentation regarding purchase agreements, as requested in our April 21, 2005 questionnaire.[10] *See* pages 1–3 and Exhibit AB–S–102 of the GOA's May 2, 2005 supplemental questionnaire response. Moreover, the information from PwC lacks any corresponding value information that would enable the Department to conduct its pass–through analysis on a transaction–specific basis. *Id.* The GOA has been unable or unwilling to explain why it has not supplied the necessary information. Therefore, we preliminarily determine to reject the information from the PwC as a basis for the GOA's pass–through claim.

Therefore, based on our findings above, we preliminarily determine that a pass–through analysis for Alberta is not warranted.

*b. British Columbia*

The GOBC claims that 14.7 million cubic meters of Crown timber, or 22 percent of the total Crown softwood log harvest, was harvested by so–called independent harvesters, *i.e.*, harvesters that do not own and are not affiliated with sawmills during the POR. The GOBC further claims that no subsidy that may be attributable to this harvest volume passed through to purchasing sawmills and, thus, the volumes should not be included in the numerator of British Columbia's provincial subsidy rate calculation. *See* page BC–XIV–2 of the GOBC's November 22, 2004 questionnaire response. In support of this claim, the GOBC provided survey data on what were purported to be B.C.'s primary sawmills' arm's–length log purchases. These data, covering the prior review period, were originally placed on the record of the first review by the BCLTC. *See* ''Norcon Forestry Ltd. Survey of Primary Sawmills' Arm's Length Log Purchases in the Province of British Columbia,'' which was placed on the record of this review at Volume IV, Exhibit 24 A, B of the BCLTC's February 24, 2005 submission (Norcon Study).[11]

In the first review, the Department found that the transactions in the Norcon Study involved sales of Crown logs through Section 20 auctions as well as sales to mills by small woodlot owners. *See e.g.*, Preliminary Results of 1st Review, 69 FR 33208 and *Final Results of 1st Review Decision Memorandum* at Comment 10. In the first review, we further found that most of the Section 20 transactions are structured under standard contracts called ''Log Purchase Agreements'' in which sawmills purchasing the Crown timber are billed for the Crown stumpage fee directly by the B.C. Ministry of Forests. *Id.* As explained above, in the first review, we determined that no pass–through analysis is warranted where the sawmill or some third–party company pays Crown stumpage fees for logs purchased from independent harvesters. *See Final Results of 1st Review Decision Memorandum* at Comment 10.

In addition to the information in the Norcon Study, evidence obtained in this review further supports our finding that sawmills pay the stumpage fee directly to the Crown for logs purchased from so–called independent harvesters. *See* Exhibits BC–S–245, 246, and 247 of the GOBC's April 21, 2005 questionnaire response, which contain source documents illustrating how sawmills pay for stumpage on Section 20 sales. Thus, under such arrangements, any stumpage benefit would go directly to the sawmills paying the stumpage fee, just as if the sawmill were drawing from its own tenure and contracting out for harvesting and hauling services, thereby eliminating the need for a pass–through analysis.

[9] In our April 21, 2005 supplemental questionnaire, we inadvertently referred to the first administrative review of the countervailing duty order when we should have instead referred to the Section 129 proceeding concerning the pass-through issue in the underlying investigation.

[10] As explained above, it is necessary to examine purchase contacts in order to determine whether they were structured as SA agreements. In addition, it is necessary to review the purchase contracts to ensure that the transactions were made at arm's length, *i.e.*, were not affected by any additional factors we previously identified, including: (1) limitations on log sales that may be contained in Crown tenure contracts such as appurtenancy requirements (2) local processing requirements, or (3) fiber exchanges between Crown tenureholders.

[11] In its initial questionnaire response, the GOBC claimed that the BCLTC would provide a Norcon Study updated for the POR of this review. *See* page BC-XIV–1 of the GOBC's November 22, 2004 questionnaire response.

In the prior review, we determined that log sales cannot be considered to be arm's–length transactions where there are restrictive government–imposed appurtenancy and local processing requirements that dictate to the harvester those entities to whom it may sell, thereby severely hampering the ability of the harvesters to bargain freely with willing purchasers in the marketplace. *See Final Results of 1st Review Decision Memorandum* at Comment 10. However, in this review the GOBC has stated that amendments to the Forest Act, effective November 2003, nullified the timber processing and appurtenancy clauses for replaceable and non–replaceable licenses older than 10 years. For licenses in effect fewer than 10 years, the timber processing and appurtenancy clauses will expire with the licenses or be nullified upon the license's tenth anniversary. Further, the GOBC claims that no new licenses advertised after November 4, 2003 contain any of these clauses. *See* GOBC's November 22, 2004 questionnaire response at BC–III–11 and GOBC's April 13, 2005 questionnaire response at page 60.

In light of the GOBC's new legislation and because pre–existing licenses continued to retain the appurtenancy clauses we identified in the prior review, we requested that the GOBC demonstrate that none of the tenure agreements for which it claimed no benefits passed through from the independent harvesters to the sawmills contained any of these restrictive clauses. In response, the GOBC claimed that the timber processing and appurtenancy clauses have no impact on the arm's length transactions and are therefore irrelevant to the Department's pass–through analysis. As to our request that it demonstrate that none of the tenure agreements included in its pass–through claim contained any restrictive clauses, the GOBC claimed that it could not provide such information because it would be burdensome. *See* page 61 of the GOBC's April 13, 2005 questionnaire response. Instead, the GOBC provided some copies of the types of tenure agreements that may have been held by so–called independent harvesters during the POR. However, regarding these agreements, the GOBC provided no information linking the tenure agreements it submitted to those transactions included in its no–pass-through claim (*e.g.*, several of the submitted agreements were merely blank templates). Therefore, for purposes of these preliminary results, we find that the GOBC has failed to demonstrate that the restrictive clauses were eliminated as a consequence of the amendments to the Forest Act. We also continue to disagree with the GOBC that these restrictions are irrelevant to the pass–through analysis. These government–imposed restrictions severely limit the ability of buyers and sellers of logs to bargain freely with whomever they choose or to bargain on terms that are not encumbered by government mandates.

For the reasons explained above, and the fact that the GOBC has not submitted any new information that warrants reconsideration of the Department's prior findings, we preliminarily conclude that the GOBC has failed to adequately substantiate its pass–through claim, and no adjustment to the provincial numerator has been made.

*c. Ontario*

As mentioned above, in response to the Department's initial questionnaire, the GOO submitted an ''aggregate'' claim of the portion of the Crown timber processed by Ontario sawmills that was purchased in arm's–length transactions. The GOO made a claim of no pass–through for 2,459,812 cubic meters or 23.55 percent of the total invoiced volume of Crown timber entering the largest 25 sawmills in Ontario during the POR. In support of this claim, the GOO provided a breakdown of log transactions between the 25 largest mills in Ontario and tenure holders that do not own a sawmill, and certifications from officials of three mills each stating that their mill is not affiliated with its timber suppliers. The OLMA separately submitted company–specific information for one harvester and eight mills. The information included transaction–specific data, statements and certification of non–affiliation, and additional supporting documentation.

For the reasons described below, we preliminarily determine that the GOO failed to substantiate its ''aggregate'' no–pass-through claim. Although the Department accepts the three certifications of non–affiliation provided by the GOO, the GOO's submission is lacking certifications for the other mills it included in its claim. Furthermore, in the initial questionnaire, we requested that the GOO ''not include (as part of its claim) any transactions that were made pursuant to wood supply commitments or purchases for which the mills paid the stumpage to the Crown rather than the harvester.'' page VI–22 of the Initial Questionnaire at ''Section VI: Questionnaire for the Province of Ontario. However, the GOO did not delineate the transactions in which the mills paid the stumpage fees directly to the Crown or the transactions that were made under a wood supply commitment letter or a wood supply agreement. *See* pages ON–237 and ON–238 of Vol. 1 of 19 and exhibit ON–PASS–1 of Vol. 17 of 19 of the GOO's November 22, 2004, initial questionnaire response. Due to these deficiencies, we are unable to conduct a pass–through analysis using the ''aggregate'' data provided by the GOO. We therefore preliminarily determine that changes to the subsidy calculation based on the GOO's ''aggregate'' no–pass-through claim are not warranted.

With respect to the company–specific data and information provided by the OLMA, we preliminarily determine that these are sufficient for purposes of conducting a pass–through analysis. We accept the certifications by the companies that the transactions they reported were between unaffiliated parties. In addition, the company–specific data clearly identified those transactions for which the harvesters (rather than the mills) paid the stumpage fees and those that were not subject to other restrictions, such as government–mandated wood supply commitments or fiber exchange agreements. Accordingly, we determine that a portion of the log sale transactions reported by the OLMA were conducted at arm's–length and were otherwise not affected by other conditions during the POR.

For these transactions, we then performed the next step of our pass–through analysis by examining whether the mill received a competitive benefit from the purchase of the subsidized logs. This competitive benefit analysis is guided by the provisions of the Department's regulation on upstream subsidies. *See* 19 CFR 351.523. Under this analysis, a competitive benefit exists when the price for the input is lower than the price for a benchmark input price. The Department's regulations provide for the use of actual or average prices for unsubsidized input products, including imports, or an appropriate surrogate as the benchmark input price.

We have previously determined that the record in the first administrative review did not contain any private prices in Ontario that were suitable for use as benchmarks to measure the adequacy of remuneration for Crown provided stumpage. *See* ''Private Provincial Market Prices'' section and *Final Results of 1st Admin Review* at Comments 20, 21. As explained in ''Provincial Stumpage Programs'' below, we have reached the same conclusion

based on the record in this proceeding. We have also explained in the first administrative review with respect to British Columbia, that ''stumpage and log markets are closely intertwined and therefore Crown stumpage prices affect both stumpage and log prices, ''and that subsidized prices in the stumpage market would result in price suppression in log markets. *Id.* at ''B.C. Log Prices Are Not An Appropriate Benchmark.'' We have reached the same conclusion with respect to the log markets in Ontario. In Ontario, Crown timber supplies a dominant portion of the market, and the unit cost of this supply effectively determines the market prices of logs in Ontario. As shown on the record in this review and the prior review, the prices harvesters charge for logs are derived directly from the prices they pay for stumpage plus harvesting costs. Because of the relationship between timber (stumpage) and log prices, prices for logs in Ontario would be suppressed by the subsidized prices in the timber markets. As such, log prices in Ontario are unsuitable for purposes of measuring whether a competitive benefit has passed–through in transactions involving sales of Crown logs.

Instead, we have turned to private stumpage prices in the Maritimes, which we have determined are market–determined, in–country prices. However, because we are measuring the competitive benefit for the sale of subsidized logs, we have derived species–specific benchmark log prices by combining the unsubsidized Maritimes stumpage prices with the various harvest, haul, road, and management costs reported by the GOO.

We then compared the per unit prices listed for each transaction reported by the OLMA that we determined was eligible for a competitive benefit analysis with our benchmark log prices. If the price per cubic meter was equal to or higher than the benchmark price, we determined that no competitive benefit passed through and the corresponding volume was excluded from the numerator of our calculations. Where the per unit price was lower than the benchmark price, and where the difference between the benchmark and actual log prices was greater than that province–specific per–unit stumpage benefit (*e.g.*, C$8.74 for Ontario SPF), we capped the amount of the subsidy considered to have ''passed–through'' by the province–specific per–unit stumpage benefit. As such, the amount of the competitive benefit that calculated as was not passed though in the transaction was never greater than the subsidy granted by the Crown. The result of these calculations is that only a small portion of the Crown harvest volume originally included in the numerator is excluded from the numerator of our revised subsidy calculations. Accordingly, a small reduction in the Ontario subsidy benefit is warranted. The calculations are business proprietary. *See* the May 31, 2005, Preliminary Calculations Memorandum for Ontario. As noted above, if we were unable to determine that the transaction qualified as an arm's–length transaction or was subject to other conditions (*e.g.*, the stumpage for the log was paid by the harvester), we did not conduct a competitive benefit analysis and the corresponding volume associated with these transactions was not excluded from the subsidy calculation.

*d. Manitoba*

The Canadian parties and the GOM did not make an ''aggregate'' claim of the portion of the Crown timber processed by Manitoba sawmills that was purchased in arm's–length transactions. Rather, the OLMA submitted company–specific information on behalf of Tembec Inc.

We determine that the company–specific data and information provided by the OLMA are sufficient for purposes of our analysis and that a portion of the transactions in Manitoba constitute arm's–length sales of logs by independent harvesters to unaffiliated sawmills during the POR. We accept the statement that ''with respect to its operations in Manitoba, Tembec is an independent harvester.'' *See* page 4 of Volume 1 of the OLMA''s November 22, 2004, submission. In addition, the information and data provided indicate that the transactions were not characterized by the limitations which constrain buyers and sellers of harvested Crown timber from free negotiation, described above. Accordingly, we determine that a portion of the transactions in Manitoba constitute arm's–length sales of logs by independent harvesters to unaffiliated sawmills during the POR.

We applied the same methodology as described above in the Ontario pass–through section when conducting our competitive benefit analysis. Because the GOM did not submit any log pricing data on the record, we derived the species–specific benchmark log price by combining the private market–determined, in–country Maritime stumpage prices with the various costs reported by the GOM. Because the GOM did not report certain harvesting costs and hauling costs, we used, where necessary, harvesting and hauling costs placed on the record by the GOO as surrogates. The result of these calculations is that none of the Crown harvest volume originally included in the numerator is excluded from the numerator of our revised subsidy calculations. Accordingly, no reduction in the Manitoba subsidy benefit is warranted. The calculations contain business proprietary information and, thus, cannot be discussed in further detail in these preliminary results. Therefore, for further details, *see* the May 31, 2005, Preliminary Calculations Memorandum for Manitoba.

*e. Quebec*

In the first review, the Department did not include Crown timber harvested by FMC and FMA licensees in the numerator of Quebec's provincial subsidy rate calculation. While we acknowledged that evidence on the record of the first review demonstrated that some of the timber harvested under FMCs was sold to sawmills during the POR, such transactions may have included sales of logs from non–sawmill owning tenure holders to sawmills and, thus, would have required a pass–through analysis. *SeeFinal Results of the 1st Review Decision Memorandum* at Comment 13. Because in the first review we did not examine the relationship between the harvesters and sawmills or the terms and conditions of the timber sales in the context of a pass–through analysis, we found that we were unable to reach a determination as to whether the volume of timber harvested under FMCs should be included in the numerator. *Id.* However, we indicated that we would reconsider the issue in the course of the second review. *Id.*

In this review, petitioners assert that the Department must include in the numerator of the Quebec provincial subsidy rate calculation the volumes of Crown timber harvested by FMC and FMA licensees on the grounds that the GOQ has refused to answer the Department's questions concerning these licensees. *See* page 112 through 114 of petitioners' April 29, 2005 submission.

For purposes of these preliminary results, we have included the volume of Crown timber harvested under the FMC license program in the numerator of Quebec's provincial subsidy rate calculation. In our initial questionnaire, we explained to the GOQ that if it wished to claim that any portion of the reported volume of Crown timber harvested under the FMC and FMA licences was sold in arm's length transactions and that any subsidies provided for that portion of timber of the Crown harvest did not ''pass–

through'' to purchasing sawmill(s), it had to provide a breakdown, by species, of the total volume and value of this harvested timber during the POR. In addition, we instructed the GOQ to respond to a series of questions regarding the terms and conditions of the transactions covered by any pass–through claim and to identify any affiliations between the buyer and seller of the logs in question. *See* VII–30 of our September 8, 2005 questionnaire. In its response, the GOQ stated:

> At this time, the Gouvernment of Quebec is not claiming that any portion of the reported volume of Crown harvest was sold in arms' length transactions. This is not to suggest that there are no such transactions. To the contrary, the volumes of Crown timber harvested pursuant to FMCs and FMAs, and subsequently sold in open market transactions are undoubtedly arm's length transactions. . . Because the volume of standing timber harvested under FMCs and FMAs is negligible, the Department's consistent practice has been to base its calculations on the volumes harvested pursuant to TSFMAs. Adherence to this practice obviates the need for pass–through analysis in Quebec.

*See* page QC–157 through QC–158 of the GOQ's November 22, 2004 questionnaire response. The GOQ added that if the Department decided to include FMC and FMA volumes in its calculations, then it would have to undertake a pass–through analysis. *Id.*

In our initial questionnaire, we further asked the GOQ to indicate the total volume and value of Crown timber billed to any person or company that did not own or operate a sawmill and was not affiliated with a sawmill that the GOQ permitted to harvest Crown timber during the POR. *See* page VII–6 of our September 8, 2004 questionnaire. In response, the GOQ provided a list of FMC holders that it claimed did not own or operate sawmills during the POR. *See* Exhibit 50 of its November 22, 2004 questionnaire response. Many of the FMC holders identified in Exhibit 50 were municipalities. The GOQ also provided consolidated volume and value harvest data for FMC holders that ''paid no stumpage'' and those that ''paid stumpage.'' *See* Exhibit 57 of the GOQ's November 22, 2004 questionnaire response. However, this exhibit did not list the volume and value data separately for each FMC holder, as instructed by our initial questionnaire.

In our initial questionnaire, we also asked the GOQ to identify the volume and value, by species and grade, of Crown log sales by FMC holders to companies that own sawmills. *See* page VII–7 of our September 8, 2004 questionnaire. In its questionnaire response, the GOQ stated:

> The requested volume and value data is collected by the {Ministry of Natural Resources} as part of an annual process. The data for the POR are not yet available. The {Ministry} does not know the specific arrangements entered into by holders of FMCs and FMAs and, therefore, cannot describe the nature of those agreements or provide the representative contracts.

*See* page QC–48 of the GOQ's November 22, 2004 questionnaire response.

**FMC Licences**

Pursuant to section 102 of the Forestry Act, the GOQ may grant a FMC license to any ''person.'' *See* QC–S–13 and page QC–44 of the GOQ's November 22, 2004 questionnaire response. Thus, FMC license holders may or may not own sawmills. However, cross–referencing a list of FMC holders, as provided in Exhibit 32 of the GOQ's November 22, 2004 questionnaire response, with a list of sawmills with GOQ authorization to consume softwood timber, reveals that several sawmills did hold FMCs during the POR. For authorized consumption data, see page 55, Attachment III, of the June 2, 2004 ''Quebec Private Price Documentation Memo'' from the *Preliminary Results of the 1st Review*, which was placed on the record of this review the February 28, 2005 memorandum to the file from Maura Jeffords, Case Analyst.

In addition, evidence indicates that the GOQ often grants FMCs to municipalities in the province. *See* page QC–24 of the GOQ's November 22, 2005 questionnaire response and *Preliminary Results of 1st Review*, 69 FR at 33225. Further, sections 104.2 and 104.3 of the GOQ's Forestry Act stipulate that the holder of a FMC license must supply standing timber covered by the license to timber wood processing plants in Quebec in the amount specified on the license's management permit. This stipulation is also reflected in the standard language of the FMC contract. *See e.g.*, page 3 and 10 of the sample FMC contract contained in Exhibit 31 of the GOQ's November 22, 2004 questionnaire response. Therefore, based on the information discussed above, we preliminarily determine that the FMC volume reported by the GOQ includes FMC licenses held by sawmills as well as softwood log volumes that were sold directly by government entities in Quebec (*e.g.*, municipalities) to sawmills.

As explained above, we provided the GOQ an opportunity to substantiate its claim that Crown logs were sold in arm's length transactions and that any subsidies did not ''pass–through'' to purchasing sawmills. We also specifically instructed the GOQ not to include in its pass–through claim any logs sold directly by government entities holding FMCs. The GOQ did not do so. Rather, the GOQ reported the entire volume of timber harvested under FMC licenses, which, apart from government municipalities, may also include timber harvested by sawmills with tenure. The volume of timber harvested by government entities and sawmills with tenure is not be eligible for a pass–through analysis. The sale by government municipalities of Crown–harvested logs is no different from the provincial government itself selling the logs and thus does not involve an ''indirect'' subsidy. Further, timber harvested by sawmills with tenure would be used by these mills to produce lumber in their own facilities rather than for the sale of logs to other sawmills. Because the GOQ did not break out separately the volume of Crown timber harvested by government entities and sawmills with tenure from the volume harvested by independent harvesters that sold logs to sawmills during the POR, we preliminarily determine that a pass–through analysis is not warranted. Therefore, we have included all of the FMC harvest volume in the numerator of our subsidy calculations.

Petitioners have further argued that the GOQ's questionnaire response indicates that no stumpage fees at all were paid for a portion of FMC harvest volume and that the Department should reflect that lack of payment in our calculations. *See* Exhibit QC–S–82 of the GOQ's November 22, 2004 questionnaire response. We disagree. In cases where the FMC licensee is a municipality, the municipality collects dues for the cutting rights, not the GOQ. *See* QC S—92 of the GOQ's November 22, 2004 questionnaire response. Thus, the information contained in Exhibit QC–S–82 reflects the FMC harvest volumes sold by government municipalities and non–profit organizations but not the corresponding prices charged to the buyers of the logs. Therefore, lacking the price information for these FMC volumes, as facts available we are applying the unit prices

that the GOQ reported for the remaining amount of the FMC volume.

**FMA Licenses**

We are not including the timber volumes harvested under FMA licenses in the numerator of our calculations. Under section 84.1 of the Forest Act, an FMA licensee may not be the holder of a wood processing permit nor be affiliated with the holder of a wood processing permit. *See* QC–S–13 of the GOQ's November 22, 2004 questionnaire response. Although the record does not contain the prices which the FMA license holders charge their customers for Crown logs even if the full amount of the subsidy is assumed to pass–through to its customer, inclusion of this volume in the numerator has no impact on the portion of the country–wide rate attributable to Quebec. Therefore, we have not included any of the FMA harvest volume in our calculations.

**Analysis of Programs**

*I. Programs Preliminarily Determined to Confer Subsidies*

A. Provincial Stumpage Programs

In Canada, the vast majority of standing timber sold originates from lands owned by the Crown. Each of the reviewed Canadian provinces, *i.e.*, Alberta, British Columbia, Manitoba, Ontario, Quebec and Saskatchewan,[12] has established programs through which it charges certain license holders ''stumpage'' fees for standing timber harvested from these Crown lands. With the exception of British Columbia, these administered stumpage programs have remained largely unchanged. Thus, for a description of the stumpage programs administered by the GOA, GOS, GOM, GOO, and GOQ, *see* ''Description of Provincial Stumpage Programs'' section of the *Preliminary Results of 1st Review*. Changes to British Columbia administered stumpage system are discussed below.

**Legal Framework**

In accordance with section 771(5) of the Act, to find a countervailable subsidy, the Department must determine that a government provided a financial contribution and that a benefit was thereby conferred, and that the subsidy is specific within the meaning of section 771(5A) of the Act. As set forth below, no new information or argument on the record of this review has resulted in a change in the Department's determinations from the final results of the first review that the provincial stumpage programs constitute financial contributions provided by the provincial governments and that they are specific.

**Financial Contribution and Specificity**

In the underlying investigation, the Department determined, consistent with section 771(5)(D)(iii) of the Act, that the Canadian provincial stumpage programs constitute a financial contribution because the provincial governments are providing a good to lumber producers, and that good is timber. The Department further noted that the ordinary meaning of ''goods'' is broad, encompassing all ''property or possessions'' and ''saleable commodities.'' *See* ''Financial Contribution'' in the *Final Determination Decision Memorandum*. Further, the Department found that ''nothing in the definition of the term 'goods' indicates that things that occur naturally on land, such as timber, do not constitute 'goods.'" To the contrary, the Department found that the term specifically includes ''. . . growing crops and other identified things to be severed from real property.'' *Id.* The Department further determined that an examination of the provincial stumpage systems demonstrated that the sole purpose of the tenures was to provide lumber producers with timber. Thus, the Department determined that regardless of whether the provinces are supplying timber or making it available through a right of access, they are providing timber. *Id.* No new information has been placed on the record of this review warranting a change in our finding that the provincial stumpage programs constitute a financial contribution in the form of a good, and that the provinces are providing that good, *i.e.*, timber, to lumber producers. Consistent with our findings in the underlying investigation, we preliminarily continue to find that the stumpage programs constitute a financial contribution provided to lumber producers within the meaning of section 771(5)(D)(iii) of the Act.

In the investigation, the Department determined that provincial stumpage subsidy programs were used by a ''limited number of certain enterprises'' and, thus, were specific in accordance with section 771(5A)(D)(iii)(I) of the Act. More particularly, the Department found that stumpage subsidy programs were used by a single group of industries, comprised of pulp and paper mills, and the sawmills and remanufacturers that produce the subject merchandise. *See* ''Specificity'' section of the *Final Determination Decision Memorandum*. This was true in each of the reviewed provinces. No information in the record of this review warrants a change in this determination and, thus, we preliminarily continue to find that the provincial stumpage programs are specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

**Benefit**

Section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a) govern the determination of whether a benefit has been conferred from subsidies involving the provision of a good or service. Pursuant to section 771(5)(E)(iv) of the Act, a benefit is conferred by a government when the government provides a good or service for less than adequate remuneration. Section 771(5)(E) further states that the adequacy of remuneration:

> . . . shall be determined in relation to prevailing market conditions for the good or service being provided . . . in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of . . . sale.

The hierarchy for selecting a benchmark price to determine whether a government good or service is provided for less than adequate remuneration is set forth in 19 CFR 351.511(a)(2). The hierarchy, in order of preference, is: (1) market–determined prices from actual transactions within the country under investigation or review; (2) world market prices that would be available to purchasers in the country under investigation; or (3) an assessment of whether the government price is consistent with market principles.

Under this hierarchy, we must first determine whether there are actual market–determined prices for timber sales in Canada that can be used to measure whether the provincial stumpage programs provide timber for less than adequate remuneration. Such benchmark prices could include prices resulting from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively–run government auctions. *See* 19 CFR 351.511(a)(2)(i).

The Preamble to the CVD Regulations provides additional guidance on the use of market–determined prices stemming from actual transactions within the country. *See* ''Explanation of the Final Rules ''*Countervailing Duties, Final Rule*, 63 FR 65348, 65377 (November

[12] In this review, we did not examine the stumpage programs with respect to the Yukon Territory, Northwest Territories, and timber sold on federal land because the amount of exports to the U.S. is insignificant and would have no measurable effect on any subsidy rate calculated in this review.

25, 1998) (the Preamble). For example, the Preamble states that prices from a government auction would be appropriate where the government sells a significant portion of the good or service through competitive bid procedures that are open to everyone, that protect confidentiality, and that are based solely on price. The Preamble also states that the Department normally will not adjust such competitively bid prices to account for government distortion of the market because such distortion will normally be minimal as long as the government involvement in the market is not substantial. 63 FR at 65377.

The Preamble also states that ''[w]hile we recognize that government involvement in the marketplace may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.''[13]

The guidance in the Preamble reflects the fact that, when the government is the predominant provider of a good or service there is a likelihood that it can affect private prices for the good or service. Where the government effectively determines the private prices, a comparison of the government price and the private prices cannot capture the full extent of the subsidy benefit. In such a case, therefore, the private prices cannot serve as an appropriate benchmark.

In the first administrative review, the Department determined that there were no usable private market stumpage prices in the provinces whose stumpage programs are under review that could serve as benchmarks. *See* ''Private Provincial Market Prices'' section of the *Final Results of 1st Review Decision Memorandum*. For the reasons discussed below, the Department continues to find that there are no private stumpage market prices in the provinces under review that can serve as first–tier benchmarks in Alberta, British Columbia, Manitoba, Ontario, Quebec, and Saskatchewan.

*There Are No Useable First–Tier Benchmarks in the Subject Provinces Measuring the Benefit on Stumpage Programs Administered by the GOA, GOBC, GOO, GOQ, GOM, and GOS*

In this administrative review, the GOA reported private price data and government competitive bid data as reported in Alberta's 2004 Timber Damage Assessment (TDA) update; the GOO provided an updated survey of private prices prepared by Demers Gobeil Mercier & Associes Inc. (DGM); the GOQ provided private stumpage prices charged in its province; and the GOBC provided prices from auctions the government administers under the B.C. Timber Sales (BCTS) program. As discussed below, we have preliminarily determined that pricing data reported by the GOA, GOO, GOQ, and GOBC are not suitable for use as a benchmark within the meaning of 19 CFR 351.111(a)(2)(i).

**Province of Alberta**

In response to the Department's request for private timber prices, the GOA explained that it is not involved in private party transactions and does not know the process by which private timber is sold. *See* GOA's November 22, 2004 response, Volume 1 at page VIII–1. However, the GOA submitted the TDA as a source of data for arm's–length, cash only private log sales. *See* GOA's November 22, 2003 response at Exhibit AB–S–76. We have examined Alberta's TDA private price data and government ''competitive'' bid data reported in Alberta's TDA 2004 update and continue to find that the TDA prices are not actual market–determined prices, as required by the CVD regulations, and, thus, cannot be used as a benchmark. *See Preliminary Results of 1st Review*, 69 FR at 33214 and ''Private Provincial Market Prices'' section of the *Final Results of 1st Review Decision Memorandum* and at Comment 19.

The GOA explains that the TDA began in the mid–1990's as a means for mediating disputes between timber operators and other industrial operators concerning the value of standing timber adversely affected by industrial operations on timber tenures. Pursuant to these efforts, a consultant has collected information on log purchases which does not differentiate between private and Crown sources. The GOA describes the methodology, stating that ''the values on the {TDA} table are derived by consultants from a two year average of competitive Commercial Timber Permit (CTP) sales values, as well as the value of arm's length log purchases, adjusted to stumpage values by backing out harvesting and haul costs.'' *See* the GOA's November 22, 2004, Questionnaire Response at Volume 1, page I–8.

The GOA's response indicates that the methodology used to report the TDA private timber transaction data for this administrative review is consistent with and has not changed since the period covered by the prior administrative review. *Id.* As previously explained by the Department, the vast majority of the CTP prices do not reflect competition for the right to harvest timber and the CTP prices underlying the TDA calculations do not reflect market determined prices. *See Final Results of 1st Review Decision Memorandum* at Comment 19.

There is no new evidence offered by the GOA that would result in a reconsideration of the Department's decision to reject the use of TDA as a provincial benchmark. Moreover, due to the fact that the TDA data does not differentiate private and Crown sources in its survey, there is no method for the Department to identify the potentially private transactions captured by the TDA survey (which would only represent a maximum of 203,041 cubic meters or 2 percent of Alberta's total softwood sawmill Section 80/81 harvest volume that is reported as harvested from private lands). *See* GOA's November 22, 2003 response Table 1 at Exhibit AB–S–1. Therefore,

based on the record evidence and consistent with the Department's prior determinations, we find that the TDA prices are not actual market–determined prices, as required by the CVD regulations, and, thus, cannot be used as a benchmark. *See* 19 CFR 351.511(a)(2).

**Province of British Columbia**

British Columbia did not provide private stumpage prices for the record of this proceeding. Instead, the Province provided prices from auctions the government administers under section 20 of the Forest Act. These auctions were formerly conducted under the Small Business Forest Enterprise Program (SBFEP). In the investigation and first administrative review, the Department determined that the auction prices under the SBFEP program were not suitable for use as benchmarks in determining whether the GOBC sold Crown timber for less than adequate remuneration because the SBFEP auctions were only open to small business forest enterprises. As such, we determined that these prices did not reflect prices from a competitively run government auction, as required by our regulations. *See* 19 CFR 351.511(a)(2)(i) and the Preamble, 63 FR at 65377; see also the ''Private Provincial Market

[13] *Preamble*, 63 FR at 65377–78 (emphasis added); *see also Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 Fed. Reg. at 20259.

Prices'' section of the *Final Results of 1st Review Decision Memorandum* and *Preliminary Results of 1st Review*, 69 FR at 33214.

The GOBC has explained in this proceeding that the Forest Act was amended effective November 4, 2003. The amendments include specific changes to the section 20 auction program, under which the SBFEP was replaced by the new B.C. Timber Sales (BCTS) program. The GOBC claims that pursuant to these changes, section 20 auction prices may serve as first–tier benchmarks for the November 2003 to April 2004 period to determine whether Crown timber in British Columbia was sold for less than adequate remuneration. *See* GOBC November 22, 2004 Questionnaire Response, BC–III–1. *See also* GOBC May 18, 2005 Comments at page 2.

To support its claim, the GOBC highlights an amendment that eliminated the limitation of section 20 auctions to small businesses. Before the amendment, section 20 sales under the SBFEP were classified under three categories. The second and third categories were subsumed into the new BCTS program largely unchanged, and continue to contain the same restrictions on participants as before the amendments to the law. According to the GOBC, the first category, however, was broadened to include individuals or corporations that own a timber processing facility. Previously, these participants were excluded. This change effectively eliminated the restriction of section 20 auction sales to small businesses allowing them to include all applicants in the Province. *See* GOBC November 22, 2004 Questionnaire Response, BC–III–2.

As explained in detail, below, the Department preliminarily determines that record evidence does not support the use of prices for Crown timber auctioned under section 20 of the Forest Act, as amended, as benchmarks to measure the adequacy of remuneration for Crown stumpage. Firstly, the volume sold at auction does not meet the standard set out in the Department's Regulations. Secondly, the auction prices submitted by the GOBC are not market determined prices as they are effectively limited by Crown stumpage prices paid by Crown tenure–holding sawmills. The Department's analysis cannot utilize a benchmark that would reflect any underlying subsidy to determine whether and to what extent that very subsidy exists.

Section 351.511(a)(2)(i) of the CVD Regulations states that in measuring the adequacy of remuneration the benchmark may be derived from actual sales from competitively run government auctions and that, when choosing from such auction prices, product similarity, quantities sold, and other factors affecting comparability will be considered. The Preamble to the CVD Regulations further elaborates on this as it requires the use of market determined prices which may include actual sales prices from government–run auctions where such sales are competitive, account for a significant portion of the total market, and are based solely on price. *See* Preamble, 63 FR at 65377. Record evidence does not support the use of prices for Crown timber auctioned under section 20 of the Forest Act, as amended, as benchmarks because the volumes sold under the auctions are not ''significant.'' As such, these prices do not meet this part of the standard as stipulated in the CVD Regulations.

Specifically, since the amendments to the Forest Act became effective, on November 4, 2003, to the end of the POR, on March 31, 2004, participants in the BCTS program, including all auction sales (*i.e.*, section 20 and section 21), accounted for 7.1 percent of the total Crown harvest and volume billed, while participants in the newly ''unrestricted'' category 1 auction sales accounted for only 1.1 percent of the total Crown harvest and volume billed. *See* GOBC April 13, 2005, Exhibit BC–S–225. Thus, the volume of Crown timber sold by the GOBC through the section 20 auctions during the POR cannot be considered to represent a ''significant'' portion of the timber sold in British Columbia during the POR, and the prices from these auctions therefore do not meet a key requirement for their consideration as benchmarks for measuring the adequacy of remuneration for government provided goods.

Our determination that the prices for Crown timber auctioned under section 20 of the Forest Act, as amended, are not market–determined prices, but rather reflect prices for administratively–set Crown stumpage, is based on a number of factors. First, participants in the auctions included Crown tenure holding sawmills but, most often, were loggers who then sold the timber to Crown tenure holding sawmills. Second, the price that Crown tenure holding mills are willing to pay at auction or, more frequently, to loggers is determined by the price they pay for Crown stumpage because of the non–binding Annual Allowable Cut (AAC) in B.C. Third, the price loggers bid at the auctions is limited by the price they receive from their customers, the largest of whom are tenure–holding sawmills. Therefore, the auction prices represented directly or indirectly by sales to Crown tenure–holding sawmills are effectively determined by Crown stumpage prices. The substantial presence of valuations by Crown tenure–holding sawmills within the BCTS prices means that the BCTS auction prices are not market–determined prices as required in the Department's Regulations and are not useable as benchmarks for measuring the adequacy of remuneration.

Record information demonstrates that the participants in BCTS section 20 auctions were primarily logging firms but included some limited participation by Crown tenure–holding sawmills . In a study prepared by Susan Athey and Peter Cramton of Market Design Inc, titled ''Competitive Auction Markets in British Columbia,'' (BCLTC Study), the authors state at pages 6—7, that ''most of the bidders in the auctions during this time period were not the major timber companies or tenure–holders, but rather most bidders were logging firms.'' *See* BCLTC's March 2, 2005, factual submission. A footnote in the study clarifies that ''about two–thirds of the 34 Coast tracts were won by log brokers or market loggers, while about four–fifths of the 142 Interior tracts were won by log brokers or market loggers.'' *Id*

The record further shows that a large portion of the Crown timber purchased in the auctions by loggers was, in turn, sold to Crown tenure–holding sawmills in the province. The BCLTC Study explains that because of the nature of the industry in B.C.:

> the efficient industry structure has specialized logging firms and manufacturing firms. The logging firms place bids in BCTS auctions, and they sell the timber directly to mills, through log markets, or some combination thereof. Mills occasionally participate in auctions directly, but this participation is the exception rather than the rule. *Id.*

During the course of this proceeding, we specifically asked the GOBC for additional information concerning the identity of the BCTS section 20 auctions bidders and the use of the timber obtained from these auctions. *See* the Department's requests for information in the questionnaires to the GOBC, dated March 16, 2005, March 23, 2005, and April 5, 2005. The GOBC contacted the Department on March 21, March 28, and on April 8, to advise that it was unable to respond fully to these questionnaires because of the voluminous data associated with each of the timber sale

licences (TSL) associated with the section 20 auctions sales.[14]

In light of this, the Department requested information from 14 randomly selected TSLs, including a copy of ''payment distribution,'' of the Ministry of Forests (MOF) invoices. The GOBC provided the requested information for ten of these TSLs, stating that no invoices were issued during the POR for the remaining four TSLs selected by the Department. The information from these 10 TSLs shows that the winning bidders of the Crown timber under BCTS section 20 auctions sold at least 65 percent of the timber to large Crown tenure holders with sawmills. *See* Exhibits BC–S–245 and 246 of the GOBC's April 21, 2005 questionnaire response.

The evidence that the auction winning loggers' principal customers are large tenure–holding sawmills is supported by the dominance of the B.C. timber market by the large Crown tenure–holding sawmills. This is significant to the extent that it limits the loggers' ability to sell timber bought at the auctions to other customers. Record information demonstrates that a small number of these large tenure–holding sawmills harvest the majority of the Crown timber in B.C. For example, the ten largest licensees by AAC (Canadian Forest Products Ltd., Weyerhaeuser Company Limited, Slocan Forest Products Ltd., West Fraser Mills Ltd., Doman Industries, International Forest Products, Riverside Forest Products Limited, Weldwood of Canada Limited, Tolko Industries Ltd., and Tembec Industries Inc) account for approximately 59 percent of the Crown harvest and 52 percent of all timber harvested in the province. *See* BC–III–14 of the GOBC's November 22, 2004 questionnaire response and Exhibits BC–S–1 and BC–S–10. These large Crown tenure–holding sawmills, and the timber harvested from administratively–set Crown logs, thus dominate a significant portion of the timber market in British Columbia.

The idea that the customers of loggers bidding at the auctions are large tenure–holding sawmills is further supported with other information on the record. For example, West Fraser, a large Crown tenure–holding sawmill, claims that it purchased logs from market loggers who won bids in section 20 small business or BCTS auctions; in such purchases, West Fraser also claims that other sawmills participated. *See* BCLTC's February 28, 2005 submission at Appendix C, page 2. Other sawmills submitted statements that they too purchased section 20 auction logs from winning bidders. *Id.* at Appendices B—G.

On the basis of the record information described above showing that most of the participants in the auctions were loggers who sold most of the timber bought at auction to Crown tenure–holding sawmills, we determine that it is reasonable to conclude that most of the Crown timber sold in BCTS section 20 auctions was ultimately purchased and used by Crown tenure–holding sawmills.

The AAC in the province effectively limits the amount that Crown tenure–holding mills are willing to pay for timber from the auctions or pay to loggers who win bids at the auctions. The AAC in BC is not an effective limitation on timber supply for Crown tenure–holding sawmills, as sawmills can just decide to harvest more from their Crown tenure, the price they pay for auctioned timber would be limited by what they pay for Crown stumpage. The record shows that these large Crown tenure–holding sawmills did not exhaust the amount of timber they could harvest from their tenures during the POR. As such, they were not forced to obtain timber from other sources, such as the BCTS section 20 auctions, because of a scarcity of available timber on their own tenure.

Specifically, the Crown tenure–holding sawmills, who hold forest licenses and tree farm licenses, were allocated 61.0 million cubic meters of timber or 85 percent of the AAC, which is the annual rate of timber harvesting specified in each Timber Supply Area (TSA), during the POR. However, these licensees harvested only 42.4 million cubic meters or 70 percent of their AAC, a shortfall of 18.6 million cubic meters. *See* GOBC's November 22, 2004, Questionnaire Response at BC–S–139. Moreover, since Crown tenure holders are allowed to overcut their AAC, even meeting their AAC would not have necessitated their buying from the auctions as additional timber could have been harvested under their tenures. *See* GOBC November 22, 2004, Questionnaire Response at BC–S–88. The mills' willingness to pay for timber from other sources, such as the auctions, will be limited by their costs for obtaining timber from their own tenures.

The price that loggers bid at the auctions is limited by the price they receive from tenure–holding sawmills because these sawmills are major purchasers of timber from the loggers and the major producers of softwood lumber in B.C. That loggers consider the price they will receive from tenure–holding sawmills and that this price determines what they bid in the BCTS auctions is demonstrated in the record by the fact that logging firms negotiate with the Crown tenure holding sawmills prior to placing a bid in the BCTS auction. *See* GOBC's November 22, 2004, Questionnaire Response at BC–IV–43 and April 13, 2005, Supplemental Response at page 47, and GOBC's November 22, 2004, Questionnaire Response at BC–S–26. *See also* the BCLTC Study at page 6–7, which states that:

> The BCTS auctions during this time period restricted bidders to hold no more than three BCTS timber licenses simultaneously. .. In addition, if a [saw]mill is unable to bid on a tract due to the restriction, the market loggers participating in the BCTS auctions will still take into account the mill's valuation for the logs, since the loggers anticipate being able to sell the harvested logs directly to the mill or through the log market (where log market prices will reflect the valuations of all local mills). Thus, a mill's valuation for the logs is still reflected in the auction prices, even it if does not bid directly. (Emphasis added.)

As stated previously, our analysis cannot utilize a benchmark that would reflect any underlying subsidy to determine whether and to what extent that very subsidy exists. As described above, the prices for timber auctioned under section 20 are effectively limited by Crown stumpage prices paid by Crown tenure–holding sawmills. These sawmills purchase the predominant amount of the timber bought in the auctions by logging companies at prices that are negotiated with the loggers prior to the auction in addition to being minor participants in the auctions. Moreover, the sawmills are in a position to establish these timber prices in a manner that reflects the prices they pay for Crown stumpage on their own tenures, *i.e.*, administratively–set prices, because they are not faced with a scarcity of timber from their tenure.

For these reasons, we preliminarily determine that the prices of Crown timber auctioned under section 20 of the Forest Act, as amended during the POR, are effectively limited by prices for administratively–set Crown timber. As such, these prices cannot serve as benchmarks to measure the adequacy of remuneration for Crown provided timber, because they do not reflect

[14] TSLs grant the right to harvest timber within a specific Timber Supply Area or TFL Area. TSLs have a duration of no more than 10 years. TSLs under Section 20 and 23 typically have a one-year term while TSLs under Section 21 have terms averaging four or five years.

market–determined prices from competitively run government auctions, a key requirement of the CVD regulations. *See* 19 CFR 351.511(a)(2)(i).

**Province of Ontario**

In the first administrative review, we determined that the prices for private standing timber in Ontario placed on the record by the GOO could not be used for benchmark purposes. Specifically, we determined that the prices reported in a survey prepared by DGM could not be used as benchmarks because the prices are effectively determined by the price for public timber. *See Preliminary Results of 1st Review*, 69 FR at 33215–33217; and *Final Results of 1st Review Decision Memorandum* at Comments 20 and 21.

In this review, the GOO submitted estimates (based on mill return data) of the volumes of private timber delivered to the various mills and a survey of prices of standing timber from private lands conducted by Bearing Point. In addition, the GOO submitted an economic analysis written by Charles River Associates and a map which shows the distribution of private forest lands in Ontario.

This new information has not led us to alter our findings from the first review. As in the prior review, we determine that the prices for private standing timber in Ontario are effectively determined by the price for public timber and, thus, cannot be used as benchmarks for determining whether the GOO sells Crown timber for less than adequate remuneration.

Information on the record indicates that sawmills in Ontario rely on Crown timber for the vast majority of their timber supply needs and use private timber in small quantities. According to mill return data provided by the GOO, 70 out of 75 mills reported usage of both Crown timber and timber from private lands, accounting for 99.7 percent of the total volume reported. *See* Exhibit ON–SUPP–3 of the GOO's April 15, 2005, supplemental questionnaire response. Also according to data provided by the GOO, the twenty–five largest sawmills, which account for about 74 percent of the volume reported, used approximately 10 million cubic meters of Crown timber during POR and less than one half million cubic meters of private timber. Information provided on the record by the GOO also indicates that tenure holders in Ontario are virtually unconstrained in the amount of Crown timber they can obtain. During the POR, loggers and mills in Ontario harvested only 70 percent of the annual allowable cut set by the GOO. *See* exhibit ON–TNR–3 of the GOO's April 15, 2005, supplemental questionnaire response. In each of the last four years, the harvest level ranged from as low as 56 percent to no more than 88 percent of the annual allowable cut. *Id.*

With no constraints on the amount of Crown timber that sawmills can obtain, the price that loggers are willing to bid on private stumpage is dictated by the difference of the expected sale price of the log and their harvesting costs plus profit. Loggers who sell to tenure–holding mills cannot expect to charge more for their private logs than the cost of the logs that the mills can source from their public tenure. The largest 25 softwood sawmills, producing 92 percent of the lumber in Ontario, have Crown tenure for which they pay government–set stumpage prices. *See* page ON–236 of the GOO's November 22, 2004 initial questionnaire response. Because the AAC in Ontario is not binding, mills with public tenure can always harvest more timber from their tenure and are not driven to the private market by demand that cannot be met from their tenure–holdings. *See Final Results of 1st Review Decision Memorandum* at Comment 20. Their willingness to pay for logs from other sources will be limited by their costs for obtaining timber from their own tenures. Therefore, the prices loggers bid for private stumpage are limited by the public stumpage prices paid by these mills. For these reasons, the Department finds that the transactions recorded in the Bearing Point Survey are effectively determined by the Crown stumpage prices and are, hence, not suitable benchmarks for assessing adequacy of remuneration.

Our analysis cannot utilize a benchmark that would reflect any underlying subsidy to determine whether and to what extent that very subsidy exists. Because the prices in the Bearing Point Survey are dictated by the price for Crown timber, they are not useable under tier one of our regulatory hierarchy.

**Province of Quebec**

In the first administrative review, we concluded that prices for private standing timber in Quebec could not serve as benchmarks for determining whether the GOQ sells Crown timber for less than adequate remuneration because the incentives that tenure holders face vis–a-vis the private market are distorted. We based our conclusion on the following factors:

- Tenure–holding sawmills have an interest in maintaining a low value of standing trees in private forests, as this value provides the basis for calculating Crown timber prices (the Feedback Effect)
- Sawmills with access to Crown timber can avoid sourcing in the private forest because, among other things, the annual allowable cut on Crown land is not binding.
- Tenure–holding sawmills dominate the private market
- Sawmills without access to Crown timber account for small harvest volume in the private forest

*See Preliminary Results of 1st Review*, 69 FR at 33215–33217. *See also Final Results of 1st Review Decision Memorandum* at Comments 22 through 33.

A review of the information on the record of this review has not led us to alter this finding. Similar to the first administrative review, the GOQ provided the aggregate sourcing patterns of Quebec's 1,020 softwood sawmills during 2003. The mills were divided into four categories: mills sourcing exclusively from public sources (purely public mills), mills sourcing exclusively from private sources (purely private mills), mills sourcing from public and private sources, and mills sourcing from public, private, and other (*e.g.*, imports) sources (public/private/other mills). Analysis of the data provided shows that purely private mills sourced 534,769 cubic meters of softwood timber which accounted for only 1.7 percent of the volume of softwood harvested in the province. *See* Exhibit 162 of the GOQ's April 19, 2005 supplemental questionnaire response; see also Table 1 of the May 31, 2005, Memorandum to the File from Eric B. Greynolds, ''Quebec Internal Price Memorandum'' (Quebec Internal Price Memorandum) Further, record evidence indicates that the average consumption rate of the 819 purely private mills continues to be small, on average approximately 653 cubic meters, relative to the 146 dual–source mills, whose consumption rate was approximately 171,421 cubic meters (a.k.a., mills that source from public and private sources). *Id.*

In addition, evidence on the record of this review indicates that dual–source mills dominate the market for private standing timber. The 146 dual–source mills accounted for 85.9 percent of the private timber harvested in 2003. *Id.* At the same time, dual–source mills obtained only a small percentage of their total harvest during 2003 from private lands. For instance, public/private/other mills obtained 17.6 percent of their total harvest from the private forest while public/private mills sourced just 10.6 percent of their softwood from the private forest. *Id.* Thus, the data continue to indicate that

the public stumpage market is a much more important sourcing component for dual–source mills and, thus, continues to be the market on which these mills focus the majority of their interests and operations.

As in the first administrative review, record evidence indicates that the dominance of the dual–source mills is pronounced at the corporate level. In Exhibit 120 of its March 15, 2005 questionnaire response, the GOQ provided actual consumption data for 440 of Quebec's softwood sawmills.[15] The data in Exhibit 120 indicate that in 2003 six corporations, whose mills source from both public and private sources, consumed approximately 54 percent of the total timber harvest, 63 percent of the public harvest, and 31 percent of the private harvest. *See* Table 2 of the Quebec Internal Price Memorandum. Further, sorting the data in Exhibit 120 by private timber consumption indicates that 20 corporations (15 of which operate dual–source mills) account for over 70 percent of the private timber harvest. *See* Table 3 of the Quebec Internal Price Memorandum. However, while these corporations consume the majority of private timber in Quebec, private–origin timber accounts, on a weighted–average basis, for 12 percent of their inputs while public timber accounts for 83 percent.

In addition, information on the record of this review indicates that there have been no changes to Quebec's Forestry Act that would lead us to alter our previous findings that feedback effects inherent in the GOQ's administered stumpage system encourage tenure holders to maintain low prices for private timber. We also continue to find that sawmills with access to Crown timber can avoid sourcing in the private forest. Therefore, for purposes of these preliminary results, we find that private prices for standing timber in Quebec cannot serve as benchmarks within the meaning of 19 CFR 351.511(a)(2)(i) when determining whether the GOQ sells Crown timber for less than adequate remuneration, because these prices are distorted by a combination of the GOQ's administered stumpage system, the relative size of public and private markets, feedback effects between the private and public markets, and a non–binding AAC. *See* ''Private Provincial Market Prices'' section of the *Final Results of 1st Review Decision Memorandum*.

**Provinces of Manitoba and Saskatchewan**

With respect to Manitoba and Saskatchewan, the provincial governments did not supply private market timber prices upon which to base a first–tier benchmark arising from those provinces.

**Private Stumpage Prices in New Brunswick and Nova Scotia May Serve as a First–Tier Benchmarks in the Subject Provinces**

As in the first administrative review, private stumpage prices for New Brunswick and Nova Scotia (together, the Maritimes) were submitted on the record of this review by the GONB and GONS, respectively. These prices are contained in separate price surveys prepared by AGFOR, Inc. Consulting (AGFOR) for each of the Maritimes' governments. *See* New Brunswick AGFOR Report at Exhibit 1 of the GONB's November 22, 2004 questionnaire response. *See* Nova Scotia AGFOR Report at Exhibit 4 of the GONS's November 22, 2004 questionnaire response.

In the first administrative review, we determined that private stumpage prices in the Maritimes constituted market determined, in–country prices consistent with the first–tier of the adequate remuneration hierarchy of 19 CFR 351.511(a)(2). Therefore, we used these prices to assess the adequacy of remuneration of the Crown stumpage provided by the GOA, GOM, GOO, GOQ, and GOS. *See Preliminary Results of 1st Review*, 69 FR at 33218. *See also* ''Private Stumpage Prices in New Brunswick and Nova Scotia'' section of the *Final Results of 1st Review Decision Memorandum* and at Comments 34, 35, 37, and 38.

As explained in the first administrative review, Maritimes' stumpage price reports were prepared by AGFOR on behalf of the Maritimes' governments to establish the bases for their administered stumpage rates and not for the purpose of this proceeding. *Id.* Record evidence further indicated that in establishing their Crown stumpage rates, the Maritimes consider the prevailing prices for stumpage in the private market and the calculations for the Crown stumpage rates are thus directly linked to actual market–based transactions in the private market. *Id.* In addition, in the first administrative review, we found that the private supply standing timber constitutes a significant portion of the overall market in the Maritimes. *See Preliminary Results of 1st Review*, 69 FR at 33218. During the POR of this administrative review, private supply accounts for 49.2 percent of the total harvest in New Brunswick and over 89.4 percent in Nova Scotia. *See* Exhibit 1 of the GONB's May 2, 2005 submission; *see* page 2 of the GONS's November 23, 2004 submission.

Although interested parties have contested our use of Maritimes' private stumpage prices in this review, we find their comments do not contain any new evidence or argument which would warrant a reconsideration of our prior finding. For example, the argument that Maritimes' private stumpage prices do not reflect prevailing market conditions in the subject provinces is fully addressed in the first review. *See Final Results of 1st Review Decision Memorandum* at Comment 38. Thus, we preliminarily determine that the Maritimes' private prices are market–determined prices in Canada, and are therefore usable under the first tier of our adequate remuneration hierarchy, and consistent with our approach in the first administrative review, we have used Maritimes' private prices to measure the adequacy of remuneration of the stumpage programs administered by the GOA, GOS, GOM, GOO, and GOQ.[16]

**Comparability of Maritimes Standing Timber to Standing Timber in Alberta, Manitoba, Ontario, Quebec, and Saskatchewan**

The Nova Scotia and New Brunswick Reports contain prices for the general timber species category of eastern SPF.[17] The species included in eastern SPF are also the primary and most commercially significant species reported in the SPF groupings for Quebec, Ontario, Manitoba, Saskatchewan and a portion of Alberta, accounting for over 90 percent of the entire timber harvest across these provinces.[18]

In the first administrative review, we found that although there is some minor variation of the relative concentration of

[15] These mills accounted for nearly all (95 percent) of the softwood processed in the Province during the POR. Thus, we find that the data in Exhibit 120 provide a reasonable summary of the consumption patterns of Quebec's softwood sawmills in operation during 2003.

[16] In the first administrative review, we determined that Maritimes' private prices were not the most appropriate benchmark for British Columbia. *See* ''Benchmark Prices for B.C.'' section of the *Final Results of 1st Review Decision Memorandum*. We have continued to adopt this approach in the current review. *See* ''Maritimes Prices are not the most appropriate Benchmark for British Columbia'' section of these preliminary results for further discussion.

[17] This category includes, among other species, white spruce, black spruce, red spruce, jack pine, and balsam fir which represents the vast majority of the species harvested in the Maritimes.

[18] 98 percent for Quebec, 94 percent for Ontario, 99 percent for Saskatchewan, 99 percent for Manitoba, and 99 percent for Alberta.

individual species across provinces, this does not affect comparability for benchmark purposes. *See, e.g.*, Preliminary Results of 1st Review, 69 FR at 33219; and ''Private Stumpage Prices in New Brunswick and Nova Scotia'' section of the *Final Results of 1st Review Decision Memorandum* and at Comment 38. We further found that the provinces themselves do not generally differentiate between these species; rather, they tend to group all eastern SPF species into one category for data collection and pricing, *e.g.*, Quebec charges one stumpage price for ''SPF.'' *Id.*

In this review, petitioners contend that it is not appropriate to measure the adequacy of the GOA's administered stumpage system because a significant portion of Alberta's Crown harvest consists of species that are made into Western ''SPF'' lumber, which is superior and, therefore, not comparable to the Eastern ''SPF'' lumber produced from standing timber harvested in the Maritimes. *See* page 63 through 69 of petitioners' April 29, 2005, submission. Petitioners further argue that it is not appropriate to compare Maritimes' stumpage prices to Alberta's Crown stumpage prices because there is little commonality between western and eastern softwood species. *Id.*[19]

We note that petitioners' contentions are premised on the notion that there is a premium attached to Western ''SPF'' lumber, which results in a premium for Western ''SPF'' logs. On this point, we note that petitioners have themselves asserted the opposite. In a submission to the Department regarding the ruling of the NAFTA dispute settlement panel, petitioners urged the Department to measure the adequacy of remuneration of the subject provinces' administered stumpage system using a U.S.-based log benchmark. *See* petitioners' August 27, 2003 submission, a public document on file in the CRU. In support of their argument that the use of a U.S.-based log benchmark would be feasible, petitioners contended that minimal adjustments would be necessary to calculate the subsidy benefits for the subject provinces:

> Any comparisons based on log prices should be species–specific. With the exception of the BC Coast, however, the large majority of Canadian timber falls into the spruce–pine-fir (''SPF'') category, which is generally recognized as commercially interchangeable.

*See* page 72 of petitioners' August 27, 2003 submission. They further stated that because, ''. . . most Canadian lumber . . . is sold as part of the undifferentiated SPF lumber grouping, timber harvests are largely simply SPF as well.'' *Id.* Petitioners went on to cite a statement made by a major Canadian lumber company, Abitibi–Consolidated, Inc., in the context of the antidumping investigation in which it also attested to the interchangeability of eastern and western SPF lumber. *Id.* On this basis, petitioners concluded that in calculating a U.S.-based log benchmark, ''adjustments for species within the SPF group, therefore, are not necessary.'' *Id.* Further, in the context of the antidumping proceeding, the Department also found eastern and western SPF to be interchangeable. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Softwood Lumber Products from Canada*, 66 FR 56062 (November 6, 2001), where, in reference to lumber, the Department stated:

> . . . Eastern and Western Spruce–Pine-Fir are identical from the viewpoints of the markets and with respect to end–use. The ''eastern'' and ''western'' designations are simply a regional distinction which is irrelevant for purposes of product comparison in this investigation.

Regarding the comparability of the Maritimes to the subject provinces, in the first administrative review we also determined that the species maps for SPF demonstrate that the species group's range of growth stretches from the Maritimes to Alberta. *See Final Results of 1st Review Decision Memorandum* at Comment 38. We further determined that record evidence demonstrated that SPF trees are comparable across their entire growing range as demonstrated by tree diameter, which is one of the most important characteristics in terms of lumber use. *Id.* For example, we found comparable diameters among SPF trees grown from the Maritimes to Alberta. *Id.* In particular, we found that at the easternmost portion of their range, SPF's average diameter at breast height (DBH) in New Brunswick is 7.78 inches, at the westernmost portion of their range in Alberta, the DBH is 8.00 inches, and in Quebec, which accounts for the largest overall harvest, the DBH is 7.91. *Id.*

In their April 29, 2005 submission, petitioners contend that the diameter information the Department relied on in the first administrative review overstated the average diameter of the Maritimes' standing timber and understated the diameter of the subject provinces, namely that of Alberta. They argue that if the Department accounts for biases in the diameter data, it will find that, regardless of the preponderance of SPF, the Maritimes logs are too small relative to those of the subject provinces to be used as stumpage benchmark.

The Department continues to rely on the diameter data it relied on in the first review. We note that petitioners previously stated that:

> . . .for sawlog sizes up to the 10–inch diameter class—the vast bulk of relevant logs in both the U.S. and Canada, outside of the B.C. Coast—log prices do not substantially vary on a per–unit-basis, as long as the logs are of a sufficient size and quality to be sold to sawmills for milling into lumber.

*Id.* at 73.

For these reasons, we preliminarily determine that Maritimes' prices for eastern SPF are comparable to Crown stumpage prices for the SPF species groupings in Quebec,[20] Ontario, Manitoba, Saskatchewan, and Alberta. Accordingly, consistent with 19 CFR 351.511(a)(2)(i), we have compared these market–determined, in–country prices to the Crown stumpage prices in each of the provinces to determine whether the Crown prices were for less than adequate remuneration.

**Application of Maritimes Prices**

Having preliminarily found that the Maritimes' prices are in–country, market–determined prices, we next consider how to apply these prices in our benefit calculations.

1. Indexing

The Nova Scotia Report contains price data from 1999. The New Brunswick Report contains price data for the period July 1, 2002, to November 30, 2002. In the first administrative review, we indexed the data in the Nova Scotia Report using using a lumber–specific index reported for the Atlantic Region by STATCAN. *See Preliminary Results*

[19] Petitioners made similar contentions regarding the dissimilarity of logs and lumber from the Maritimes and Alberta during their April 14 and May 5 meetings with members of the Import Administration staff. *See* the attachments in the April 14 and May 6, 2005 memorandums to the file from Eric B. Greynolds, Program Manager, Office of AD/CVD Enforcement III, entitled, ''Meeting with Counsel to the Coalition for Fair Lumber Imports Concerning the Upcoming Preliminary Results.''

[20] Consistent with our approach in the first administrative review, we continue to find that Quebec's SPF basket includes larch. Accordingly, we constructed an SPF benchmark which includes larch for Quebec for this review. *See, e.g.*, Final Results of 1st Review Decision Memorandum at Comment 40.

*of 1st Review*, 69 FR at 33218.[21] In the current administrative review, petitioners have argued that it is incorrect to index stumpage prices using a lumber price index, especially since the evidence they submitted on the record purportedly indicates diverging lumber and log prices. *See* page 89 of petitioners' April 29, 2005 submission. Petitioners contend that we should instead rely on indices derived from log price data from the Atlantic Forestry Review (AFR), a Maritimes–based publication that reports softwood sawlog prices on a bi–annual basis, to index the pricing data from Nova Scotia and New Brunswick. They further argue that if we continue to use the STATCAN index for Nova Scotia, then we should index the private pricing data in the New Brunswick Report using a constructed lumber price index derived from lumber pricing data reported by Madison's Canadian Lumber Reporter (Madison's), a British Columbia–based lumber reporting publication, on the grounds that record evidence indicates that the GONB uses the Madison's publication to set their administered stumpage prices.

During the POR, the AFR published price information in July 2003 and January 2004. *See* the May 31, 2005, Memorandum to the File from Maura Jeffords, Case Analyst, AD/CVD Enforcement, Office 3 (*AFR Memorandum*). The July 2003 publication covered a one-week period in May 2003, while the January publication covered a one-week period in late November 2003. *Id.* According to officials at the AFR, their softwood log price surveys cover approximately 20 respondents, with five to ten percent of the selection varying between publications. *Id.* Regarding Madison's, officials from the publication stated that it does not collect lumber prices from entities in the Maritime provinces. *See* the May 31, 2005, Memorandum to the File from Maura Jeffords, Case Analyst, AD/CVD Enforcement, Office 3 (*Madison's Memorandum*).

For purposes of these preliminary results, we have determined to index the private price data from the New Brunswick and Nova Scotia Reports using the lumber–specific index reported for the Atlantic Region by STATCAN. First, information from Madison's indicates that it does not collect lumber price information for the Maritimes. We further note that the AFR and Madison's simply contain price information and are not indices in and of themselves. Thus, to use the publications in the manner requested by petitioners requires that the Department construct an index based on limited data. In contrast, the lumber index from STATCAN is prepared and maintained in the ordinary course of business and can be incorporated into our calculations without the added steps that would be necessary to construct an index using the data from AFR and Madison's. *See* the May 31, 2005, Memorandum to the File from Eric B. Greynolds, Program Manager, AD/CVD Enforcement, Office 3, ''Data on the Statistics Canada Obtained from the Internet and Placed on the Record.'' Further, STATCAN produces its lumber index using an established and consistent methodology from year to year that involves mandatory respondents, including a group of ''must take'' respondents that are included in every survey period. *Id.* In addition, STATCAN employs commodity specialists to conduct follow–up inquiries of outlier, incorrect, or suspicious prices. *Id.*

Thus, we acknowledge that, in an ideal situation, we would use a pre–existing stumpage or log index to adjust for price changes in the Maritime price data. However, in light of the evidence submitted on the record of this review, we preliminary determine that the constructed log index proposed by petitioners remains inferior to the lumber price index from STATCAN.

2. Costs That Must Be Paid in Order to Harvest Private Standing Timber in New Brunswick and Nova Scotia

In the first administrative review, we found that the pricing data for New Brunswick and Nova Scotia reflect the prices paid by harvesters for standing timber and include the value of the timber being purchased in addition to any landowner costs. *See Final Results of 1st Review Decision Memorandum* at Comment 39. We also found that harvesters in the Maritimes incur additional costs that must be paid in order to be able to acquire private timber. Specifically, we found that harvesters in New Brunswick are required to pay silviculture fees as well as administrative fees to the marketing board operating within the region. In Nova Scotia, in order to be able to acquire the standing timber, the registered buyer must either pay for or perform in–kind activities equal to C$3.00 for every cubic meter of private wood harvested. *Id.*[22] For purposes of these preliminary results, we find there has been no new information or arguments from interested parties that would warrant a reconsideration of these findings. Therefore, we added these costs to the indexed stumpage prices to obtain the average stumpage price for softwood logs from New Brunswick and Nova Scotia.

3. Weighting of Studwood in the Nova Scotia Benchmark

The GONS does not collect harvest volume data by log type (*i.e.*, studwood log, sawlog, or treelength log). Thus, in its Nova Scotia Report, AGFOR used a methodology which allowed it to allocate prices to the corresponding log type. Specifically, AGFOR, when it constructed the weighted prices found on page 23 of the AGFOR Nova Scotia Report, allocated an equal share of the volume to all of the log types harvested in a given region within Nova Scotia. *See, e.g.*, page 13 and 14 of the October 1, 2004 memorandum to Melissa G. Skinner, Director, Office of AD/CVD Enforcement 3, from Maura Jeffords, Case Analyst, Office of AD/CVD Enforcement 3, regarding, ''Verification of the Questionnaire Responses Submitted by Governments of New Brunswick (GONB) and Nova Scotia (GONS) and AGFOR Reports Submitted in Reference to Private Prices in New Brunswick and Nova Scotia,'' (Maritimes Verification Report), which was placed on the record of this review in the GOC's March 15, 2005 submission. In the first administrative review, we determined that it was reasonable to accept AGFOR's methodology for reporting the Nova Scotia stumpage prices. *See Final Results of 1st Review Decision Memorandum* at Comment 37.

Petitioners contend that it is not appropriate to weight the studwood prices in the manner described above. They argue that lumber production capacity data for Nova Scotia sawmills contained in a 2003 United States Forest Service (USFS) Survey demonstrate that the Department's approach in the first administrative review vastly overstates the amount of studwood in Nova Scotia. They assert that the data in the USFS survey demonstrate that a weight of 10.3 percent should be attributed to the studwood prices contained in the Nova Scotia Report. *See* petitioners' April 29, 2005 submission at page 97.

First, we acknowledge the difficulty involved in attaching a weight to the studwood prices contained in the

[21] It was not necessary to index the pricing data in the New Brunswick Report because it coincided with the POR of the first administrative review.

[22] In the final results of the first review, we also confirmed that harvesters of private standing timber in Nova Scotia and New Brunswick do not incur any other charges (*i.e.*, road building/maintenance costs, fire prevention costs, or land-owner related costs).

AGFOR report. In light of this fact, in these preliminary results we continue to rely on the approach adopted by AGFOR in the Nova Scotia Report. As noted in *Final Results of 1st Review Decision Memorandum*, AGFOR developed this approach in the ordinary course of business prior to the initiation of the CVD investigation. Moreover, the Department found AGFOR's approach to be reasonable in the first administrative review. Second, regarding the studwood weight that petitioners derived using mill capacity data from the USFS survey, we note that it is based on only 8 sawmills and, thus, does not account for dozens of additional mills in Nova Scotia that produce significant commercial quantities of lumber.

**Benchmark Prices Used for British Columbia**

*Maritimes' Stumpage Prices Are Not the Most Appropriate Benchmarks for British Columbia*

In the final results of the first review, we concluded that the Maritimes' private stumpage prices were not suitable as benchmarks for British Columbia because of the lack of commercial interchangeability between the species in British Columbia and the eastern SPF species in the Maritimes. *See* ''Maritimes Benchmarks Are Not the Most Appropriate for B.C.'' section of the *Final Results of 1st Review Decision Memorandum*. We preliminarily determine that the record does not contain any new evidence which would warrant a reconsideration of our finding from the final results of the first review.

**B.C. Log Prices Are Not An Appropriate Benchmark**

In the final results of the first review, we found that stumpage and log markets in British Columbia were closely intertwined and therefore Crown stumpage prices affected both stumpage and log prices. *See* ''B.C. Log Prices Are Not An Appropriate Benchmark'' section of the *Final Results of 1st Review Decision Memorandum*. We further found that Crown logs were, in fact, sold in substantial quantities on the log market. *Id.* For example, we found that the great majority of wood sold in B.C. (apart from allocated Crown wood) was purchased by large integrated tenure–holding producers who purchase wood for their sawmills following standard purchase contracts that were structured as log or stumpage purchases. Thus, we determined that these producers were indifferent as to which form of wood, *i.e.*, either timber or logs, they purchased for use in softwood lumber production and that the decision to purchase either timber or logs would instead ultimately depend on price.

In the final results of the first administrative review, we further determined that, because these companies simultaneously purchased and used both forms of wood, they must in principle view the cost of stumpage and logs as equivalent, *i.e.*, stumpage price plus the cost of harvesting should equate to the cost of a log. In addition, we explained that the fact these producers used both timber and logs throughout the period of the first review to produce softwood lumber meant that stumpage–log price equivalence was maintained throughout that review period and that this, in turn, suggested that the timber and log prices were linked (*e.g.*, low (or high) timber prices means low (or high) log prices). *Id.* On this basis, in the final results of the first review, we determined that there was sufficient record evidence to conclude that subsidized prices in the Crown stumpage market would result in price suppression in the sales of Crown logs. *Id.* For these reasons, we also determined that B.C. log prices are not market–determined prices independent from the effects of the underlying Crown stumpage prices and, therefore, cannot be used to assess the adequacy of remuneration of B.C.'s stumpage program. For purposes of these preliminary results, we find that the record does not contain any new evidence which would warrant a reconsideration of our finding from the final results of the first review.

**U.S. Stumpage Prices Are Not the Most Appropriate Benchmark for British Columbia**

In the first administrative review, we explained that we were cognizant of the fact that a NAFTA Panel, considering the B.C. benchmark employed in the underlying investigation, found that standing timber is not a good that is commonly traded across borders. *See* ''World Market Prices'' in *Final Results of 1st Review Decision Memorandum*. We also explained, in considering U.S. stumpage prices as a benchmark under our regulatory hierarchy, that using those prices would require complex adjustments to the available data. We therefore turned our analysis to U.S. log prices. *Id.* For purposes of these preliminary results, we find that the record of this review does not contain any new evidence that would warrant a reconsideration of our finding from the final results of the first review.

**U.S. Log Prices Are a More Appropriate Benchmark**

In the final results of the first administrative review, we found that U.S. log prices may constitute third–tier benchmarks when determining the adequacy of remuneration of the GOBC's administered stumpage program (*i.e.*, a benchmark that is consistent with market principles under 19 CFR 351.511(a)(2)(iii)). *See* ''U.S. Log Prices Are a More Appropriate Benchmark'' in *Final Results of 1st Review Decision Memorandum*. In the final results of the first review, we stated that a market principles analysis by its very nature depends on the available information concerning the market sector at issue, and must, therefore, be developed on a case–by-case basis. In this case, we found that using U.S. log prices is consistent with a market principles analysis, because (1) stumpage values are largely derived from the demand for logs produced from a given tree; (2) the timber species in the U.S. Pacific Northwest and British Columbia are very similar and, therefore, U.S. log prices, properly adjusted for market conditions in British Columbia, are representative of prices for timber in British Columbia; and (3) U.S. log prices are market determined. *Id.* For purposes of these preliminary results, we find that the record of the current review does not contain any new evidence which would warrant a reconsideration of our finding from the final results of the first review. We also continue to make the same adjustments to derive the market stumpage prices for British Columbia. *See* ''Calculation of the ''Derived Market Stumpage Price'' section below.

**Application of U.S. Log Prices**

1. Selection of Data Sources

In the final results of the first review, our U.S. log benchmark for the B.C. Coast consisted of *Log Lines* prices for Washington and Oregon, as well as Oregon prices from the Oregon Department of Forestry. Our U.S. log benchmark prices for the B.C. Interior consisted of prices from Northwest Management Inc.'s *Log Market Report* covering eastern Washington and Northern Idaho (Area 1) and western Montana (Area 4) as well as prices from the University of Montana's *Montana Sawlog & Veneer Log Report* that contains log prices for western Montana.

In this review, interested parties have submitted updated U.S. log prices from the four sources covering the same regions listed above. Interested parties have also submitted additional U.S. log price data for the current review period

from the following sources: Oregon Log Market Report, Washington Log Market Report, Pacific Rim Wood Market Report, Timber Data Company, and Idaho Department of Lands.

We preliminarily determine to continue to use the U.S. log price sources listed above for the B.C. Coast and Interior, as updated for the current POR. In addition, we preliminarily determine to include the following additional U.S. log price data sources for the B.C. coast: Oregon Log Market Report, Washington Log Market Report, and Pacific Rim Wood Market Report (which cover the coast, northwest, and southwest Oregon and Washington). For the B.C. interior, we preliminarily determine to include the following additional U.S. log price data sources: Oregon Log Market Report and Washington Log Market Report (which cover eastern Oregon, eastern Washington, Idaho, and Montana). We have preliminarily decided not to use the Western Washington log prices reported by the Timber Data Company and the Idaho Department of Lands' ''pond value'' log prices, as prepared by the Timber Data Company. For additional information concerning our selection of the additional data sets, *see* the May 31, 2005, Memorandum to the File regarding the Preliminary Calculations for the Province of British Columbia.

2. Derivation of U.S. Log Prices on a Per Unit Basis For Use in Comparison to Log Prices on the B.C. Coast and Interior

a. Weighting of U.S. Log Price Sources

As explained above, in the final results of the first review, we used a total of four sources to derive our U.S. log price benchmarks (*i.e.*, two sources for the B.C. Coast and two sources for the B.C. Interior). For both the B.C. Coast and Interior, we derived the U.S. log benchmark prices by taking the average unit price of the two respective data sources. *See* the February 28, 2005, Memorandum to the File regarding the Amended Final Results Calculations for B.C. at Table 3A.

The GOBC argues that if the Department continues to use U.S. logs as the benchmark for British Columbia, it should calculate simple averages using a different methodology from the one it employed in the first administrative review. *See* GOBC and BCLTC's February 28, 2005 Factual Submission at Vol. 1, p.76. The GOBC asserts that the methodology employed by the Department in the final results of the first review overstates the significance of log price data in certain states based on nothing other than the availability of data for those states. They argue that it is more appropriate to develop a simple average for each state within each benchmark area, and then calculate a simple average of those prices. *Id.*

We preliminarily find that the GOBC's proposed simple–averaging methodology creates additional complications and we have not made the requested changes. For example, some U.S. log data sources report log prices for regions or areas which include two U.S. states. However, we welcome comments from interested parties on the simple–average methodology previously employed and on the GOBC and BCLTC comments on this issue. We will continue to examine the manner in which we average the benchmark U.S. log prices used in measuring the adequacy of remuneration of the GOBC's stumpage programs on the B.C. Coast and Interior.

b.Conversion of U.S. Log Prices into Canadian Dollar (CAD) / cubic meter

The U.S. log price data was expressed in U.S. dollars (USD) per thousand board feet (mbf). Therefore, it was necessary to convert our benchmark data so that they were expressed in the same currency and unit of measure as the B.C. administered stumpage prices. In the final results of the first review, we converted U.S. log price data for the B.C. Coast using a conversion factor of 6.76 USD / cubic meter. For the B.C. Interior, we used a conversion factor of 5.93 USD / cubic meter. We then converted the benchmark prices into Canadian currency based on the average of the daily USD / CAD daily exchange rate, as published by the Federal Reserve Bank of New York. For purposes of these preliminary results, we find that the record does not contain any new evidence which would warrant a reconsideration of our approach from the final results of the first review. Therefore, we continue to apply the same conversion factors and exchange approach that was employed in the final results of the first review.

**Calculation of Provincial Benefits**

*Adjustment to Administrative Stumpage Unit Price*

In the final results of the first review, we established a methodology for adjusting the unit prices of the Crown stumpage programs administered by the GOA, GOS, GOM, GOO, and GOQ. *See, e.g.*, Final Results of 1st Review Decision Memorandum at Comment 39. Under this methodology, we focused on those costs that are assumed under the timber contract (*e.g.*, the Crown tenure agreement) and those costs that are necessary to access the standing timber for harvesting (but that may differ substantially depending on the location of the timber). Where such costs are incurred by harvesters in either the Maritimes or the subject provinces, we included them in our benefit calculations. We did not, however, make adjustments for costs that might be necessary to access the standing timber for harvesting but that do not differ substantially based on the location of the timber (*e.g.*, costs for tertiary road construction and harvesting). Because the Maritimes data reflect prices at the point of harvest, we also did not include post–harvest activities such as scaling and delivering logs to mills or market. *Id.* In this manner, we adjusted the unit stumpage prices of the GOA, GOS, GOM, GOO, and GOQ such that they were on the same ''level'' as the private stumpage prices we obtained from the Maritimes. We preliminarily determine that the record does not contain any new evidence which would warrant a reconsideration of our finding from the final results of the first review.

*1. Province of Alberta*

a. Derivation of Administered Stumpage Unit Prices

To derive Alberta's administratively established stumpage rate, we divided the total timber dues charged to tenure holders during the POR for each species by the total softwood stumpage billed under each tenure for each species. In this manner, we obtained a weighted–average stumpage price per species that was paid by tenure holders during the POR.

b. Adjustments to Administered Stumpage Unit Price

Pursuant to the methodology established in the final results of the first review, we have added the following costs to Alberta's administered stumpage unit price:[23]

- Costs for Primary and Secondary Roads (*e.g.*, Permanent Road Costs in Road Classes 1 Through 4)
- Basic Reforestation
- Forest Management Planning
- Holding and Protection

[23] For a description of the derivation of the unit costs added to the GOA's administered stumpage price, see the May 31, 2005, Preliminary Calculations Memorandum for Alberta. The derivation of the unit costs for the GOS, GOM, GOO, and GOQ are also described in this calculation memorandum. The categories of costs added to the administered stumpage prices of the GOA, GOS, GOM, GOO, and GOQ are the same as those used in the final results of the review. *See Final Results of 1st Review Decision Memorandum* at Comment 39.

- Environmental Protection
- Forest Inventory
- Reforestation Levy
- Fire, Insect, and Disease Protection

c. Calculation of the Benefit

To calculate the unit benefit under this program, we compared the species–specific benchmark prices (the Maritimes private stumpage prices described above) to the GOA's corresponding adjusted administered stumpage prices. In this manner, we calculated a unit benefit for each species group. Next, we calculated the species–specific unit benefit by the total species–specific softwood timber billed volume in Alberta during the POR.

Regarding the softwood timber billed volume used in the benefit calculations, the GOA claims that its stumpage classification system does not allow the province to isolate the wood volumes going strictly to sawmills and used to produce lumber. Thus, it is necessary to derive the volume of softwood Crown logs that entered and were processed by Alberta's sawmills during the POR (*i.e.*, logs used in the lumber production process). We performed a similar calculation in the first administrative review. However, upon identifying additional information discussed below, we determined that it is necessary to alter our approach to the calculations for Alberta.

The GOA argues that this volume amount harvested by non–sawmill-owning tenure holders should not be included in our calculations. However, by the GOA's own admission, this volume amount includes logs that were subsequently sold to sawmills. *See, e.g.*, page 8 of the GOA's May 2, 2005 supplemental questionnaire response. Further, with respect to this volume amount, the GOA provided no means by which we could identify the portion of the volume that went to sawmills and the portion that was exported or went to non–sawmills. Thus, because there is no way to break out this volume amount and because the GOA has offered no information on whether any subsidies attributable to this softwood timber did or did not pass through to any sawmills, we have, as a starting point, included the entire timber volume in question when determining the volume of Crown logs to include in the numerator of Alberta's provincial subsidy rate calculation.

In order to determine the volume of Crown logs that went to sawmills (*a.k.a.*, ''net–down'' approach), we have slightly revised the methodology that was used in the first administrative review. Specifically, we have used the GOA's Section 80/81 timber data from Table 39, Exhibit AB–S–87 that has not been ''netted down'' as the basis for Alberta's benefit calculation. This data differs from the data set reported in the first review (Alberta Verification Exhibit, GOA–3, AR Table 43, Exhibit AB–S–70) because it represents the Section 80/81 basket category of timber which has not been ''netted down'' to exclude the volumes from tenure holders who do not own sawmills.

We subsequently added the volumes of certain non–lumber categories to the Crown Section 80/81 data to capture the universe of timber going to sawmills which corresponds to the provincial softwood billed volume identified in the PwC survey and reported by the GOA in Exhibit AB–S–107. The resulting aggregate Crown softwood billed volume was then ''netted down'' using the ''percentage of survey billed volume as lumber'' reported in the PwC survey results. This calculation enabled the Department to derive the Alberta's total Crown stumpage billed volume on a species–specific basis, which reflects the volume of provincial stumpage cut by tenure holders and sent to sawmills for processing into lumber and co–products. For further discussion, see the Preliminary Calculation Memorandum.[24] Finally, we summed the species–specific benefits to calculate the total stumpage benefit for the province.

d. Calculation of Provincial and Country–Wide Rate

To calculate the province–specific subsidy rate, we divided the total stumpage benefit by Alberta's POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see ''Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates'' in these preliminary results. As explained in ''Aggregate Subsidy Rate Calculation,'' we weight–averaged the benefit from this provincial subsidy program by Alberta's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in ''Country–Wide Rate for Stumpage.''

[24] We note that this volume of timber is separate from the volume of timber included in the GOA's pass through claim. For further information regarding the GOA's pass through claim, see the ''Pass Through'' section of these preliminary results.

*2. Province of Manitoba*

a. Adjustments to Administered Stumpage Unit Price

The GOM reported average, per unit stumpage prices for the POR. Thus, our next step was to adjust the per unit stumpage prices pursuant to the methodology described above in ''Calculation of Provincial Benefits.'' Specifically, we have added the following costs to Manitoba's administered stumpage unit price:

- Forest Renewal Charge
- Forest Management License Silviculture
- Costs for Permanent Roads (*e.g.*, Primary and Secondary Roads)
- Forest Inventory
- Forest Management Planning
- Environmental Protection
- Fire Protection.

b. Calculation of the Benefit

To calculate the unit benefit conferred under the GOM's administered stumpage program, we subtracted from the species–specific benchmark prices the cost–adjusted weighted average stumpage price per species. Next, we calculated the species–specific benefit by multiplying the species–specific unit benefit by the total softwood timber harvest volume for that species during the POR. We then summed the species–specific benefits to calculate the total stumpage benefit for the province.

c. Calculation of Provincial and Country–Wide Rate

To calculate the province–specific subsidy rate, we divided the total stumpage benefit for Manitoba by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, *see* ''Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates.'' As explained in ''Aggregate Subsidy Rate Calculation,'' we weight–averaged the benefit from this provincial subsidy program by Manitoba's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in ''Country–Wide Rate for Stumpage.''

*3. Province of Saskatchewan*

a. Derivation of Administered Stumpage Unit Prices

To derive Saskatchewan's administratively established stumpage rate, we divided the total stumpage collections for each species by the corresponding volume of Crown softwood timber destined to sawmills.

In this manner, we obtained a weighted–average stumpage price per species that was paid by tenure holders during the POR.

b. Adjustments to Administered Stumpage Unit Price

Next, we adjusted the administered stumpage unit prices pursuant to the methodology describe above in ''Calculation of Provincial Benefits.'' Specifically, we have added the following costs to Saskatchewan's administered stumpage unit price:

- Forest Management Fee
- Processing Facilities License Fee
- Forest Product Permit Application Fee
- Forest Management Activities
- Costs for Permanent Roads (*e.g.*, Primary and Secondary Roads).

c. Calculation of the Benefit

To calculate the unit benefit conferred under the GOS's administered stumpage program, we subtracted from the species–specific benchmark prices the cost–adjusted weighted average stumpage price per species. Next, we calculated the species–specific benefit by multiplying the species–specific unit benefit by the total softwood timber harvest volume for that species during the POR. We then summed the species–specific benefits to calculate the total stumpage benefit for the province.

d.Calculation of Provincial and Country–Wide Rate

To calculate the province–specific subsidy rate, we divided the total stumpage benefit for Saskatchewan by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, *see* ''Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates.'' As explained in ''Aggregate Subsidy Rate Calculation,'' we weight–averaged the benefit from this provincial subsidy program by Ontario's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in ''Country–Wide Rate for Stumpage.''

*4. Province of Ontario*

a. Derivation of Administered Stumpage Unit Prices

To derive Ontario's administratively established stumpage rate, we divided the total stumpage collections for each species by the corresponding volume of Crown softwood timber destined to sawmills. In this manner, we obtained a weighted–average stumpage price per species that was paid by tenure holders during the POR.

b. Adjustments to Administered Stumpage Unit Price

Next, we adjusted the administered stumpage unit prices pursuant to the methodology describe above in the ''Calculation of Provincial Benefits'' section of these preliminary results. Specifically, we have added the following costs to Ontario's administered stumpage unit price:

- Forest Management Planning
- Construction and Maintenance of Primary and Secondary Roads
- Fire Protection.

b Calculation of the Benefit

To calculate the unit benefit conferred under the GOO's administered stumpage program, we subtracted from the species–specific benchmark prices the cost–adjusted weighted average stumpage prices per species. Next, we calculated the species–specific benefit by multiplying the species–specific unit benefit by the total softwood timber harvest volume for that species during the POR. We then summed the species–specific benefits to calculate the total stumpage benefit for the province.

c. Calculation of Provincial and Country–Wide Rate

To calculate the province–specific subsidy rate, we divided the total stumpage benefit for Ontario by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, see ''Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates.'' As explained in ''Aggregate Subsidy Rate Calculation,'' we weight–averaged the benefit from this provincial subsidy program by Ontario's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in ''Country–Wide Rate for Stumpage.''

*5. Province of Quebec*

To derive Quebec's administratively established stumpage rate, we divided the total stumpage collections for each species by the corresponding volume of Crown softwood timber destined to sawmills. In this manner, we obtained a weighted–average stumpage price per species that was paid by tenure holders during the POR.

b. Adjustments to Administered Stumpage Unit Price

Next, we adjusted the administered stumpage unit prices pursuant to the methodology describe above in ''Calculation of Provincial Benefits.'' Specifically, we have added the following costs to Quebec's administered stumpage unit price:

- Forest Fund
- Administrative Forest Planning
- Non–Credited Silviculture
- Construction and Maintenance of Primary and Secondary Roads
- Fire and Insect Protection
- Logging Camps
- Silviculture Credits for Non–Mandatory Activities (Negative Adjustment).

b Calculation of the Benefit

To calculate the unit benefit conferred under the GOQ's administered stumpage program, we subtracted from the species–specific benchmark prices the cost–adjusted weighted average stumpage prices per species. Next, we calculated the species–specific benefit by multiplying the species–specific unit benefit by the total softwood timber harvest volume for that species during the POR. We then summed the species–specific benefits to calculate the total stumpage benefit for the province.

c. Calculation of Provincial and Country–Wide Rate

To calculate the province–specific subsidy rate, we divided the total stumpage benefit for Quebec by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, *see* ''Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates.'' As explained in ''Aggregate Subsidy Rate Calculation,'' we weight–averaged the benefit from this provincial subsidy program by Ontario's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in ''Country–Wide Rate for Stumpage.''

*6. Province of British Columbia*

a. Derivation of Administered Stumpage Unit Prices

To derive British Columbia's administratively established stumpage rate, we divided the total stumpage collections for each species for the Coast and Interior by the corresponding Crown softwood sawlog volume. In this manner, we obtained a weighted–average stumpage price per species.

b. Calculation of the ''Derived Market Stumpage Price''

Consistent with our approach from the final results of the first review, we calculated a ''derived market stumpage price'' for each species by using U.S. log prices as the benchmark for standing timber prices to measure the adequacy of remuneration of B.C.'s administered stumpage system. *See supra* section on use of U.S. log prices as B.C. benchmarks. Specifically, we deducted from the U.S. log prices all B.C. harvesting costs, including costs associated with Crown tenure for calendar year 2003. As in the final results of the first review, we relied on cost data from surveys of major tenure holders prepared by PwC. Specifically, PwC was engaged by the B.C. Ministry of Forests (MOF) to collect calendar year 2003 logging and forest management cost data for the Coast and Interior regions of British Columbia. The cost data presented by PwC was derived from three separate surveys the MOF's 2004 annual Coast survey and two surveys (one for the Coast and the other for the Interior) conducted by PwC itself.

In these preliminary results, we have subtracted the following unit costs from the U.S. log price benchmarks used for the B.C. Coast:

- Tree–to-Truck
- Hauling
- Dump, Sort, Boom, and Rehaul
- Crew Transportation Labor
- Road Maintenance
- Towing/Barging
- Helicopter Logging
- Camp Operations and Overhead
- Road Construction
- Head Office, General Administration
- Logging Fees and Taxes
- Forestry, Engineering, and Fire Protection.

In these preliminary results, we have subtracted the following unit costs from the U.S. log price benchmarks used for the B.C. Interior:

- Tree–to-Truck
- Hauling
- Dump, Sort, and Boom
- Towing/Barging
- On–Block Road and Bridge Maintenance
- Mainline/Secondary Road and Bridge Maintenance
- Post Logging Treatment
- Administration/Overhead
- Camp Operation
- Depreciation, Depletion, and Amortization
- Mainline/Secondary Road and Bridge Construction
- Mainline/Secondary Road and Bridge Deactivation
- On–Block Road and Bridge Construction
- On–Block Road and Bridge Deactivation
- Protection (Fire, Insect, and Disease Control)
- Silviculture and Reforestation.

In the final results of the first review, we subtracted a per unit profit component from the ''derived market stumpage prices'' used in the benefit calculations for the B.C. Coast and Interior. Our decision to include a profit component for the B.C. Coast and Interior was based on the assumption that our cost data from the PwC survey report of B.C. logging and forest management costs did not account for any profit that may have been incurred by independent harvesters. Therefore, based on a 2001 study entitled, ''Ready for Change: Crisis and Opportunity in the Coast Forest Industry,'' by Dr. Peter H. Pearse (Pearse Study), we estimated that half of the reported costs for the B.C. Coast was based on payments from integrated sawmills to independent contractors acting has harvesters.[25] Because the ''fee for service'' payments made by the sawmills already included the independent harvesters' profit, we only added a profit adjustment for half of the reported costs. In other words, we reduced the profit rate applied to the ''derived market stumpage price'' by 50 percent to reflect our finding that half of the reported survey costs on the B.C. Coast (*e.g.*, those costs attributable to independent harvesters) already included a profit component. For the B.C. Interior, we treated the profit component in a similar manner.

As for the profit rate applied to the ''derived market stumpage prices,'' in the final results of the first review, we calculated the adjustment through the average of two profit figures on the record in the first administrative review: a five (5) percent profit figure for New Brunswick reported by the Atlantic Canada Opportunities Agency and a ten (10) percent profit figure for Southeast Alaska that was included in a submission by the GOBC. *Id.*

Information available on the record of the current review has led us to revise the profit methodology employed in the final results of the first review. In our initial questionnaire, we asked the GOBC to report for each of the ten largest tenure holders whether any of them hired independent contractors to conduct any basic silviculture, road building, forest management, or harvesting activities. *See* page IV–21 of the Department's September 8, 2004 questionnaire. In response, the GOBC stated:

> In British Columbia, the vast bulk of logging activity, including road construction, basic silviculture, and other forest management obligations, is undertaken by independent contractors. In the Interior, company crews are virtually non–existent—all work is done by contract and the tenure holders do not perform the work themselves. On the Coast, there are some company crews for some activities, but much of the work is done by contractors. Therefore, the cost report prepared by PricewaterhouseCoopers (PwC) . . . already reflects contractor costs for the Interior and contractor and some limited company costs for the Coast.

*See* page BC–VI–22, Volume I of the GOBC's November 22, 2004 questionnaire response.

Based on the GOBC's statements (*e.g.*, that all work is done by contract and that the tenure holders do not perform the work themselves), we find that the cost data contained in the PwC's survey of the B.C. Interior reflect ''fee for service'' costs and, thus, already include a profit component. Therefore, we preliminarily determine that no profit adjustment is appropriate for U.S. log benchmark prices used in the benefit calculation of the B.C. Interior.

As for the B.C. Coast, we note that the Pearse Study states that the ''Forest Act requires licensees to employ contractors to log at least 50 percent of their harvests under Tree Farm Licenses and a variable percentage—usually 50 percent also—under Forest Licenses.'' *See Pearse Study* at 15. Further, the GOBC stated in its initial questionnaire response that logging and harvesting costs attributable to company crews are ''limited'' and that ''. . .much of the work is done by contractors.'' *See* GOBC's November 22, 2004 questionnaire response. Based on the fact the Forest Act dictates that at least 50 percent of the harvesting activities must be conducted by independent contractors on the Coast, and in light of the GOBC's statements that company crew costs for logging activities on the B.C. Coast are limited (information that was not on the record of the first administrative review), we preliminarily determine that it is no longer appropriate to assume that tenure holders harvested half of the logs on the B.C. Coast. Lacking any other information and, based on the GOBC's characterization of company crew

[25] The Pearse Study was placed on the record of this review by the GOBC in its November 11, 2004, questionnaire response at Volume 6, Exhibit BC-S–20.

harvesting costs as being ''limited,'' we preliminarily determine that in–house company crews employed by tenure holders are used 25 percent of the time on the B.C. Coast and that the remaining amount is performed by independent contractors. Accordingly, we are assuming that 75 percent of the costs contained in the PwC survey for the B.C. Coast already contain a profit component and, thus, no profit adjustment is necessary for those costs.

We have, however, applied a profit component to the remaining 25 percent of the costs contained in the PwC survey for the B.C. Coast. Based on new information not available on the record of the first review, we have revised the manner in which we calculated the profit amount.

In our initial questionnaire, we asked the GOBC to provide the allowance for profit and risk for each tenure arrangement in effect which utilizes an appraisal system. *See* pages IV–12 and IV–13 of our September 8, 2004 initial questionnaire. In response, the GOBC stated:

> There is no allowance for profit and risk in the CVP system. All tables and formulas used for estimating costs are based upon average experienced licensee costs, without any additions for profit or risk. There is no allowance for profit and risk in the MPS. The system is based on bids from auction sales.

*See* page BC–IV–26 of the GOBC's November 22, 2004 questionnaire response. Further in the Log Export Restraint section of our initial questionnaire, for both domestic and export sales of softwood logs, we asked the GOBC to provide:

> . . . a weighted average value for each of the costs associated with harvesting and selling the logs during the POR (*i.e.*, logging costs, inventory, selling expenses, administrative and general expenses, transportation, marketing, etc.). In addition, what is the weighted average profit on the sale of softwood logs?

*See* pages 3—4 of the Log Export Ban Appendix of our September 8, 2004 initial questionnaire. In response, the GOBC stated that, ''the ministry does not have information on the average profit on the sale of softwood sawlogs.''

However, in spite of the GOBC's apparent inability to obtain any information on logging profit, we have managed to obtain publicly available profit data for the B.C. logging industry from ''Industry Canada,'' a department of the Canadian federal government, through its business and consumer site entitled ''strategis.gc.ca.''[26] Specifically, we obtained a 3.7 percent profit figure for the B.C. logging industry. This profit figure is an average calculated from financial data for the year 2002 (the most recent year for which data is available) from all small businesses (incorporated and unincorporated) in the B.C. logging industry.[27] Given that the data are specific to the industry and province in question, we find it more appropriate to use the profit data from Industry Canada rather than continuing to use the profit figures from Southeast Alaska and New Brunswick. Thus, in keeping with the approach described above, we have multiplied the per unit B.C. logging profit figure from Industry Canada by 25 percent and subtracted the resulting product from the per unit ''derived market stumpage price'' for the B.C. Coast.

c. Calculation of the Benefit

To calculate the unit benefit per species conferred under the GOBC's administered stumpage program, we subtracted from the cost–adjusted, ''derived market stumpage prices'' the corresponding average administered stumpage prices. Consistent with our approach in the final results of the first review, we reduced the total Crown harvest to capture that volume of logs destined to sawmills. Specifically, we multiplied the Coast and Interior Crown volumes by their respective percentage of logs entering sawmills for the calendar year 2003, *i.e.*, 58.1 percent and 85.2 percent, respectively. *See* GOBC's November 22, 2004 questionnaire response at BC–I–5. Next, we multiplied the species–specific unit benefit by the Crown volume destined to sawmills. We then summed the species–specific benefits for the Coast and the Interior to calculate the provincial benefit.

d. Calculation of Provincial and Country–Wide Rate

To calculate the province–specific subsidy rate, we divided the total stumpage benefit for British Columbia by the POR stumpage program denominator. For a discussion of the denominator used to derive the provincial rate for stumpage programs, *see* ''Numerator and Denominator Used for Calculating the Stumpage Programs' Net Subsidy Rates.'' As explained in ''Aggregate Subsidy Rate Calculation,'' we weight–averaged the benefit from this provincial subsidy program by British Columbia's relative share of total exports of softwood lumber to the United States during the POR. The total countervailable subsidy for the provincial stumpage programs can be found in ''Country–Wide Rate for Stumpage.''

**Country–Wide Rate for Stumpage**

The preliminary country–wide subsidy rate for the provincial stumpage programs is 7.97 percent *ad valorem*.

*II. Other Programs Determined to Confer Subsidies*

Non–Stumpage Programs Determined To Confer Subsidies
Programs Administered by the Government of Canada

*1. Western Economic Diversification Program: Grants and Conditionally Repayable Contributions*

Introduced in 1987, the Western Economic Diversification program (WDP) is administered by the GOC's Department of Western Economic Diversification headquartered in Edmonton, Alberta, whose jurisdiction encompasses the four western provinces of B.C., Alberta, Saskatchewan and Manitoba. The program supports commercial and non–commercial projects that promote economic development and diversification in the region.

In the first administrative review, we found that the provision of grants under the WDP constitutes a government financial contribution and confers a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. *See Preliminary Results of 1st Review*, 69 FR at 33228 and ''Western Economic Diversification Program Grants and Conditionally Repayable Contributions'' section of the *Final Results of 1st Review Decision Memorandum*. Further, we determined that the WDP is specific under section 771(5A)(D)(iv) of the Act, because assistance under the program is limited to designated regions in Canada. On this basis, we found recurring and non–recurring grants provided to softwood lumber producers under the WDP to be countervailable subsidies. No new information has been placed on the record of this review to warrant a change in our finding that the WDP is countervailable.

During the current POR, the WDP provided grants to softwood lumber producers or associations under two ''sub–programs,'' the International Trade Personnel Program (ITPP) and

[26] Strategis (www.strategis.gc.ca) offers interactive financial applications, *e.g.*, building industry profiles for specific provinces via Performance Plus, a software tool.

[27] Logging: industry classification # 1133 under the North American Industry Classification System (NAICS).

''Other WDP Projects.''[28] Under the ITPP and ''Other WDP Projects,'' companies were reimbursed for certain salary expenses in Alberta, British Columbia, Manitoba, Saskatchewan.

Consistent with our approach in the first administrative review, where the employee's activities were directed towards exports of softwood lumber to all markets, we attributed the subsidy to total softwood lumber exports. *See Final Results of 1st Review Decision Memorandum* at Comment 46 and ''Western Economic Diversification Program Grants and Conditionally Repayable Contributions.'' Where the employee's activities were directed towards exports of softwood lumber to the United States, we attributed the subsidy to U.S. exports. *Id.* Where the personnel promoted exports to non–U.S. markets, we did not attribute any of the benefit to U.S. sales. *Id.* In accordance with 19 CFR 351.524(b)(2), we determine that all ITPP and ''Other WDP Project'' grants were less than 0.5 percent of their corresponding denominator in the year of receipt.[29] Therefore, we are expensing all grants received during the POR under this program to the year of receipt.

To calculate the countervailable subsidy rate for this program, we summed the rates for the ITPP and ''Other WDP'' sub–projects. Next, as explained in ''Aggregate Subsidy Rate Calculation,'' we multiplied this amount by the four provinces' relative share of total exports of softwood lumber to the United States. We adjusted the provinces' total exports of softwood lumber to the United States to account for any excluded company sales. Using this methodology, we determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

*2. Natural Resources Canada (NRCAN) Softwood Marketing Subsidies*

In 2002, the GOC approved a total of C$75 million in grants to target new and existing export markets for wood products and to provide increased research and development to supplement innovation in the forest products sector. This total was allocated to three sub–programs: Canada Wood Export Program (Canada Wood), Value to Wood Program (VWP), and the National Research Institutes Initiative (NRII). The programs were placed under the administration of NRCAN, a part of the Canadian Forest Service.[30]

The VWP is a five-year research and technology transfer initiative supporting the value–added wood sector, specifically through partnerships with academic and private non–profit entities. In particular, during the POR, NRCAN entered into research contribution agreements with Forintek Canada Corp. (Forintek) to do research on efficient resource use, manufacturing process improvements, product development, and product access improvement.

In the first administrative review, we found that grants provided to Forintek under the VWP constitute a government financial contribution and confer a benefit to softwood lumber producers within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. *See Preliminary Results of 1st Review*, 69 FR at 33229 and ''Natural Resources Canada (NRCAN) Softwood Marketing Subsidies'' in the *Final Results of 1st Review Decision Memorandum*. We also determined that, because VWP grants are limited to Forintek, which conducted research related to softwood lumber and manufactured wood products, the program is specific within the meaning of section 771(5A)(D)(i) of the Act. *Id.* Consequently, we found the grants under the NRCAN program to be countervailable.

The NRII is a two-year program that provides salary support to three national research institutes: the Forest Engineering Research Institute of Canada (FERIC), Forintek, and the Pulp & Paper Research Institute of Canada (PAPRICAN). In the first administrative review, we found that research undertaken by FERIC constitutes a government financial contribution to commercial users of Canada's forests within the meaning of section 771(5)(D)(i) of the Act. *Id.* Further, we found that FERIC's research covers harvesting, processing, and transportation of forest products, silviculture operations, and small–scale operations and, thus, we determined that government–funded R&D by FERIC benefits, *inter alia*, producers of softwood lumber within the meaning of section 771(5)(E) of the Act.

Similarly, we found that Forintek's NRII operations, which pertain to resource utilization, tree and wood quality, and wood physics, also constitute a government financial contribution and confer a benefit, *inter alia*, upon the softwood lumber industry within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. *Id.*

In the first administrative review, we determined that because grants offered under the NRII are limited to Forintek and FERIC, institutions that conducted research related to the forestry and logging industry, the wood products manufacturing industry, and the paper manufacturing industry, the program is specific within the meaning of 771(5A)(D)(i) of the Act. *Id.* On this basis, we found the Forintek and FERIC grants offered under the NRII are countervailable.[31] No new information has been placed on the record of this review to warrant a change in our finding that grants under the VWP and NRII programs are countervailable.

Consistent with our approach in the first administrative review and in accordance with section 19 CFR 351.524(b)(2), we first examined whether the non–recurring grants under the VWP and NRII programs should be expensed to the year of receipt. *Id.*, 69 FR 33229. We summed the funding approved for Forintek during the POR under the VWP and NRII programs, and divided this sum by the total sales of the wood products manufacturing industry during the POR. We also divided the funding approved for FERIC under the NRII program during the POR by the total sales of the wood products manufacturing and paper industries during the POR. In both cases, we adjusted the denominators to account for sales of excluded companies. Combining these two amounts, we preliminarily determine that the benefit under the NRCAN softwood marketing subsidies program should be expensed in the year of receipt.

Consistent with our approach in the first administrative review, we then calculated the countervailable subsidy rate during the POR by dividing the amounts received by Forintek during the POR under the VWP and NRII programs by Canada's total sales of the wood products manufacturing industry during the POR. We also divided the funding received by FERIC under the NRII during the POR by Canada's total sales of the wood products manufacturing and paper industries during the POR. We adjusted these sales amounts to account for any excluded company sales. *See Preliminary Results of 1st Review*, 69 FR at 33229. Combining these two amounts, we

[28] These are the same two sub-programs analyzed in the first administrative review.

[29] We reduced these denominators, where appropriate, to account for any excluded company sales.

[30] We found the Canada Wood program to be not countervailable in the first administrative review. *See Preliminary Results of 1st Review*, 69 FR at 33229.

[31] We found NRII's support of PAPRICAN to be not countervailable in the first administrative review. *See Preliminary Results of 1st Review*, 69 FR at 33229.

preliminarily determine the net subsidy rate from the NRCAN softwood marketing subsidies program to be 0.02 percent *ad valorem*.

**Programs Administered by the Government of British Columbia**

*1. Forestry Innovation Investment Program (FIIP)*

The Forestry Innovation Investment Program came into effect on April 1, 2002. On March 31, 2003, FIIP was incorporated as Forestry Innovation Investment Ltd. (FII). FII funds are used to support the activities of universities, research and educational organizations, and industry associations producing a wide range of wood products. FII's strategic objectives are implemented through three sub–programs addressing: research, product development and international marketing.

In the first administrative review, we determined that the FII grants provided to support product development and international marketing and, thus, constitute a government financial contribution and confer a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. *See Preliminary Results of 1st Review*, 69 FR at 33230. Further, we found that the grants are specific within the meaning of section 771(5A)(D)(i) of the Act because they are limited to institutions and associations conducting projects related to wood products generally and softwood lumber, in particular. *Id.* No new information has been placed on the record of this review to warrant a change in our finding that grants FIIP are countervailable.

To calculate the benefit from this program, we first determined whether these non–recurring subsidies should be expensed in the year of receipt. *See* 19 CFR 351.524(b)(2). For grants given to support product development for softwood lumber, we divided the amounts approved by total sales of softwood lumber (*i.e.*, lumber from primary and secondary mills as well as ''residual'' products from primary mills) for B.C. during the POR. For grants to support international marketing, we divided the grants approved by exports of softwood lumber from B.C. to the United States during the POR. *See* 19 CFR 351.525(b)(4). As explained in the first review, the GOBC did not report grants tied to other export markets. *See Preliminary Results of 1st Review*, 69 FR at 33230. For research grants, we divided the grants approved by total sales of the wood products manufacturing and paper industries from B.C. during the POR. Combining these three amounts, we have preliminarily determined that the FII benefit should be expensed in the POR.

Consistent with our approach in the first administrative review, we then calculated the countervailable subsidy rate during the POR by dividing the amounts disbursed during the POR by their corresponding sales denominator. For grants given to support product development for softwood lumber, we divided the amounts disbursed by total sales of softwood lumber for B.C. during the POR. For grants to support international marketing, we divided the amounts disbursed by exports of softwood lumber from B.C. to the United States during the POR. For research grants, we divided the amounts disbursed by total sales of the wood products manufacturing and paper industries for B.C. during the POR. *See Preliminary Results of 1st Review*, 69 FR at 33230–33231. We combined these three amounts and, as explained in ''Aggregate Subsidy Rate Calculation,'' we multiplied this total by B.C.'s relative share of total exports to the United States. On this basis, we have preliminarily determined the countervailable subsidy from the FIIP to be 0.08 percent *ad valorem*.

*2. British Columbia Private Forest Property Tax Program*

B.C.'s property tax system has two classes of private forest land—class 3, ''unmanaged forest land,'' and Class 7, ''managed forest land'' that incurred different tax rates in the 1990s through the POR. In the first review, we found that property tax rates for Class 7 were generally lower than for Class 3 land at all levels of tax authority for most, though not all, taxes. *See* ''British Columbia Private Forest Property Tax Program'' section of *Final Results of 1st Review Decision Memorandum*. We further found that the various municipal and district (a.k.a. regional) level authorities imposed generally lower rates for Class 7 than for Class 3 land. *Id.*

The tax program is codified in several laws, of which the most salient is the 1996 Assessment Act (and subsequent amendments). Section 24(1) of the Assessment Act contains forest land classification language expressly requiring that, *inter alia*, Class 7 land be ''used for the production and harvesting of timber.'' Additionally, Section 24(3) or 24(4) of the *Assessment Act*, depending on the edition of the statute, requires the assessor to declassify all or part of Class 7 land if ''the assessor is not satisfied. . .that the land meets all requirements'' for managed forest land classification. Amendments to the provision, enacted from 1996 through 2003, retained the same language stating these two conditions. Thus, the law as published during the POR required that, for private forest land to be classified and remain classified as managed forest land, it had to be ''used for the production and harvesting of timber.''

In the first review, we found that because the tax authorities impose two different tax rates on private forest land, the governments are foregoing revenue when they collect taxes at the lower rate, and we therefore determined that the program constitutes a government financial contribution as defined in section 771(5)(D)(ii) of the Act. *Id.* We also determined that the program confers a benefit in the form of tax savings within the meaning of section 771(5)(E) of the Act. *Id.* Further, we determined that because the Assessment Act expressly requires that Class 7 land be ''used for the production and harvesting of timber,'' and additionally requires the assessor to declassify any Class 7 land not meeting all the Class 7 conditions (of which timber use was one), the B.C. private forest land tax program is specific as a matter of law (*i.e.*, de jure specific) within the meaning of section 771(5A)(D)(i) of the Act. *Id.* No new information has been placed on the record of this review to warrant a change in our finding that the B.C. private forest land tax program is countervailable.

Consistent with our approach in the first review, and in accordance with 19 CFR 351.509(a), we find that the benefit received under this program is the sum of the tax savings enjoyed by Class 7 sawmill landowners at the provincial, regional, and sub–provincial (or. local) levels of tax authority in B.C. *Id.* With regard to the provincial tax, the assessed value is calculated as the sum of the land value and a formulaic valuation of the timber harvested from the land in the prior year. The tax is levied by applying the tax rate to this assessed value. The GOBC did not submit data on the timber value. Accordingly, the Department calculated the tax benefit at the provincial level based solely on the tax savings conferred upon Class 7 land with sawmills.

We determined the tax benefit at the local level using the data submitted by the GOBC on local tax rates, and on the value and acreage of Class 3 and Class 7 land held by sawmill landowners in the various jurisdictions. Only those jurisdictions with both Class 3 and Class 7 land in the assessment rolls for 2003 and 2004, and whose tax differential resulted in a tax savings for Class 7 sawmill landowners, were included in the benefit calculation.

With regard to a number of regional and hospital district jurisdictions that are between the provincial and local levels, in the first review we explained that the GOBC submitted data on their Class 3 and Class 7 tax rates, but did not provide assessment data on land value and acreage. *Id.* Consequently, in the first review, to the extent that any benefit may have accrued at that level, we did not include it in our calculation. *Id.* We went on to state that we would re–examine this aspect of the program in any subsequent review. In this review, we have sought and obtained assessment data on land value and acreage for the relevant regions that are between the provincial and local levels. Using this data, we have determined the benefit at the regional and hospital districts. However, while the GOBC was able to provide Class 3 and Class 7 tax rates and the value for Class 7 land value for the relevant regional and hospital districts, it was unable to provide the land values for Class land 7 with sawmills within those areas. Therefore, we derived the share of value of Class 7 land with sawmills at the provincial level for 2003 and 2004 and applied the ratios to the corresponding Class 7 land values of the regional and hospital districts. In this manner, we derived the portion of benefit attributable to Class 7 land with sawmills in the regional and hospital districts during the POR.

The provincial, regional, and local level benefit amounts were summed to produce an overall POR benefit amount. Consistent with our approach in the first review, we used the POR total value of B.C. sawmill softwood product shipments (*i.e.*, lumber, co–products, and ''residual'' products from primary sawmills) as the denominator, and, adjusting for B.C.'s share of the total exports to the United States, we determined the countervailable subsidy under this program to be 0.11 percent ad valorem during the POR.

**Programs Administered by the Government of Quebec**

*Private Forest Development Program*

In the first administrative review, we determined that the provision of grants to producers of softwood lumber under the Private Forest Development Program (PFDP) constitutes a government financial contribution and confers a benefit under sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. *See* ''Private Forest Development Program'' in *Final Results of 1st Review Decision Memorandum*. In addition, we determined that assistance provided under this program is specific under section 771(5A)(D)(i) of the Act because assistance is limited to private woodlot owners. *Id.*

Every holder of a wood processing plant operating permit must pay the fee of C$1.20 for every cubic meter of timber acquired from a private forest. These fees fund, in part, the PFDP. The recipients of payments under the PFDP are owners of private forest land. Thus, the sawmill operators that received assistance under the PFDP received assistance because they owned private forest land. Therefore, in the first administrative review, we determined that the fees paid to harvest timber from private land do not qualify as an offset to the grants received under the PFDP pursuant to section 771(6) of the Act. *Id.* Section 771(6) of the Act specifically enumerates the only adjustments that can be made to the benefit conferred by a countervailable subsidy and fees paid by processing facilities do not qualify as an offset against benefits received by private woodlot owners. *Id.* Consistent with our treatment of the PFDP in the first administrative review, we treated these payments as recurring in accordance with 19 CFR 351.524(c). *Id.*

Consistent with our approach in the first administrative review, to calculate the countervailable subsidy under the PFDP, we first summed the reported amount of grants provided to sawmills that produce softwood lumber (and other products) during the POR. Next, we reduced the total benefit amount to account for any PFDP benefits received by companies in Quebec that have been excluded from the countervailing duty order. We then divided the net benefit amount by total sales of softwood lumber (*i.e.*, lumber from primary mills and in–scope lumber from remanufacturers), hardwood lumber, and softwood co–products. *Id.* We adjusted the sales denominator to account for sales of excluded companies from Quebec. Next, as explained in ''Aggregate Subsidy Rate Calculation,'' we multiplied this amount by Quebec's relative share of exports to the United States, adjusted for sales of excluded companies. On this basis, we preliminary determine the countervailable subsidy from this program to be less than 0.005 percent *ad valorem*.

**Programs Determined Not to Confer a Benefit**

**Government of Canada**

*1. Federal Economic Development Initiative in Northern Ontario (FEDNOR)*

FEDNOR is an agency of Industry Canada, a department of the GOC, which encourages investment, innovation, and trade in Northern Ontario. A considerable portion of the GOC assistance under FEDNOR is provided to Community Futures Development Corporations (CFDCs), non–profit community organizations providing small business advisory services and offering commercial loans to small and medium enterprises (SMEs). Assistance in the form of grants is also provided under the FEDNOR program.

In the underlying investigation and first administrative review, we determined that grants and loans under the FEDNOR program constitute government financial contributions to softwood lumber producers within the meaning of section 771(5)(D)(i) of the Act. *See Preliminary Results of 1st Review*, 69 FR at 33228. In addition, we found that grants under the program confer a benefit to softwood lumber producers under section 771(5)(E) of the Act and that CFDC loans confer a benefit to softwood lumber producers under section 771(5)(E)(ii) of the Act to the extent that the amount they pay on CFDC loans are less than the amount they would pay on a comparable commercial loan that they could actually obtain on the market. *Id.* Furthermore, we found that the grants and loans provided under the FEDNOR program are specific within the meaning of section 771(5A)(D)(iv) of the Act, because assistance under the program is limited to certain regions in Ontario. *Id.* On this basis, we found the program to be countervailable. No new information has been placed on the record of this review to warrant a change in our findings.

In this administrative review, the GOC claims that no grants were disbursed during the POR. However, it reported several long and short–term CFDC loans that were outstanding during the POR.

Consistent with our approach in the first administrative review, to determine the benefit attributable to loans offered under the FEDNOR program, we compared the long–term and short–term interest rates charged on these loans during the POR to the long–term and short–term benchmark interest rates. *Id.* Our benchmark interest rates are described in ''Benchmarks for Loans & Discount Rates.'' As the interest amounts paid on the loans under the FEDNOR program were greater than what would have been paid on a comparable commercial loan, as indicated by our benchmark interest rate, we preliminarily determine that this program did not confer a benefit upon softwood lumber producers in

accordance with section 771(5)(E)(ii) of the Act during the POR.

*2. Payments to the Canadian Lumber Trade Alliance (CLTA) & Independent Lumber Remanufacturing Association (ILRA)*

In March 2003, the GOC's Department of Foreign Affairs and International Trade (DFAIT) approved a total of C$15 million in grants under separate agreements with the CLTA and ILRA to underwrite the administrative and communications costs incurred by these forest products industry associations as a result of the Canada–U.S. softwood lumber dispute. The GOC reports that the CLTA is composed of companies located in Alberta, B.C., Ontario and Quebec, which produce not only lumber but all types of forest products, while the membership of the ILRA is made up entirely of value–added wood product manufacturers in B.C. Of the approved sums, the DFAIT disbursed C$14.85 million to the CLTA and C$75,000 to the ILRA during the POR.

In the first administrative review, we determined that grants under this program constitute a government financial contribution and confer a benefit within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act, respectively. Further, because the program provided grants to two associations, CLTA and ILRA, we determined that it was specific within the meaning of section 771(5A)(D)(i) of the Act. *See Preliminary Results of 1st Review*, 69 FR at 33229. Accordingly, we determined that the GOC grants to CLTA and ILRA provided a countervailable subsidy to the softwood lumber industry. *Id.* No new information has been placed on the record of this review to warrant a change in our finding that grants under the CLTA and ILRA programs are countervailable.

According to the GOC, all grants bestowed under the CLTA and ILRA were received prior to the POR of the current review. Therefore, we first examined whether the non–recurring grants should be expensed to the year of receipt. *See* 19 CFR 351.524(b)(2). Consistent with the first administrative review, because the grants underwrote the associations' costs related to the softwood lumber dispute, we preliminarily determine that the benefit is tied to anticipated exports to the United States. *See* 19 CFR 351.514(a); *see also Preliminary Results of 1st Review*, 69 FR at 33229. Therefore, we divided the amount approved by total exports of softwood lumber to the United States during the year of approval. We adjusted this sales amount to account for any exports of softwood lumber to the United States during the POR by excluded companies. *See* 19 CFR 351.525(b)(4). Because the resulting amount was less than 0.5 percent, we have expensed the benefit in the year of receipt, which prior to the POR. On this basis, we preliminary determine that the CLTA and ILRA programs did not confer provide countervailable benefits during the POR of the instant review.

**Government of British Columbia**

*Forest Renewal B.C. Program*

The Forest Renewal program was enacted by the GOBC in the Forest Renewal Act in June 1994 to renew the forest economy of British Columbia by, among other things, improving forest management of Crown lands, supporting training for displaced forestry workers, and promoting enhanced community and First Nations involvement in the forestry sector. To achieve these goals, the Forest Renewal Act created Forest Renewal B.C., a Crown corporation. The corporation's strategic objectives were implemented through three business units: the Forests and Environment Business Unit, the Value–Added Business Unit, and the Communities and Workforce Business Unit.

The Forest Renewal B.C. program provides funds to community groups and independent financial institutions, which may in turn provide loans and loan guarantees to companies involved in softwood lumber production.[32] Effective March 31, 2002, the B.C. legislature terminated the Forest Renewal B.C. program. However, during the POR, there remained active Forest Renewal B.C. loans, with interest payments outstanding during the POR.

According to the GOBC, Forest Renewal B.C. provided blanket guarantees with respect to all loans outstanding under the program during the POR. *See* page BC–FRBC–19, Volume 33 of the GOBC's November 22, 2004 questionnaire response. Accordingly, we find that the loan guarantees provided under the program constitutes a government financial contribution within the meaning of section 771(5)(D)(i) of the Act. Further, in the first administrative review we found that because assistance under the Forest Renewal B.C. program was limited to the forest products industry, the program was specific within the meaning of section 771(5A)(D) of the Act. No new information has been placed on the record of this review to warrant a change in our findings.

To determine whether the active Forest Renewal loans provided benefits to the softwood lumber industry, in accordance with section 771(5)(E)(ii) of the Act, we compared the interest rates charged on the Forest Renewal loans to the benchmark interest rates described in ''Benchmarks for Loans and Discount Rates.'' Using this methodology, we have preliminarily determined that no benefit was provided by the Forest Renewal loans because the interest rates charged under this program were equal to or higher than the interest rates charged on comparable commercial loans.

**Government of Quebec**

*1. Assistance Under Article 28 of Investment Quebec*

Assistance under Article 28 is administered by Investissement Quebec, a government corporation. In the underlying investigation, the Department investigated assistance from the GOQ under Article 7, which was administered by the Societe de Developpement Industriel du Quebec (SDI). Article 28 supplanted Article 7 in 1998. Under Article 7, SDI provided financial assistance in the form of loans, loan guarantees, grants, assumption of interest expenses, and equity investments to projects that would significantly promote the development of Quebec's economy. According to the GOQ's response, prior to authorizing assistance, SDI would review a project to ensure that it had strong profit potential and that the recipient business possessed the necessary financial structure, adequate technical and management personnel, and the means of production and marketing required to complete the proposed project. The Article 28 program operates fundamentally in the same manner as Article 7.

During the POR, there was one outstanding loan under Article 28. There were no outstanding loans under Article 7. No other assistance was provided to softwood lumber companies under Article 7 or Article 28.

To determine whether this loan provided a benefit to the softwood lumber industry, in accordance with section 771(5)(E)(ii) of the Act, we compared the interest rates charged on the Article 28 loan to the benchmark interest rates described in ''Benchmarks for Loans and Discount Rates.'' Using this methodology, we have preliminarily determined that no benefit was provided by this loan because the interest rates and fees charged under

[32] Grants have also been provided directly to softwood lumber producers. However, the GOBC has reported that no such grants were provided during the POR.

this program were equal to or higher than the interest rates charged on comparable commercial loans.

*2. Assistance from the Societe de Recuperation d'Exploitation et de Developpement Forestiers du Quebec (Rexfor)*

SGF Rexfor, Inc. (Rexfor) is a corporation all of whose shares are owned by the Societe Generale de Financement du Quebec (SGF). SGF is an industrial and financial holding company that finances economic development projects in cooperation with industrial partners. Rexfor is SGF's vehicle for investment in the forest products industry.

Rexfor receives and analyzes investment opportunities and determines whether to become an investor either through equity or participative subordinated debentures. Debentures are used as an investment vehicle when Rexfor determines that a project is worthwhile, but is not large enough to necessitate more complex equity arrangements. Consistent with our approach in the underlying investigation, we have not analyzed equity investments by Rexfor because (1) there was no allegation that Rexfor's equity investments were inconsistent with the usual investment practice of private investors, and (2) there is no evidence on the record indicating that Rexfor's equity investments conferred a benefit.

Also, consistent with our approach in the underlying investigation, we examined whether Rexfor's participative subordinated debentures, *i.e.*, loans, conferred a subsidy. Because assistance from Rexfor is limited to companies in the forest products industry, we have preliminarily determined that this program is specific under section 771(5A)(D)(i) of the Act. The long–term loans provided by Rexfor qualify as a financial contribution under section 771(5)(D)(i) of the Act. To determine whether the single loan outstanding to a softwood lumber producer during the POR provided a benefit, we compared the interest rates on the loan from Rexfor to the benchmark interest rates as described in ''Benchmarks for Loans and Discount Rates.'' *See* 771(5)(E)(ii) of the Act. Using this methodology, we have preliminarily determined that no benefit was provided by this loan because the interest rates charged under this program were higher than the interest rates charged on comparable commercial loans.

On this basis, we have preliminarily found that the debt forgiveness by Rexfor did not confer a benefit in the POR and, thus, provides no countervailable subsidy.

**Preliminary Results of Review**

In accordance with 777A(e)(2)(B) of the Act, we have calculated a single country–wide subsidy rate to be applied to all producers and exporters of the subject merchandise from Canada, other than those producers that have been excluded from this order. This rate is summarized in the table below:

| Producer/Exporter | Net Subsidy Rate |
|---|---|
| All Producers/Exporters | 8.18 percent ad valorem |

If the final results of this review remain the same as these preliminary results, the Department intends to instruct CBP to assess countervailing duties as indicated above. The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties of 8.18 percent of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

**Public Comment**

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than seven days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Please note that an interested party may still submit case and/or rebuttal briefs even though the party is not going to participate in the hearing.

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary results. Any requested hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal briefs.

This administrative review is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2005.

**Susan Kuhbach,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E5–2884 Filed 6–6–05; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 040511147–5142–02; I.D. 042804B]**

### Listing Endangered and Threatened Species and Designating Critical Habitat: 12–Month Finding on Petition to List the Cherry Point Stock of Pacific Herring as an Endangered or Threatened Species

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

**ACTION:** Notice of 12–month petition finding.

**SUMMARY:** We (NMFS) have completed an updated Endangered Species Act (ESA) status review of Pacific herring (*Clupea pallasi*), inclusive of the Cherry Point herring stock (Strait of Georgia, Washington). We initiated this status review update in response to a petition received on May 14, 2004, to list the Cherry Point stock of Pacific herring as a threatened or endangered species. We have determined that the Cherry Point herring stock does not qualify as a ''species'' for consideration under the ESA. Based upon the best available

scientific and commercial information, we conclude that the petitioned action to list the Cherry Point Pacific herring stock as a threatened or endangered species is not warranted. We find that the Cherry Point stock is part of the previously defined Georgia Basin distinct population segment (DPS) composed of inshore Pacific herring stocks from Puget Sound (Washington) and the Strait of Georgia (Washington and British Columbia). We have determined that the Georgia Basin DPS of Pacific herring is not in danger of extinction or likely to become endangered in the foreseeable future throughout all or a significant portion of its range, and therefore does not warrant ESA listing at this time.

**DATES:** The finding announced in this notice was made on June 1, 2005.

**ADDRESSES:** The status review update for Pacific herring and the list of references cited in this notice are available upon request from Chief, NMFS, Protected Resources Division, 1201 NE Lloyd Avenue, Suite 1100, Portland, OR, 97232. These materials are also available on the Internet at: *http://www.nwr.noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this notice contact Garth Griffin, NMFS, Northwest Region, (503) 231–2005, or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

**SUPPLEMENTARY INFORMATION:**

## Background

ESA Statutory Provisions and Policy Considerations

Under the ESA, a listing determination may address a species, subspecies, or a DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(15)). On February 7, 1996, the U.S. Fish and Wildlife Service and NMFS adopted a policy to clarify the agencies' interpretation of the phrase ''distinct population segment of any species of vertebrate fish or wildlife'' (ESA section 3(15)) for the purposes of listing, delisting, and reclassifying a species under the ESA (51 FR 4722). The joint DPS policy identified two elements that must be considered when making DPS determinations: (1) the discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs.

Section 3 of the ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The statute lists factors that may cause a species to be threatened or endangered (ESA section 4(a)(1)): (a) the present or threatened destruction, modification, or curtailment of its habitat or range; (b) overutilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; or (e) other natural or manmade factors affecting its continued existence.

Section 4(b)(1)(A) of the ESA requires NMFS to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made to protect the species. In making listing determinations under the ESA we first determine whether a population or group of populations constitutes a DPS (i.e., whether the populations(s) should be considered a ''species'' within the meaning of the ESA), and if so we assess the level of extinction risk faced by the DPS and any factors that have led to its decline. If it is determined that the DPS' survival is at risk throughout all or a significant portion of its range, we then assess efforts being made to protect the species, determining if these efforts are adequate to mitigate threats to the species. Based on the foregoing information and the factors identified in ESA section 4(a)(1), we then make a listing determination of whether the species is threatened, the species is endangered, or listing is not warranted.

### *Life History of Pacific Herring*

Pacific herring in the Eastern Pacific Ocean range from northern Baja California north to at least the Mackenzie Delta in the Beaufort Sea. They are also found in the Russian Arctic from the Chukchi Sea in the east to the White Sea in the west, although the boundary between Atlantic and Pacific herring is unclear in this region (Hay *et al.*, 2001b). In the Northwestern Pacific they are found throughout the Western Bering Sea, the east coast of Kamchatka, and the Sea of Okhotsk; on the east and west coasts of Hokkaido, Japan; and south and west to the Yellow Sea off the Korean Peninsula (Haegele and Schweigert, 1985; Hay *et al.*, 2001b).

Adult herring in the Eastern Pacific move inshore during winter and early spring and reside in holding areas before moving to adjacent spawning grounds (Hay, 1985). Spawning grounds are typically in sheltered inlets, sounds, bays, and estuaries (Haegele and Schweigert, 1985). Pacific herring usually spawn intertidally or in shallow subtidal zones, depositing adhesive eggs over algae, vegetation, or other substrates (Hay, 1985). The location and timing of spawning for individual stocks are generally consistent and predictable from year to year (Hay et al., 1989; O'Toole *et al.*, 2000).

Pacific herring spawn timing varies with latitude, with earlier spawning (i.e., early-winter) occurring in the more southern latitudes of the species' range, and later spawning (i.e., mid-summer) occurring toward the northern limit of the species' range (Hay, 1985). In Puget Sound, spawning generally occurs from January to April, with peak spawning activity in February and March; however, Pacific herring at Cherry Point spawn from late-March to mid-June (Bargmann, 1998).

Pacific herring larvae drift in ocean currents after hatching and are abundant in shallow nearshore waters (Lassuy, 1989; Hay and McCarter, 1997). After 2 to 3 months, larvae metamorphose into juveniles that form large schools and remain primarily in nearshore shallow-water areas during the first summer. After their first summer, juveniles may disperse to deeper offshore waters to mature or reside year-round in nearshore waters (Hay, 1985). For example, some herring are nonmigratory or resident and spend their entire life within Puget Sound and the Strait of Georgia, while other more migratory herring spend their summers in the offshore waters of Washington and southern British Columbia (Hay et al., 2001a; Trumble, 1983).

Pacific herring age at first maturity ranges from age–2 to age–5 (Hay, 1985). Along the west coast of North America, populations of Pacific herring exhibit a latitudinal cline in age at first maturity, such that herring in southern locations (i.e., California) mature at an earlier age and herring in the north (i.e., Bering Sea) mature at later ages (Hay, 1985). In Puget Sound, Pacific herring reach sexual maturity at age–2 to age–4 (Bargmann, 1998). Pacific herring in the Strait of Georgia and other major assessment areas in British Columbia reach sexual maturity at age–3 (Hay and McCarter, 1999). In general, populations of Pacific herring also exhibit a latitudinal cline in mean size-at-age, such that herring in southern locations (i.e., California) exhibit small size and herring in the north (i.e., Bering Sea) attain a far larger size at a similar age. Herring may spawn annually for several years (Hay, 1985), with overall

fecundity increasing as body size increases (Ware, 1985; Hay, 1985).

In the state of Washington there are 21 documented spawning stocks: 19 stocks in Puget Sound (including the Cherry Point stock and the recently re-discovered Wollochet Bay stock), and two on the Washington Coast (Bargmann, 1998; Stout *et al.*, 2001). The Cherry Point Pacific herring stock historically spawned along the Washington coastline from Hale Passage (between the north end of Bellingham Bay and the east coast of Lummi Island), north to Cherry Point, Birch Point, Point Roberts, and the border with Canada (Lemberg *et al.*, 1997). Since 1996, spawning of the Cherry Point stock has only occurred in the vicinity of Birch Point and along the Cherry Point Reach. Spawning at Cherry Point can begin as early as late-March and end as late as mid-June, although peak spawning activity occurs around May 10th (O'Toole et al., 2000). Spawning at all other Pacific herring locations in Puget Sound, Hood Canal, and the Strait of Juan de Fuca normally occurs from late-January through late-April (Trumble, 1983; Lemberg *et al.*, 1997; O'Toole *et al.*, 2000) with peak spawning starting the last week of February or the first week of March (O'Toole *et al.*, 2000).

Since record keeping began in 1928, British Columbia Pacific herring have been observed to spawn at over 1,300 locations along the approximately 5,200 km of coastline that is classified as herring spawning habitat (Hay and McCarter, 2004). In any given year, between 450 and 600 km of the British Columbia coast receives herring spawn. The Canada Department of Fisheries and Oceans has identified six stock assessment regions and 101 sub-areas or ''Herring Sections'' characterized by consistent Pacific herring spawning activity. In general, Pacific herring spawn from January to May in southern British Columbia and from mid-January to June in northern British Columbia (Taylor, 1964; Hourston, 1980). As at Cherry Point, Pacific herring in several Herring Sections in British Columbia exhibit notably late spawn timing for their local region (e.g., Skidegate Inlet [Section 022] and Masset Inlet [Section 011] in the Queen Charlotte Islands Region and Burke Channel [Section 084] in the Central Coast Region) (Hay *et al.*, 1989).

*Previous Federal Actions Relating to Pacific Herring*

We completed a status review of Pacific Herring in 2001 (Stout *et al.*, 2001). This earlier review was initiated in response to a petition received in February 1999 to list 18 species of marine fishes in Puget Sound, including Pacific herring. We concluded that the Pacific herring stocks in Puget Sound do not constitute a DPS (and therefore do not qualify as a ''species'' under the ESA). We determined that these Puget Sound herring stocks, including the Cherry Point stock, belonged to a larger Georgia Basin Pacific herring DPS consisting of over 40 inshore stocks from Puget Sound and the Strait of Georgia in the United States and Canada (64 FR 17659; April 3, 2001). We concluded that the Georgia Basin DPS is not threatened or endangered throughout all or a significant portion of its range (64 FR 17659; April 3, 2001); however, we did note concern regarding two herring stocks within the Georgia Basin DPS (the Cherry Point and Discovery Bay stocks) that have shown marked declines in range and abundance. Although we recognized that these two declining stocks may be vulnerable to extirpation, we concluded that they represent a relatively small portion of the more than 40 stocks and assessment areas composing the DPS and do not confer significant risk to the DPS throughout all or a significant portion of its range.

*Summary of Petitions Received*

On January 22, 2004, NMFS received a petition from the Northwest Ecosystem Alliance, the Center for Biological Diversity, Ocean Advocates, People for Puget Sound, Public Employees for Environmental Responsibility, Sam Wright, and the Friends of the San Juans to find that the Cherry Point (Washington) stock of Pacific herring qualifies as a DPS and warrants listing as a threatened or endangered species under the ESA. Subsequently, on May 14, 2004, the same petitioners submitted additional information including new genetic information on the stock structure of Pacific herring in Puget Sound and the Strait of Georgia (Washington) that had become available since the initial petition was received on January 22, 2004. We considered the petitioners' supplemental submission (in conjunction with the January 22, 2004, submission) as a distinct petition received by the agency on May 14, 2004. On August 10, 2004, we issued our finding that the petition received on January 22, 2004, fails to present substantial scientific and commercial information indicating that the petitioned action may be warranted, but that the petition received on May 14, 2004, does present substantial scientific and commercial information indicating that the petitioned action may be warranted (69 FR 48455).

For a summary of the specific information presented in the two petitions, the reader is referred to the above mentioned **Federal Register** notice describing the petition findings. Most significantly, the petition received on May 14, 2004, presented new genetic information (Small *et al.*, 2004) indicating that the Cherry Point herring stock may be ''discrete'' and ''significant'' with respect to the species, and may thereby qualify as a DPS for listing consideration under the ESA. The majority of the information provided by the petitioners regarding the viability of the Cherry Point herring stock was evaluated in our earlier 2001 status review. The Cherry Point herring stock has declined dramatically over the last three decades, with the spawning biomass in 2000 representing a 94 percent decline from historical observations. The 2001 status review noted that there was a 50 percent chance that the Cherry Point stock would decline to 1 ton or less in 100 years (Stout et al., 2001). The petitioners also provided additional biomass information from 2001–2004 for the period since the 2001 status review.

**Updated Status Review of Pacific Herring**

The ESA requires that, as a consequence of accepting the above petition, NMFS promptly commence a review of the species' status and make a finding within 12 months after receiving the petition, whether the petitioned action is warranted (ESA Section 4(b)(3)). To ensure that our review was based on the best available and most recent scientific information, we solicited information during a 60–day public comment period regarding the DPS structure and extinction risk of, and efforts being made to protect, the species (69 FR 48455; August 10, 2004).

We convened a Biological Review Team (BRT) (an expert panel of scientists from NMFS' Northwest and Alaska Fisheries Science Centers, and NOAA's National Ocean Service) to review the available information and determine: (1) the DPS structure of Pacific herring, specifically whether the Cherry Point herring stock qualifies as a ''species'' for consideration under the ESA; and (2) whether the identified DPS(s) are in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The BRT's findings are presented in a January 24, 2005, memorandum ''Summary of Scientific Conclusions of the Status of Cherry Point Pacific Herring (Clupea pallasii) and Update of the Status of the Georgia

Basin Pacific Herring DPS,'' and are summarized briefly below.

*Determination of ''Species''*

Under the joint DPS policy (51 FR 4722; February 7, 1996) a population segment may be considered discrete if it satisfies either one of the following conditions: (1) it is markedly separated from other populations of the same biological taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries across which there is a significant difference in exploitation control, habitat management or conservation status. Under the joint DPS policy, if a population is determined to be discrete, the agency must then consider whether it is significant to the taxon to which it belongs. Considerations in evaluating the significance of a discrete population include: (1) persistence of the discrete population in an unusual or unique ecological setting for the taxon; (2) evidence that the loss of the discrete population segment would cause a significant gap in the taxon's range; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere outside its historical geographic range; or (4) evidence that the discrete population has marked genetic differences from other populations of the species.

The BRT considered several types of information in evaluating the DPS structure of Pacific herring, including whether the Cherry Point herring stock qualifies for listing consideration as an independent DPS. Information considered in evaluating the discreteness of stocks include: (1) geographic variability in life-history characteristics and morphology; (2) tagging and recapture studies indicating the level of migration among stocks; and (3) genetic differentiation among stocks reflective of marked reproductive isolation.

*Relationship of Stock and DPS Concepts*

Pacific herring in the vicinity of Cherry Point (Washington) are considered to be a stock for management purposes in the state of Washington (Bargmann, 1998). There is no definition of the term ''stock'' that is generally accepted by fisheries biologists (Stout *et al.*, 2001). The term stock has been used to refer to: (1) fish spawning in a particular place or time, separated to a substantial degree from fish spawning in a different place or time (Ricker, 1972); (2) a population sharing a common environment that is sufficiently discrete to warrant consideration as a self-perpetuating system that can be managed separately (Larkin, 1972); (3) a species group or population of fish that maintains and sustains itself over time in a definable area (Booke, 1981); and (4) an intraspecific group of randomly mating individuals with temporal or spatial integrity (Ihssen et al., 1981). None of these definitions imply that a fish stock is ecologically, biologically, or physiologically significant in relation to the biological species as a whole. Hence, information establishing a group of fish as a stock, such as the Cherry Point stock of Pacific herring, does not necessarily qualify it as a DPS. A DPS may be composed of a group of related stocks, or in some cases (if the evidence warrants) a single stock, that form(s) a discrete population and are (is) significant to the biological species as a whole.

*Pacific Herring as a Metapopulation*

A ''metapopulation'' is an aggregation of subpopulations linked by migration, and subject to periodic extinction and recolonization events (Levins, 1968, 1970). Observations of herring population structure in the Atlantic and Pacific are consistent with this metapopulation concept (McQuinn, 1997; Ware e*t al.*, 2000; Ware and Schweigert, 2001 ,2002; Ware and Tovey, 2004): (1) local herring stocks are distributed across spatially fragmented spawning habitat; (2) local stocks exhibit partially independent demographics and dynamics; (3) there is appreciable straying and gene flow among local populations; and (4) there is evidence of disappearance and recolonization events. Consistent with the consideration of Pacific herring as a metapopulation, local spawning stocks of herring may demonstrate distinctive demographic patterns and reproductive isolation over relatively short temporal scales, yet over longer time periods regularly exchange low levels of individuals or experience periodic waves of dispersal during years of abundant recruitment.

*DPS Determination for the Cherry Point Stock of Pacific Herring*

The BRT concluded that the Cherry Point stock of Pacific herring was ''discrete'' under the DPS policy (NMFS, 2005). The BRT determined that the Cherry Point stock is markedly separated from other Pacific herring populations as a consequence of physical, physiological, ecological, or behavioral factors due to: (1) its locally unique late spawn timing; (2) the locally unusual location of its spawning habitat on an exposed section of coastline; (3) its consistently large size-at-age and continued growth after maturation relative to other local herring stocks; and (4) its differential accumulation of toxic compounds relative to other local herring stocks, indicative of different rearing or migratory conditions for Cherry Point herring.

Although the BRT determined that the Cherry Point stock represents a discrete population, the BRT concluded that the stock is not ''significant'' to the taxon, and hence does not constitute a DPS (NMFS, 2005). The BRT noted that: (1) over the broad geographic range of Pacific herring, the local distinctiveness of the Cherry Point stock is not unusual; (2) the late spawn timing of the Cherry Point stock is not exceptional for Pacific herring, as there are other Pacific herring stocks with similarly exceptionally late (as well as early) spawn timing for their local region; (3) other Pacific herring stocks have spawning habitats located on exposed coastlines subject to high-energy wave action; and (4), given the level of genetic variability observed within and between herring stocks, the level of genetic differentiation exhibited by the Cherry Point stock was unlikely to indicate a marked or evolutionarily significant level of differentiation. Based on this information, the BRT concluded that the Cherry Point stock does not satisfy the applicable DPS criteria for significance: Cherry Point does not represent a unique or unusual ecological setting for Pacific herring; the loss of the Cherry Point herring stock would not result in a significant gap in the extensive range of Pacific herring; and the Cherry Point stock does not exhibit marked genetic differentiation relative to other Pacific herring populations.

*Petition Finding*

As summarized above, the May 14, 2004, petition submitted by the Northwest Ecosystem Alliance and co-petitioners sought a finding that the Cherry Point (Washington) stock of Pacific herring qualifies as a DPS and warrants listing as a threatened or endangered species under the ESA. In a **Federal Register** notice published on August 10, 2004 (69 FR 48455), we published the finding that the petition presented substantial scientific and commercial information indicating that the petitioned action may be warranted. As described in the preceding section, we have determined that the Cherry Point stock of Pacific herring is ''discrete,'' but is not ''significant'' under the joint NMFS/U.S. Fish and Wildlife Service DPS policy. Thus, the

Cherry Point herring stock does not qualify as a DPS for listing consideration under the ESA. Accordingly, we find that the action sought by the May 14, 2004, Northwest Ecosystem Alliance et al. petition is not warranted.

*DPS Determination for Pacific Herring in the Georgia Basin*

The BRT considered a number of alternative DPS configurations for Pacific herring incorporating the Cherry Point herring stock, ranging from the previously identified Georgia Basin DPS to a DPS encompassing Pacific herring from San Diego (California) to Sitka (Alaska). Evidence suggesting a DPS configuration larger than the Georgia Basin includes: (1) tagging studies indicating that straying among herring stocks occurs at spatial scales exceeding that of the Georgia Basin; (2) information indicating relative genetic homogeneity of Pacific herring stocks in the Pacific Northwest, Strait of Georgia, and British Columbia; and (3) evidence supporting the concept that local herring stocks are part of a larger Pacific herring metapopulation. Notwithstanding this information, the majority of the BRT favored the previous delineation of a Georgia Basin DPS of Pacific herring, finding that the available information is insufficient to warrant modification of the previous DPS delineation (NMFS, 2005). A variety of evidence supports the finding that Georgia Basin Pacific herring satisfy the criteria for discreteness and significance under the joint DPS policy, including: the similarity in age composition of herring stocks in the Strait of Georgia and Puget Sound supporting the discreteness of Georgia Basin Pacific herring, and the ecological uniqueness of the inshore waters of Puget Sound and the Strait of Georgia supporting the significance of the Pacific herring in the Georgia Basin to the taxon as-a-whole. (For a more detailed discussion of the information supporting the delineation of the Georgia Basin DPS of Pacific herring, the reader is referred to the Stout *et al.*, 2001, status review). The BRT delineated the Georgia Basin DPS as encompassing spawning stocks of Pacific herring in the marine waters of Puget Sound, the Strait of Georgia, and eastern Strait of Juan de Fuca in the United States and Canada.

*Review of the Species' Status*

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and taking into account those efforts, if any, being made to protect such species.

The BRT considered the best available biological information to assess the level of extinction risk for the Georgia Basin DPS of Pacific herring. The BRT evaluated the DPS's extinction risk based on risks to its abundance, productivity, spatial structure (including spatial distribution and connectivity), and diversity. These four ''Viable Salmonid Population'' (VSP; McElhany *et al.*, 2000) criteria were developed to provide a consistent and logical framework for assessing risks to populations and DPSs of West Coast salmon and steelhead. Although initially developed for application to salmonid metapopulations, the VSP criteria are well founded in the conservation biology literature. Threats to a species' long-term persistence are manifested demographically as risks to its abundance, productivity, spatial structure, and productivity. These demographic risks thus provide the most direct and robust biological indicators of extinction risk. The BRT's assessment of extinction risk did not include an evaluation of the likely or potential contribution of efforts being made to protect the species, but was based solely on the available biological information assuming that present conditions will continue, and recognizing that natural demographic and environmental variability is an inherent feature of present conditions. Below we summarize the BRT's assessment of demographic risks to the Georgia Basin DPS's abundance, productivity, spatial structure, and diversity, as well as the BRT's extinction risk assessment for the DPS based on these risks.

*Evaluation of Demographic Risks to the DPS*

The majority opinion of the BRT was that there is very low risk to the abundance of the Georgia Basin DPS, concluding that it is unlikely that the current trends and levels of abundance contribute significantly to the risk of extinction for the DPS, either by themselves or in combination with other factors. The BRT noted that the overall abundance of the DPS is at historically high levels since monitoring began in the 1930s, in terms of the estimated biomass (the recent abundance is well over 100,000 metric tons) and numbers of herring (estimated at more than half a billion mature herring). However, the BRT was concerned about the observed decline in the number of the Cherry Point herring spawners from an estimated 24 million fish in 2003 to 14 million fish in 2004.

The majority opinion of the BRT was that there is low risk to the productivity of the DPS, concluding that it is unlikely to contribute significantly to the risk of extinction for the DPS by itself, but that there may be concern in combination with other factors. The BRT noted that the DPS as a whole is highly productive with the overall population trend and growth rate being highly positive. The BRT observed that the overall DPS appeared to be in steep decline in the 1960s. However, some stocks have exhibited high levels of productivity conferring resiliency to the DPS and reflecting an apparent ability to rebound from past declines. The recent short-term trend for the overall DPS is also very positive and recruitment levels remain high, despite an apparent increase in adult mortality, possibly due to predation by seals, disease factors, and other risk factors.

The BRT's appraisal of risk to the spatial structure of the DPS ranged from very low risk to increasing risk. The majority opinion of the BRT was that the DPS faces low risk to its spatial structure, concluding that it is unlikely that spatial distribution and connectivity contribute significantly to the risk of extinction by themselves, and that there is some concern that they may in combination with other factors. The BRT noted that the DPS remains well distributed, with no gaps in the geographic range of spawning within the DPS. All, or nearly all, of the historically occupied areas continue to support spawning, and moderate migration rates based on tagging information indicate little loss of connectivity among stocks within the DPS. The BRT noted that increasing trends in the DPS are not uniformly distributed among stocks or spawning areas, with the Central and Northeastern portions of the DPS exhibiting declines. The BRT was concerned that the bulk of the spawning distribution and abundance and productivity in the DPS has become spatially compacted, particularly in the northern half of the DPS. However, the BRT felt that declining trends in some parts of the DPS are not a major concern in the context of a herring metapopulation, particularly in light of observations of high connectivity among stocks, and evidence of disappearance and subsequent recolonization events in the

British Columbia portion of the DPS. The BRT also felt that the spatial compaction of the most abundant and productive spawning stocks may be a natural phenomenon.

The majority opinion of the BRT was that there is low risk to the diversity of the DPS, concluding that it is unlikely that diversity contributes significantly to the risk of extinction for the DPS, but that it may in combination with other factors. The BRT noted that the DPS continues to exhibit diversity in spawn timing and migratory behavior both within and among spawning stocks. Although there is limited long-term data regarding the genetic diversity of the DPS, the BRT concluded that there has been no apparent genetic loss as compared to other marine species. The BRT noted concern that the life-history diversity of the DPS has apparently declined with the compression of population age structure (a much smaller proportion of older age classes), the decline of late-spawning herring (principally the Cherry Point herring stock), and an apparent decline in nonmigratory inlet herring stocks on the eastern side of the Strait of Georgia. The BRT was uncertain whether the migratory/nonmigratory life-history types are specific to certain populations, or are present to some degree in most or all spawning stocks in the Strait of Georgia and Puget Sound.

*Assessment of the Risk of Extinction*

Informed by its assessment of demographic risks to the DPS, and a consideration of the interactions among demographic risks, the BRT concluded that the Georgia Basin DPS of Pacific herring is not at risk of extinction in all or a significant portion of its range, nor likely to become so in the foreseeable future. The BRT noted that the overall abundance of the DPS is at historically high levels, and that the linear extent of coastline used for spawning has been increasing. The BRT concluded that the available information suggests that spawning stocks in the Georgia Basin DPS operate as a ''mixed structure'' metapopulation (Harrison and Taylor, 1997) in which all subpopulations are connected by migration, but some are relatively discrete with weaker demographic linkages to other subpopulations in the DPS. It is expected in a viable metapopulation that some local subpopulations will be in decline, other subpopulations will be increasing, and some suitable habitat patches may be unoccupied. Accordingly, the observation that some local stocks are declining (principally the Cherry Point stock, and the nonmigratory inlet stocks in the eastern Strait of Georgia) is not by itself cause for concern about the long-term viability of the DPS. Additionally, given the metapopulation structure of the DPS, the BRT did not feel that the low demographic risks (described in the previous section) collectively represent a risk to the long-term viability of the DPS. The few declining stocks represent a small proportion of the more than 40 stocks and assessment areas that compose the Georgia Basin DPS. Evidence of significant migration among stocks, high levels of gene flow, and disappearance and subsequent recolonization events for Georgia Basin Pacific herring suggest that local extirpations or stock declines confer little risk to the overall DPS. The specific stocks exhibiting decline, however, appear to exhibit greater demographic independence on generational time scales relative to other stocks within the DPS. It is possible, given their weaker connectivity with other spawning stocks in the DPS, that if these declining stocks were lost, recolonization might take longer than it might for a classical metapopulation in which subpopulations are connected by higher rates of exchange. Nonetheless, the BRT did not feel that the current risks to these declining stocks posed risks to the DPS as a whole, or to any significant portion of the DPS.

The BRT considered whether recent factors have disrupted the function of the metapopulation such that its long-term viability is compromised. The BRT concluded that the patterns of abundance and distribution within the Georgia Basin DPS appear to be typical of what is seen in other herring metapopulations throughout northwestern North America, including metapopulations in relatively pristine areas in southeastern Alaska and British Columbia. The BRT noted, however, that if habitat areas were lost or permanently degraded to the point that they lacked the potential to support a spawning subpopulation, this could seriously impair the function of the entire metapopulation. The BRT concluded that the declining Cherry Point and eastern Strait of Georgia inlet stocks do not appear to be limited by habitat factors. The BRT concluded that the available evidence does not suggest unusual levels of risk to the DPS as a whole, nor to any significant portion of the DPS.

*Consideration of ''Significant Portion of its Range''*

The ESA defines endangered and threatened species in terms of the level of extinction risk ''throughout all or a significant portion of its range'' (sections 3(6) and 3(20)). If it is determined that the defined species is not in danger of extinction or likely to become so throughout all of its range, but there are major geographic areas where the species is no longer viable, the statute directs that we must address whether such areas represent a significant portion of the species' range. As mentioned above, the BRT expressed concern regarding declines in the Cherry Point stock and the non-migratory inlet stocks in the eastern Strait of Georgia, but concluded that these stocks do not represent a significant portion of the Georgia Basin DPS's range. The BRT recognized that the Cherry Point stock is characterized by late spawn timing, but noted that this timing represents the tail of the distribution of run timing for the DPS as a whole and overlaps with the range of spawn timing exhibited by other stocks in the DPS. The BRT noted that the Cherry Point stock represents only one of about 40 recognized herring stocks and management areas within the DPS. Although at peak abundance (in the early 1970s) the Cherry Point stock possibly represented about 11 percent of the DPS's total biomass, other historically large stocks were severely depressed at the time due to over-harvesting and poor recruitment conditions. Thus, it is speculative to conclude that the Cherry Point stock historically represented a substantial portion of the ESU's biomass. With respect to the declining inlet stocks in the eastern Strait of Georgia, the BRT concluded that it is unclear whether their nonmigratory life history represents a biologically significant portion of the DPS. Pentilla (1986) suggested that some proportion of adult herring in Puget Sound are nonmigratory as well. The BRT observed that it is unclear whether the nonmigratory life-history type is specific to certain stocks or is present to some degree in all herring stocks. Based on the above information, the BRT concluded that the declining Cherry Point and eastern Strait of Georgia inlet herring stocks individually and collectively do not represent a significant portion of the Georgia Basin DPS's range.

*Efforts Being Made to Protect the Species*

Section 4(b)(1)(A) of the ESA requires the Secretary to make listing determinations solely on the basis of the best scientific and commercial data available after taking into account efforts being made to protect a species (emphasis added). Therefore, in making listing determinations we first assess the

defined species' level of extinction risk, and identify factors that have led to its decline. If it is determined that the species' survival is at risk, we then assess existing efforts being made to protect the species to determine if those measures ameliorate the risks faced by the species. As described above, the BRT concluded that the defined species' (the Georgia Basin DPS of Pacific herring) survival is not at risk. It is not necessary to assess whether protective efforts reduce risks to a DPS that has been determined to be viable.

**Listing Determination**

Informed by NMFS' findings that: (1) the spawning stocks of Pacific herring in the Georgia Basin (including the marine waters of Puget Sound, the Strait of Georgia, and eastern Juan de Fuca Strait in the United States and Canada) constitute a DPS; and (2) the DPS is not in danger of extinction or likely to become endangered in the foreseeable future throughout all or a significant portion of its range, we conclude that the Georgia Basin DPS of Pacific herring does not warrant listing as threatened or endangered under the ESA.

*References*

Copies of the BRT's Status Review Update report, the petition, and related materials are available on the Internet at *http://www.nwr.noaa.gov*, or upon request (see **ADDRESSES** section above).

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: June 1, 2005.

**Rebecca Lent,**

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

[FR Doc. 05–11210 Filed 6–6–05; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 031005B]**

### Small Takes of Marine Mammals Incidental to Specified Activities; Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida

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

**ACTION:** Notice of receipt of application and proposed authorization for incidental harassment of marine mammals; request for comments and information.

**SUMMARY:** NMFS has received a request from Eglin Air Force Base (EAFB) for the take of small numbers of marine mammals, by harassment, incidental to Naval Explosive Ordnance Disposal School (NEODS) Training Operations at EAFB, Florida. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the Air Force to take, by harassment, small numbers of two species of cetaceans at EAFB beginning in July 7, 2005.

**DATES:** Comments and information must be received no later than July 7, 2005.

**ADDRESSES:** Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments on this action is *PR1.031005B@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. Comments may also be submitted via facsimile to (301) 427–2521. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (SEE FOR FURTHER INFORMATION CONTACT) or online at: *http://www.nmfs.noaa.gov/prot_res/PR1/Small_Take/smalltake_info.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext. 166.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The National Defense Authorization Act of 2004 (NDAA) (Public Law 108–136) amended the definition of ''harassment'' in section 18(A) of the MMPA as it applies to a ''military readiness activity'' to read as follows:

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment).

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

**Summary of Request**

On March 11, 2004, NMFS received an application from EAFB, under section 101(a)(5)(D) of the MMPA, requesting authorization for the harassment of small numbers of Atlantic bottlenose dolphins (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*) incidental to NEODS training operations at EAFB, Florida, in the northern Gulf of Mexico (GOM). Each of up to six missions per year would include up to 5 live detonations of approximately 5–pound (2.3–kg) net explosive weight charges to occur in approximately 60–ft (18.3–m) deep water from one to three nm (1.9 to 5.6 km) off shore. Because this activity will be a multi-year activity, NMFS also plans to develop proposed regulations for NEODS training operations at EAFB.

**Specified Activities**

The mission of NEODS is to train personnel to detect, recover, identify, evaluate, render safe, and dispose of unexploded ordnance (UXO) that constitutes a threat to people, material, installations, ships, aircraft, and operations. The NEODS proposes to utilize three areas within the Eglin Gulf Test and Training Range (EGTTR), consisting of approximately 86,000 square miles within the GOM and the airspace above, for Mine Countermeasures (MCM) detonations, which involve mine-hunting and mine-clearance operations. The detonation of small, live explosive charges disables the function of the mines, which are inert for training purposes. The proposed training would occur approximately one to three nautical miles (nm) (1.9 to 5.6 km) offshore of Santa Rosa Island (SRI) six times annually, at varying times within the year.

Each of the six training classes would include one or two ''Live Demolition Days.'' During each set of Live Demolition Days, five inert mines would be placed in a compact area on the sea floor in approximately 60 ft (18.3 m) of water. Divers would locate the mines by hand-held sonars. The AN/PQS–2A acoustic locator has a sound pressure level (SPL) of 178.5 re 1 microPascal @ 1 meter and the Dukane Underwater Acoustic Locator has a SPL of 157–160.5 re 1 microPascal @ 1 meter. Because these sonar ranges are below any current threshold for protected species, noise impacts are not anticipated and are not addressed further in this analysis.

Five charges packed with five lbs (2.3 kg) of C–4 explosive material will be set up adjacent to each of the mines. No more than five charges will be detonated over the two-day period. Detonation times will begin no earlier than two hours after sunrise and end no later than two hours before dusk and charges utilized within the same hour period will have a maximum separation time of 20 minutes. Mine shapes and debris will be recovered and removed from the water when training is completed. A more detailed description of the work proposed for 2005 and 2006 is contained in the application which is available upon request (see **ADDRESSES**).

*Military Readiness Activity*

NEODS supports the Naval Fleet by providing training to personnel from all four armed services, civil officials, and military students from over 70 countries. The NEODS facility supports the Department of Defense Joint Service Explosive Ordnance Disposal training mission. The Navy and the Marine Corps believe that the ability of Sailors and Marines to detect, characterize, and neutralize mines from their operating areas at sea, on the shore, and inland, is vital to their doctrines.

The Navy believes that an array of transnational, rogue, and subnational adversaries now pose the most immediate threat to American interests. Because of their relative low cost and ease of use, mines will be among the adversaries' weapons of choice in shallow-water situations, and they will be deployed in an asymmetrical and asynchronous manner. The Navy needs organic means to clear mines and obstacles rapidly in three challenging environments: shallow water; the surf zone; and the beach zone. The Navy also needs a capability for rapid clandestine surveillance and reconnaissance of minefields and obstacles in these environments. The NEODS mission in the GOM offshore of EAFB is considered a military readiness activity pursuant to the NDAA (Public Law 108–136).

**Marine Mammals and Habitat Affected by the Activity**

Marine mammal species that potentially occur within the EGTTR include several species of cetaceans and the West Indian manatee. While a few manatees may migrate as far north from southern Florida (where there are generally confined in the winter) as Louisiana in the summer, they primarily inhabit coastal and inshore waters and rarely venture offshore. NEODS missions are conducted one to 3 nm (5.6 km) from shore and effects on manatees are therefore considered very unlikely and not discussed further in this analysis.

Cetacean abundance estimates for the project area are derived from GulfCet II aerial surveys conducted from 1996 to 1998 over a 70,470 km2 area, including nearly the entire continental shelf region of the EGTTR, which extends approximately 9 nm (16.7 km) from shore. The dwarf and pygmy sperm whales are not included in this analysis because their potential for being found near the project site is remote. Although Atlantic spotted dolphins do not normally inhabit nearshore waters, they are included in the analysis to ensure conservative mitigation measures are applied. The two marine mammal species expected to be affected by these activities are the bottlenose dolphin (*Tursiops truncatus*) and the Atlantic spotted dolphin (*Stenella frontalis*). Descriptions of the biology and local distribution of these species can be found in the application (see **ADDRESSES** for availability), other sources such as Wursig et al. (2000), and the NMFS Stock Assessments, which can be viewed at: *http://www.NMFS.noaa.gov/pr/PR2/Stock__Assessment__Program/sars.html*.

*Atlantic Bottlenose Dolphins*

Atlantic bottlenose dolphins are distributed worldwide in tropical and temperate waters and occur in the slope, shelf, and inshore waters of the GOM. Based on a combination of geography and ecological and genetic research, Atlantic bottlenose dolphins have been divided into many separate stocks within the GOM. The exact structure of these stocks is complex and continues to be revised as research is completed. For now, bottlenose dolphins inhabiting waters less than 20 m (66 ft) deep in the U.S. GOM are believed to constitute 36 inshore or coastal stocks, and those inhabiting waters from 20 to 200 m (66 to 656 ft) deep in the northern GOM from the U.S.-Mexican border to the Florida Keys are considered the continental shelf stock (Waring *et al.*, 2004). The proposed action would occur on the ocean floor at a depth of approximately 60 ft (18 m) and therefore has the potential to affect both the continental shelf and inshore stocks.

Continental shelf stock assessments were estimated using data from vessel surveys conducted between 1998 and 2001 (at 20– to 200–m (66- to 656–ft) depths). The minimum population estimate for the northern GOM continental shelf stock of the Atlantic bottlenose dolphin is 20,414 (Waring *et al.*, 2004). The potential for biological removal (PBR), which is the ''maximum number of animals that may be removed from a stock while allowing the stock to maintain its optimal sustainable population'', of the continental shelf stock is currently 204.

The most recent inshore stock assessment surveys were conducted aerially in 1993 and covered the area from the shore or bay boundaries out to 9.3 km (5.0 nm) past the 18.3 m (60.0 nm) isobath (a slightly different area than that defined as inshore in the more recent stock assessment above). The minimum population estimate of the northern GOM coastal stock of the Atlantic bottlenose dolphin was 3,518 dolphins and the PBR for this stock was 35 (Waring *et al.*, 1997).

Texas A&M University and the NMFS conducted GulfCet II aerial surveys in an area including the EGTTR from 1996 to 1998. Density estimates were calculated using abundance data collected from the continental shelf area of the EGTTR. In an effort to provide better species conservation and protection, estimates were adjusted to

incorporate temporal and spatial variations, surface and submerged variations, and overall density confidence. The adjusted density estimate for Atlantic bottlenose dolphins within the project area is 0.810 individuals/km². A small number of dolphins could not be identified specifically as Atlantic bottlenose or Atlantic spotted and their estimated density was 0.053 individuals/km2.

*Atlantic Spotted Dolphins*

Atlantic spotted dolphins are endemic to the tropical and warm temperate waters of the Atlantic Ocean and can be found from the latitude of Cape May, New Jersey south along mainland shores to Venezuela, including the GOM and Lesser Antilles. In the GOM, Atlantic spotted dolphins occur primarily in continental shelf waters 10 to 200 m (33 to 656 ft) deep out to continental slope waters less than 500 m (1640.4 ft) deep. One recent study presents strong genetic support for differentiation between GOM and western North Atlantic management stocks, but the Gulf of Mexico stock has not yet been further subdivided.

Abundance was estimated in the most recent assessment of the northern GOM stock of the Atlantic spotted dolphin using combined data from continental shelf surveys (20 to 200 m (66 to 656 ft) deep) and oceanic surveys (200 m (656 ft)) to offshore extent of U.S. Exclusive Economic Zone) conducted from 1996 to 2001. The minimum population estimate for the northern GOM is 24,752 Atlantic spotted dolphins (Waring *et al.*, 2004). The estimated PBR for this stock is 248 dolphins.

Density estimates for the Atlantic spotted dolphin within the EGTTR were calculated using abundance data collected during the GulfCet II aerial surveys. In an effort to provide better species conservation and protection, estimates were adjusted to incorporate temporal and spatial variations, surface and submerged variations, and overall density confidence. The adjusted density estimate for Atlantic spotted dolphins within the project area is 0.677 individuals/km2. A small number of dolphins could not be identified specifically as Atlantic bottlenose or Atlantic spotted and their estimated density was 0.053 individuals/km2.

**Potential Effects of Activities on Marine Mammals**

The primary potential impact to the Atlantic bottlenose and the Atlantic spotted dolphins occurring in the EGTTR from the proposed detonations is Level B harassment from noise. There is a slight potential, absent mitigation, that small numbers of marine mammals may be injured or killed due to the energy generated from an explosive force on the sea floor. Analysis of NEODS noise impacts to cetaceans was based on criteria and thresholds initially presented in U.S. Navy Environmental Impact Statements for ship shock trials of the SEAWOLF submarine and the WINSTON CHURCHILL vessel and subsequently adopted by NMFS.

Non-lethal injurious impacts (Level A Harassment) are defined in EAFB's application and this proposed IHA as tympanic membrane (TM) rupture and the onset of slight lung injury. The threshold for Level A Harassment corresponds to a 50 percent rate of TM rupture, which can be stated in terms of an energy flux density (EFD) value of 205 dB re 1 microPa2 s. TM rupture is well-correlated with permanent hearing impairment (Ketten (1998) indicates a 30 percent incidence of permanent threshold shift (PTS) at the same threshold). The zone of influence (ZOI) (farthest distance from the source at which an animal is exposed to the EFD level referred to) for the Level A Harassment threshold is 52.2 m (171.6 ft).

Level B (non-injurious) Harassment includes temporary (auditory) threshold shift (TTS), a slight, recoverable loss of hearing sensitivity. One criterion used for TTS is 182 dB re 1 microPa² s maximum EFD level in any 1/3–octave band above 100 Hz for toothed whales (e.g., dolphins). The ZOI for this threshold is 229.8 m (754.0 ft). A second criterion, 23 psi, has recently been established by NMFS to provide a more conservative range for TTS when the explosive or animal approaches the sea surface, in which case explosive energy is reduced, but the peak pressure is not. The ZOI for 23 psi is 222 m (728 ft).

Level B Harassment also includes behavioral modifications resulting from repeated noise exposures (below TTS) to the same animals (usually resident) over a relatively short period of time. Threshold criteria for this particular type of harassment are currently still under debate. One recommendation is a level of 6 dB below TTS (see 69 FR 21816, April 22, 2004), which would be 176 dB re 1 microPa2 s. Due to the infrequency of the detonations, the potential variability in target locations, and the continuous movement of marine mammals off the northern Gulf, behavioral modification from repeated exposures to the same animals is considered highly unlikely.

**Numbers of Marine Mammals Expected to be Harassed**

Estimates of the potential number of Atlantic bottlenose dolphins and Atlantic spotted dolphins to be harassed by the training were calculated using the number of distinct firing or test events (maximum 30 per year), the ZOI for noise exposure, and the density of animals that potentially occur in the ZOI. The take estimates provided here do not include mitigation measures, which are expected to further minimize impacts to protected species and make injury or death highly unlikely.

The estimated number of Atlantic bottlenose dolphins and Atlantic spotted dolphins potentially taken through exposure to the Level A Harassment threshold (205 dB re 1 microPa² s), are less than one (0.22 and 0.19, respectively) annually.

For Level B Harassment, two separate criteria were established, one expressed in dB re 1 microPa2 s maximum EFD level in any 1/3–octave band above 100 Hz, and one expressed in psi. The estimated numbers of Atlantic bottlenose dolphins and Atlantic spotted dolphins potentially taken through exposure to 182 dB are 4 and 3 individuals, respectively. The estimated numbers potentially taken through exposure to 23 psi are also 4 and 3 individuals, respectively.

**Possible Effects of Activities on Marine Mammal Habitat**

The Air Force anticipates no loss or modification to the habitat used by Atlantic bottlenose dolphins or Atlantic spotted dolphins in the EGTTR. The primary source of marine mammal habitat impact resulting from the NEODS missions is noise, which is intermittent (maximum 30 times per year) and of limited duration. The effects of debris (which will be recovered following test activities), ordnance, fuel, and chemical residues were analyzed in the NEODS Biological Assessment and the Air Force concluded that marine mammal habitat would not be affected.

**Possible Effects of Activities on Subsistence Needs**

There are no subsistence uses for Atlantic bottlenose dolphins or Atlantic spotted dolphins in Gulf of Mexico waters, and thus, there are no anticipated effects on subsistence needs.

**Mitigation and Monitoring**

Mitigation will consist primarily of surveying and taking action to avoid detonating charges when protected species are within the ZOI. A trained, NMFS-approved observerwill be staged

from the highest point possible on a support ship and have proper lines of communication to the Officer in Tactical Command. The survey area will be 460 m (1509 ft) in every direction from the target, which is twice the radius of the ZOI for Level B Harassment (230 m (755 ft)). To ensure visibility of marine mammals to observers, NEODS missions will be delayed if whitecaps cover more than 50 percent of the surface or if the waves are greater than 3 feet (Beaufort Sea State 4).

Pre-mission monitoring will be used to evaluate the test site for environmental suitability of the mission. Visual surveys will be conducted two hours, one hour, and five minutes prior to the mission to verify that the ZOI (230 m (755 ft)) is free of visually detectable marine mammals, sea turtles, large schools of fish, large flocks of birds, large Sargassum mats, or large concentrations of jellyfish and that the weather is adequate to support visual surveys. The observer will plot and record sightings, bearing, and time for all marine mammals detected, which would allow the observer to determine if the animal is likely to enter the test area during detonation. If an animal appears likely to enter the test area during detonation, if marine mammals, sea turtles, large schools of fish, large flocks of birds, large Sargassum mats, or large concentrations of jellyfish are present, or if the weather is inadequate to support monitoring, the observer will declare the range fouled and the tactical officer will implement a hold until monitoring indicates that the test area is and will remain clear of detectable marine mammals or sea turtles.

Monitoring of the test area will continue throughout the mission until the last detonation is complete. The mission would be postponed if:

(1) Any marine mammal is visually detected within the ZOI (230 m (755 ft)). The delay would continue until the animal that caused the postponement is confirmed to be outside the ZOI (visually observed swimming out of the range).

(2) Any marine mammal or sea turtle is detected in the ZOI and subsequently is not seen again. The mission would not continue until the last verified location is outside of the ZOI and the animal is moving away from the mission area.

(3) Large Sargassum rafts or large concentrations of jellyfish are observed within the ZOI. The delay would continue until the Sargassum rafts or jellyfish that caused the postponement are confirmed to be outside of the ZOI either due to the current and/or wind moving them out of the mission area.

(4) Large schools of fish are observed in the water within of the ZOI. The delay would continue until large fish schools are confirmed to be outside the ZOI.

In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. If a charge failed to explode, mitigation measures would continue while operations personnel attempted to recognize and solve the problem (detonate the charge).

Post-mission monitoring is designed to determine the effectiveness of pre-mission mitigation by reporting any sightings of dead or injured marine mammals or sea turtles. Post-detonation monitoring, concentrating on the area down current of the test site, would commence immediately following each detonation and continue for at least two hours after the last detonation. The monitoring team would document and report to the appropriate marine animal stranding network any marine mammals or turtles killed or injured during the test and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the teams would be documented and reported to the Officer in Tactical Command.

## Reporting

The Air Force will notify NMFS 2 weeks prior to initiation of each training session. Any takes of marine mammals other than those authorized by the IHA, as well as any injuries or deaths of marine mammals, will be reported to the Southeast Regional Administrator, NMFS, by the next working day. A summary of mission observations and test results, including dates and times of detonations as well as pre- and post-mission monitoring observations, will be submitted to the Southeast Regional Office (NMFS) and to the Division of Permits, Conservation, and Education, Office of Protected Resources (NMFS) within 90 days after the completion of the last training session.

## Endangered Species Act

In a Biological Opinion issued on October 25, 2004, NMFS concluded that the NEODS training missions and their associated actions are not likely to jeopardize the continued existence of threatened or endangered species under the jurisdiction of NMFS or destroy or adversely modify critical habitat that has been designated for those species. NMFS has issued an incidental take statement (ITS) for sea turtles pursuant to Section 7 of the Endangered Species Act. The ITS contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of this take. This proposed IHA action is within the scope of the previously analyzed action and does not change the action in a manner that was not considered previously.

## National Environmental Policy Act

NMFS is currently conducting an analysis, pursuant to NEPA, to determine whether or not this activity may have a significant effect on the human environment. A record of decision will be issued prior to the issuance or denial of this IHA.

## Preliminary Conclusions

NMFS proposes to issue an IHA to the USAF for the NEODS training missions to take place at EAFB over a 1–year period. The proposal to issue this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has preliminarily determined that the impact of the NEODS training, which entails up to six missions per year, including up to 5 live detonations per mission of approximately 5–pound net explosive weight charges to occur in approximately 60–foot (18 m) deep water from one to three nm off shore, will result in the harassment of small numbers of Atlantic bottlenose dolphins and Atlantic spotted dolphins; would have no more negligible impact on these marine mammal stocks; and would not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence uses. Dwarf and pygmy sperm whales and manatees are unlikely to be found in the area and, therefore, will not be affected. While behavioral modifications may be made by Atlantic bottlenose dolphins and Atlantic spotted dolphins to avoid the resultant acoustic stimuli, there is virtually no possibility of injury or mortality when the potential density of dolphins in the area and extent of mitigation and monitoring are taken into consideration. The effects of the NEODS training are expected to be limited to short-term and localized TTS-related behavioral changes.

Due to the infrequency and localized nature of these activities, the estimated number of marine mammals potentially taken by harassment is small. In addition, no take by injury and/or death is anticipated. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the NEODS test sites.

## Information Solicited

NMFS requests interested persons to submit comments and information

concerning this request (see **ADDRESSES**). Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 1, 2005.

**Michael Payne,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 05–11209 Filed 6–6–05; 8:45 am]

**BILLING CODE 3510–22–S**

## DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

### Notice of the 2005 Defense Base Closure and Realignment Commission—Open Meeting

**AGENCY:** Defense Base Closure and Realignment Commission.

**ACTION:** Notice; 2005 Defense Base Closure and Realignment Commission—open meeting (Baltimore, MD).

**SUMMARY:** Notice is hereby given that a delegation of Commissioners of the 2005 Defense Base Closure and Realignment Commission will hold an open meeting on July 8, 2005, from 8:30 a.m. to 5 p.m. at the Kraushaar Auditorium, Goucher College, 1021 Dulaney Valley Road, Baltimore, Maryland 21204. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The delegation will meet to receive comment from Federal, state and local government representatives and the general public on base realignment and closure actions in the District of Columbia, Maryland, New Jersey, Pennsylvania and Virginia that have been recommended by the Department of Defense (DoD). The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

**DATES:** July 8, 2005, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** The Kraushaar Auditorium, Goucher College, 1021 Dulaney Valley Road, Baltimore, Maryland 21204.

**FOR FURTHER INFORMATION CONTACT:** Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: May 31, 2005.

**Jeannette Owings-Ballard,**

*Administrative Support Officer.*

[FR Doc. 05–11232 Filed 6–6–05; 8:45 am]

**BILLING CODE 5001–06–P**

## DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

### Notice of the 2005 Defense Base Closure and Realignment Commission—Open Meeting

**AGENCY:** Defense Base Closure and Realignment Commission.

**ACTION:** Notice; 2005 Defense Base Closure and Realignment Commission—open meeting (Charlotte, NC).

**SUMMARY:** Notice is hereby given that a delegation of Commissioners of the 2005 Defense Base Closure and Realignment Commission will hold an open meeting on June 28, 2005, from 1 p.m. to 5:30 p.m. at the Harris Conference Center, Central Piedmont Community College West Campus, 3216 CPCC West Campus Drive, Charlotte, North Carolina 28208. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The delegation will meet to receive comment from Federal, State and local government representatives and the general public on base realignment and closure actions in North Carolina and South Carolina that have been recommended by the Department of Defense (DoD). The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

**DATES:** June 28, 2005, from 1 p.m. to 5:30 p.m.

**ADDRESSES:** The Harris Conference Center, Central Piedmont Community College West Campus, 3216 CPCC West Campus Drive, Charlotte, North Carolina 28208.

**FOR FURTHER INFORMATION CONTACT:** Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: May 31, 2005.

**Jeannette Owings-Ballard,**

*Administrative Support Officer.*

[FR Doc. 05–11233 Filed 6–6–05; 8:45 am]

**BILLING CODE 5001–06–P**

## DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

### Notice of the 2005 Defense Base Closure and Realignment Commission—Open Meeting

**AGENCY:** Defense Base Closure and Realignment Commission.

**ACTION:** Notice; 2005 Defense Base Closure and Realignment Commission—open meeting (Buffalo, NY).

**SUMMARY:** Notice is hereby given that a delegation of Commissioners of the 2005 Defense Base Closure and Realignment Commission will hold an open meeting on June 27, 2005 from 1 p.m. to 5:30 p.m. at Kleinhans Music Hall, 3 Symphony Circle, Buffalo, New York, 14201. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The delegation will meet to receive comment from Federal, state and local government representatives and the general public on base realignment and closure actions in New York and Ohio that have been recommended by the Department of Defense (DoD). The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

**DATES:** June 27, 2005 from 1 p.m. to 5:30 p.m.

**ADDRESSES:** Kleinhans Music Hall, 3 Symphony Circle, Buffalo, New York, 14201.

**FOR FURTHER INFORMATION CONTACT:** Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: May 31, 2005.

**Jeannette Owings-Ballard,**

*Administrative Support Officer.*

[FR Doc. 05–11234 Filed 6–6–05; 8:45 am]

BILLING CODE 5001–06–P

## DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

### Notice of the 2005 Defense Base Closure and Realignment Commission—Open Meeting

**AGENCY:** Defense Base Closure and Realignment Commission.

**ACTION:** Notice; 2005 Defense Base Closure and Realignment Commission—open meeting (Clovis, NM).

**SUMMARY:** Notice is hereby given that a delegation of Commissioners of the 2005 Defense Base Closure and Realignment Commission will hold an open meeting on June 24, 2005 from 8:30 a.m. to 11 a.m. at Marshall Junior High School, 100 Commerce Way, Clovis, New Mexico 88101. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The delegation will meet to receive comment from Federal, State and local government representatives and the general public on base realignment and closure actions in New Mexico that have been recommended by the Department of Defense (DoD). The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

**DATES:** June 24, 2005 from 8:30 a.m. to 11 a.m.

**ADDRESSES:** Marshall Junior High School, 100 Commerce Way, Clovis, New Mexico 88101.

**FOR FURTHER INFORMATION CONTACT:** Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: May 31, 2005.

**Jeannette Owings-Ballard,**

*Administrative Support Officer.*

[FR Doc. 05–11235 Filed 6–6–05; 8:45 am]

BILLING CODE 5001–06–P

## DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

### Notice of the 2005 Defense Base Closure and Realignment Commission—Open Meeting

**AGENCY:** Defense Base Closure and Realignment Commission.

**ACTION:** Notice; 2005 Defense Base Closure and Realignment Commission—open meeting (Fairbanks, AK).

**SUMMARY:** Notice is hereby given that a delegation of Commissioners of the 2005 Defense Base Closure and Realignment Commission will hold an open meeting on June 15, 2005, from 1 p.m. to 3:30 p.m. at The Carlson Center, 2010 Second Avenue, Fairbanks, Alaska 99701. The delay of this notice resulted from the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission and the need to coordinate the schedules of the various Federal, State and local officials whose participation was judged essential to a meaningful public discussion. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The delegation will meet to receive comment from Federal, State and local government representatives and the general public on base realignment and closure actions in Alaska that have been recommended by the Department of Defense (DoD). The purpose of this

regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

**DATES:** June 15, 2005, from 1 p.m. to 3:30 p.m.

**ADDRESSES:** The Carlson Center, 2010 Second Avenue, Fairbanks, Alaska 99701.

**FOR FURTHER INFORMATION CONTACT:** Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: May 31, 2005.

**Jeannette Owings-Ballard,**

*Administrative Support Officer.*

[FR Doc. 05–11236 Filed 6–6–05; 8:45 am]

BILLING CODE 5001–06–P

## DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

### Notice of the 2005 Defense Base Closure and Realignment Commission—Open Meeting

**AGENCY:** Defense Base Closure and Realignment Commission.

**ACTION:** Notice; 2005 Defense Base Closure and Realignment Commission—open meeting (New Orleans, LA).

**SUMMARY:** Notice is hereby given that a delegation of Commissioners of the 2005 Defense Base Closure and Realignment Commission will hold an open meeting on July 12, 2005 from 9 a.m. to 3:30 p.m. at the National D-Day Museum, 945 Magazine Street, New Orleans, Louisiana 70130. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The delegation will meet to receive comment from Federal, state and local government representatives and the general public on base realignment and closure actions in Florida, Louisiana and Mississippi that have been recommended by the Department of Defense (DoD). The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

**DATES:** July 12, 2005 from 9 a.m. to 3:30 p.m.

**ADDRESSES:** The National D-Day Museum, 945 Magazine Street, New Orleans, Louisiana 70130.

**FOR FURTHER INFORMATION CONTACT:** Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: May 31, 2005.

**Jeannette Owings-Ballard,**

*Administrative Support Officer.*

[FR Doc. 05–11237 Filed 6–6–05; 8:45 am]

BILLING CODE 5001–06–P

## DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

### Notice of the 2005 Defense Base Closure and Realignment Commission—Open Meeting

**AGENCY:** Defense Base Closure and Realignment Commission.

**ACTION:** Notice; 2005 Defense Base Closure and Realignment Commission—Open Meeting (Rapid City, SD).

**SUMMARY:** Notice is hereby given that a delegation of Commissioners of the 2005 Defense Base Closure and Realignment Commission will hold an open meeting on June 21, 2005 from 1 p.m. to 3:30 p.m. at The Rushmore Plaza Civic Center, 444 Mount Rushmore Road North, Rapid City, South Dakota 57701. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The delegation will meet to receive comment from Federal, state and local government representatives and the general public on base realignment and closure actions in South Dakota that have been recommended by the Department of Defense (DoD). The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

**DATES:** June 21, 2005 from 1 p.m. to 3:30 p.m.

**ADDRESSES:** The Rushmore Plaza Civic Center, 444 Mount Rushmore Road North, Rapid City, South Dakota 57701.

**FOR FURTHER INFORMATION CONTACT:** Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site

or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: May 31, 2005.

**Jeannette Owings-Ballard,**

*Administrative Support Officer.*

[FR Doc. 05–11238 Filed 6–6–05; 8:45 am]

**BILLING CODE 5001–06–P**

## DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

### Notice of the 2005 Defense Base Closure and Realignment Commission—Open Meeting

**AGENCY:** Defense Base Closure and Realignment Commission.

**ACTION:** Notice; 2005 Defense Base Closure and Realignment Commission—Open meeting (Grand Forks, ND).

**SUMMARY:** Notice is hereby given that a delegation of Commissioners of the 2005 Defense Base Closure and Realignment Commission will hold an open meeting on June 23, 2005 from 8:30 a.m. to 11 a.m. at the Chester Fritz Auditorium, The University of North Dakota, University Avenue and Dale Drive, Grand Forks, North Dakota 58202. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The delegation will meet to receive comment from Federal, state and local government representatives and the general public on base realignment and closure actions in North Dakota that have been recommended by the Department of Defense (DoD). The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

**DATES:** June 23, 2005 from 8:30 a.m. to 11 a.m.

**ADDRESSES:** The Chester Fritz Auditorium, The University of North Dakota, University Avenue and Dale Drive, Grand Forks, North Dakota 58202.

**FOR FURTHER INFORMATION CONTACT:** Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: May 31, 2005.

**Jeannette Owings-Ballard,**

*Administrative Support Officer.*

[FR Doc. 05–11239 Filed 6–6–05; 8:45 am]

**BILLING CODE 5001–06–P**

## DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

### Notice of the 2005 Defense Base Closure and Realignment Commission—Open Meeting

**AGENCY:** Defense Base Closure and Realignment Commission.

**ACTION:** Notice; 2005 Defense Base Closure and Realignment Commission—open meeting (Portland, OR).

**SUMMARY:** Notice is hereby given that a delegation of Commissioners of the 2005 Defense Base Closure and Realignment Commission will hold an open meeting on June 17, 2005, from 8:30 a.m. to 11 a.m. in the first floor auditorium of the Eastside Federal Complex, 911 North East 11th Avenue, Portland, Oregon 97232. The delay of this notice resulted from the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission and the need to coordinate the schedules of the various Federal, state and local officials whose participation was judged essential to a meaningful public discussion. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov,* for updates.

The delegation will meet to receive comment from Federal, state and local government representatives and the general public on base realignment and closure actions in Oregon and Washington that have been recommended by the Department of Defense (DoD). The purpose of this regional meeting is to allow communities experiencing a base closure or major realignment action (defined as loss of 300 civilian positions or 400 military and civilian positions) an opportunity to voice their concerns, counter-arguments, and opinions in a live public forum. This meeting will be open to the public, subject to the availability of space. The delegation will not render decisions regarding the DoD recommendations at this meeting, but will gather information for later deliberations by the Commission as a whole.

**DATES:** June 17, 2005, from 8:30 a.m. to 11 a.m.

**ADDRESSES:** Eastside Federal Complex, first floor auditorium, 911 North East 11th Avenue, Portland, Oregon 97232.

**FOR FURTHER INFORMATION CONTACT:** Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990,* as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the

Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: May 31, 2005.

**Jeannette Owings-Ballard,**

*Administrative Support Officer.*

[FR Doc. 05–11241 Filed 6–6–05; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 05–25]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA!OPS ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–25 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 31, 2005.

**Jeannette Owings-Ballard,**

*OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

**25 MAY 2005**
**In reply refer to:**
**I-05/005361**

**The Honorable J. Dennis Hastert**
**Speaker of the House of Representatives**
**Washington, D.C. 20515-6501**

**Dear Mr. Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-25, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Canada for defense articles and services estimated to cost $34 million. Soon after this letter is delivered to your office, we plan to notify the news media.**

**Sincerely,**

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

**Enclosures:**
1. **Transmittal**
2. **Policy Justification**

**Same ltr to: House Committee on International Relations**
**Senate Committee on Foreign Relations**
**House Committee on Armed Services**
**Senate Committee on Armed Services**
**House Committee on Appropriations**
**Senate Committee on Appropriations**

**Transmittal No. 05-25**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act, as amended**

**(i) Prospective Purchaser: Canada**

**(ii) Total Estimated Value:**

| | |
|---|---|
| Major Defense Equipment* | $27 million |
| Other | $ 7 million |
| TOTAL | $34 million |

**(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 94 Link 16 Multifunctional Information Distribution System (MIDS)/Low Volume Terminals (LVT), 1,000 MIDS batteries, 12 battery tool kits, testing, integration, spare and repair parts, support equipment, personnel training and training equipment, contractor engineering and technical support, and other related elements of program support publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support.**

**(iv) Military Department: Navy (LHS)**

**(v) Prior Related Cases, if any: none**

**(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

**(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

**(viii) Date Report Delivered to Congress: 26 MAY 2005**

*** as defined in Section 47(6) of the Arms Export Control Act.**

# POLICY JUSTIFICATION

## Canada - Multifunctional Information Distribution System/Low Volume Terminals

**The Government of Canada has requested a possible sale of 94 Link 16 Multifunctional Information Distribution System (MIDS)/Low Volume Terminals (LVT), 1,000 MIDS batteries, 12 battery tool kits, testing, integration, spare and repair parts, support equipment, personnel training and training equipment, contractor engineering and technical support, and other related elements of program support publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $34 million.**

**This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Canada and further weapon system standardization and interoperability with U.S. forces.**

**Canada will use these MIDS to rapidly and efficiently receive and transmit digital and verbal tactical command and control information to greatly increase interoperability with the U.S. The MIDS terminals will increase pilot operational effectiveness by at-a-glance portrayal of targets, threats, and friendly forces on an easy-to-understand relative position display. This proposed system will increase Canadian F-18 combat effectiveness while reducing the threat of friendly fire. The Canadians will operate in bilateral or multilateral coalition networks that use classified information approved for release to Canada. The system will increase benefits of joint training exercises and foster interoperability with the U.S Navy and other countries.**

**The proposed sale of this equipment and support will not affect the basic military balance in the region. Canada is capable of absorbing and maintaining these additional MIDS terminals in its inventory.**

**The prime contractor will be Data Link Solutions of Wayne, New Jersey. Although generally the purchaser requires offsets, at this time, there are currently no known offset agreements proposed in connection with this potential sale.**

**Implementation of this proposed sale will require the assignment of 20 U.S. Government and contractor representatives for one-week intervals annually to participate in training, program management and technical review.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

[FR Doc. 05–11240 Filed 6–6–05; 8:45 am]

BILLING CODE 5001–06–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Notice of Meeting

**AGENCY:** DoD Education Benefits Board of Actuaries.

**ACTION:** Notice of meeting.

**SUMMARY:** A meeting of the Board has been scheduled to execute the provisions of Chapter 101, Title 10, United States Code (10 U.S.C. 2006). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the Department of Defense Education Benefits Fund. Persons desiring to: (1) Attend the DoD Education Benefits Board of Actuaries meeting, or (2) make an oral presentation or submit a written statement for consideration at the meeting, must notify Inger Pettygrove at (703) 696–7413 by July 8, 2005.

Notice of this meeting is required under the Federal Advisory Committee Act.

**DATES:** August 12, 2005 10 a.m. to 1 p.m.

**ADDRESSES:** 4040 N. Fairfax Drive, Suite 270, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Inger Pettygrove, DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203, (703) 696–7413.

Dated: May 31, 2005.

**Jeannette Owings-Ballard,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 05–11230 Filed 6–6–05; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Intelligence Agency Advisory Board Closed Meeting

**AGENCY:** Department of Defense, Defense Intelligence Agency.

**ACTION:** Notice; Defense Intelligence Agency Advisory Board closed meeting.

**SUMMARY:** Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Advisory Board has been scheduled as follows:

**DATES:** 22–23 June 2005 (8:30 a.m. to 5 p.m.)

**ADDRESSES:** The Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340.

**FOR FURTHER INFORMATION CONTACT:** Ms. Victoria Prescott, Program Manager/Executive Secretary, DIA Advisory Board, Washington, DC, 20340–1328 ((703) 697–1664).

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings and discuss several current critical intelligence issues in order to advise the Director, DIA.

Dated: May 31, 2005.

**Jeannette Owings-Ballard,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 05–11231 Filed 6–6–05; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF EDUCATION

**[CFDA Nos. 84.007, 84.032, 84.033, 84.038, 84.063, 84.069, and 84.268]**

### Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Leveraging Educational Assistance Partnership, and William D. Ford Federal Direct Loan Programs

**ACTION:** Notice of deadline dates for receipt of applications, reports, and other records for the 2005–2006 award year.

**SUMMARY:** The Secretary announces deadline dates for the receipt of documents and other information from institutions and applicants for the Federal student aid programs authorized under Title IV of the Higher Education Act of 1965, as amended, for the 2005–2006 award year. The Federal student aid programs include the Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Pell Grant, and Leveraging Educational Assistance Partnership programs.

These programs, administered by the U.S. Department of Education (Department), provide financial assistance to students attending eligible postsecondary educational institutions to help them pay their educational costs.

*Deadline and Submission Dates:* See Tables A and B at the end of this notice.

**Table A—Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions**

Table A provides deadline dates for application processing, including corrections and submission of signatures, submission of verification documents and, for purposes of the Federal Pell Grant Program, receipt by institutions of SARs or ISIRs. We are using only three deadline dates in Table A for the 2005–2006 award year. The single date for the submission of a Free Application for Federal Student Aid (FAFSA) is June 30, 2006, regardless of the method that the applicant uses to submit the FAFSA. September 15, 2006 is the deadline date for the submission and receipt of a signature page (if required), corrections, changes of addresses or schools, or requests for a duplicate SAR. September 22, 2006 is the deadline date for the submission and receipt of all other documents and materials that are specified in Table A.

**Table B—Federal Pell Grant Program Submission Dates for Disbursement Information by Institutions**

Table B provides the earliest submission and deadline dates for institutions to submit Federal Pell Grant disbursement records to the Department's Common Origination and Disbursement (COD) System.

In general, an institution must submit Federal Pell Grant disbursement records no later than 30 days after making a Federal Pell Grant disbursement or becoming aware of the need to adjust a student's previously reported Federal Pell Grant disbursement. In accordance with the regulations in 34 CFR 668.164, we consider that Federal Pell Grant funds are disbursed on the earlier of the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger, or (b) pays those funds to a student directly. We consider that Federal Pell Grant funds are disbursed even if an institution uses its own funds in advance of receiving program funds from the Department. An institution's failure to submit disbursement records within the required 30-day timeframe may result in an audit or program review finding. In addition, the Secretary may initiate an adverse action, such as a fine or other penalty for such failure.

*Other Sources for Detailed Information*

We publish a detailed discussion of the Federal student aid application process in the following publications:

- *2005–2006 Student Guide.*
- *Funding Your Education.*
- *2005–2006 High School Counselor's Handbook.*
- *A Guide to 2005–2006 SARs and ISIRs.*
- *2005–2006 Federal Student Aid Handbook.*

Additional information on the institutional reporting requirements for the Federal Pell Grant Program is contained in the 2005–2006 *Common Origination and Disbursement (COD) Technical Reference,* which is available at the Information for Financial Aid Professionals Web site at: *http://www.ifap.ed.gov.*

*Applicable Regulations:* The following regulations apply: (1) Student Assistance General Provisions, 34 CFR part 668 and (2) Federal Pell Grant Program, 34 CFR part 690.

**FOR FURTHER INFORMATION CONTACT:** Harold McCullough, U.S. Department of Education, Federal Student Aid, 830 First Street, NE, Union Center Plaza, room 113E1, Washington, DC 20202–5345. Telephone: (202) 377–4030.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document*

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in PDF at the following site: *http://www.ifap.ed.gov.*

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

**Program Authority:** 20 U.S.C. 1070a, 1070b–1070b–3, 1070c–1070c–4, 1071–1087–2, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: June 2, 2005.

**Theresa S. Shaw,**

*Chief Operating Officer, Federal Student Aid.*

**BILLING CODE 4000–01–P**

Table A. Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions

| Who submits? | What is submitted? | Where is it submitted? | What is the deadline date for receipt? |
|---|---|---|---|
| Student | Free Application for Federal Student Aid (FAFSA) on the Web or Renewal FAFSA on the Web | Electronically to the Department's Central Processing System (CPS) | June 30, 2006[1] |
| | Signature Page (if required) | To the address printed on the signature page | September 15, 2006 |
| Student through an Institution | An electronic original or Renewal FAFSA | Electronically to the Department's CPS | June 30, 2006[1] |
| Student | A paper original FAFSA or paper Renewal FAFSA | To the address printed on the FAFSA, Renewal FAFSA, or envelope provided with the form | June 30, 2006 |
| Student | Corrections on the Web with all required electronic signatures | Electronically to the Department's CPS | September 15, 2006[1] |
| Student | Corrections on the Web needing paper signatures | Electronically to the Department's CPS | September 15, 2006[1] |
| | Paper signatures for Corrections on the Web | To the address printed on the signature page | September 15, 2006 |
| Student through an Institution | Electronic corrections | Electronically to the Department's CPS | September 15, 2006[1] |
| Student | Paper corrections using a SAR, including change of mailing and e-mail addresses or institutions | To the address printed on the SAR | September 15, 2006 |
| Student | Change of mailing and e-mail addresses, change of institutions, or requests for a duplicate SAR | To the Federal Student Aid Information Center by calling 1-800-433-3243 | September 15, 2006 |
| Student | SAR with an official expected family contribution (EFC) calculated by the Department's CPS (Pell Only) | To the institution | The earlier of:<br>- the student's last date of enrollment; or<br>- September 22, 2006[2] |
| Student through CPS | ISIR with an official EFC calculated by the Department's CPS (Pell Only) | To the institution from the Department's CPS | The earlier of:<br>- the student's last date of enrollment; or<br>- September 22, 2006[2] |

| | | | |
|---|---|---|---|
| Student | Valid SAR (Pell Only) | To the institution | Except for late disbursements under 34 CFR 668.164(g), the earlier of:<br>- the student's last date of enrollment; or<br>- September 22, 2006[2]<br>For late disbursements, the earlier of:<br>- the timeframes provided in the regulations at 34 CFR 668.164(g)(4)(i); or<br>- September 22, 2006[2] |
| Student through CPS | Valid ISIR (Pell Only) | To the institution from the Department's CPS | |
| Student | Verification documents | To the institution | The earlier of:[3]<br>- 120 days after the student's last date of enrollment; or<br>- September 22, 2006 |
| Student | Valid SAR after verification (For Pell Only) | To the institution | The earlier of:[4]<br>- 120 days after the student's last date of enrollment; or<br>- September 22, 2006[2] |
| Student through the Department's CPS | Valid ISIR after verification (For Pell Only) | To the institution from the Department's CPS | |

[1] The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions do not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[2] The date the ISIR/SAR transaction was processed by CPS is considered to be the date the institution received the ISIR or SAR regardless of whether the institution has downloaded the ISIR from its SAIG mailbox or when the student submits the SAR to the institution.

[3] Although the Secretary has set this deadline date for the submission of verification documents, if corrections are required, deadline dates for submission of paper or electronic corrections and, for a Federal Pell Grant, the submission of a valid SAR or valid ISIR to the institution must still be met. An institution may establish an earlier deadline for the submission of verification documents for purposes of the campus-based programs, the FFEL Program, and the Federal Direct Loan Program.

[4] Students completing verification while no longer enrolled will be paid based on the higher of the two EFCs.

Table B. Federal Pell Grant Program Submission Dates for Disbursement Information by Institutions

| Who submits? | What is submitted? | Where is it submitted? | What are the earliest disbursement, submission, and deadline dates for receipt? |
|---|---|---|---|
| Institutions | At least one acceptable disbursement record must be submitted for each Federal Pell Grant recipient at the institution. | To the Common Origination and Disbursement (COD) System using either:<br>- the COD Web site at: www.cod.ed.gov; or<br>- the Student Aid Internet Gateway (SAIG) | Earliest Disbursement Date: July 1, 2005<br>Earliest Submission Dates:<br>An institution may submit actual or anticipated disbursement information as early as June 21, 2005, but actual disbursement information no earlier than:<br>(a) 30 calendar days prior to the disbursement date under the advance payment method;<br>(b) 7 calendar days prior to the disbursement date under the Just-in-Time or Cash Monitoring #1 payment methods; or<br>(c) the date of disbursement under the Reimbursement or Cash Monitoring #2 payment methods.<br>Deadline Submission Dates:<br>Except as provided below, an institution is required to submit disbursement information no later than the earlier of:<br>(a) 30 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data; or<br>(b) October 2, 2006.[1]<br>An institution may submit disbursement information after October 2, 2006, only:<br>(a) for a downward adjustment of a previously reported award;<br>(b) based upon a program review or initial audit finding per 34 CFR 690.83;<br>(c) for reporting a late disbursement under 34 CFR 668.164(g); or<br>(d) for reporting disbursements previously blocked as a result of another institution failing to post a downward adjustment. |

| | | | |
|---|---|---|---|
| | natural disaster or other unusual circumstances, or an administrative error made by the Department | fsa.administrative.relief@ed.gov | - a date designated by the Secretary after consultation with the institution; or<br>- January 31, 2007 |
| | Request for administrative relief for a student who reenters the institution (1) within 180 days after initially withdrawing and (2) after September 15, 2006[2] | By email to:<br>fsa.administrative.relief@ed.gov | The earlier of:<br>- 30 days after the student reenrolls; or<br>- May 1, 2007 |

[1] The deadline for electronic transactions is 11:59 p.m. (Eastern Time) on October 2, 2006. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him/her of the rejection.

[2] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

NOTE: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. 05–11291 Filed 6–6–05; 8:45 am]
**BILLING CODE 4000–01–C**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC05–11–000; FERC Form 11]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

April 28, 2005.

**AGENCY:** Federal Energy Regulatory Commission, DoE.

**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 (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 July 28, 2005.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from the Commission's website (*Http://www.ferc.gov/docs-filings/elibrary.asp*) or to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director Officer, ED–33, 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 filing, 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. IC05–11–000.

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 *FERCOlineSupport@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 Form 11 ''Natural Gas Monthly Quarterly Statement of Monthly Data'' (OMB No. 1902–0032) is used by the Commission to implement the statutory provisions of Sections 10(a) and 16 of the Natural Gas Act (NGA) 15 U.S.C. 717–717w and the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301–3432). The NGA and NGPA authorize the Commission to prescribe rules and regulations requiring natural gas pipeline companies whose gas was transported or stored for a fee, which exceeded 50 million dekatherms in each of the three previous calendar years to submit FERC Form 11. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 260.3 and 385.2011.

Although the submission of the form is quarterly, the information is reported on a monthly basis. This permits the Commission to follow developing trends on a pipeline's system. Gas revenues and quantities of gas by rate schedule, transition cost from upstream pipelines, and reservation charges are reported. This information is used by the Commission to assess the reasonableness of the various revenues and cost of service items claimed in rate filings. It also provides the Commission with a view of the status pipeline activities, allows revenue comparisons between pipelines, and provides the financial status of the regulated pipelines.

*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) |
|---|---|---|---|
| 63 | 4 | 3 | 756 |

Estimated cost burden to respondents is $39,457. (756 hours/2080 hours per year times $108,558 per year average per employee = $ 39,457.). The cost per respondent is $626.30.

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.

**Linda Mitry,**

*Deputy Secretary.*

[FR Doc. E5–2880 Filed 6–6–05; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC05–510–000; FERC–510]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

May 6, 2005.

**AGENCY:** Federal Energy Regulatory Commission, DoE.

**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 (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 August 5, 2005.

**ADDRESSES:** Copies of sample filings of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filings/elibrary.asp*) or to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director Officer, ED–33, 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 filing, 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. IC05–510–000.

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–510 ''Application for Surrender of Hydropower License'' (OMB No. 1902–0068) is used by the Commission to implement the statutory provisions of sections 4(e) and 6 and 13 of the Federal Power Act (FPA) 16 U.S.C. sections 797(e), 799 and 806. Section 4(e) gives the Commission authority to issue licenses for the purposes of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmissions lines or other power project works necessary or convenient for developing and improving navigation, transmissions and utilization of power over which Congress has jurisdiction. Section 6 gives the Commission the authority to prescribe the conditions of licenses including the revocation or surrender of the license. Section 13 defines the Commission's authority to delegate time periods for when a license must be terminated if project construction has not begun. Surrender of a license may be desired by a licensee when a licensed project is retired or not constructed or natural catastrophes have damaged or destroyed the project facilities. The information collected under the designation FERC–510 is in the form of a written application for a surrender of a hydropower license. The information is used by Commission staff to determine the broad impact of such a surrender. The Commission will issue a notice soliciting comments from the public and other agencies and conduct a careful review of the prepared application before issuing an order for Surrender of a License. The order is the result of an analysis of the information produced, i.e., economic, environmental concerns, etc., which are examined to determine if the application for surrender is warranted. The order implements the existing regulations and is inclusive for surrender of all types of hydropower licenses issued by FERC and its predecessor, the Federal Power Commission. The Commission implements these mandatory filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 6.1–6.4.

*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) |
|---|---|---|---|
| 8 | 1 | 10 | 80 |

Estimated cost burden to respondents is $4,175. (80 hours/2080 hours per year times $108,558 per year average per employee = $4,175). The cost per respondent is $522.00.

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.

**Linda Mitry,**

*Deputy Secretary.*

[FR Doc. E5–2881 Filed 6–6–05; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Filings

Wednesday, June 1, 2005.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers: ER04–170–006; ER05–1027–000.*

*Applicants:* MxEnergy Electric Inc.

*Description: MxEnergy Electric Inc submits its Substitute Second Revised Sheet No. 3, which revises paragraph 8 of its FERC Electric Rate Schedule No. 1 and a Notice of Succession of Total Gas & Electricity (PA) Inc.'s Rate Schedule No. 2.*

*Filed Date:* 5/26/2005.

*Accession Number: 20050531–0127.*

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 16, 2005.

*Docket Numbers: ER05–644–002.*

*Applicants:* PSEG Energy Resources & Trade LLC and PSEG Fossil Fossil LLC.

*Description: PSEG Energy Resources & Trade LLC submits Substitute Original Sheet No. 1, et al.*, to *FERC Electric Tariff, Original Volume 1 in compliance with FERC's Order issued 4/25/05 under ER05–644.*

*Filed Date:* 5/25/2005.

*Accession Number: 20050531–0128.*

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 15, 2005.

*Docket Numbers: ER05–1018–000.*

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description: Midwest Independent Transmission System Operator, Inc. submits a Large Generator Interconnection Agreement among the PPM Energy, Inc., itself, and Northern States Power Company dba Xcel Energy under ER05–1018.*

*Filed Date:* 5/25/2005.

*Accession Number: 20050526–0217.*

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 15, 2005.

*Docket Numbers: ER05–1019–000.*

*Applicants:* Nevada Power Company.

*Description: Nevada Power Company submits a Notice of Cancellation of an Agreement for Long-Term Firm Point-to-Point Transmission Service Between Nevada Power Company and Duke Energy Trading and Marketing—Service Agreement No. 97.*

*Filed Date:* 5/26/2005.

*Accession Number: 20050531–0123.*

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 16, 2005.

*Docket Numbers: ER05–1020–000.*

*Applicants:* WASP Energy, LLC.

*Description: WASP Energy, LLC's petition for acceptance of initial rate schedule (FERC Electric Rate Schedule 1), waivers and blanket authority under ER05–1020.*

*Filed Date:* 5/26/2005.

*Accession Number: 20050531–0122.*

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 16, 2005.

*Docket Numbers: ER05–1021–000.*

*Applicants:* Pacific Gas & Electric Company.

*Description: Pacific Gas and Electric Company submits Agreements between Pacific Gas and Electric Company and the City and County of San Francisco PUC for the interconnection of the San Francisco Airport Electric Reliability Project under ER05–1021.*

*Filed Date:* 5/26/2005.

*Accession Number: 20050531–0134.*

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 16, 2005.

*Docket Numbers: ER05–1022–000.*

*Applicants:* ISO New England Inc. and New England Power Pool.

*Description: ISO New England, Inc. and New England Power Pool submits proposed market rule changes to modify the existing methodology for allocating surplus Transmission Congestion Revenue and to conform certain market monitoring definitions used in Market Rule 1 to the terminology that has been adopted as part of the RTO process under ER05–1022.*

*Filed Date:* 5/25/2005.

*Accession Number: 20050531–0120.*

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 15, 2005.

*Docket Numbers: ER05–1023–000.*

*Applicants:* TransAlta Centralia Generation L.L.C.

*Description: TransAlta Centralia Generation, L.L.C. submits FERC Electric Rate Schedule 2 for Reactive Supply and Voltage Control from Generation Sources Service that it provides to Bonneville Power Administration from its Big Hanaford generating plant under ER05–1023.*

*Filed Date:* 5/26/2005.

*Accession Number:* 20050531–0124.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 16, 2005.

*Docket Numbers:* ER05–1024–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description: PJM Interconnection, L.L.C. submits an executed interconnection service agreement with Eastern Landfill Gas, LLC and Baltimore Gas and Electric Company under ER05–1024.*

*Filed Date:* 5/25/2005.

*Accession Number: 20050531–0130.*

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 15, 2005.

*Docket Numbers: ER05–1025–000.*

*Applicants:* California Independent System Operator Corporation.

*Description: California Independent System Operator Corporation submits Amendment No. 70 to its ISO Tariff under ER05–1025.*

*Filed Date:* 5/25/2005.

*Accession Number: 20050531–0131.*

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 15, 2005.

*Docket Numbers: ER05–1026–000.*

*Applicants:* American Electric Power Services Corporation.

*Description: American Electric Power Service Corporation on behalf of the AEP Eastern Operating Companies submits a letter agreement, dated 4/28/05, to the Amended & Restated Cost Allocation Agreement with Buckeye Power, Inc under ER05–1026.*

*Filed Date:* 5/26/2005.

*Accession Number: 20050531–0129.*

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 16, 2005.

*Docket Numbers: ER98–1150–005; EL05–87–001.*

*Applicants:* Tucson Electric Power Company.

*Description: Tucson Electric Power Co submits the second of two filings in compliance with FERC's 4/14/05 Order, an updated generation market power analysis under ER98–1150 et al.*

*Filed Date: 5/25/2005.*

*Accession Number: 20050531–0125.*

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 15, 2005.

*Docket Numbers: ER99–2251–003; ER99–2252–004; ER98–2491–009; ER97–*

*705–014; ER02–2080–003; ER02–2546–004; ER99–3248–006; ER99–1213–004 and ER01–1526–004.*

*Applicants:* Consolidated Edison Company of New York, Inc., et al.

Description: *ConEdison Companies submits amendments to their market-based rate tariff, in accordance with FERC's May 5, 2005 Order under ER99–2251 et al.*

*Filed Date:* 5/25/2005.

*Accession Number: 20050527–0023.*

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 15, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Linda Mitry,**

*Deputy Secretary.*

[FR Doc. E5–2882 Filed 6–6–05; 8:45 am]

BILLING CODE 6717–01–P

---

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC05–86–000, et al.]**

## La Paloma Generating Company, LLC, et al.; Electric Rate and Corporate Filings

May 31, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

### 1. La Paloma Generating Company, LLC; La Paloma Holding Company, LLC; and La Paloma Acquisition Co, LLC

[Docket No. EC05–86–000]

Take notice that on May 24, 2005, La Paloma Generating Company, LLC (Genco), La Paloma Holding Company, LLC (La Paloma Holding), and La Paloma Acquisition Co, LLC (La Paloma Acquisition Co) (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities, whereby La Paloma Holding proposes to transfer to La Paloma Acquisition Co one-hundred percent of the membership interests in Genco, which owns and operates an approximately 1,022 MW combined cycle generating facility in the California Independent System Operator (CAISO) market, and certain related rights and assets. Genco states that the sale of the membership interests in Genco from La Paloma Holding to La Paloma Acquisition Co will constitute the indirect disposition of certain jurisdictional facilities and assets held by Genco, including a market-based rate wholesale power sales tariff on file with the Commission, certain interconnection facilities associated with the generating facility, and related FPA jurisdictional accounts, books and records. Genco also states that the Applicants seek expedited review of the application and request confidential treatment of certain documents submitted therewith.

Applicants state that a copy of the application was served upon the California Public Utilities Commission.

*Comment Date:* 5 p.m. June 14, 2005.

### 2. EME Homer City Generation L.P., Metropolitan Life Insurance Company, General Electric Capital Corporation

[Docket No. EC05–87–000]

Take notice that on May 24, 2005, EME Homer City Generation L.P., (EME Homer City) Metropolitan Life Insurance Company (MetLife) and General Electric Capital Corporation (GECG) filed with the Commission an application pursuant to section 203 of the Federal Power Act for authorization of an indirect disposition of jurisdictional facilities whereby interests in a passive, non-power-selling lessor of the Homer City generating station in Pennsylvania will be transferred by GECG or an affiliate to MetLife or an affiliate.

*Comment Date:* 5 p.m. June 14, 2005.

### 3. PJM Interconnection L.L.C.

[Docket Nos. ER04–742–005 and EL04–105–003]

Take notice that on May 24, 2005, PJM Interconnection, L.L.C. (PJM) submitted revisions to the PJM Open Access Transmission Tariff (PJM Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) in compliance with the Commission's May 9, 2005 order in Docket Nos. EL04–742–004 and ER04–105–002, 111 FERC ¶ 61,187 (May 9 Order), concerning the allocation of auction revenue rights and financial transmission rights. PJM states that the submitted revisions reflect an effective date of March 8, 2005, consistent with the effective date previously established in this proceeding.

PJM states that copies of this filing were served upon all persons on the service list in these dockets, as well as all PJM members, and each state electric utility regulatory commission in the PJM region. PJM also states that the requested waiver of the Commission's posting requirements to permit electronic service on the PJM members and state commissions.

*Comment Date:* 5 p.m. on June 14, 2005.

### 4. Black Hills Power, Inc.

[Docket No. ER05–924–001]

Take notice that on May 24, 2005, Black Hills Power, Inc. (Black Hills Power), submitted an amendment to its April 29, 2005 filing in ER05–924–000.

*Comment Date:* 5 p.m. on June 14, 2005.

**5. El Paso Electric Company**

[Docket No. ES05–30–000]

Take notice that on May 25, 2005, El Paso Electric Company (El Paso) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to undertake certain transactions and assume obligations associated with the refinancing of pollution control bonds (PCBs) issued for the benefit of El Paso.

El Paso also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

*Comment Date:* 5 p.m. Eastern Time on June 17, 2005.

**Standard Paragraph**

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to long on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protests to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available to 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 email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TYY, call (202) 502–8659.

**Linda Mitry,**

*Deputy Secretary.*

[FR Doc. E5–2883 Filed 6–6–05; 8:45 am]

BILLING CODE 6717–01–P

## FARM CREDIT ADMINISTRATION

### Sunshine Act Meeting; Farm Credit Administration Board

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 9, 2005, from 9 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

- May 12, 2005 (Open)

*B. Reports*

- Farm Credit System Building Association Quarterly Report
- Young, Beginning, and Small Farmer Reporting Results—2004 What Trends are Emerging?
- FCA Implements GIS Mapping Software

*C. New Business—Regulations*

- Farmer Mac Non-Program Investments and Liquidity—Final Rule

**Closed Session***

- OSMO Quarterly Report

Dated: June 3, 2005.

**Jeanette C. Brinkley,**

*Secretary, Farm Credit Administration Board.*

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

[FR Doc. 05–11375 Filed 6–3–05; 12:04 pm]

BILLING CODE 6705–01–P

## 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 June 30, 2005.

**A. Federal Reserve Bank of Atlanta** (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

*1. Mountain Valley Bancshares, Inc.*, Cleveland, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Mountain Valley Community Bank, Cleveland, Georgia.

**B. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice

President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. Albany Bancshares, Inc.*, Albany, Illinois; to acquire 100 percent of the voting shares of Hillsdale Development Corporation, Hillsdale, Illinois, and thereby indirectly acquire voting shares of Old Farmers & Merchants State Bank, Hillsdale, Illinois.

**C. Federal Reserve Bank of Minneapolis** (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

*1. Menahga Bancshares, Inc.*, Menahga, Minnesota; to merge with Sebeka Bancshares, Inc., Sebeka, Minnesota, and thereby indirectly acquire voting shares of Security State Bank of Sebeka, Minnesota.

*2. St. Joseph Bancshares Acquisitions, Inc.*, St. Joseph, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of St. Joseph Bancshares, Inc., St. Joseph, Minnesota, and thereby indirectly acquire First State Bank of St. Joseph, St. Joseph, Minnesota.

**D. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Pilot Point Bancorp, Inc.*, ESOP, Pilot Point, Texas; to become a bank holding company by acquiring 26.05 percent of the voting shares of Pilot Point Bancorp, Inc., Pilot Point, Texas, and thereby indirectly acquire PointBank, Pilot Point, Texas.

Board of Governors of the Federal Reserve System, June 1, 2005.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 05–11211 Filed 6–6–05; 8:45 am]

**BILLING CODE 6210–01–S**

## GENERAL SERVICES ADMINISTRATION

### Notice of Intent to Prepare an Environmental Impact Statement

**AGENCY:** General Services Administration (GSA), National Capital Region.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA) , 42 U.S.C. § 4321–4347, the Council on Environmental Quality Regulations (40 CFR parts 1500—1508), GSA Order PBS P 1095.1F (Environmental considerations in decision-making, dated October 19, 1999), and the GSA Public Buildings Service NEPA Desk Guide, GSA plans to prepare an Environmental Impact Statement (EIS) for the proposed Master Plan for the redevelopment of the St. Elizabeths (St. Es) West Campus in Southeast Washington, DC. GSA has initiated consultation under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, for the proposed Master Plan.

**FOR FURTHER INFORMATION CONTACT:** Denise Decker, NEPA Lead, General Services Administration, National Capital Region, at (202) 205–5821. Also, call this number if special assistance is needed to attend and participate in the scoping meeting.

**SUPPLEMENTARY INFORMATION:** The notice of intent is as follows:

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Master Plan for the Redevelopment of the St. Elizabeths West Campus in Southeast Washington, DC

The General Services Administration intends to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts resulting from adoption and implementation of a Master Plan to redevelop the St. Elizabeths (St. Es) West Campus in Southeast Washington, DC. GSA's primary purpose for this proposed action is to develop secure office space in the District of Columbia to accommodate substantial Federal operations.

#### Background

The St. Es West Campus, formerly a mental health facility, consists of 176 acres and 61 buildings constructed between the 1850s and the 1960s. The buildings contain approximately 1.1 million gross square feet of space. The entire site, including the brick wall running along Martin Luther King Jr. Avenue, is a National Historic Landmark. The St. Es West Campus also contains a Civil War cemetery. From 1953 to December 2004, St. Es West Campus was controlled by the U.S. Department of Health and Human Services (HHS).

GSA has identified a need to redevelop the West Campus because (i) there is an immediate need for secure Federal office space in the National Capital Region; (ii) the site is within the District of Columbia boundary and proximate to the Central Employment Area (CEA); and (iii) the existing site is currently underutilized.

To implement this redevelopment, GSA is preparing a Master Plan that will guide the long-term use and redevelopment of the St. Es West Campus.

#### Alternatives Under Consideration

GSA will analyze a range of Master Plan alternatives for the St. Es West Campus. In addition, as required by NEPA, GSA will study the no action alternative under which a Master Plan will not be adopted and the site will remain in its current state. As part of the EIS, GSA will study the impacts of each alternative on the human environment.

#### Scoping Process

In accordance with NEPA, a scoping process will be conducted to (i) aid in determining the alternatives to be considered and the scope of issues to be addressed, and (ii) identify the significant issues related to the proposed Master Plan for the redevelopment of the St. Es West Campus. Scoping will be accomplished through a public scoping meeting, direct mail correspondence to potentially interested persons, agencies, and organizations, and meetings with agencies having an interest in the proposed Master Plan. It is important that Federal, regional, and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft EIS.

GSA is also using the NEPA scoping process to facilitate consultation with the public under Section 106 of the National Historic Preservation Act (36 CFR Part 800 [Protection of Historic Properties]). GSA welcomes comments from the public to ensure that it takes into account the effects of its action on historic and cultural resources.

#### Public Scoping Meeting

The public scoping meeting will be held on Tuesday, June 14, 2005, from 6:00 p.m. to 8:30 p.m., at Birney Elementary School (Auditorium), located at 2501 Martin Luther King Jr. Avenue in Southeast Washington, DC. The meeting will be an informal open house, where visitors may come, receive information, and give comments. GSA will publish notices in the *Washington Post, Washington Times,* and a local community newspaper announcing this meeting approximately two weeks prior to the meeting. GSA will prepare a scoping report, available to the public that will summarize the comments received for incorporation into the EIS and Section 106 processes.

*Written Comments:* Agencies and the public are encouraged to provide written comments on the scoping issues in addition to or in lieu of giving their comments at the public scoping meeting. Written comments regarding

the environmental analysis for the redevelopment of the St. Es West Campus must be postmarked no later than July 5, 2005, and sent to the following address: General Services Administration, National Capital Region, Attention: Denise Decker, NEPA Lead, 301 7th Street, SW, Room 7600, Washington, DC 20407. Fax (202) 708—7671. *denise.decker@gsa.gov.*

Dated: May 31, 2005.

**Patricia T. Ralston,**

*Acting Director, Portfolio Management.*

[FR Doc. 05–11242 Filed 6–6–05; 8:45 am]

**BILLING CODE 6820–23–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Breast and Prostate Cancer Data Quality and Patterns of Care Study

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–DP05–071.

Catalog of Federal Domestic Assistance Number: 93.395.

Key Dates:

Release Date: May 11, 2005.

Letters of Intent Receipt Date: May 27, 2005.

Application Receipt Date: June 28, 2005.

Earliest Anticipated Start Date: August 31, 2005.

Expiration Date: June 29, 2005.

Due Dates for E.O. 12372:

Not applicable.

**I. Funding Opportunity Description**

*Executive Summary*

• This RFA will support up to six registries to conduct enhanced surveillance and operations research utilizing population-based data from the National Program of Cancer Registries (NPCR). The research will focus on improving the completeness, timeliness, quality, and use of first course of treatment and stage data, and on describing patterns of care for female breast cancer and prostate cancer. A long term goal is to strengthen the capacity of NPCR funded state cancer registries to use their data to improve aspects of cancer care.

• It is estimated that approximately $2 million will be available each year to fund up to six registries. A total of approximately $6 million will be available for the entire three year project period.

• This funding opportunity will use the cooperative agreement funding mechanism (CDC U58).

• Eligible organizations include NPCR funded cancer registries, or their designated agent, meeting United States Cancer Statistics (USCS) publication criteria for the diagnosis year 2000 or 2001. For-profit organizations, non-profit organizations, public and private institutions, units of State government, and domestic institutions that can provide evidence of an active collaboration with their respective NPCR funded cancer registry are also eligible to apply.

• Individuals with the skills, knowledge, and resources necessary to carry out the proposed research are invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC funding announcements.

• An applicant may submit only one application under this funding announcement.

• Applications must be prepared using the ''Application for a DHHS Public Health Service Grant'' (PHS 398, rev. 9/04). The PHS 398 instructions and forms are available at *http://grants.nih.gov/grants/forms.htm*.

• Telecommunications for the hearing impaired is available at: TTY 301–451–0088

**Table of Contents**

*Part I Overview Information*
*Section I. Funding Opportunity Description*
1. Research Objectives
*Section II. Award Information*
1. Mechanism(s) of Support
2. Funds Available
*Section III. Eligibility Information*
1. Eligible Applicants
A. Eligible Institutions
B. Eligible Individuals
2. Cost Sharing or Matching
3. Other—Special Eligibility Criteria
*Section IV. Application and Submission Information*
1. Address to Request Application Information
2. Content and Form of Application Submission
3. Submission Dates and Times
A. Receipt and Review and Anticipated Start Dates
1. Letter of Intent
B. Sending an Application to the CDC
C. Application Processing
4. Intergovernmental Review
5. Funding Restrictions
6. Other Submission Requirements
*Section V. Application Review Information*
1. Criteria
2. Review and Selection Process
A. Additional Review Criteria
B. Additional Review Considerations
C. Sharing Research Data
D. Sharing Research Resources
3. Anticipated Announcement and Award Dates
*Section VI. Award Administration Information*
1. Award Notices
2. Administrative and National Policy Requirements
A. Cooperative Agreement Terms and Conditions of Award
1. Principal Investigator Rights and Responsibilities
2. NCCDPHP Responsibilities
3. Collaborative Responsibilities
4. Arbitration Process
3. Reporting
*Section VII. Agency Contact(s)*
1. Scientific/Research Contact(s)
2. Peer Review Contact(s)
3. Financial/ Grants Management Contact(s)
*Section VIII. Other Information—Required Federal Citations*

**I. Funding Opportunity Description**

The purpose of this RFA is to support research focused on two priority cancers, female breast cancer and prostate cancer, which will build on and expand the work of two Patterns of Care (PoC) projects conducted collaboratively by CDC and selected state cancer registries. This program addresses the ''Healthy People 2010'' focus areas of Access to Quality Health Services and Cancer.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP): (1) To improve the quality of state-based cancer registries, (2) to increase early detection of breast and cervical cancer by building nationwide programs in breast and cervical prevention, especially among high-risk, underserved women, and (3) to expand community-based breast and cervical cancer screening and diagnostic services to low income, medically underserved women. For women diagnosed with cancer or pre-cancer, ensure access to treatment services.

*1. Research Objectives*

Nature of Research Opportunity

The research priorities of the Centers for Disease Control and Prevention's (CDC) Cancer Surveillance Branch, within the Division of Cancer Prevention and Control, are to describe the burden of priority cancers and patterns of care among minority, rural, and other populations and to assess the quality of these data in NPCR funded cancer registries. This RFA builds on and extends the work of two patterns of care (PoC) projects conducted collaboratively by CDC and selected state cancer registries. It solicits applications in the form of cooperative agreements to utilize data from NPCR

funded cancer registries to perform enhanced surveillance and research regarding patterns of care in female breast and prostate cancers.

Recently published statistics from United States Cancer Statistics: 2001 Incidence and Mortality, a joint publication of CDC and the National Cancer Institute in collaboration with the North American Association of Central Cancer Registries, revealed that prostate cancer is the leading cancer diagnosed in men in the United States (U.S.) and breast cancer is the most common form of cancer diagnosed in U.S. women. Prostate and female breast cancers are the second leading cause of cancer death among men and women.

Background

In 1992, Congress established the NPCR by enacting the Cancer Registries Amendment Act (Public Law 102–515). This law, generally, authorizes the Centers for Disease Control and Prevention to provide funds to states and territories to: improve existing cancer registries; plan and implement registries where they do not exist; develop model legislation and regulations to enhance the viability of registry operations; set data standards for data completeness, timeliness, and quality; provide training for registry personnel; and help establish a computerized reporting and data-processing system.

The Institute of Medicine (IOM) reported in 1999 that some individuals with cancer were not receiving the care known to be the most effective for their cancer diagnoses. Subsequently in 2000, the IOM strongly recommended that information from existing data systems, specifically NPCR, be used to assess the quality of cancer care and variations in adherence to established standards of care in the United States. In addition, the 2000 IOM report also documented the need to assess the quality of data in NPCR funded registries for measuring variations in the delivery of cancer care.

In 2001, CDC responded to the IOM report by funding the Breast, Prostate, and Colon Data Quality and Patterns of Care study (PoC Part 1) involving eight NPCR funded cancer registries. This study was designed to assess the quality of data collected by population-based registries and to determine the proportion of patients diagnosed within a certain time period who received the established, stage-specific standard of care. The eight NPCR funded cancer registries also participated in Phase II of the international CONCORD study, which sought to measure and explain differences in cancer survival between Europe, Canada, and the United States. Additionally, CDC funded three NPCR cancer registries for a second PoC study, Ovarian Cancer Treatment Patterns and Outcomes (PoC Part 3), which was designed to describe the first course of treatment for ovarian cancer and to assess the effects of physician specialty on the quality of staging and treatment data.

Scientific Knowledge To Be Achieved Through This Funding Opportunity

The research to be supported by this RFA will focus on improving the completeness, timeliness, quality, and use of recent first course of treatment and stage data and on describing patterns of care for two priority cancers, female breast cancer and prostate cancer. Additional research on the patterns of care for patients diagnosed with these two cancers, and continued assessment of the quality and completeness of relevant data collected by population-based cancer registries, has the potential to influence adherence to established standards of cancer care. A long term goal of conducting such studies is to further develop the capacity of NPCR funded registries to engage in advanced cancer surveillance activities that will contribute to improving aspects of cancer care.

Experimental Approach and Research Objectives

Using a standardized protocol for data collection by the participating NPCR funded registries, enhanced surveillance and research will be conducted targeting female breast cancer and prostate cancer. The four broad research objectives of this RFA are to:

(1) Determine the proportion of patients who received the recognized standard of care for stages I through III female breast cancer.

(2) Describe the treatment patterns for all stages of prostate cancer.

(3) Determine the tumor, patient, provider, and health system characteristics that are associated with different cancer treatments for female breast and prostate cancers.

(4) Assess the completeness and quality of the stage and first course of treatment data that are collected by cancer registries for female breast and prostate cancers.

These four research objectives will focus on the two most recent diagnosis years available, as determined by the Steering Committee and defined in the study protocol.

See *Section VIII, Other Information—Required Federal Citations*, for policies related to this announcement.

## II. Award Information

*1. Mechanism(s) of Support*

This funding opportunity will use the CDC (U58) cooperative agreement award mechanism. The award recipient will be solely responsible for planning, directing, and executing the proposed project. In the cooperative agreement mechanism, the Principal Investigator retains the primary responsibility and dominant role for planning, directing, and executing the proposed project, with NCCDPHP staff being substantially involved as a partner with the Principal Investigator, as described under the *Section VI. 2. Administrative Requirements*, ''Cooperative Agreement Terms and Conditions of Award''.

This funding opportunity uses the just-in-time budget concepts. It requires summary budget information provided in the application package, including the budget justification and support, written in the form, format, and the level of detail as specified in the budget guidelines. You may access the latest version of the budget guidelines by accessing the following Web site: *http://www.cdc.gov/od/pgo/funding/budgetguide2004.htm.*

This RFA is a one-time solicitation. The total project period for an application submitted in response to this RFA may not exceed three years

*2. Funds Available*

The NCCDPHP intends to commit approximately $2 million in FY 2005 to fund up to six new competitive cooperative agreements in response to this RFA. An applicant may request a project period of up to three years and a maximum budget for total costs of $333,000 per year. Approximately $6 million will be available for the entire three years.

The earliest anticipated start date is August 31, 2005, with three performance periods between September 2005 and September 2008.

Although the financial plans of the NCCDPHP provide support for this program, awards pursuant to this funding opportunity are contingent upon the availability of funds and the receipt of a sufficient number of meritorious applications. Continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

**Section III. Eligibility Information**

*1. Eligible Applicants*

1. A. Eligible Institutions

You may submit an application if your organization has any of the following characteristics:

- Public nonprofit organizations
- Private nonprofit organizations
- For profit organizations
- Universities
- Colleges
- Research institutions
- Hospitals
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

Institution eligibility is limited to those with broad research capacity and access to the data sources and populations necessary to conduct the research activities of the RFA.

1. B. Eligible Individuals

Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

*2. Cost Sharing or Matching*

Cost sharing is not required.

*3. Other-Special Eligibility Criteria*

The following criteria will be used to determine an applicant's eligibility:

1.a. NPCR funded cancer registries, or their designated agent, meeting United States Cancer Statistics (USCS) publication criteria for either diagnosis year 2000 or 2001. Publication criteria are demonstrated through case ascertainment of ≥90% with ≤5% of cases being ascertained by death certificate only, ≤5% of cases missing race, ≤3% of cases missing sex and age, and ≥97% of cases passing a set of single-field and inter-field computerized edits. Funding will be contingent on registry data meeting USCS publication criteria for diagnosis year 2002.

1.b. NPCR funded cancer registries that have a minimum of 2,000 female breast cancer cases (stages I through III) and 2,000 prostate cancer cases (all stages) over the two year period, as demonstrated in Appendix E of the 2000 and 2001 publications of USCS.

2. Public or private institutions that can demonstrate an effective and well-defined working relationship between the institution and the NPCR funded cancer registry in that state. Evidence must be provided in the form of a Letter of Support from the NPCR funded registry describing the strong working relationship and assuring access to data for the period of the study.

Investigators may submit only one application under this funding announcement. If your application is incomplete or non-responsive to the special eligibility requirements listed in this section, it will not be entered into the review process and you will be notified that your application did not meet the submission requirements. Applicants that request a funding amount greater than the award ceiling will be considered non-responsive.

**Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

**Section IV. Application and Submission Information**

*1. Address To Request Application Information*

The PHS 398 application instructions are available at *PHS 398 Application Form* in an interactive format. Applicants must use the currently approved version of the PHS 398. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770/488–2700, e-mail: *PGOTIM@cdc.gov.*

*2. Content and Form of Application Submission*

Applications must be prepared using the most current PHS 398 research grant application instructions and forms. Applications must have a D&B Data Universal Numbering System (DUNS) number as the universal identifier when applying for Federal grants or cooperative agreements. The D&B number can be obtained by calling 866/705–5711 or through the Web site at *http://www.dnb.com/us/*. The D&B number should be entered on line 11 of the face page of the PHS 398 form.

The title and number of this funding opportunity must be typed on line 2 of the face page of the application form and the YES box must be checked.

*3. Submission Dates and Times*

Applications must be received on or before the receipt date described below (*Section IV.3.A*).

3.A. Receipt, Review, and Anticipated Start Dates

*Letter of Intent Receipt Date:* May 27, 2005.

*Application Receipt Date:* June 38, 2005.

*Peer Review Date:* Week of July 25, 2005.

*Earliest Anticipated Start Date:* August 31, 2005.

*Explanation of Deadlines:* All requested information must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date.

If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadlines. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770/488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

3.A.1. Letter of Intent

CDC requests that prospective applicants send a Letter of Intent (LOI). Although an LOI is not required, is not binding, and does not enter into the review of a subsequent application, the information that it contains allows NCCDPHP staff to estimate the potential reviewer workload and plan the review.

LOI format:

- Two page maximum, one side only.
- One-inch margins, 12 point font, single spaced.

LOI contents:

- Number and title of this funding opportunity (RFA or PA)
- Descriptive title of proposed research.
- Name, address, e-mail, and telephone number of the Principal Investigator.
- Names of other key personnel.
- Participating Institutions.

The LOI should be mailed, faxed, or e-mailed by May 27, 2005, to: Office of Extramural Research, NCCDPHP, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341. Telephone: 770/488–8390. Fax: 770/488–8046. E-mail: *OER@cdc.gov.*

3.B. Sending an Application

Applications must be prepared using the PHS 398 research grant application instructions and forms as described above. Submit a signed, typewritten original of the application, including the checklist, and two signed photocopies in one package to: Technical Information Management–CDC–RFA DP–05–071, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, three additional copies of the complete application, including the appendix material, must be sent to: Brenda Colley Gilbert, Ph.D., M.S.P.H., Centers for Disease Control and Prevention, Office of Extramural Research, NCCDPHP, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341.

FedEX Address: Brenda Colley Gilbert, Ph.D., M.S.P.H., Office of Extramural Research, NCCDPHP, Koger Center/Williams Building, 2877 Brandywine Road, Room 5516, Atlanta, GA 30341.

For further assistance contact the CDC Procurement and Grants Office, Technical Information Management Section: telephone 770/488–2700, e-mail *pgotim@cdc.gov.*

3.C. Application Processing

Applications must be received on or before the application receipt date described above (*Section IV.3.A.*). If an application is received after that date, it will be returned to the applicant without review.

Upon receipt, applications will be evaluated for completeness by the Procurement and Grants Office (PGO) and responsiveness by the NCCDPHP. Incomplete and non-responsive applications will not be reviewed.

*4. Intergovernmental Review*

Executive Order 12372 does not apply to this program.

*5. Funding Restrictions*

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

*6. Other Submission Requirements*

The general instructions in the PHS 398 should be followed; however, applications must also include the following:

1. A work plan describing activities to meet the project goals and objectives and demonstrating the capability to abstract the required number of cases.
2. A personnel plan describing the team members' roles in carrying out the objectives of the project, including the planned percent of effort for team members.
3. A timeline that adequately demonstrates appropriate distribution of project activities over the three year study period.
4. Letters of support from collaborating partners that provide evidence of an active collaboration and commitment to work as full partners.

This announcement requires summary budget information provided in the application package, including the budget justification and support, written in the form, format, and the level of detail as specified in the budget guidelines. You may access the latest version of the budget guidelines by accessing the following Web site: *http://www.cdc.gov/od/pgo/funding/budgetguide2004.htm.*

Projects that involve the collection of information from ten or more individuals and funded by cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Section V. Application Review Information**

*1. Criteria*

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in Section I. Funding Opportunity Description of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The following will be considered in making funding decisions:

- Scientific merit of the proposed project as determined by peer review.
- Availability of funds.
- Relevance of program priorities.

Preference may be given to applications based on evidence of accessibility to populations with racial/ethnic and socio-economic diversity necessary to achieve socio-economic and racial/ethnic representation of the United States population.

*2. Review and Selection Process*

Upon receipt, applications will be reviewed for completeness by PGO and responsiveness by the NCCDPHP. Incomplete and/or non-responsive applications will not be reviewed. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the RFA will be evaluated for scientific and technical merit by an external peer review group convened by the NCCDPHP in accordance with the review criteria stated below.

As part of the initial merit review, all applications will:

- Undergo a selection process in which only those applications deemed to have the highest scientific merit, generally the top half of applications under review, will be discussed and assigned a priority score.

• Receive a written critique within 30 days after the review.

Scored applications will receive a second level of review by the NCCDPHP Secondary Review Committee. The review process will follow the policy requirements as stated in the GPD 2.04 (*http://198.102.218.46/doc/gpd204.doc*).

The following review criteria will be addressed and considered in assigning the overall score, weighting them as appropriate for each application. Note that an application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative but is essential to move a field forward.

1. *Significance.* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge or clinical practice be advanced? What will be the effect of these studies on the concepts, methods, technologies, treatments, services, or preventative interventions that drive this field?

2. *Approach.* Are the conceptual or clinical framework, design, methods, and analyses adequately developed, well integrated, well reasoned, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

Does the work plan describe activities that meet the project goals and objectives and demonstrate the capability to abstract the required number of cases? Does the personnel plan describe the team members' roles in carrying out the objectives of the project? Are the PI's and other team members' percent effort adequate for the conduct of the study? Is a timeline provided that demonstrates appropriate distribution of project activities over the three-year study period? Does the applicant provide evidence of the capacity to engage in advanced cancer surveillance activities that will ultimately contribute to improving aspects of cancer care?

3. *Innovation.* Is the project original and innovative? For example: Does the project challenge existing paradigms or clinical practice; address an innovative hypothesis or critical barrier to progress in the field? Does the project develop or employ novel concepts, approaches, methodologies, tools, or technologies for this area?

Does the project have the potential to provide insights about patterns of care in diverse racial, ethnic, geographic, socio-economic, and other special populations?

4. *Investigators.* Are the investigators appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers? Does the investigative team bring complementary and integrated expertise to the project (if applicable)?

Does the project team have expertise in cancer surveillance research or provide evidence of recent preparation that would enhance its successful involvement in such a project?

5. *Environment.* Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed studies benefit from unique features of the scientific environment, or subject populations, or employ useful collaborative arrangements? Is there evidence of institutional support?

2. A. Additional Review Criteria

*Collaboration.* Does the applicant provide evidence of an active collaboration and commitment to work as full partners? Do current or past cancer surveillance projects involve successful collaborations between the researchers and the partnering public or private institutions?

In addition to the above criteria, the following items will continue to be considered in the determination of scientific merit and the priority score:

*Protection of Human Subjects from Research Risk.* Federal regulations (45 CFR part 46) require that applications and proposals involving human subjects be evaluated and that they reference the risk to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained (*http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.htm*). The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed (see the Research Plan, Section E on Human Subjects in the PHS Form 398).

*Inclusion of Women, Minorities and Children in Research.* Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

2. B. Additional Review Considerations

*Budget:* The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

*3. Anticipated Announcement and Award Dates*

CDC expects to make awards on or about August 31, 2005.

**Section VI. Award Administration Information**

*1. Award Notices*

After the peer review of the application is completed, the Principal Investigator will receive a written critique called a Summary Statement. Those applications under consideration for funding will receive a call or email from the Grants Management Specialist (GMS) of the Procurements and Grants Office (PGO) with additional information.

A formal notification in the form of a Notice of Award (NoA) will be provided to the applicant organization. The NoA signed by the Grants Management Officer (GMO) is the authorizing document. This document will be mailed and/or emailed to the institutional fiscal officer identified in the application.

Selection of the application for award is not an authorization to begin performance. Any cost incurred before receipt of the NoA is at the recipient's risk. See also Section IV.5. Funding Restrictions.

*2. Administrative and National Policy Requirements*

The Code of Federal Regulations 45 CFR part 74 and part 92 have details about policy requirements. For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.* The following additional requirements can be found in Section VIII. Other Information of this document or on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.* These will be incorporated into the award statement and will be provided to the Principal Investigator, as well as to the

appropriate institutional official, at the time of award.

2. A. Cooperative Agreement Terms and Conditions of Award

The following special terms of award are in addition to, and not in lieu of, otherwise applicable OMB administrative guidelines, HHS grant administration regulations at 45 CFR Parts 74 and 92 (Part 92 is applicable when State and local Governments are eligible to apply), and other HHS, PHS, and CDC grant administration policies.

The administrative and funding instrument used for this program will be the cooperative agreement (CDC U58), an ''assistance'' mechanism (rather than an ''acquisition'' mechanism), in which substantial NCCDPHP programmatic involvement with the awardees is anticipated during the performance of the activities. Under the cooperative agreement, the NCCDPHP's purpose is to support and stimulate the recipients' activities by involvement in, and otherwise working jointly with, the award recipients in a partnership role; it is not to assume direction, prime responsibility, or a dominant role in the activities. Consistent with this concept, the dominant role and prime responsibility resides with the awardees for the project as a whole, although specific tasks and activities may be shared among the awardees and the NCCDPHP as defined above.

2. A.1. Principal Investigator Rights and Responsibilities

The Principal Investigator at each research site will have the primary responsibility to lead the efforts of the research team to:

1. Participate effectively within the research collaborative group, composed of investigators from each of the research sites and CDC investigators, to develop the specific research questions to be addressed in the project (Section I Research Objectives, 1–4) and the resulting standard research protocol, including the study design, design of the instruments, development of study methods and procedures, collection, analysis and interpretation of data, and methods for dissemination of results.

2. Assist in the development of a research protocol for the Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially, and on at least an annual basis, until the research project is completed.

3. Collaborate with other study investigators and follow common protocols and manuals of operation developed by the Steering Committee.

4. Obtain an annual, updated local institutional IRB approval.

5. Assure and maintain the confidentiality of all study data.

6. Participate actively in CDC site visits designed to support and enhance research progress and performance.

7. Participate in the analyses of aggregated study data and state-specific data.

8. Develop and produce technical reports or manuscripts for peer-reviewed publications.

9. Serve as a member of the Steering Committee that will provide scientific oversight for the study.

10. Participate in national, regional, and local communication of study development, implementation, and findings to public, professional, and governmental organizations and agencies, through written, oral, and electronic means.

11. Communicate state-specific findings to the public, cancer registry, and medical and cancer control communities through presentations and publications.

Awardees will retain custody of and have primary rights to the data and software developed under these awards, subject to Government rights of access consistent with current HHS, PHS, and CDC policies and applicable federal laws and regulations.

2. A.2. NCCDPHP Responsibilities

A NCCDPHP Project Scientist and PoC multidisciplinary team will have substantial programmatic involvement that is above and beyond the normal stewardship role in awards, as described below:

1. Participate in the development of the study by providing scientific consultation and technical assistance in the development of the research questions, study design and protocol, the development of sampling procedures, the design of the instruments, development of study methods and procedures, including collection, analysis, and interpretation of data, resolution of data quality issues, and dissemination of results.

2. Facilitate communication among recipients for the development of a common protocol, quality control, interim data monitoring, data analysis, interpretation of findings, reporting, and coordination of activities, through written, oral, and electronic means.

3. Support the recipients' activities by collaborating and providing ongoing scientific and public health consultation and assistance in the development of activities related to the cooperative agreement, including conducting site visits to recipient institutions.

4. Facilitate movement of the initial research protocol through the CDC Institutional Review Board (IRB), including keeping the CDC IRB abreast of protocol amendments, and facilitating annual reviews.

5. Participate in joint data analyses and interpretation and the presentation and publication of findings.

6. Collaborate in producing technical reports and manuscripts for peer-reviewed publications, as appropriate.

7. Facilitate distribution and dissemination of research findings.

8. Assure and maintain the confidentiality of all study data.

Additionally, an agency program official or the NCCDPHP program director will be responsible for the normal scientific and programmatic stewardship of the award and will be named in the award notice.

2. A.3. Collaborative Responsibilities

The following are areas of joint responsibility between the award recipients and the NCCDPHP project team:

1. Participation in the development of a Steering Committee that will provide scientific oversight for the study. The Steering Committee, the main governing board of the study, will be composed of the Principal Investigator from each research site and a NCCDPHP Project Scientist serving as consultant. The role of chairperson will be rotated among the Principal Investigators of the research sites. The Principal Investigators must have proven evidence of leadership ability and be able to make an adequate time commitment to the cooperative agreement.

The Steering Committee, in collaboration with NCCDPHP project scientists, will meet initially to develop the protocol and throughout the year to discuss the progress of the study. It will have primary responsibility for developing a common research design, protocols and manuals of operations, facilitating the conduct and monitoring of studies, developing policies relating to access to patient data, and reporting study results. The Steering Committee must approve the protocol, changes to protocols, and manuals of operation. The Principal Investigator of each research site will be responsible for the execution of the protocol and will provide progress reports to the Steering Committee. The Steering Committee will establish guidelines for presentations at scientific meetings and for writing and publishing manuscripts on the findings of the study.

2. Identify ways to collaborate with cancer care providers and others to use

research findings to improve care to patients.

3. Establish agreements for sharing data.

Each full member will have one vote. Grantee members of the Steering Committee will be required to accept and implement policies approved by the Steering Committee.

*3. Reporting*

Grantees must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Annual Progress Report, due 90 days after the end of the budget period.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

**Section VII. Agency Contacts**

We encourage your inquiries concerning this funding opportunity and welcome the opportunity to answer questions from potential applicants. Inquiries may fall into three areas: Scientific/research, peer review, and financial or grants management issues:

*1. General Questions*

Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770/488–2700. E-mail: *PGOTIM@cdc.gov.*

*2. Scientific/Research Contacts*

Brenda Colley Gilbert, PhD, M.S.P.H., Centers for Disease Control and Prevention, Office of Extramural Research, NCCDPHP, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341. Telephone: 770/488–8390. E-mail: *BColleyGilbert@cdc.gov.*

*3. Peer Review Contacts*

Scientific Review Administrator, Centers for Disease Control and Prevention, Office of Extramural Research, NCCDPHP, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341. Telephone: 770/488–8390. E-mail: *OER@cdc.gov.*

*4. Financial or Grants Management Contacts*

Lucy Picciolo, Procurements and Grants Office, Centers for Disease Control and Prevention, Koger Office Park, Colgate Building, Mailstop E–14, Atlanta, GA 30341–5539. Telephone: 770/488–2683. E-mail: *lip6@cdc.gov.*

**Section VIII. Other Information**

*Required Federal Citations*

AR–1 Human Subjects Requirements

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services (DHHS) Regulations (Title 45 Code of Federal Regulations Part 46) regarding the protection of human research subjects. All awardees of CDC grants and cooperative agreements and their performance sites engaged in human subjects research must file an assurance of compliance with the Regulations and have continuing reviews of the research protocol by appropriate institutional review boards.

In order to obtain a Federalwide Assurance (FWA) of Protection for Human Subjects, the applicant must complete an on-line application at the Office for Human Research Protections (OHRP) Web site or write to the OHRP for an application. OHRP will verify that the Signatory Official and the Human Subjects Protections Administrator have completed the OHRP Assurance Training/Education Module *before* approving the FWA. Existing Multiple Project Assurances (MPAs), Cooperative Project Assurances (CPAs), and Single Project Assurances (SPAs) remain in full effect until they expire or until December 31, 2003, whichever comes first.

To obtain a FWA contact the OHRP at: *http://ohrp.osophs.dhhs.gov/irbasur.htm.* Or:

If your organization is not Internet-active, please obtain an application by writing to: Office for Human Research Protections (OHRP), Department of Health and Human Services, 6100 Executive Boulevard, Suite 3B01, MSC 7501, Rockville, Maryland 20892–7507. (For express or hand delivered mail, use ZIP code 20852.)

**Note:** In addition to other applicable committees, Indian Health Service (IHS) institutional review committees must also review the project if any component of IHS will be involved with or will support the research. If any American Indian community is involved, its tribal government must also approve the applicable portion of that project.

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

AR–9 Paperwork Reduction Act Requirements

Under the Paperwork Reduction Act, projects that involve the collection of information from ten or more individuals and funded by a grant or a cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB).

AR–10 Smoke-Free Workplace Requirements

CDC strongly encourages all recipients to provide a smoke-free workplace and to promote abstinence from all tobacco products. Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, or early childhood development services are provided to children.

AR–11 Healthy People 2010

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and improve the quality of life. For the conference copy of ''Healthy People 2010,'' visit the Internet site: *http://www.health.gov/healthypeople.*

AR–12 Lobbying Restrictions

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. 1352, recipients (and their sub-tier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, no part of CDC appropriated funds, shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State or local legislature, except in presentation to the Congress or any State or local legislature itself. No part of the appropriated funds shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State or local legislature.

Any activity designed to influence action in regard to a particular piece of pending legislation would be considered ''lobbying.'' That is lobbying for or against pending legislation, as well as indirect or ''grass roots'' lobbying efforts by award recipients that are directed at inducing members of the public to contact their elected representatives at the Federal or State levels to urge support of, or opposition to, pending legislative proposals is prohibited. As a matter of policy, CDC extends the prohibitions to lobbying with respect to local legislation and local legislative bodies.

The provisions are not intended to prohibit all interaction with the legislative branch, or to prohibit educational efforts pertaining to public health. Clearly there are circumstances when it is advisable and permissible to provide information to the legislative branch in order to foster implementation of prevention strategies to promote public health. However, it would not be permissible to influence, directly or indirectly, a specific piece of pending legislation. It remains permissible to use CDC funds to engage in activity to enhance prevention; collect and analyze data; publish and disseminate results of research and surveillance data; implement prevention strategies; conduct community outreach services; provide leadership and training, and foster safe and healthful environments.

Recipients of CDC grants and cooperative agreements need to be careful to prevent CDC funds from being used to influence or promote pending legislation. With respect to conferences, public events, publications, and ''grassroots'' activities that relate to specific legislation, recipients of CDC funds should give close attention to isolating and separating the appropriate use of CDC funds from non-CDC funds. CDC also cautions recipients of CDC funds to be careful not to give the appearance that CDC funds are being used to carry out activities in a manner that is prohibited under Federal law.

AR–14 Accounting System Requirements

The services of a certified public accountant licensed by the State Board of Accountancy or the equivalent must be retained throughout the project as a part of the recipient's staff or as a consultant to the recipient's accounting personnel. These services may include the design, implementation, and maintenance of an accounting system that will record receipts and expenditures of Federal funds in accordance with accounting principles, Federal regulations, and terms of the cooperative agreement or grant.

Capability Assessment

It may be necessary to conduct an on-site evaluation of some applicant organization's financial management capabilities prior to or immediately following the award of the grant or cooperative agreement. Independent audit statements from a Certified Public Accountant (CPA) for the preceding two fiscal years may also be required.

AR–15 Proof of Non-profit Status

Proof of nonprofit status must be submitted by private nonprofit organizations with the application. Any of the following is acceptable evidence of nonprofit status: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate; (c) a statement from a State taxing body, State Attorney General, or other appropriate State Official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status; (e) any of the above proof for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

AR–16 Security Clearance Requirement

All individuals who will be performing work under a grant or cooperative agreement in a CDC-owned or leased facility (on-site facility) must receive a favorable security clearance, and meet all security requirements. This means that all awardee employees, fellows, visiting researchers, interns, etc., no matter the duration of their stay at CDC must undergo a security clearance process.

AR–22 Research Integrity

The signature of the institution official on the face page of the application submitted under this Program Announcement is certifying compliance with the Department of Health and Human Services (DHHS) regulations in title 42 part 50, subpart A, entitled ''Responsibility of PHS Awardee and Applicant Institutions for Dealing with and Reporting Possible Misconduct in Science.''

The regulation places several requirements on institutions receiving or applying for funds under the PHS Act that are monitored by the DHHS Office of Research Integrity's (ORI) Assurance Program. For examples:

Section 50.103(a) of the regulation states: ''Each institution that applies for or receives assistance under the Act for any project or program which involves the conduct of biomedical or behavioral research must have an assurance satisfactory to the Secretary (DHHS) that the applicant: (1) Has established an

administrative process, that meets the requirements of this subpart, for reviewing, investigating, and reporting allegations of misconduct in science in connection with PHS-sponsored biomedical and behavioral research conducted at the applicant institution or sponsored by the applicant; and (2) Will comply with its own administrative process and the requirements of this subpart.''

Section 50.103(b) of the regulation states that: ''An applicant or recipient institution shall make an annual submission to the [ORI] as follows: (1) The institution's assurance shall be submitted to the [ORI], on a form prescribed by the Secretary, * * * and updated annually thereafter * * * (2) An institution shall submit, along with its annual assurance, such aggregate information on allegations, inquiries, and investigations as the Secretary may prescribe.'' An additional policy is added in the year 2000 that ''requires research institutions to provide training in the responsible conduct of research to all staff engaged in research or research training with PHS funds.

AR–24 Health Insurance Portability and Accountability Act Requirements

Recipients of this grant award should note that pursuant to the Standards for Privacy of Individually Identifiable Health Information promulgated under the Health Insurance Portability and Accountability Act (HIPAA) (45 CFR parts 160 and 164) covered entities may disclose protected health information to public health authorities authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions. The definition of a public health authority includes a person or entity acting under a grant of authority from or contract with such public agency. CDC considers this project a public health activity consistent with the Standards for Privacy of Individually Identifiable Health Information and CDC will provide successful recipients a specific grant of public health authority for the purposes of this project.

AR–25 Release and Sharing of Data

The Data Release Plan is the Grantee's assurance that the dissemination of any and all data collected under the CDC data sharing agreement will be released as follows:

a. In a timely manner.

b. Completely, and as accurately as possible.

c. To facilitate the broader community.

d. Developed in accordance with CDC policy on Releasing and Sharing Data, April 16, 2003, *http://www.cdc.gov/od/foia/policies/sharing.htm,* and in full compliance with the 1996 Health Insurance Portability and Accountability Act (HIPPA), (where applicable), The Office of Management and Budget Circular A110, (2000) revised 2003, *http://www.whitehouse.gov/omb/query.html?col=omb&qt=Releasing+and+Sharing+of+Data* and Freedom of Information Act (FOIA) *http://www.4.law.cornell.edu/uscode/5/5/552/html.*

Applications must include a copy of the applicant's Data Release Plan. Applicants should provide CDC with appropriate documentation on the reliability of the data. Applications submitted without the required Plan may be ineligible for award. Award will be made when reviewing officials have approved an acceptable Plan. The successful applicant and the Program Manager will determine the documentation format. CDC recommends data is released in the form closest to micro data and one that will preserve confidentiality.

**Authority and Regulations**

This program is described in the Catalog of Federal Domestic Assistance at *http://www.cfda.gov/* and is not subject to the intergovernmental review requirements of Executive Order 12372 or Health Systems Agency review. Awards are made under the authorization of 399B of the Public Health Service Act (PHS Act), 42 U.S.C. 280e, 399C of the PHS Act, 42 U.S.C. 280e–1, 399D of the PHS Act, 42 U.S.C. 280e–2, 317(k)(2) of the PHS Act, 42 U.S.C. 247b(k)(2), and 301(a) of the PHS Act, 42 U.S.C. 241(a). All awards are subject to the terms and conditions, cost principles, and other considerations described in the NIH Grants Policy Statement. The NIH Grants Policy Statement can be found at *http://grants.nih.gov/grants/policy/policy.htm.*

Dated: May 31, 2005.

**William P. Nichols,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–11254 Filed 6–6–05; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

## Incidence, Natural History, and Quality of Life of Diabetes in Youth

**Part I—Overview Information**

*Department of Health and Human Services*

Issuing Organization

Centers for Disease Control and Prevention (CDC), (*http://www.cdc.gov/*).

Participating Organizations

Centers for Disease Control and Prevention (CDC), (*http://www.cdc.gov/*).

National Institutes of Health (NIH), (*http://www.nih.gov/*).

Components of Participating Organizations

National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), (*http://www.cdc.gov/nccdphp/*), Division of Diabetes Translation (DDT), (*http://www.cdc.gov/diabetes/*).

National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), (*http://www.niddk.nih.gov/*).

*Title:* Incidence, Natural History, and Quality of Life of Diabetes in Youth.

*Announcement Type:* New.

*Request For Applications (RFA) Number:* RFA–DP–05–069.

*Catalog of Federal Domestic Assistance Number:* 93.945.

*Key Dates:* Release Date: May 11, 2005.

*Letters of Intent Receipt Date:* May 25, 2005.

*Application Receipt Date:* June 24, 2005.

*Earliest Anticipated Start Date:* August 31, 2005.

*Expiration Date:* June 25, 2005.

*Due Dates for E.O. 12372:* Not Applicable.

**Additional Overview Content**

*Executive Summary*

• This RFA has two components, A and B:

Component A solicits applications for conducting multi-center, population-based research studies aimed at: assessing the incidence and secular trends of diabetes in youth; enhancing our knowledge of the natural history of diabetes and its complications in children; conducting research on health care utilization, processes of care, and quality of life of youth with diabetes;

and developing and validating classification schemes of diabetes in youth suitable for public health surveillance.

Component B solicits applications for a study Coordinating Center (CC) to provide the data management and analysis to support this multi-center research study.

- The participating organizations plan on contributing $4.1 million in FY 2005 to fund up to six new cooperative agreement awards for Component A and one cooperative agreement award for Component B.
- This funding opportunity will use the cooperative agreement funding mechanism (CDC U58).
- Applications may be submitted by: for-profit organizations, non-profit organizations; public or private institutions such as universities, colleges, hospitals, and laboratories; units of State government; domestic institutions; and faith- or community-based organizations, including Native American tribal organizations.
- Any individuals with the skills, knowledge, and resources necessary to carry out the proposed research are invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups, as well as individuals with disabilities, are always encouraged to apply for CDC funding announcements.
- An applicant may submit only one application for either Component A or B, but not both under this funding announcement.
- Applications must be prepared using the ''Application for a DHHS Public Health Service Grant'' (PHS 398, rev. 9/04). The PHS 398 instructions and forms are available at *http://grants.nih.gov/grants/forms.htm.*
- Telecommunications for the hearing impaired is available at: TTY 301–451–0088.

**Table of Contents**

*Part I Overview Information*
*Part II Full Text of Announcement*
*Section I. Funding Opportunity Description*
1. Research Objectives
*Section II. Award Information*
1. Mechanism(s) of Support
2. Funds Available
*Section III. Eligibility Information*
1. Eligible Applicants
A. Eligible Institutions
B. Eligible Individuals
2. Cost Sharing or Matching
3. Other—Special Eligibility Criteria
*Section IV. Application and Submission Information*
1. Address to Request Application Information
2. Content and Form of Application Submission
3. Submission Dates and Times
A. Receipt and Review and Anticipated Start Dates
1. Letter of Intent
B. Sending an Application to the CDC
C. Application Processing
4. Intergovernmental Review
5. Funding Restrictions
6. Other Submission Requirements
*Section V. Application Review Information*
1. Criteria
2. Review and Selection Process
A. Additional Review Criteria
B. Additional Review Considerations
C. Sharing Research Data
D. Sharing Research Resources
3. Anticipated Announcement and Award Dates
*Section VI. Award Administration Information*
1. Award Notices
2. Administrative and National Policy Requirements
A. Cooperative Agreement Terms and Conditions of Award
1. Principal Investigator Rights and Responsibilities
2. NCCDPHP Responsibilities
3. Collaborative Responsibilities
4. Arbitration Process
3. Reporting
*Section VII. Agency Contact(s)*
1. Scientific/Research Contact(s)
2. Peer Review Contact(s)
3. Financial/Grants Management Contact(s)
*Section VIII. Other Information—Required Federal Citations*

## Part II—Full Text of Announcement

### *Section I. Funding Opportunity Description*

The purpose of this RFA is to support research that will expand the preliminary findings of a five year research project, SEARCH for Diabetes in Youth, and enhance our understanding of the natural history, complications, and risk factors of diabetes mellitus with onset in childhood and adolescence. This program addresses the ''Healthy People 2010'' focus area of Diabetes.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP): To increase the capacity of state diabetes control programs to address the prevention of diabetes and its complications at the community level.

#### *1. Research Objectives*

Nature of the Research Opportunity

This RFA builds upon a five year research project, SEARCH for Diabetes in Youth, and solicits applications in the form of cooperative agreements to conduct research that will expand the preliminary findings from SEARCH and enhance our understanding of the natural history, complications, and risk factors of diabetes mellitus with onset in childhood and adolescence. A second component of this RFA is the funding of a data management, analysis, and study Coordinating Center (CC) that will collaborate with award recipients and the NCCDPHP.

Background

Diabetes mellitus, a leading cause of end-stage renal disease, blindness, non-traumatic amputation, and cardiovascular disease, is one of the most prevalent severe chronic diseases of childhood in the United States. Until recently, diabetes diagnosed in children and adolescents was almost entirely considered to be type 1, which is usually attributed to the destruction of the beta cells of the pancreas leading to an absolute deficiency of insulin. However, in the last two decades diabetes in children and adolescents has emerged as a complex disorder with heterogeneity in its pathogenesis, clinical presentation, and outcomes.

In adolescents, especially those from minority race/ethnic U.S. groups, type 2 diabetes appears to be increasing. Type 1 diabetes incidence is also increasing worldwide; however, type 1 diabetes registries in the U.S. have reported conflicting results. Knowledge of the magnitude of diabetes in adolescents and children, the rate of increase, and the clinical course and evolution of different forms of diabetes in children and youth is limited.

In 2000, CDC in collaboration with the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) of the National Institutes of Health (NIH) under Program Announcement #00097 (Uniform Population-Based Approach to Case Ascertainment, Typology, Surveillance, and Research on Childhood Diabetes) established a 5-year research project to assess the burden of diabetes with onset in childhood and adolescence in the U.S. The goals of this project (now called SEARCH for Diabetes in Youth) were to: (1) Identify prevalent and incident cases of diabetes among individuals under age 20 years in order to estimate population prevalence and incidence rates; (2) develop gold standards for the classification of diabetes type in youth; and (3) describe and compare clinical presentation and characteristics of type 1, type 2, and other types of diabetes.

Six SEARCH research centers, located across the U.S., were funded to conduct this study. Approximately 5.5 million children aged < 20 years (~6% of the <20 years U.S. population), with wide racial/ethnic, socioeconomic, and geographic representation, have been under surveillance at the SEARCH

research centers to estimate diabetes prevalence and incidence by age, sex, race/ethnicity, and diabetes type.

Scientific Knowledge To Be Achieved Through this Funding Opportunity

Data from SEARCH reveal important preliminary findings that warrant further scientific study:

- The incidence of diabetes in U.S. youth is higher at all the SEARCH sites and among all age groups than had been expected based on estimates from previous diabetes registries. However, this does not necessarily imply that the incidence has increased. Differences in case definition and in ascertainment methodology, or changes in screening patterns, may partly explain the higher incidence estimated by SEARCH. In order to assess temporal trends, it is necessary to monitor diabetes incidence in youth for a longer period of time using consistent methodology for case ascertainment and classification.
- Some subjects not only exhibit the clinical features of type 2 diabetes, but also have positive diabetes autoantibody status (a characteristic of type 1 autoimmune diabetes). This finding demonstrates the limits of the current diabetes classification scheme in youth and the need to better understand the natural history and long-term evolution of diabetes in youth, especially those with features of both type 1 and type 2 diabetes.

This RFA will fund research that will expand our understanding of the natural history, complications, and risk factors of diabetes with onset in childhood and adolescence. Additional research will also provide consistency and ensure sustainable and simplified criteria for case ascertainment and classification for surveillance purposes, across centers, across populations, and over time. This approach will constitute an essential basis for assembling large numbers of incident cases for additional clinical, epidemiological, health care, or therapeutic research into childhood diabetes.

Experimental Approach and Research Objectives

Using an established standardized multi-center, population-based approach in a diverse population, the objectives of this research program under Component A are to:

- Assess the incidence of diabetes with onset in childhood and adolescence by age, gender, and race/ethnicity.
- Describe the natural history of diabetes in youth, including the occurrence of diabetes micro- and macro-vascular complications and their risk factors.
- Assess the impact of quality of diabetes care in youth on short- and long-term diabetes outcomes, including quality of life.
- Develop and validate simple and low-cost case definition and classification of diabetes in youth that can be used for public health surveillance.

Component B will establish a data management, analysis, and study Coordinating Center (CC) to collaborate with award recipients from Component A and with the NCCDPHP. The objectives of this research program under Component B are for the CC to:

- Create and maintain a central data repository and create protocols and mechanisms to secure transmission of data and relevant data management reports between the CC and the study sites.
- Ensure the training and certification of staff at the study sites on measurement and study procedures as outlined in the protocol and manual of operations.
- Provide statistical and other analytic support to the multi-center study.
- Act, directly or through a subcontractor, as a central laboratory for the analyses of specimens from the study sites and ensure rapid transmission of the results.

See *Section VIII, Other Information—Required Federal Citations,* for policies related to this announcement.

**Section II. Award Information**

*1. Mechanism(s) of Support*

This funding opportunity will use the CDC (U58) cooperative agreement award mechanism for both Component A and B. The applicant will be solely responsible for planning, directing, and executing the proposed project. In the cooperative agreement mechanism, the Principal Investigator retains the primary responsibility and dominant role for planning, directing, and executing the proposed project, with NCCDPHP staff being substantially involved, as a partner with the Principal Investigator, as described under the *Section VI. 2. Administrative and National Policy Requirements,* ''Cooperative Agreement Terms and Conditions of Award''.

This funding opportunity uses the just-in-time budget concepts. It requires the summary budget information provided in the application package, including the budget justification and support, written in the form, format, and the level of detail as specified in the budget guidelines. You may access the latest version of the budget guidelines by accessing the following web site: *http://www.cdc.gov/od/pgo/funding/budgetguide2004.htm.*

This RFA is a one-time solicitation. The total project period for an application submitted in response to this RFA may not exceed five years.

*2. Funds Available*

The participating organizations, NCCDPHP and NIDDK, intend to commit approximately $4.4 million in FY 2005 to fund up to six competitive cooperative agreements under Component A and one competitive cooperative agreement under Component B in response to this RFA. An applicant under Component A may request a project period of up to five years and a budget for total costs between $450,000 and $650,000 per year. An applicant under Component B may request a project period of up to five years and a budget for total costs up to $1.1 million per year.

The earliest anticipated start date is August 31, 2005 with performance periods between September 2005 and September 2010.

Although the financial plans of the NCCDPHP and NIDDK provide support for this program, awards pursuant to this funding opportunity are contingent upon the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

**Section III. Eligibility Information**

*1. Eligible Applicants*

1.A. Eligible Institutions

You may submit an application if your organization has any of the following characteristics:

- Public nonprofit organizations
- Private nonprofit organizations
- For profit organizations
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the

Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

Institution eligibility is limited to those with broad research capacity and access to the data sources that are representative of the overall U.S. population, including the specific populations targeted in this announcement.

*1.B. Eligible Individuals*

Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

*2. Cost Sharing or Matching*

Cost sharing is not required.

*3. Other—Special Eligibility Criteria*

For Component A, the following criteria will be used to determine an applicant's eligibility:

- Access to a research infrastructure and an established population-based childhood diabetes registry. Evidence should be provided in the form of summaries of existing data collected in the last five years which shows incidence and prevalence of diabetes in youth by age, sex, race/ethnicity, and diabetes type. In addition, a description of an already established cohort of youth with diabetes including age, race/ethnicity, socio-economic status, and diabetes type distribution should be included.
- Experience in the recruitment and retention of youth with diabetes, especially those from older adolescent populations, racial/ethnic minorities, and socio-economic disadvantaged populations.
- A minimum of five years experience collaborating with other partners in a multi-center study that included a common protocol, development of methods and procedures, design of instruments, the collection, analysis and interpretation of data, and dissemination of results. Evidence of previous collaborations with other institutional partners should be provided in the form of letters of support, publications, reports, and abstracts.

For Component B (Coordinating Center), the following criteria will be used to determine an applicant's eligibility:

- A minimum of five years experience in directing and operating a coordinating center for collaborative, population-based, large-scale epidemiological research projects that included coordination of multi-site studies, development of training/certification programs, monitoring site performance and progress of studies, and providing governance support.
- Experience in providing data management, analysis, and statistical support to multi-site research studies that included development and management of a multi-site database, the design, analysis, and interpretation of data, and the development/production of data summaries and statistical reports.
- Experience with working with centralized laboratories and tracking of specimens.

Investigators may submit one application for either Component A or B, but not both under this funding announcement.

If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process and you will be notified that your application did not meet submission requirements. Applicants that request a funding amount greater than the ceiling of the award range will be considered non-responsive.

**Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

## Section IV. Application and Submission Information

*1. Address To Request Application Information*

The PHS 398 application instructions are available at *http://grants.nih.gov/grants/funding/phs398/phs398.html* in an interactive format. Applicants must use the currently approved version of the PHS 398. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770/488–2700, E-mail: *PGOTIM@cdc.gov.*

*2. Content and Form of Application Submission*

Applications must be prepared using the most current PHS 398 research grant application instructions and forms. Applications must have a D&B Data Universal Numbering System (DUNS) number as the universal identifier when applying for Federal grants or cooperative agreements. The D&B number can be obtained by calling 866/705–5711 or through the web site at *http://www.dnb.com/us/.* The D&B number should be entered on line 11 of the face page of the PHS 398 form.

The title and number of this funding opportunity must be typed on line 2 of the face page of the application form and the YES box must be checked.

*3. Submission Dates and Times*

Applications must be received on or before the receipt date described below (*Section IV.3.A*).

3.A. Receipt, Review and Anticipated Start Dates

*Letter of Intent Receipt Date:* Add Information Here.

*Application Receipt Date:* Month XX, 2005.

*Peer Review Date:* Add Information Here.

*Earliest Anticipated Start Date:* August 31, 2005.

*Explanation of Deadlines:* All requested information must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770/488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

3.A.1. Letter of Intent

CDC requests that you send a Letter of Intent (LOI) if you intend to apply for this funding announcement. Although an LOI is not required, is not binding, and does not enter into the review of a subsequent application, the information that it contains allows NCCDPHP staff to estimate the potential reviewer workload and plan the review.

LOI Format

- Two page maximum, one side only
- One-inch margins, 12 point font, single spaced

LOI Contents

- Number and title of this funding opportunity (RFA)
- Descriptive title of proposed research
- Name, address, e-mail, and telephone number of the Principal Investigator
- Names of other key personnel
- Participating Institutions

The LOI should be mailed, faxed, or emailed by Month XX, 2005 to

Office of Extramural Research, NCCDPHP, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop K–92, Atlanta, GA 30341. Phone: 770/488–8390. Fax: 770/488–8046. E-mail: *OER@cdc.gov.*

3.B. Sending an Application to the CDC

Applications must be prepared using the PHS 398 research grant application instructions and forms as described above. Submit a signed, typewritten original of the application, including the checklist, and two signed photocopies in one package to: Technical Information Management—RFA DP–05–069, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, three additional copies of the complete application, including the appendix material, must be sent to: Brenda Colley Gilbert, Ph.D., M.S.P.H., Office of Extramural Research, NCCDPHP, Centers for Disease Control and Prevention, 4770 Buford Highway NE, Mailstop K–92, Atlanta, GA 30341. FedEx Address: Brenda Colley Gilbert, Ph.D., M.S.P.H., Office of Extramural Research, NCCDPHP, Koger Center/Williams Building, 2877 Brandywine Road, Room 5516, Atlanta, GA 30341.

For further assistance contact the CDC Procurement and Grants Office, Technical Information Management Section: Telephone 770/488–2700, E-mail *pgotim@cdc.gov.*

3.C. Application Processing

Applications must be received on or before the application receipt date described above (*Section IV.3.A.*). If an application is received after that date, it will be returned to the applicant without review.

Upon receipt, applications will be evaluated for completeness by the Procurement and Grants Office (PGO) and responsiveness by the NCCDPHP. Incomplete and non-responsive applications will not be reviewed.

*4. Intergovernmental Review*

Executive Order 12372 does not apply to this program.

*5. Funding Restrictions*

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

*6. Other Submission Requirements*

For Component A of this RFA the general instructions in the PHS 398 should be followed; however, the applicant should include:

- Copies of publications, reports, and abstracts on the epidemiology of diabetes with onset in childhood and adolescence authored by the Principal Investigator or co-principal investigator and published within the last five years.
- Plans for recruiting children and adolescents with diabetes and retaining them for long-term follow-up, especially those from racial/ethnic minorities and socio-economically disadvantaged populations.
- Strategies for the follow-up of the incident cases and prevalent cases of childhood diabetes for studying the natural history of the disease and the long-term impact of quality of diabetes care.
- Letters of support from collaborating partners specifying the commitment of the parties involved including the terms of access to data and populations and any specified limits to collaboration.

For Component B (Coordinating Center) of this RFA the general instructions in the PHS 398 should be followed; however, the applicant should include:

- Evidence that the applicant has the staffing and facilities to implement the program at the time of the award. The cost of coordinating at least four annual meetings with the Principal Investigators of the study sites and the Steering Committee must be included in the budget.
- A proposed organizational structure for facilitating and supporting, scientifically and administratively, a collaborative, multi-center research study.
- Examples of materials and methods used to recruit and retain children and adolescents in health care research.
- A description of the research infrastructure and physical facilities for developing a central database.
- Examples of innovative analytic approaches to evaluating research data from multi-site studies.
- Examples of detailed data management and quality control procedures, including methods for assuring privacy and maintaining confidentiality, methods for sending and receiving data, descriptions and examples of data forms and questionnaires, and descriptions of software/computer programs.
- A description of the approach that will be used for soliciting and evaluating proposals for centralized laboratories and/or reading centers.

Principal Investigators must include a research plan of the activities to be conducted over the entire project period and a Data Release Plan that addresses the dissemination of any and all data collected in their application. This announcement also requires summary budget information provided in the application package, including the budget justification and support, written in the form, format, and the level of detail as specified in the budget guidelines. You may access the latest version of the budget guidelines by accessing the following Web site: *http://www.cdc.gov/od/pgo/funding/budgetguide2004.htm.*

Projects that involve the collection of information from ten or more individuals and funded by cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

**Section V. Application Review Information**

*1. Criteria*

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in Section I. Funding Opportunity Description of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The following will be considered in making funding decisions:

- Scientific merit of the proposed project as determined by peer review.
- Availability of funds.
- Relevance of program priorities.

Preference may be given to applications based on evidence of accessibility to populations with racial/ethnic and socio-economic diversity necessary to achieve socio-economic and racial/ethnic representation of the U.S. population.

*2. Review and Selection Process*

Upon receipt, applications will be reviewed for completeness by PGO and responsiveness by the NCCDPHP. Incomplete and/or non-responsive applications will not be reviewed. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an external peer review group in accordance with the review criteria stated below.

As part of the initial merit review, all applications will:

- Undergo a process in which only those applications deemed to have the highest scientific merit, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique within 30 days after the review.

Scored applications will receive a second level review by the NCCDPHP Secondary Review Committee. The review process will follow the policy requirements as stated in the GPD 2.04 [*http://198.102.218.46/doc/gpd204.doc*].

The following review criteria will be addressed and considered in assigning the overall score, weighting them as appropriate for each application. Note that an application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative but is essential to move a field forward.

1. *Significance.* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge or clinical practice be advanced? What will be the effect of these studies on the concepts, methods, technologies, treatments, services, or preventative interventions that drive this field?

2. *Approach.* Are the conceptual or clinical framework, design, methods, and analyses adequately developed, well integrated, well reasoned, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics?

For Component A: Does the application adequately describe: (a) The population source (including size, age, ethnicity, medical insurance status, socio-economic status, and geographic distribution); (b) the partnership/network(s) which will provide access to information on the cases of diabetes within this population source; (c) access to racial and ethnic minority and socio-economically disadvantaged populations; (d) data sources (hospital and non-hospital) that will be used; (e) how the population size (denominator) will be ascertained for estimation of incidence and secular trends over the five years of study; and (f) strategies for the follow-up of the incident cases and prevalent cases of childhood diabetes for studying the natural history of the disease and the long-term impact of quality of diabetes care?

For Component B: Does the applicant describe the approach that would be used for soliciting and evaluating proposals for centralized laboratories and/or reading centers?

3. *Innovation.* Is the project original and innovative? For example: Does the project challenge existing paradigms or clinical practice; address an innovative hypothesis or critical barrier to progress in the field? Does the project develop or employ novel concepts, approaches, methodologies, tools, or technologies for this area?

4. *Investigators.* Are the investigators appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers? Does the investigative team bring complementary and integrated expertise to the project (if applicable)?

For Component A: Does the Principal Investigator or the co-principal investigator have a history of conducting competitively funded peer reviewed research on the epidemiology of diabetes with onset in childhood and adolescence within the last five years? Is there evidence of prior experience in working collaboratively to carry out a population-based, multi-center study or standard protocol? Does the applicant's project team include significant expertise in pediatric endocrinology, epidemiology of diabetes and its micro- and macro-vascular complications, and/or health care research?

For Component B: Is the Principal Investigator an experienced biostatistician, epidemiologist, physician, or other professional with experience in directing a coordinating center for a collaborative, population-based, large-scale epidemiological research project? Does the applicant's project team include senior statistical staff that will devote substantial time to developing data analysis methods for use in the study? Does the applicant demonstrate experience in developing materials and methods for the recruitment and retention of children and adolescents?

5. *Environment.* Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed studies benefit from unique features of the scientific environment, or subject populations, or employ useful collaborative arrangements? Is there evidence of institutional support?

For Component A: Is there an institutional research infrastructure to carry out large, complex, population-based projects, as well as facilities to perform in-person visits, and handle and process biological samples?

For Component B: Is there a description of the applicant's physical facilities, data management and computer resources, and facilities for data retrieval and storage?

2.A. Additional Review Criteria

In addition to the above criteria, the following items will continue to be considered in the determination of scientific merit and the priority score:

*Protection of Human Subjects from Research Risk:* Federal regulations (45

CFR Part 46) require that applications and proposals involving human subjects be evaluated and that they reference the risk to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained (*http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.htm*). The involvement of human subjects and protections from research risk relating to their participation in the proposed research will be assessed (see the Research Plan, Section E on Human Subjects in the PHS Form 398).

*Inclusion of Women, Minorities and Children in Research:* Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. Plans for the recruitment and retention of subjects will also be evaluated (see the Research Plan, Section E on Human Subjects in the PHS Form 398).

2.B. Additional Review Considerations

*Budget:* The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

*3. Anticipated Announcement and Award Dates*

CDC expects to make awards on or about August 31, 2005.

**Section VI. Award Administration Information**

*1. Award Notices*

After the peer review of applications is complete, Principal Investigators will receive a written critique called a Summary Statement. Those applications under consideration for funding will receive a call or e-mail from the Grants Management Specialist (GMS) of the Procurements and Grants Office (PGO) for additional information.

A formal notification in the form of a Notice of Award (NoA) will be provided to the applicant organization. The NoA signed by the Grants Management Officer (GMO) is the authorizing document. This document will be mailed and/or emailed to the institutional fiscal official identified in the application.

Selection of an application for award is not an authorization to begin performance. Any costs incurred before receipt of the NoA are at the recipient's risk. See Also *Section IV.5. Funding Restrictions.*

*2. Administrative and National Policy Requirements*

The Code of Federal Regulations 45 CFR Part 74 and Part 92 have details about policy requirements. For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.* The following additional requirements can be found in Section VIII. Other Information of this document or on the CDC website at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.* These will be incorporated into the award statement and will be provided to the Principal Investigator, as well as to the appropriate institutional official, at the time of award.

2.A. Cooperative Agreement Terms and Conditions of Award

The following special terms of award are in addition to, and not in lieu of, otherwise applicable OMB administrative guidelines, HHS grant administration regulations at 45 CFR Parts 74 and 92 (Part 92 is applicable when State and local Governments are eligible to apply), and other HHS, PHS, and CDC grant administration policies.

The administrative and funding instrument used for this program will be the cooperative agreement (CDC U58), an ''assistance'' mechanism (rather than an ''acquisition'' mechanism), in which substantial NCCDPHP programmatic involvement with the awardees is anticipated during the performance of the activities. Under the cooperative agreement, the NCCDPHP's purpose is to support and stimulate the recipients' activities by involvement in and otherwise working jointly with the award recipients in a partnership role; it is not to assume direction, prime responsibility, or a dominant role in the activities. Consistent with this concept, the dominant role and prime responsibility resides with the awardees for the project as a whole, although specific tasks and activities may be shared among the awardees and the NCCDPHP as defined above.

2.A.1. Principal Investigator Rights and Responsibilities

The Principal Investigator under Component A will have the primary responsibility for:

1. Participating in the Steering Committee, the primary governing body of the study and comprised of the Principal Investigators from each study site (*see* section 2.A.3).
2. Establishing and maintaining networks or partnerships with health care providers and health care systems that have access to information on cases of childhood diabetes.
3. Participating in the methodology and protocol development of the study, on-going data collection and follow up, quality control, data analysis and interpretation, and the preparation of peer-reviewed publications for presentation of findings.
4. Collaborating with other study investigators and following common protocol(s) and manuals of operations developed by the Steering Committee.
5. Maintaining an effective and adequate management and staffing plan.
6. Assuring and maintaining the confidentiality of all study data.
7. Performing joint analysis with aggregate data and communicating scientifically via publications, abstracts, and presentations, the main and secondary findings pertaining to the goals of the study.

Awardees of Component A will retain custody of and have primary rights to the data and software developed under these awards, subject to Government rights of access consistent with current HHS, PHS, and CDC policies.

The Principal Investigator under Component B (Coordinating Center) will have the primary responsibility for:

1. Promoting and facilitating a multi-center and collaborative environment among the award recipients.
2. Facilitating the formation of a Steering Committee (SC) consisting of the Principal Investigators from each study site. The SC will have a minimum of four meetings each year and regular teleconferences throughout the year. The SC may create sub-committees as appropriate to accomplish its goals.
3. Coordinating the statistical analyses and data management aspects of the study. The CC will have both scientific and administrative functions.
4. Reviewing the study protocol and assisting in the development of the statistical design for the multi-center study, analyzing study results, and reviewing all manuscripts for statistical considerations. Based on input from the

Steering Committee, the CC will prepare and update the protocols and manuals of operation, provide materials to aid in patient recruitment and retention, and ensure the training and certification of staff at the study sites as outlined in the study protocol.

5. Establishing a database to accommodate data generated by each study site, developing a data transmission system, and assessing data quality and completeness throughout the study. The CC will provide for central registration of all individuals enrolled in the study.

6. Establishing, directly or through subcontracts, central laboratories and reading centers, as determined by the Steering Committee.

7. Providing statistical reports on the progress of the study at Steering Committee meetings and facilitating communication among investigators, including scheduling meetings and conference calls, developing agendas and documenting minutes, and maintaining membership rosters and committee lists.

The Principal Investigator of the CC will be a member of the Steering Committee. The Coordinating Center will not retain custody of or have primary rights to the data and software developed under this award. Primary rights to collected data will remain with the awardees under Component A.

2.A.2. NCCDPHP Responsibilities

For both Component A and B, a NCCDPHP Project Scientist will have substantial programmatic involvement that is above and beyond the normal stewardship role in awards, as described below:

1. Support the grantees' activities by collaborating and providing scientific and public health consultation and assistance in the development of activities related to the cooperative agreement.

2. Assist in facilitating communication among grantees' for the development of common multi-center protocol(s), quality control, interim data monitoring, data analysis, interpretation, reporting, and coordination.

3. Ensure adherence of human subjects requirements, and approval of study protocol by appropriate local IRBs, for all cooperating institutions participating in the research study.

4. Serve as a consultant to the Steering Committee.

5. Facilitate the process for obtaining Certificates of Confidentiality in the form of 301(d), as appropriate.

6. Collaborate to produce technical reports or manuscripts for peer-reviewed publications, as appropriate. Provide assistance for joint analysis with aggregate data.

An External Advisory Committee (EAC) will be appointed by the NCCDPHP. It will consist of a Chair and scientists with expertise in epidemiology, biostatistics, and diabetes. Clinical scientists knowledgeable about diabetes, but who are not participating at a designated Research Center, may be invited to assess the study protocol.

The EAC will evaluate the protocol proposed by the Steering Committee based on the importance of the question to be addressed, scientific merit of the experimental design, feasibility, and consistency with NCCDPHP mission and policies. The EAC will provide a written critique of the protocol and a final recommendation to the Steering Committee and the NCCDPHP. During the implementation phase of the protocol, the EAC will monitor each research center for adherence to the study protocol and progress towards study goals. The EAC will have the authority to recommend protocol or procedural changes or early termination of any award for poor performance.

The EAC is advisory to both the NCCDPHP and the Steering Committee. The Chairperson of the Steering Committee and the Principal Investigator of the CC will attend annual EAC meetings.

The CDC reserves the right to terminate or curtail the study (or an individual award) in the event of substantial shortfall in participant recruitment, follow-up, data reporting, quality control, or other major breach of the protocol. The CDC can also terminate or curtail the study (or an individual award) if human subject safety or ethical issues dictate a premature termination. The CDC may also terminate the project if there is failure to develop or implement a mutually agreeable collaborative protocol.

Additionally, an agency program official or NCCDPHP program director will be responsible for the normal scientific and programmatic stewardship of the award and will be named in the award notice.

2.A.3. Collaborative Responsibilities

The Steering Committee, the main governing board of the study, will be comprised of the Principal Investigator from each study site, the Principal Investigator of the CC, and a NCCDPHP Project Scientist serving as consultant. A chairperson will be selected from the non-federal Steering Committee members. The chairperson must have proven evidence of leadership ability and be able to make an adequate time commitment to the cooperative agreement.

The Steering Committee will meet initially to develop the protocol and throughout the year to discuss the progress of the study. It will have primary responsibility for developing common research designs, protocols and manuals of operations, facilitating the conduct and monitoring of studies, and reporting study results. The Steering Committee must approve the protocol, changes to protocols, and manuals of operation. The Principal Investigator of each study site will be responsible for the execution of the protocol and will provide progress reports to the Steering Committee. The Steering Committee will also develop policies relating to access to patient data and specimens and ancillary studies. It will establish guidelines for presentations at scientific meetings and for writing and publishing manuscripts on the findings of the study.

Each full member of the Steering Committee will have one vote. Grantee members of the Steering Committee will be required to accept and implement policies approved by the Steering Committee. To promote the development of a collaborative program among awardees, Principal Investigators are expected to attend Steering Committee meetings and participate in conference calls on a regular basis.

*3. Reporting*

Grantees must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Annual Progress Report, due 90 days after the end of the budget period.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

5. Data collected must be released to the public no later than two years after the end of the budget period as specified in the application's Data Release Plan and in accordance with CDC policy on Releasing and Sharing Data.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

**Section VII. Agency Contacts**

We encourage your inquiries concerning this funding opportunity and welcome the opportunity to answer questions from potential applicants. Inquiries may fall into three areas: scientific/research, peer review, and financial or grants management issues:

1. General Questions: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770/488–2700. E-mail: *PGOTIM@cdc.gov*.

2. Scientific/Research Contacts: Brenda Colley Gilbert, Ph.D., M.S.P.H., Office of Extramural Research, NCCDPHP, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE, Mailstop K–92, Atlanta, GA 30341. Telephone: 770/488–8390. E-mail: *BColleyGilbert@cdc.gov*.

3. Peer Review Contacts: Scientific Review Administrator, Office of Extramural Research, NCCDPHP, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE, Mailstop K–92, Atlanta, GA 30341. Telephone: 770/488–8390. E-mail: *OER@cdc.gov*.

4. Financial or Grants Management Contacts: Sylvia Dawson, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Koger Office Park, Colgate Building, Mail-Stop E–14, 2920 Brandywine Road, Atlanta, GA 30341–5539. Telephone: 770/488–2771. E-mail: *SDawson@cdc.gov*.

**Section VIII. Other Information**

*Required Federal Citations*

AR–1

Human Subjects Requirements

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services (DHHS) Regulations (Title 45 Code of Federal Regulations Part 46) regarding the protection of human research subjects. All awardees of CDC grants and cooperative agreements and their performance sites engaged in human subjects research must file an assurance of compliance with the Regulations and have continuing reviews of the research protocol by appropriate institutional review boards. In order to obtain a Federalwide Assurance (FWA) of Protection for Human Subjects, the applicant must complete an on-line application at the Office for Human Research Protections (OHRP) website or write to the OHRP for an application. OHRP will verify that the Signatory Official and the Human Subjects Protections Administrator have completed the OHRP Assurance Training/Education Module *before* approving the FWA. Existing Multiple Project Assurances (MPAs), Cooperative Project Assurances (CPAs), and Single Project Assurances (SPAs) remain in full effect until they expire or until December 31, 2003, whichever comes first.

To obtain a FWA contact the OHRP at: *http://ohrp.osophs.dhhs.gov/irbasur.htm* OR If your organization is not Internet-active, please obtain an application by writing to: Office for Human Research Protections (OHRP), Department of Health and Human Services, 6100 Executive Boulevard, Suite 3B01, MSC 7501, Rockville, Maryland 20892–7507. (For Express or Hand Delivered Mail, Use Zip Code 20852)

**Note:** In addition to other applicable committees, Indian Health Service (IHS) institutional review committees must also review the project if any component of IHS will be involved with or will support the research. If any American Indian community is involved, its tribal government must also approve the applicable portion of that project.

AR–2

Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

AR–8

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based non-governmental organizations submitting health services applications must prepare and submit the items identified below to the head of the appropriate State and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the application deadline date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

A. A copy of the face page of the application (SF 424).

B. A summary of the project that should be titled ''Public Health System Impact Statement'' (PHSIS), not exceed one page, and include the following: A description of the population to be served. A summary of the services to be provided. A description of the coordination plans with the appropriate state and/or local health agencies.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the State Single Point of Contact (SPOC) or directly from the applicant.

AR–9

**Paperwork Reduction Act Requirements**

Under the Paperwork Reduction Act, projects that involve the collection of information from 10 or more individuals and funded by a grant or a cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB).

AR–10

Smoke-Free Workplace Requirements

CDC strongly encourages all recipients to provide a smoke-free workplace and to promote abstinence from all tobacco products. Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care,

or early childhood development services are provided to children.

AR–11

Healthy People 2010

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2010,'' a national activity to reduce morbidity and mortality and improve the quality of life. For the conference copy of ''Healthy People 2010,'' visit the internet site: *http://www.health.gov/healthypeople.*

AR–12

Lobbying Restrictions

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352, recipients (and their sub-tier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, no part of CDC appropriated funds, shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State or local legislature, except in presentation to the Congress or any State or local legislature itself. No part of the appropriated funds shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State or local legislature.

Any activity designed to influence action in regard to a particular piece of pending legislation would be considered ''lobbying.'' That is lobbying for or against pending legislation, as well as indirect or ''grass roots'' lobbying efforts by award recipients that are directed at inducing members of the public to contact their elected representatives at the Federal or State levels to urge support of, or opposition to, pending legislative proposals is prohibited. As a matter of policy, CDC extends the prohibitions to lobbying with respect to local legislation and local legislative bodies.

The provisions are not intended to prohibit all interaction with the legislative branch, or to prohibit educational efforts pertaining to public health. Clearly there are circumstances when it is advisable and permissible to provide information to the legislative branch in order to foster implementation of prevention strategies to promote public health. However, it would not be permissible to influence, directly or indirectly, a specific piece of pending legislation. It remains permissible to use CDC funds to engage in activity to enhance prevention; collect and analyze data; publish and disseminate results of research and surveillance data; implement prevention strategies; conduct community outreach services; provide leadership and training, and foster safe and healthful environments.

Recipients of CDC grants and cooperative agreements need to be careful to prevent CDC funds from being used to influence or promote pending legislation. With respect to conferences, public events, publications, and ''grassroots'' activities that relate to specific legislation, recipients of CDC funds should give close attention to isolating and separating the appropriate use of CDC funds from non-CDC funds. CDC also cautions recipients of CDC funds to be careful not to give the appearance that CDC funds are being used to carry out activities in a manner that is prohibited under Federal law.

AR–14

Accounting System Requirements

The services of a certified public accountant licensed by the State Board of Accountancy or the equivalent must be retained throughout the project as a part of the recipient's staff or as a consultant to the recipient's accounting personnel. These services may include the design, implementation, and maintenance of an accounting system that will record receipts and expenditures of Federal funds in accordance with accounting principles, Federal regulations, and terms of the cooperative agreement or grant.

Capability Assessment

It may be necessary to conduct an on-site evaluation of some applicant organization's financial management capabilities prior to or immediately following the award of the grant or cooperative agreement. Independent audit statements from a Certified Public Accountant (CPA) for the preceding two fiscal years may also be required.

AR–15

Proof of Non-profit Status

Proof of nonprofit status must be submitted by private nonprofit organizations with the application. Any of the following is acceptable evidence of nonprofit status: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate; (c) a statement from a State taxing body, State Attorney General, or other appropriate State Official certifying that the applicant organization has a nonprofit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes nonprofit status; (e) any of the above proof for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local nonprofit affiliate.

AR–16

Security Clearance Requirement

All individuals who will be performing work under a grant or cooperative agreement in a CDC-owned or leased facility (on-site facility) must receive a favorable security clearance, and meet all security requirements. This means that all awardee employees, fellows, visiting researchers, interns, etc., no matter the duration of their stay at CDC must undergo a security clearance process.

AR–22

Research Integrity

The signature of the institution official on the face page of the application submitted under this Program Announcement is certifying compliance with the Department of Health and Human Services (DHHS) regulations in Title 42 Part 50, Subpart A, entitled ''Responsibility of PHS Awardee and Applicant Institutions for Dealing with and Reporting Possible Misconduct in Science.''

The regulation places several requirements on institutions receiving or applying for funds under the PHS Act that are monitored by the DHHS Office of Research Integrity's (ORI) Assurance Program. For examples:

Section 50.103(a) of the regulation states: ''Each institution that applies for or receives assistance under the Act for

any project or program which involves the conduct of biomedical or behavioral research must have an assurance satisfactory to the Secretary (DHHS) that the applicant: (1) Has established an administrative process, that meets the requirements of this subpart, for reviewing, investigating, and reporting allegations of misconduct in science in connection with PHS-sponsored biomedical and behavioral research conducted at the applicant institution or sponsored by the applicant; and (2) Will comply with its own administrative process and the requirements of this Subpart.''

Section 50.103(b) of the regulation states that: ''an applicant or recipient institution shall make an annual submission to the [ORI] as follows: (1) The institution's assurance shall be submitted to the [ORI], on a form prescribed by the Secretary, * * * and updated annually thereafter * * * (2) An institution shall submit, along with its annual assurance, such aggregate information on allegations, inquiries, and investigations as the Secretary may prescribe.''

An additional policy is added in the year 2000 that ''requires research institutions to provide training in the responsible conduct of research to all staff engaged in research or research training with PHS funds.

AR–23

Compliance With Executive Order 13279

Faith-based organization are eligible to receive federal financial assistance, and their applications are evaluated in the same manner and using the same criteria as those for non-faith-based organizations in accordance with Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations. All applicants should, however, be aware of restrictions on the use of direct financial assistance from the Department of Health and Human Services (DHHS) for inherently religious activities. Under the provisions of Title 45, Parts 74, 87, 92 and 96, organizations that receive direct financial assistance from DHHS under any DHHS program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization as a part of the programs or services funded with direct financial assistance from DHHS. If an organization engages in such activities, it must offer them separately, in time or location, from the programs or services funded with direct DHHS assistance, and participation must be voluntary for the beneficiaries of the programs or services funded with such assistance. A religious organization that participates in the DHHS funded programs or services will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct financial assistance from DHHS to support inherently religious activities such as those activities described above. A faith-based organization may, however, use space in its facilities to provide programs or services funded with financial assistance from DHHS without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization that receives financial assistance from DHHS retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents in accordance with all program requirements, statutes, and other applicable requirements governing the conduct of DHHS funded activities. For further guidance on the use of DHHS direct financial assistance see Title 45, Code of Federal Regulations, Part 87, Equal Treatment for Faith-Based Organizations, and visit the Internet site: *http://www.whitehouse.gov/government/fbci/.*

AR–24

Health Insurance Portability and Accountability Act Requirements

Recipients of this grant award should note that pursuant to the Standards for Privacy of Individually Identifiable Health Information promulgated under the Health Insurance Portability and Accountability Act (HIPAA) (45 CFR Parts 160 and 164) covered entities may disclose protected health information to public health authorities authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions. The definition of a public health authority includes a person or entity acting under a grant of authority from or contract with such public agency. CDC considers this project a public health activity consistent with the Standards for Privacy of Individually Identifiable Health Information and CDC will provide successful recipients a specific grant of public health authority for the purposes of this project.

AR–25

Release and Sharing of Data

The Data Release Plan is the Grantee's assurance that the dissemination of any and all data collected under the CDC data sharing agreement will be released as follows:

a. In a timely manner.

b. Completely, and as accurately as possible.

c. To facilitate the broader community.

d. Developed in accordance with CDC policy on Releasing and Sharing Data, April 16, 2003, *http://www.cdc.gov/od/foia/policies/sharing.htm,* and in full compliance with the 1996 Health Insurance Portability and Accountability Act (HIPPA), (where applicable), The Office of Management and Budget Circular A110, (2000) revised 2003, *www.whitehouse.gov/omb/query.html?col=omb&qt=Releasing+and+Sharing+of+Data and Freedom of Information Act (FOIA), www.4.law.cornell.edu/uscode/5/5/552/html.*

Applications must include a copy of the applicant's Data Release Plan. Applicants should provide CDC with appropriate documentation on the reliability of the data. Applications submitted without the required Plan may be ineligible for award. Award will be made when reviewing officials have approved an acceptable Plan. The successful applicant and the Program Manager will determine the documentation format. CDC recommends data is released in the form closest to micro data and one that will preserve confidentiality.

*Authority and Regulations*

This program is described in the Catalog of Federal Domestic Assistance at *http://www.cfda.gov/* and is not subject to the intergovernmental review requirements of Executive Order 12372 or Health Systems Agency review. Awards are made under the authorization of 317(k)(2) of the Public Health Service Act (PHS Act), 42 U.S.C. 247b(k)(2) and 301(a) of the PHS Act, 42 U.S.C. 241(a). All awards are subject to the terms and conditions, cost principles, and other considerations described in the NIH Grants Policy Statement. The NIH Grants Policy Statement can be found at *http://grants.nih.gov/grants/policy/policy.htm.*

Dated: June 1, 2005.

**William P. Nichols,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–11253 Filed 6–6–05; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Study Team for the Los Alamos Historical Document Retrieval and Assessment (LAHDRA) Project

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following meeting.

*Name:* Public Meeting of the Study Team for the Los Alamos Historical Document Retrieval and Assessment Project.

*Time and Date:* 5 p.m.–7 p.m., (mountain time), June 23, 2005.

*Place:* Cities of Gold Hotel in Pojoaque (15 miles north of Santa Fe on U.S. 84/285), 10–A Cities of Gold Road, Santa Fe, New Mexico 87506, telephone: 505–455–0515.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Background:* Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE) and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC. In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between the Agency for Toxic Substances and Disease Registry (ATSDR) and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

*Purpose:* This study group is charged with locating, evaluating, cataloguing, and copying documents that contain information about historical chemical or radionuclide releases from facilities at the Los Alamos National Laboratory since its inception. The purpose of this meeting is to review the goals, methods, and schedule of the project, discuss progress to date, provide a forum for community interaction, and serve as a vehicle for members of the public to express concerns and provide advice to CDC.

*Matters to be Discussed:* Agenda items include a presentation from the National Center for Environmental Health (NCEH) and its contractor regarding the status of project work. There will be time for public input, questions, and comments.

Agenda items are subject to change as priorities dictate.

*Contact Person For Additional Information:* Phillip R. Green, Public Health Advisor, Radiation Studies Branch, NCEH, CDC, 1600 Clifton Road, N.E. (MS–E39), Atlanta, GA 30333, telephone 404/498–1717, fax 404/498–1811.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: June 2, 2005.

**Diane Allen,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 05–11363 Filed 6–6–05; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Designation of a Class of Employees for Addition to the Special Exposure Cohort

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (''HHS'') gives notice of a decision to designate a class of employees at the Iowa Army Ammunition Plant (IAAP), in Burlington, Iowa as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On May 20, 2005, the Secretary of HHS designated the following class of employees as an addition to the SEC:

Employees of the Department of Energy (DOE) or DOE contractors or subcontractors employed by the Iowa Army Ammunition Plant, Line 1, during the period from March 1949 through 1974 who were employed for a number of work days aggregating at least 250 work days either solely under this employment or in combination with work days within the parameters (excluding aggregate work day requirements) established for other classes of employees included in the SEC.

This designation will become effective on June 19, 2005, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any action by Congress.

**FOR FURTHER INFORMATION CONTACT:** Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to OCAS@CDC.GOV

Dated: May 27, 2005.

**John Howard,**

*Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.*

[FR Doc. 05–11255 Filed 6–6–05; 8:45 am]

BILLING CODE 4160–17–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Administration for Native Americans; Grants and Cooperative Agreements; Notice of Availability

*Funding Opportunity Title:* Environmental Mitigation.

*Announcement Type:* Initial.

*Funding Opportunity Number:* HHS–2005–ACF–ANA–NM–0019.

*CFDA Number:* 93.582.

*Due Date for Applications:* 07/08/2005.

*Executive Summary:*

The Administration for Native Americans (ANA), within the Administration for Children and Families (ACF), announces the availability of funds to eligible applicants to mitigate environmental impacts on Indian lands due to Department of Defense (DOD) activities on Formerly Used Defense Sites (FUDS). Financial assistance is provided utilizing the competitive process in accordance with the Native Americans Programs Act of 1974, as amended.

Program Areas of Interest are projects that ANA considers supportive to Native American communities for the purpose of FUDS environmental activities. Although eligibility for funding is not restricted to projects of the type listed in this program announcement, these Program Areas of Interest are ones which ANA sees as particularly beneficial to the development of an environmental mitigation project.

**I. Funding Opportunity Description**

The Administration for Native Americans (ANA), within the Administration for Children and Families, announces the availability of financial assistance for new community-based projects under the competitive area: Environmental Mitigation. This announcement contains information on financial assistance from the Environmental Mitigation Program, authorized under Section 8094A of the Department of Defense Appropriation Act, Public Law 103–139 and Public Law 103–335 (the Act). The Congress has recognized that DOD activities may have caused environmental impacts on Indian lands. For this specific purpose, Indian lands are defined as all lands of American Indian Tribes and Alaska Native Villages. Accordingly, the Congress has taken steps to help those affected begin to mitigate environmental impacts from DOD activities by assisting them in the planning, development and implementation of programs for such mitigation.

The Environmental Mitigation program began through a program announcement published on December 29, 1993 as a response to the Department of Defense Appropriations Act, Public Law 103–139, which was enacted on November 11, 1993. This program continues under Public Law 103–335 (Act), enacted on September 30, 1994. Section 809 4–A of the Act states that of the funds appropriated to the Department of Defense (DOD) for Operations and Maintenance Defense-Wide, not less than $8,000,000 shall be made available until expended to provide for the mitigation of environmental impacts, including training and technical assistance to tribes, related administrative support, the gathering of information, documenting of environmental damage, and developing a system for prioritizing of mitigation, on Indian lands resulting from Department of Defense activities.

Achieving compliance with Federal environmental protection legislation is the driving force behind all Federal clean-up activities. The following is a list of major Federal environmental legislation that should be recognized in a regulatory review of all Federal, state and local regulatory requirements which could have major impacts in the design of mitigation strategies:

- Indian Environmental General Assistance Program Act of 1992;
- Clean Air Act (CAA);
- Clean Water Act (CWA);
- Safe Drinking Water Act (SDWA);
- Surface Mining Control and Reclamation Act of 1977 (SMCRA);
- Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA);
- Toxic Substances Control Act (TSCA);
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);
- Nuclear Waste Policy Act of 1982 (NWPA);
- Comprehensive Environmental Resource Conservation and Liability Act (CERCLA or Superfund);
- Resource Conservation and Recovery Act of 1976 (RCRA);
- Hazardous and Solid Waste Amendments of 1984 (HSWA);
- National Environmental Policy Act of 1969 (NEPA).

Other Federal legislation that should be included in the regulatory review and that should be of assistance are the tribal specific legislative acts, such as:

- American Indian Religious Freedom Act;
- National Historic Preservation Act of 1991.
- Indian Environmental Regulatory Enhancement Act of 1990; Other regulatory considerations could involve applicable tribal, village, state and local laws, codes, ordinances, standards, etc., which should also be reviewed to assist in planning, the mitigation design, and development of the comprehensive mitigation strategy.

In this announcement, ANA encourages Native American tribes to develop their own plans and technical capabilities and access the necessary financial and technical resources in order to assess, plan, develop and implement projects to mitigate any impacts caused by DOD activities.

ANA Administrative Policies

Applicants must comply with the following Administrative Policies:

- An application from a Tribe, Alaska Native Village or Native American organization must be from the governing body.
- A non-profit organization submitting an application must submit proof of its non-profit status at the time of submission. The non-profit agency can accomplish this by providing: (1) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; or (2) a copy of the currently valid IRS tax exemption certificate; or (3) a statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and none of the net earnings accrue to any private shareholders or individuals; or (4) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status; or (5) any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.
- If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans, Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. Applicants must provide information that at least a majority of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) a current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community be to served.
- Applicants must describe how the proposed project objectives and activities relate to a locally determined strategy.
- ANA will review proposed projects to ensure applicants have considered all resources available to the community to support the project.
- Proposed projects must present a strategy to overcome the challenges that hinder movement toward self-sufficiency in the community.
- All funded applications will be reviewed to ensure that the applicant has provided a positive statement to give credit to ANA on all materials developed using ANA funds.

• ANA will not accept applications from tribal components that are tribally authorized divisions unless the ANA application includes a tribal resolution.

• ANA will only accept one application per eligible entity. The first application received by ANA shall be the application considered for competition unless ANA is notified in writing which application should be considered for competitive review.

• An applicant can have only one active ANA Environmental Mitigation grant operating at any given time.

• ANA funds short-term projects, not programs. Projects must have definitive goals and objectives that will be achieved by the end of the project period. All projects funded by ANA must be completed, or self-sustaining, or supported by other than ANA funding at the end of the project period.

• ANA reviews the quarterly and annual reports of grantees to determine if the grantee is meeting its goals, objectives and activities identified in the OWP.

• Applications from National and Regional organizations must clearly demonstrate a need for the project, explain how the project originated, and discuss the community-based delivery strategy of the project, identify and describe the intended beneficiaries, describe and relate the actual project benefits to the community and organization, and describe a community-based delivery system. National and Regional organizations must describe their membership, define how the organization operates, and demonstrate Native community and/or Tribal government support for the project. The type of community to be served will determine the type of documentation necessary to support the project.

Definitions

Program specific terms and concepts are defined and should be used as a guide in writing and submitting the proposed project. The funding for allowable projects in this program announcement is based on the following definitions:

*Authorized Representative:* The person or person(s) authorized by Tribal or Organizational resolution to execute documents and other actions required by outside agencies.

*Budget Period:* The interval of time into which the project period is divided for budgetary or funding purposes, and for which a grant is made. A budget period usually lasts one year in a multi-year project period.

*Community:* A group of people residing in the same geographic area that can apply their own cultural and socio-economic values in implementing ANA's program objectives and goals. In discussing the applicant's community, the following information must be provided: (1) A description of the population segment within the community to be served or impacted; (2) the size of the community; (3) geographic description or location, including the boundaries of the community; (4) demographic data on the target population; and (5) the relationship of the community to any larger group or tribe.

*Community Involvement:* How the community participated in the development of the proposed project, how the community will be involved during the project implementation and after the project is completed. Evidence of community involvement can include, but is not limited to, certified petitions, public meeting minutes, surveys, needs assessments, newsletters, special meetings, public Council meetings, public committee meetings, public hearings, and annual meetings with representatives from the community.

*Completed Project:* A project funded by ANA is finished, or self-sustaining, or funded by other than ANA funds, and the results and outcomes are achieved by the end of the project period.

*Consortium—Tribe/Village:* A group of Tribes or Villages that join together either for long-term purposes or for the purpose of an ANA project.

*Construction:* The initial building of a facility.

*Core Administration:* Salaries and other expenses for those functions that support the applicant's organization as a whole or for purposes that are unrelated to the actual management or implementation of the ANA project.

*Equipment:* Tangible, non-expendable personal property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

*Impact Indicators:* Measurement descriptions used to identify the outcomes or results of the project. Outcomes or results must be quantifiable, measurable, verifiable and related to the outcome of the project to determine that the project has achieved its desired objective and can be independently verified through ANA monitoring and evaluation.

*Indian Land:* All lands used by American Indian tribes and Alaska Native Villages.

*In-kind Contributions:* In-kind contributions are property or services which benefit a Federally assisted project or program and which are contributed by the grantee, non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement. Any proposed in-kind match must meet the applicable requirements found in 45 CFR part 74 and part 92.

*Letter of Commitment:* A third party statement to document the intent to provide specific in-kind contributions or cash to support the applicant. The Letter of Commitment must state the dollar amount (if applicable), the length of time the commitment will be honored, and the conditions under which the organization will support the proposed ANA project. If a dollar amount is included, the amount must be based on market and historical rates charged and paid. The resources to be committed may be human, natural, physical, or financial, and may include other Federal and non-Federal resources. Statements about resources which have been committed to support a proposed project made in the application without supporting documentation will be disregarded.

*Minor Renovation or Alteration:* Work required to change the interior arrangements or other physical characteristics of an existing facility, or install equipment so that it may be more effectively used for the project. Minor alteration and renovation may include work referred to as improvements, conversion, rehabilitation, remodeling, or modernization, but is distinguished from construction and major renovations. A minor alteration and or renovation must be incidental and essential for the project (''incidental'' meaning the total alteration and renovation budget must not exceed the lesser of $150,000 or 25 percent of total direct costs approved for the entire project period.).

*Multi-purpose Organization:* A community-based corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization.

*Objective(s):* Specific outcomes or results to be achieved within the proposed project period that are specified in the Objective Work Plan. Completion of objectives must result in specific, measurable outcomes that would benefit the community and directly contribute to the achievement

of the stated community goals. Applicants should relate their proposed project objectives to outcomes that support the community's long-range goals. Objectives are an important component of Criterion III and are the foundation for the Objective Work Plans.

*Objective Work Plan (OWP):* The project plan the applicant will use in meeting the results and benefits expected for the project. The results and benefits are directly related to the Impact Indicators. The OWP provides detailed descriptions of how, when, where, by whom and why activities are proposed for the project and is complemented and condensed in the Objective Work Plan. ANA will require separate OWPs for each year of the project. (Form OMB# 0980–0204 exp. 10/31/06)

*Partnerships:* Agreements between two or more parties that will support the development and implementation of the proposed project. Partnerships include other community-based organizations or associations, Tribes, Federal and State agencies and private or non-profit organizations, which may include faith-based organizations.

*Real Property:* Land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

*Resolution:* Applicants are required to include a current signed and dated Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period. The Resolution should indicate who is authorized to sign documents and negotiate on behalf of the Tribe or organization. The Resolution should indicate that the community was involved in the project planning process, and indicate the specific dollar amount of any non-Federal matching funds (if applicable).

*Sustainable Project:* A sustainable project is an ongoing program or service that can be maintained without additional ANA funds.

*Self-Sufficiency:* The ability to generate resources to meet a community's needs in a sustainable manner. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner that is consistent with its established long-range goals. For a community to be self-sufficient, it must have local access to, control of, and coordination of services and programs that safeguard the health, well-being, and culture of the people that reside and work in the community.

Total Approved Project Costs: The sum of the Federal request and the non-Federal share.

*Priority Area 1*

Environmental Mitigation

*Description:* The purpose of Environmental Mitigation projects is to conduct the research and planning needed to identify environmental impacts to Indian lands caused by DOD activities on or near Indian lands and to plan for remedial investigations to determine and carry out a preliminary assessment of these problems. Mitigation projects should result in adequately detailed documentation of the problems and sources of help in solving them to provide a useful basis for examining alternative mitigation approaches.

Program Areas of Interest are:

- Projects that identify the disruption of subsistence activities due to contamination of the food chain and/or the development of a remediation plan to address subsistence contamination.
- Projects to conduct a comprehensive environmental assessment.
- Projects to conduct site inspections and remedial investigation to identify problems and causes related to DOD activities.
- Projects that identify approaches and methodologies to be undertaken in mitigation activities.
- Projects to develop a mitigation strategy plan to address problem areas identified such as: land use restoration, clean-up processes, and the resources necessary to implement clean-up actions. The plan should include: technical assistance and management expertise required; protocols for environmental assessments; cost estimates of short- and long-term mitigation activities; estimate of impacts of short-term and/or long-term approaches; and, cultural, economic and human health-risk impacts.

## II. Award Information

*Funding Instrument Type:* Grant.

*Anticipated Total Priority Area Funding:* $1,200,000.

*Anticipated Number of Awards:* 8 to 10.

*Ceiling on Amount of Individual Awards Per Budget Period:* 125,000.

*Floor on Amount of Individual Awards Per Budget Period:* $50,000.

*Average Projected Award Amount Per Budget Period:* $100,000.

*Length of Project Periods:* 12-month project and budget period.

Applicants that exceed the ceiling amount will be considered non-responsive and will not be considered for competition.

## III. Eligibility Information

*1. Eligible Applicants*

Native American Tribal governments (Federally recognized)

Native American Tribal organizations (other than Federally recognized Tribal governments)

*Additional Information on Eligibility:*

- Federally Recognized Indian Tribes;
- Incorporated non-Federally recognized and State-recognized Indian Tribes;
- Alaska Native Villages, as defined in the Alaska Native Claims Settlement Act (ANSCA) and/or non-profit Village consortia;
- Non-profit Alaska Native Regional Corporations/Associations with Village-specific projects;
- Non-profit Native organizations in Alaska with Village-specific projects;
- Other Tribal or Village organizations or consortia of Indian Tribes; and
- Tribal governing bodies (Indian Reorganization Act or Traditional Councils) as recognized by the Bureau of Indian Affairs.

Please refer to Section I. Funding Opportunity Description to review general ANA Administrative Policies and Section IV.5 Funding Restrictions.

*2. Cost Sharing/Matching*

No.

*3. Other*

All applicants must have a Dun & Bradstreet number. On June 27, 2003 the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires Federal grant applicants to provide a Dun & Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.
- A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.
- Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Disqualification Factors

Applications that exceed the ceiling amount will be considered non-responsive and will not be considered for funding under this announcement.

Any application that fails to satisfy the deadline requirements referenced in Section IV.3 will be considered non-responsive and will not be considered for funding under this announcement.

Applications that do not include a current signed and dated Resolution (a formal decision voted on by the official governing body) in support of the project for the entire project period will be considered non-responsive and will not be considered for competition.

If the applicant is not a Tribe or Alaska Native Village government, applications that do not include proof that a majority of the governing board of directors is representative of the community to be served will be considered non-responsive and will not be considered for competition.

## IV. Application and Submission Information

### *1. Address To Request Application Package*

Region I: AL, AR, CT, DC, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, W.VA

Native American Management Services, Inc., 6858 Old Dominion Drive, Suite 302, McLean, VA 22101, Phone: 888–221–9686, Fax: 703–821–3680, Rondelle Clay, Project Manager, Email: rclay@namsinc.org, URL: www.anaeastern.org.

Region II: AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, WY.

ACKCO, INC., 1326 N. Central, Suite 208, Phoenix, Arizona 85004, Toll Free: 800–525–2859, Direct: 602–253–9211, Fax 602–253–9135, Theron Wauneka, Project Manager, Email: *theron.wauneka@ackco.com*, URL: *www.anawestern.org*.

Region III: Alaska

Native American Management Services, Inc., 11723 Old Glenn Highway, Suite 201, Eagle River, Alaska 99577, Toll Free 877–770–6230, Direct: 907–694–5711, Fax 907–694–5775, P.J. Bell, Project Manager, E-Mail: *region3@gci.net*, URL: *www.anaalaska.org*.

### *2. Content and Form of Application Submission*

Please refer to Section I. Funding Opportunity Description, to review general ANA Administrative Policies and Section IV.5 Funding Restrictions.

*Application Submission:* Each application should include one signed original and two additional copies of the complete application are required. The original copy must include all required forms, certifications, assurances, and appendices, contain an original signature by an authorized representative, and be submitted unbound. The two additional copies of the complete application must include all required forms, certifications, assurances, and appendices and must also be submitted unbound. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget. A complete application for assistance under this Program Announcements consists of Three Parts. Part One includes the SF 424, other required government forms, and other required documentation. Part Two of the application is the project narrative. This section of the application may not exceed 40 pages, the line-item budgets, budget justifications and the OWP form (OMB Control Number 0980–0204 exp 10/31/06) will be exempt from the page limitation. Part Three of the application is the Appendix. This section of the application may not exceed 20 pages (the exception to this 20-page limit applies only to projects that require, if relevant to the project, a Business Plan or any Third-Party Agreements).

*Electronic Submission:* While ACF does have the capability to receive program announcement applications electronically through Grants.gov, electronic submission of applications will not be available for this particular announcement. There are required application form(s) specific to ANA that have not yet received clearance from Grants.gov. While electronic submission of applications may be available in the next fiscal year for this program, no electronic submission of applications will be accepted for this announcement this year as they would be missing those required ANA forms and be considered incomplete.

*Organization and Preparation of Application:* Due to the intensity and pace of the application review and evaluation process, ANA strongly recommends applicants organize, label, and insert required information in accordance with Part One, Part Two and Part Three as presented in the table below. ANA strongly suggests applicants label the application for ease of reviewing. The application must begin with the information requested in Part One of the chart in the prescribed order. Utilizing this format will insure all information submitted to support an applicant's request for funding is thoroughly reviewed. Submitting information in this format will assist the panel reviewer in locating and evaluating the information. Deviation from this suggested format will reduce the applicant's ability to receive maximum points, which are directly related to ANA's funding review decisions.

*ANA Application Format:* ANA requires all applications to be labeled in compliance with the format provided in the program announcement. This format applies to all applicants submitting applications for funding. All pages submitted (including government forms, certifications and assurances) must be numbered consecutively (for example, the first page of the application is the SF 424 and must be labeled as page one). The paper size shall be 8.5 x 11 inches, line spacing shall be a space and a half (1.5 line spacing), printed only on one side, and have a half-inch margin on all sides of the paper. (**Note:** the 1.5 line spacing does not apply to the Project

Abstract Form, Appendices, the Table of Contents, the Objective Work Plans, and the Budget.) The font size shall be 12-point and the font type shall be Times New Roman.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Standard Forms and Certifications

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Section V Application Review Information. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement.

Applicants seeking financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information—Non-Construction Programs; SF 424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Applicants must sign and return the standard forms with their application.

Applicants must furnish prior to award an executed copy of the Standard Form LLL, Certification Regarding Lobbying, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must also understand they will be held accountable for the smoking prohibition included within Public Law 103–227, Title XII Environmental Tobacco Smoke (also known as the PRO–KIDS Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification form. Complete the standard forms and the associated certifications and assurances based on the instructions on the forms. The forms and certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Those organizations required to provide proof of non-profit status, please refer to Section III.3.

Please see Section V.1, for instructions on preparing the full project description.

*3. Submission Dates and Times*

*Due Date for Applications:* 07/08/2005.

*Explanation of Due Dates:*

The closing date for receipt of applications is referenced above. Applications received after 4:30 p.m. eastern time on the closing date will be classified as late.

*Deadline:* Applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date referenced in Section IV.6. Applicants are responsible for ensuring applications are mailed or submitted electronically well in advance of the application due date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., eastern time, at the address referenced in Section IV.6., between Monday and Friday (excluding Federal holidays).

ACF cannot accommodate transmission of applications by facsimile. Therefore, applications transmitted to ACF by fax will not be accepted regardless of date or time of submission and time of receipt.

Receipt acknowledgement for application packages will not be provided to applicants who submit their package via mail, courier services, or by hand delivery. However, applicants will receive an electronic acknowledgement for applications that are submitted via *http://www.Grants.gov*.

*Late Applications:* Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Any application received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

Applicants using express/overnight mail services should allow two working days prior to the deadline date for receipt of applications. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

*Extension of deadlines:* ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

Checklist

You may use the checklist below as a guide when preparing your application package.

PART ONE.—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Table of Contents | See Section IV | Applicant must include a table of contents that accurately identifies the page number and where the information can be located. Table of Contents does not count against application page limit. | By application due date. |
| SF424 | See Section IV | http://www.acf.hhs.gov/programs/ofs/forms.htm | By application due date. |
| SF424A | See Section IV | http://www.acf.hhs.gov/programs/ofs/forms.htm | By application due date. |
| SF424B | See Section IV | http://www.acf.hhs.gov/programs/ofs/forms.htm | By application due date. |
| Proof of Non-Profit Status. | See Section III | As described in this announcement under Section III ''Additional Information on Eligibility''. | By award date. |

PART ONE.—FEDERAL FORMS AND OTHER REQUIRED DOCUMENTS—Continued

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Resolution | See Section I | As described in this announcement under Section I ''Definitions'' | By application due date. |
| Board of Directors Documentation. | See Section I | As described in this announcement under Section I ''ANA Administrative Policies''. | By application due date. |
| Audit Letter | See Section I | A Certified Public Accountant's ''Independent Auditors' Report on Financial Statement.'' This is usually only a two to three page document. (This requirement applies only to applicants with annual expenditures of $500,000 or more of Federal funds). Applicant must also include only that portion of the audit document titled ''Supplemental Schedule of Expenditures of Federal Awards''. | By application due date. |
| Indirect Cost Agreement. | See Section V | Organizations and Tribes must submit a current indirect cost agreement (if claiming indirect costs) that aligns with the approved ANA project period. The Indirect Cost Agreement must identify the individual components and percentages that make up the indirect cost rate. | By application due date. |
| Certification Regarding Maintenance of Effort. | See Section I | May be found at: *www.acf.hhs.gov/programs/ofs/forms.htm* | By award date. |
| Certification Regarding Lobbying Disclosure of Lobbying Activities—SF LLL. | See Section IV | May be found at: *www.acf.hhs.gov/programs/ofs/forms.htm* | By award date. |
| Environmental Tobacco. Smoke Certification. | See Section IV | May be found at: *www.acf.hhs.gov/programs/ofs/forms.htm* | By award date. |

PART TWO.—APPLICATION REVIEW CRITERIA

| What to submit | Required content | Required form or format<br>ANA application review criteria<br>this section may not exceed 40 pages | When to submit |
|---|---|---|---|
| Criteria One (10 pts) | See Section V | Introduction and Project Summary/Application Format<br>Include the ANA Project Abstract form (OMB # 0980–0204 exp. 10/31/06) | By application due date. |
| Criteria Two (20 pts) | See Section V | Need for Assistance | By application due date. |
| Criteria Three (25 pts). | See Section V | Project Approach<br>Include an Objective Work Plan (OWP) form (OMB # 0980–0204 exp. 10/31/06) for each 12-month budget period.<br>Note: The OWP is not included in the page count for this Part | By application due date. |
| Criteria Four (15 pts) | See Section V | Organizational Capacity | By application due date. |
| Criteria Five (15 pts) | See Section V | Project Impact/Evaluation | By application due date. |
| Criteria Six (15 pts) | See Section V | Budget and Budget Justification/Cost Effectiveness<br>Note: The line item budget and budget justification are not included in the page count for this Part. | By application due date. |

PART THREE.—APPENDIX

| What to submit | Required content | Required form or format<br>this section may not exceed 20 pages | When to submit |
|---|---|---|---|
| Support Documentation. | See Section V | Part Three includes only supplemental information or required support documentation that addresses the applicant's capacity to carry out and fulfill the proposed project. These items include: letters of agreement with cooperating entities, in-kind commitment and support letters, business plans, and a summary of the Third Party Agreements. Do not include books, videotapes, studies or published reports and articles, as they will not be made available to the reviewers or returned to the applicant. | By application due date. |

## Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms,'' ''Survey for Private, Non-Profit Grant Applicants,'' titled, ''Survey on Ensuring Equal Opportunity for Applicants,'' at: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

| What to submit | Required content | Location | When to submit |
|---|---|---|---|
| Survey for Private, Non-Profit Grant Applicants. | See form ..... | Found in *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |

*4. Intergovernmental Review*

This program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' or 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities''.

*5. Funding Restrictions*

ANA does not fund:

• Activities in support of any foreseeable litigation against the United States Government that are unallowable under OMB Circulars A–87 and A–122.

• ANA does not fund duplicative projects or allow any one community or region to receive a disproportionate share of the funds available for award. When making decisions on awards of grants the agency will consider whether the project is essentially identical or similar, in whole or significant part, to projects in the same community previously funded or being funded under the same competition. The agency will also consider whether the grantee is already receiving funding for a SEDS, Language, or Environmental project from ANA. The agency will also take into account in making funding decisions whether a proposed project would require funding on indefinite or recurring basis. This determination will be made after it is determined whether the application meets the requirements for eligibility as set forth in 45 CFR part 1336, subpart C, but before funding decisions are complete [See Section I. Funding Opportunity Description—ANA Administrative Policies regarding short-term projects].

• Projects in which a grantee would provide training and/or technical assistance (T/TA) to other Tribes or Native American organizations that are otherwise eligible to apply for ANA funding. However, ANA will fund T/TA requested by a grantee for its own use or for its members' use (as in the case of a consortium), when the T/TA is necessary to carry out project objectives.

• The purchase of real property or construction because these activities are not authorized by the Native American Programs Act of 1974, as amended.

• Core administration (see Definitions) functions, or other activities, that essentially support only the applicant's ongoing administrative functions and are not related to the proposed project.

• Costs associated with fund-raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under an ANA grant award.

• Projects originated and designed by consultants who provide a major role for themselves and are not members of the applicant organization, Tribe, or Village.

• Activities that are not responsive to Environmental Mitigation program goals.

• Major renovations or alterations are prohibited activities because these activities are not authorized under the Native American Programs Act of 1974 as amended. Minor alterations, as defined in this announcement, may be allowable.

• ANA will not fund activities by a consortium of Tribes that duplicate activities for which a consortium member Tribe also receives funding from ANA.

*6. Other Submission Requirements*

*Submission by Mail:* An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. Please see Section IV.3 for an explanation of due dates. Applications should be mailed to:

Attention: Tim Chappelle, U.S. Department of Health and Human Services, Administration for Children and Services, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

*Hand Delivery:* An applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m. eastern time, Monday through Friday. Applications should be delivered to:

Attention: Tim Chappelle, US Department of Health and Human Services, Office of Grants Management, Division of Discretionary Grants, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024.

## V. Application Review Information

*The Paperwork Reduction Act of 1995 (Pub. L. 104–13)*

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection information.

The project description is approved under OMB control number 0970–0139 which expires 4/30/2007.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Criteria

The following are instructions and guidelines on how to prepare the ''project summary/abstract'' and ''full project description'' sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD).

**Part I—The Project Description Overview**

*Purpose*

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, information responsive to each of the requested evaluation criteria must be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application in a manner that is clear and complete.

*General Instructions*

ACF is particularly interested in specific project descriptions that focus on outcomes and convey strategies for achieving intended performance. Project descriptions are evaluated on the basis of substance and measurable outcomes, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

*Introduction*

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions while being aware of the specified evaluation criteria. The text options give a broad overview of what your project description should include while the evaluation criteria identifies the measures that will be used to evaluate applications.

*Project Summary/Abstract*

Provide a summary of the project description (a page or less) with reference to the funding request.

*Objectives and Need for Assistance*

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

*Results or Benefits Expected*

Identify the results and benefits to be derived.

Applicants are encouraged to describe the qualitative and quantitative data collected, how this data will measure progress towards the stated results or benefits, and how impact indicators under this program area can be monitored, evaluated and verified.

*Approach*

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

*Additional Information*

Following are requests for additional information that need to be included in the application:

*Organizational Profiles*

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. If the applicant is a non-profit organization, submit proof of non-profit status in its application.

The non-profit agency can accomplish this by providing: (a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code; (b) a copy of a currently valid IRS tax exemption certificate, (c) a statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals; (d) a certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status, (e) any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

*Third-Party Agreements*

Provide written and signed agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

*Budget and Budget Justification*

Provide a budget with line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF 424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

*General*

Use the following guidelines for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. ''Federal resources'' refers only to the ACF grant for which you are applying. ''Non Federal resources'' are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-

Federal budget(s), and last column, total budget. The budget justification should be a narrative.

*Personnel*

*Description:* Costs of employee salaries and wages.

*Justification:* Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

*Fringe Benefits*

*Description:* Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

*Justification:* Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

*Travel*

*Description:* Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

*Justification:* For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

*Equipment*

*Description:* ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

*Justification:* For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

*Supplies*

*Description:* Costs of all tangible personal property (other than that included under the Equipment category.)

*Justification:* Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

*Contractual*

*Description:* Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Include third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant.

*Justification:* Demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000).

Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

**Note:** Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

*Other*

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

*Justification:* Provide computations, a narrative description and a justification for each cost under this category.

*Indirect Charges*

*Description:* Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

*Justification:* An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, upon notification that an award will be made, it should immediately develop a tentative indirect cost rate proposal based on its most recently completed fiscal year, in accordance with the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. When an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

*Program Income*

*Description:* The estimated amount of income, if any, expected to be generated from this project.

*Justification:* Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

*Federal*

ANA Evaluation Criteria

The following evaluation criteria appear in weighted descending order. The corresponding score values indicate the relative importance that ACF places on each evaluation criterion; however, applicants need not develop their applications precisely according to the order presented. Application components may be organized such that a reviewer will be able to follow a seamless and logical flow of information (*i.e.*, from a broad overview of the project to more detailed information about how it will be conducted).

In considering how applicants will carry out the responsibilities addressed

under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

*Approach—25 Points*

*Project Approach:* The Project Approach narrative must be clear and concise. The narrative must include a detailed project description with goals and objectives. It must discuss the project strategy and implementation plan over the project period. The applicant must use the Objective Work Plan (OWP) form to identify the project objectives, time frames, proposed activities, results and benefits expected and criteria for evaluating results and benefits, as well as the individuals responsible for completing the objectives and performing the activities. Within the results and benefits section of the OWP the applicant must provide quantitative quarterly projections of the accomplishments to be achieved for each function or activity. In this criterion, the applicant describes how the project description, objective(s), approach and strategy are inter-related. The applicant must also include the names and activities of any organizations, consultants, or other key individuals who will contribute to the project, utilizing the column for Non-Salaried Personnel to list the hours incurred for these activities.

*Objectives and Need for Assistance—20 Points*

*Need for Assistance:* Applicant must show a clear relationship between the proposed project, the Environmental Mitigation strategy, and the community's long-range goals. The need for assistance must clearly identify the physical, economic, social, financial, governmental, and institutional challenges and problem(s) requiring a solution that supports the funding request. Describe the community (see Definitions) to be affected by the project and the community involvement in the project. The applicant must describe the community's long-range goals, the community planning process, and how the project supports the community goals. Provide any existing documentation from preliminary site inspections that identifies problems or causes due to DOD activities. Include documentation that identifies contamination sites or instances of pathway contamination due to proximity to FUDS (Formerly Used Defense Sites). The applicant must describe how the proposed goals, objectives, and activities reflect the Environmental Mitigation needs of the local community. Discuss the geographic location of the project and where the project and grant will be administered. Applicant must describe how the proposed project objectives and activities relate to a locally determined strategy.

The applicant must provide documentation of the community's support for the proposed project. Applications from regional organizations must clearly demonstrate a need for the project, explain how the project originated, identify the intended beneficiaries, describe and relate the actual project benefits to the community and organization, and describe a community-based project delivery strategy. Regional organizations must also identify their membership and specifically discuss how the organization operates and impacts Native American people and communities. Proposed project objectives support the identified need and must be measurable.

*Budget and Budget Justification—15 Points*

*Budget and Budget Justification/Cost Effectiveness:* An applicant must submit an itemized budget detailing the applicant's Federal request. A budget justification narrative to support the line-item budget request must also be included. The budget must include a line-item justification for each Object Class Category listed under Section B: ''Budget Categories'' on the ''Budget Information-Non Construction Programs'' (SF 424A) form. The line-item budget and budget justification narrative must include the necessary details to facilitate the determination of allowable costs and the relevance of these costs to the proposed project. A line-item budget and budget justification narrative should be included for any non-Federal resources committed to support the project (cite source of commitment).

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a copy of its current Indirect Cost Rate Agreement must be included in the application, with all costs broken down by category so ANA reviewers can be certain that no budgeted line items are included in the indirect cost pool. Applicants that do not submit a current Indirect Cost Rate Agreement may not be able to claim the Indirect Cost Rate as an allowable cost, may have the grant award amount reduced, or may experience a delay in grant award.

Applicants are strongly encouraged to include sufficient funds for principal representatives, such as the applicant's chief financial officer or project director to travel to one regional ANA post-award grant training and technical assistance workshop. This expenditure is allowable for new grant recipients and optional for grantees that have had previous ANA grant awards, and will be negotiated upon award.

*Cost Effectiveness:* This section of the criterion reflects ANA's concern with ensuring that the expenditure of its limited resources yields the greatest benefit possible in achieving environmentally sound and healthy Native American communities.

*Results or Benefits Expected—15 Points*

*Project Impact/Evaluation:* In this criterion, the applicant will discuss the ''Impact Indicators'' (see Definitions) and the benefits expected as a result of this project. Impact indicators identify qualitative and quantitative data directly associated with the project. Each applicant must submit five impact indicators to support the applicant's project. For each impact indicator submitted the applicant must discuss the relevance of the impact indicators to the project, the method used to track the indicator and the method used to determine project success. Impact indicators will be reported to ANA in the grantee's quarterly report. The applicant must indicate a target number to be achieved for the impact indicators. The impact indicators may be selected from the suggested list below, or they may be developed for a specific proposed project, or the applicant may submit a combination of both the ANA suggested indicators and project specific indicators. The suggested ANA indicators are: (1) The number of sites assessed (*i.e.*, contamination sites or instances of pathway contamination due to proximity to FUDS); (2) the type of data collected for assessment; (3) number of contaminants identified; (4) types of capacity building systems created and implemented to support environmental mitigation program functions; (5) identification of Tribal or Village government regulations, codes or ordinances that were enacted and adopted; (6) number of infrastructure and administrative systems, including policies and procedures developed and implemented.

The applicant should discuss the project's value and long-term impact to the participants and the community and explain how the information relates to the proposed project goals, objectives and outcomes. Applicants should discuss and present objectives and goals to be achieved and evaluated at the end of each budget period or quarter (if applicable). Project outcomes should

support the identified need and should be measurable and quantifiable.

*Organizational Profiles—15 Points*

*Organizational Capacity:* In this criterion, the application provides information on the management structure of the applicant and the organizational relationships with its cooperating partners. Include an organizational chart that indicates where the proposed project will fit in the existing structure. Demonstrates experience in the program area. Describe the administrative structure, and the applicant's ability to administer and implement a project of the proposed scope and its capacity to fulfill the implementation plan. Applicants are required to affirm that they will credit the Administration for Native Americans, and reference the ANA funded project on any audio, video, and/or printed materials developed in whole or in part with ANA funds.

Applicants must list all current sources of Federal funding, the agency, purpose, amount, and provide the most recent certified signed audit letter for the organization to be included in Part One of the application. If the applicant has audit exceptions, these issues must be discussed in this criterion.

Applicants must provide ''staffing and position data'' to include a proposed staffing pattern for the project where the applicant highlights the new project staff. Positions discussed in this section must match the positions identified in the Objective Work Plan and in the proposed budget. Applicant must provide a paragraph of the duties and skills required for the proposed staff and a paragraph on qualifications and experience of current staff. Full position descriptions are required to be submitted and included in the Appendix. Applicant must explain how the current and future staff will manage the proposed project. Brief biographies of key positions or individuals must be included. (**Note:** Applicants are strongly encouraged to give preference to qualified Native Americans in hiring project staff and in contracting services under an approved ANA grant.)

If applicable, applicant must identify consortium membership. The consortium applicant must be the recipient of the funds. A consortium applicant must be an ''eligible entity'' as defined by this Program Announcement and the ANA regulations. Consortium applicants must include documentation (a resolution adopted pursuant to the organization's established procedures and signed by an authorized representative) from all consortium members supporting the ANA application. An application from a consortium must have goals and objectives that will create positive impacts and outcomes in the communities of its members. ANA will not fund activities by a consortium of Tribes that duplicate activities for which member Tribes also receive funding from ANA. The consortium application must identify the role and responsibility of each participating consortium member and a copy of the consortia legal agreement or Memoranda of Agreement to support the proposed project.

*Introduction—Project Summary/Abstract—10 Points*

*Introduction and Project Summary/Application Format: Introduction and Project Summary:* Using the ANA Project Abstract form (OMB Control Number 0980–0204, exp. 10/31/06), the applicant must include: The name of the applicant, the project title, the Federal amount requested, the amount of matching funds to be provided, length of time required to accomplish the project, the goal of the project, a list of the project objectives (not activities), the estimated number of people to be served and the expected outcomes of the project.

In addition to the Project Abstract form, the applicant will provide an introductory summary narrative that includes: An overview of the project, a description of the community to be served, the location of the identified community, a declarative statement identifying the need for the project, and a brief overview of the project's objectives, strategy and community or organizational impact.

*Application Format:* Applicants are required to submit applications in a standard format, following the ANA requirements on application length, font, numbering, line spacing, etc. Please refer to Section IV Part 2, ''Content and Form of Application Submission'' for detailed formatting instructions.

2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application.

*Initial Screening:* Each application submitted under an ANA program announcement will undergo a pre-review screening to determine: (a) Timeliness—the application was received by 4:30 p.m. eastern time on the closing date; (b) the funding request does not exceed the upper value of the dollar range specified; (c) the applicant has submitted a current signed and dated resolution from the governing body; and, (d) if the applicant is not a Tribe or Alaska Native Village government, the applicant has submitted proof of a majority of the board of directors is representative of the community to be served. An application that does not meet one of the above elements will be determined to be incomplete and excluded from the competitive review process. Applicants with incomplete applications will be notified by mail within 30 business days from the closing date of this program announcement. ANA staff cannot respond to requests for information regarding funding decisions prior to the official applicant notification. After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within 90 days. The notification will include the reviewer comments. Applicants are not ranked based on general financial need. Applicants who are initially excluded from competition because of ineligibility may appeal the agency's decision. Applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817 and 45 CFR part 1336, subpart C).

*Competitive Review Process:* Applications that pass the initial ANA screening process will be analyzed, evaluated and rated by an independent review panel on the basis of the Evaluation Criteria. The evaluation criteria were designed to analyze and assess the quality of a proposed community-based project, the likelihood of its success, and the ability of ANA to monitor and evaluate community impact and long-term results. The evaluation criteria and analysis are closely related and are wholly considered in judging the overall quality of an application. In addition, the evaluation criteria standardizes the review of each application and distributes the number of points more equitably. Applications will be evaluated in accordance with the program announcement criteria and ANA's program areas of interest. A determination will be made as to whether the project is an effective use of Federal funds.

*Application Review Criteria:* Applicants will be reviewed based on the following criteria and points: ANA's criteria categories are Introduction and Project Summary/Application Format; Need for Assistance; Project Approach; Organizational Capacity; Project Impact/Evaluation; and Budget and Budget Narrative/Cost Effectiveness.

*Application Consideration:* The Commissioner's funding decision is based on an analysis of the application by the review panel, panel review scores and recommendations; an analysis by ANA staff; review of previous ANA grantee's past performance; comments from State and Federal agencies having contract and grant performance related information; and other interested parties. The Commissioner makes grant awards consistent with the purpose of the Native American Programs Act (NAPA), all relevant statutory and regulatory requirements, this program announcement, and the availability of appropriated funds. The Commissioner reserves the right to award more, or less, than the funds described or under such circumstances as may be deemed to be in the best interest of the Federal government. Applicants may be required to reduce the scope of projects based on the amount of approved award.

*Federal.* Since ACF will be using non-Federal reviewers in the process, applicants have the option of omitting from the application copies (not the original) of specific salary rates or amounts for individuals specified in the application budget and Social Security numbers, if otherwise required for individuals. The copies may include summary salary information.

*Approved but Unfunded Applications.* Applications that are approved but unfunded may be held over for funding in the next funding cycle, pending the availability of funds, for a period not to exceed one year.

3. Anticipated Announcement and Award Dates

Approximately 120 days after the application due date, the successful applicants will be notified by mail through the issuance of a Financial Assistance Award document which will set forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and sent to the applicant's Authorizing Official. Applications not funded in this competition will be notified in writing.

## VI. Award Administration Information

*1. Award Notices*

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided (if applicable), and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing.

*2. Administrative and National Policy Requirements*

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR part 92 (governmental); 45 CFR part 1336; and, Native American Programs Act of 1974–42 U.S.C. 2991 *et seq.*

Direct Federal grants, subaward funds, or contracts under this Program shall not be used to support inherently religious activities such as religious instruction, worship, or proselytization. Therefore, organizations must take steps to separate, in time or location, their inherently religious activities from the services funded under this Program. Regulations pertaining to the prohibition of Federal funds for inherently religious activities can be found on the HHS Web site at: *http://www.os.dhhs.gov/fbci/waisgate21.pdf.*

*3. Reporting Requirements*

Program Progress Reports: Quarterly

Financial Reports: Quarterly

Special Reporting Requirements: An original and one copy of each performance report and financial status report must be submitted to the Grants Officer. Failure to submit these reports when required will mean the grantee is non-compliant with the terms and conditions of the grant award and subject to administrative action or termination. Program progress reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final program progress report, due 90 days after the project period end date, shall cover grantee performance during the entire project period. All grantees shall use the SF 269 (Long Form) to report the status of funds. Financial Status Reports are submitted 30 days after each quarter (3-month intervals) of the budget period. The final SF 269 report shall be due 90 days after the end of the project period.

## VII. Agency Contacts

*Program Office Contact*

ANA Applicant Help Desk, Aerospace Center, 8th Floor West, 370 L'Enfant Promenade SW., Washington, DC 20047, Phone: 877–922–9262, E-mail: *ana@acf.hhs.gov.*

*Grants Management Office Contact*

Tim Chappelle, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., Aerospace Building 8th Floor West, Washington, DC 20447–0002, Phone: 202–401–2344, E-mail: *tichappelle@acf.hhs.gov.*

## VIII. Other Information

*Notice:* Beginning with FY 2006, the Administration for Children and Families (ACF) will no longer publish grant announcements in the **Federal Register**. Beginning October 1, 2005 applicants will be able to find a synopsis of all ACF grant opportunities and apply electronically for opportunities via: *www.Grants.gov.* Applicants will also be able to find the complete text of all ACF grant announcements on the ACF Web site located at: *http://www.acf.hhs.gov/grants/index.html.*

*Training and Technical Assistance (T&TA):* All potential ANA applicants are eligible to receive T&TA. Prospective applicants should check ANA's Web site for training and technical assistance dates and locations, or contact the ANA Help Desk at 1–877–922–9262.

Please reference *Section IV.3* for details about acknowledgement of received applications.

Dated: May 24, 2005.

**Kimberly Romine,**

*Deputy Commissioner, Administration for Native Americans.*

[FR Doc. 05–11279 Filed 6–6–05; 8:45 am]

BILLING CODE 4184–01–P

---

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004N–0526]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the

Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by July 7, 2005.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

**Guidance for Industry: Fast Track Drug Development Programs—Designation, Development, and Application Review—(OMB Control Number 0910–0389)—Extension**

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506 (21 U.S.C. 356). The section authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrate a potential to address an unmet medical need. Under FDAMA section 112(b), FDA issued guidance to industry on fast track policies and procedures outlined in section 506 of the act. The guidance discusses collections of information that are specified under section 506 of the act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. The guidance describes three general areas involving the following collection of information: (1) Fast track designation requests, (2) premeeting packages, and (3) requests to submit portions of an application. Of these, fast track designation requests and premeeting packages, in support of receiving a fast track program benefit, provide for additional collections of information not covered elsewhere in statute or regulation. Information in support of fast track designation or fast track program benefits that has previously been submitted to the agency, may, in some cases, be incorporated into the request by referring to the information rather than resubmitting it.

Under section 506(a)(1) of the act, an applicant who seeks fast track designation is required to submit a request to the agency showing that the product may do the following: (1) Is intended for a serious or life-threatening condition and (2) the product has the potential to address an unmet medical need. Mostly, the agency expects that information to support a designation request will have been gathered under existing provisions of the act, the PHS Act, or implementing regulations. If such information has already been submitted to the agency, the information may be summarized in the fast track designation request. The guidance recommends that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to address an unmet medical need where an approved therapy exists for the serious or life-threatening condition to be treated. Such information may include clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast track designation have been met.

After the agency makes a fast track designation, a sponsor or applicant may submit a premeeting package, which may include additional information supporting a request to participate in certain fast track programs. The premeeting package serves as background information for the meeting and should support the intended objectives of the meeting. As with the request for fast track designation, the agency expects that most sponsors or applicants will have already gathered such information to meet existing requirements under the act, the PHS Act, or implementing regulations. These may include descriptions of clinical safety and efficacy trials not conducted under an investigational new drug application (IND) (i.e., foreign studies), and information to support a request for accelerated approval. If such information has already been submitted to FDA the information may be summarized in the premeeting package. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Under section 506(c) of the act, a sponsor must submit sufficient clinical data for the agency to determine, after preliminary evaluation, that a fast track product may be effective. Section 506(c) also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance does not provide for any new collection of information regarding the submission of portions of an application that is not required under section 506(c) of the act or any other provision of the act. All forms referred to in the guidance have a current OMB approval: FDA Forms 1571 (OMB control number 0910–0014, expires January 31, 2006); 356h (OMB control number 0910–0338, expires August 31, 2005); and 3397 (OMB control number 0910–0297, expires December 31, 2006).

Respondents to this information collection are sponsors and applicants who seek fast track designation under section 506 of the act. The agency estimates the total annual number of respondents submitting requests for fast track designation to the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) will be approximately 56. To obtain this estimate, FDA averaged the number of requests for fast track designation received by CBER and CDER in the 3-year period from 2001 to 2003. For these 3 years, CBER and CDER together received a yearly average of 67 requests from 56 respondents. The rate of submissions is not expected to change significantly in the next few years. FDA estimates that the number of hours needed to prepare a request for fast track designation may range between 40 and 80 hours per request, depending on the complexity of each request, with an average of 60 hours per request, as indicated in table 1 of this document.

Not all requests for fast track designation may meet the statutory standard. Of the average 67 requests made per year, the agency granted 47 requests for fast track designation. For each of the 47 granted requests, FDA estimates that a premeeting package was submitted to the agency. FDA estimates that the preparation hours may generally range between 80 and 120 hours, with an average of 100 hours per package, as indicated in table 1 of this document.

In the **Federal Register** of December 13, 2004 (69 FR 72202), FDA published a 60-day notice requesting public comment on the information collection

provisions. One comment was received but was not related to the information collection.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Reporting Activity | Number of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Respondent | Total Hours |
|---|---|---|---|---|---|
| Designation Request | 56 | 1.20 | 67 | 60 | 4,020 |
| Premeeting Packages | 47 | 1.00 | 47 | 100 | 4,700 |
| Total | | | | | 8,720 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: May 31, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–11206 Filed 6–6–05; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004D–0251]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Requests for Inspection by an Accredited Person Under the Inspection by Accredited Persons Program

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by July 7, 2005.

**ADDRESSES:** The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Requests for Inspection by an Accredited Person under the Inspection by Accredited Persons Program

Section 201 of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Public Law 107–250) amends section 704 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 374) by adding paragraph (g). This amendment authorizes FDA to establish a voluntary third party inspection program applicable to manufacturers of class II or class III medical devices who meet certain eligibility criteria. Under this new Inspection by Accredited Persons Program (AP program), such manufacturers may elect to have third parties that have been accredited by FDA (accredited person or AP) conduct some of their inspections instead of FDA.

The AP program applies to manufacturers who currently market their medical devices in the United States and who also market or plan to market their devices in foreign countries. Such manufacturers may need current inspections of their establishments to operate in global commerce.

The applicant must submit the following information in support of a request for approval to use an AP:

- Information that shows that the applicant ''manufactures, prepares, propagates, compounds, or processes'' class II or class III medical devices.
- Information that shows that the applicant markets at least one of the devices in the United States.
- Information that shows that the applicant markets or intends to market at least one of the devices in one or more foreign countries and one or both of the following two conditions are met as follows:

1. One of the foreign countries certifies, accredits, or otherwise recognizes the AP the applicant has selected as a person authorized to conduct inspections of device establishments; or

2. A statement that the law of a country where the applicant markets or intends to market the device recognizes an inspection by the FDA or by the AP.

- Information that shows that the applicant's most recent inspection performed by FDA, or by an AP under this program, was classified by FDA as either ''No Action Indicated (NAI)'' or ''Voluntary Action Indicated (VAI);'' and
- A notice to FDA requesting clearance (approval) to use an AP, and identifying the AP the applicant selected.

In the **Federal Register** of June 3, 2004 (69 FR 31397 at 31398), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received one comment concerning the potential burden associated with the third party inspectional program application process if related cumulative partial inspections over a 2-year period were not recognized by FDA as a single comprehensive inspection. FDA clarified the guidance to state that manufacturers may rely on a single comprehensive inspection or a serious of partial inspections that would cumulatively constitute a complete inspection for the purposes of meeting FDA's biennial inspection requirement. Reapplication to the FDA AP inspection program will not be necessary to conduct each related partial inspection that cumulatively constitutes a single comprehensive inspection of an establishment.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|
| 100 | 1 | 100 | 15 | 1,500 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

There are approximately 8,000 foreign and 10,000 domestic manufacturers of medical devices. Approximately 5,000 of these firms only manufacture class I devices and are, therefore, not eligible for the AP program. In addition, 40 percent of the domestic firms do not export devices and therefore are not eligible for the AP program. Also 10 to 15 percent of the firms are not eligible due to the results of their previous inspection. FDA estimates that there are 4,000 domestic manufacturers and 4,000 foreign manufacturers that are eligible for inclusion in the AP program. Based on informal communications with industry, FDA estimates that approximately 100 of these manufacturers may apply to use an AP in any given year.

Dated: May 31, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–11264 Filed 6–6–05; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0209]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Food Contact Substances Notification System

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information associated with the Food Contact Substances Notification System.

**DATES:** Submit written or electronic comments on the collection of information by August 8, 2005.

**ADDRESSES:** Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (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. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Food Contact Substances Notification System—21 CFR 170.101 and 170.106—(OMB Control Number 0910–0495)—Extension**

Section 409(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(h)) establishes a premarket notification process for food contact substances. Section 409(h)(6) of the act defines a ''food contact substance'' as ''any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.'' Section 409(h)(3) of the act requires that the notification process be used for authorizing the marketing of food contact substances except where FDA determines that the submission and premarket review of a food additive petition (FAP) under section 409(b) of the act is necessary to provide adequate assurance of safety or where FDA and the manufacturer or supplier agree that an FAP should be submitted. Section 409(h)(1) of the act requires that a notification include information on the identity and the intended use of the food contact substance and the basis for the manufacturer's or supplier's determination that the food contact substance is safe under the intended conditions of use.

Sections 170.101 and 170.106 of FDA's regulations (21 CFR 170.101 and 170.106) require that a food contact notification (FCN) include FDA Form 3480 entitled ''Notification for New Use of a Food Contact Substance'' and that a notification for a food contact substance formulation include FDA Form 3479 entitled ''Notification for a Food Contact Substance Formulation.'' These forms will serve to summarize pertinent information in the notification. FDA believes that these forms will facilitate both preparation and review of notifications because the forms will serve to organize information necessary to support the safety of the use of the food contact substance. The burden of filling out the appropriate form has been included in the burden estimate for the notification.

*Description of Respondents*: Manufacturers of food contact substances.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Form | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|---|
| 170.106[2] (Category A) | 5 | FDA 3479 | 1 | 5 | 2 | 10 |
| 170.101 [3,7] (Category B) | 5 | FDA 3480 | 1 | 5 | 25 | 125 |
| 170.101 [4,7] (Category C) | 5 | FDA 3480 | 2 | 10 | 120 | 1,200 |
| 170.101 [5,7] (Category D) | 33 | FDA 3480 | 2 | 66 | 150 | 9,900 |
| 170.101 [6,7] (Category E) | 30 | FDA 3480 | 1 | 30 | 150 | 4,500 |
| Total | | | | | | 15,735 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Notifications for food contact substance formulations and food contact articles. These notifications require the submission of FDA Form 3479 ("Notification for a Food Contact Substance Formulation") only.
[3] Duplicate notifications for uses of food contact substances.
[4] Notifications for uses that are the subject of exemptions under 21 CFR 170.39 and very simple food additive petitions.
[5] Notifications for uses that are the subject of moderately complex food additive petitions.
[6] Notifications for uses that are the subject of very complex food additive petitions.
[7] These notifications require the submission of FDA Form 3480.

These estimates are based on FDA's experience with the food contact substances notification system.

- Based on input from industry sources, FDA estimates that the agency will receive approximately five notifications annually for food contact substance formulations.
- FDA also has included five expected duplicate submissions in the second row of table 1 of this document. FDA expects that the burden for preparing these notifications primarily will consist of the manufacturer or supplier filling out FDA Form 3480, verifying that a previous notification is effective, and preparing necessary documentation.
- Based on the submissions received, FDA identified three other tiers of FCNs that represent escalating levels of burden required to collect information (the third, fourth and fifth rows of table 1 of this document).
- FDA estimated the median number of hours necessary for collecting information for each type of notification within each of the three tiers based on input from industry sources.

Dated: May 31, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–11265 Filed 6–6–05; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005N–0003]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Prescription Drug Product Labeling; Medication Guide Requirements

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by July 7, 2005.

**ADDRESSES:** OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance. This notice solicits comments on regulations requiring the distribution of patient labeling, called Medication Guides, for certain products that pose a serious and significant public health concern requiring distribution of FDA-approved patient medication information.

**Prescription Drug Product Labeling; Medication Guide Requirements—(OMB Control Number 0910–0393—Extension**

FDA regulations require the distribution of patient labeling, called Medication Guides, for certain prescription human drug and biological products used primarily on an outpatient basis that pose a serious and significant public health concern requiring distribution of FDA-approved patient medication information. These Medication Guides inform patients about the most important information they should know about these products in order to use them safely and effectively. Included is information such as the drug's approved uses, contraindications, adverse drug reactions, and cautions for specific populations, with a focus on why the particular product requires a Medication Guide. These regulations are intended to improve the public health by providing information necessary for patients to use

certain medication safely and effectively.

The regulations contain the following reporting requirements that are subject to the PRA, and the estimates for the burden hours imposed by the following regulations are listed in table 1 of this document:

21 CFR 208.20—Applicants must submit draft Medication Guides for FDA approval according to the prescribed content and format.

21 CFR 314.70(b)(3)(ii) and 21 CFR 601.12(f)—Application holders must submit changes to Medication Guides to FDA for prior approval as supplements to their applications.

21 CFR 208.24(e)—Each authorized dispenser of a prescription drug product for which a Medication Guide is required, when dispensing the product to a patient or to a patient's agent, must provide a Medication Guide directly to each patient unless an exemption applies under 21 CFR 208.26.

21 CFR 208.26(a)—Requests may be submitted for exemption or deferral from particular Medication Guide content or format requirements.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section | No. of Respondents | Annual Frequency Per Response | Total Annual Responses | Hours Per Response | Total Hours |
|---|---|---|---|---|---|
| 208.20 | 8 | 1 | 8 | 320 | 2,560 |
| 314.70(b)(3)(ii) and 601.12(f) | 2 | 1 | 2 | 72 | 144 |
| 208.24(e) | 55,000 | 20 | 1,100,000 | .0014 | 1,540 |
| 208.26(a) | 1 | 1 | 1 | 4 | 4 |
| Total | | | | | 4,248 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the **Federal Register** of January 12, 2005 (70 FR 2174), FDA requested comments for 60 days on the information collection. No comments were received on this information collection.

FDA estimates that, on average, approximately 8 products annually would be classified as serious and significant and thus require Medication Guides. FDA's regulatory impact analysis estimated that applicants would require approximately 2 months of full-time effort (320 hours) to develop (i.e., develop for submission to FDA for review and approval) each Medication Guide. Based on an average annual professional labor cost of $70,000, the cost of developing each Medication Guide would be approximately $11,666 for a total cost of $93,328.

In addition, FDA estimates that the sponsor of one of the new or supplementary applications will request an exemption from at least some of the Medication Guide format or content requirements. FDA estimates that this will entail approximately 4 hours of work, or about $200.

In addition, FDA estimates that two existing Medication Guides annually might require minor change under 21 CFR 314.70(b)(3)(ii) or 21 CFR 601.12(f), necessitating 3 days (72 hours) of full-time effort per Medication Guide, for a total of 144 hours or $5,250.

Under section 204.24(e) authorized dispensers are required to provide a Medication Guide directly to the patient (or the patient's agent) upon dispensing a product for which a Medication Guide is required. Thus, the final rule imposes a third-party reporting burden on authorized dispensers, who, for the most part, will be pharmacists. FDA estimates that, on average, it would take a pharmacist approximately 5 seconds (.0014 hour) to provide a Medication Guide to a patient.

Dated: May 31, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–11267 Filed 6–6–05; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005D–0202]**

### Draft Guidance for Industry on Bar Code Label Requirements—Questions and Answers; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Bar Code Label Requirements—Questions and Answers.'' FDA regulations require certain human drug and biological products to have on their labels a linear bar code that identifies the drug's National Drug Code (NDC) number. We have received several inquiries about how the requirements apply to specific products or circumstances. The purpose of the draft guidance is to respond to the questions.

**DATES:** Submit written or electronic comments on the draft guidance by August 8, 2005. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:**

*For products regulated by the Center for Drug Evaluation and Research*: Michael D. Jones, Center for Drug Evaluation and Research (HFD–5), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

*For products regulated by the Center for Biologics Evaluation and Research*: Elizabeth Callaghan, Center for Biologics Evaluation and Research (HFM–370), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3424.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Bar Code Label Requirements—Questions and Answers.'' Under FDA regulations, certain human drug and biological product labels must have a bar code containing the drug's NDC number (69 FR 9120, February 26, 2004). Bar codes will help reduce the number of medication errors in hospitals and other health care settings by allowing health care professionals to use bar code scanning equipment to verify that the right drug (in the right dose and right route of administration) is being given to the right patient at the right time. This draft guidance is intended to explain certain bar code labeling requirements and their application to human drug and biological products.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on certain questions and answers on bar code labeling requirements. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/cber/guidelines.htm*, or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: May 27, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–11266 Filed 6–6–05; 8:45 am]

**BILLING CODE 4160–01–S**

---

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## National Institutes of Health

## Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

### Farnesyltransferase Inhibitors for Treatment of Laminopathies, Cellular Aging and Atherosclerosis

Francis Collins (NHGRI) *et al.*

U.S. Provisional Application No. 60/648,307 filed 28 Jan 2005 (DHHS Reference No. E–055–2005/0–US–01).

*Licensing Contact:* Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov*.

Hutchinson-Gilford Progeria Syndrome (HGPS) is a very rare progressive childhood disorder characterized by premature aging (progeria). Recently, the gene responsible for HGPS was identified (Eriksson M, Brown WT, Gordon LB, Glynn MW, Singer J, Scott L, *et al.* Recurrent de novo point mutations in lamin A cause Hutchinson-Gilford progeria syndrome. Nature 2003; 423(6937): 293–8), and HGPS joined a group of syndromes—the laminopathies—all of which are caused by various mutations in the lamin A/C gene (LMNA). Lamin A is one of the family of proteins that is modified post-translationally by the addition of a farnesyl group. In progeria, the abnormal protein (progerin) can still be farnesylated, however, a subsequent cleavage is blocked.

The present invention describes a possible treatment of laminopathies, cellular aging and aging-related conditions such as HGPS through the use of farnesyltransferase inhibitors (FTIs) and other related compounds. This treatment should lead to a decrease in the accumulation of abnormal proteins such as progerin in case of HGPS patients and therefore reduce or eliminate many of the devastating clinical symptoms of the underlying biological defect of nuclear membrane instability (Goldman R, Shumaker DK, Erdos MR, Eriksson M, Goldman AE, Gordon LB, Gruenbaum Y, Khuon S, Mendez M, Varga R, Collins FS. Accumulation of mutant lamin A causes progressive changes in nuclear architecture in Hutchinson-Gilford progeria syndrome. Proc Natl Acad Sci U S A 2004; 8963–8968.).

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

### Cell Culture System for Efficient Expression of Self-Replicating Norwalk Virus

Kyeong-Ok Chang, Stanislav Sosnovtsev, Gael M. Belliot, Kim Y. Green (NIAID).

U.S. Provisional Application filed 08 Apr 2005 (DHHS Reference No. E–043–2005/0–US–01).

*Licensing Contact:* Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*.

Available for licensing and commercial development is a cell culture system for the efficient expression of self-replicating Norwalk virus (NV) RNA (NV replicons). This invention provides compositions and methods for preparing a cell-based system for molecular studies of NV replication and the development of antiviral drugs. A method related to effectively clearing NV replicons, by subjecting cells infected with NV replicon to IFN-alpha is included that demonstrates the applicability of this invention to drug development. A method of effectively clearing NV replicons, by subjecting cells expressing the NV replicon to nucleotide analogues is also provided. These methods provide molecular tools for the identification and development of treatments for NV and may also extend to other members

of the Calicivirus(es) (*e.g., Norovirus, Sapovirus, Lagovirus and Vesivirus*).

**Therapeutic Delivery of Nitric Oxide From Novel Diazeniumdiolated Derivatives of Acrylonitrile-based Polymers**

Joseph Hrabie, Michael Citro, Frank DeRosa, and Larry Keefer (NCI).

U.S. Provisional Application No. 60/613,257 filed 27 Sep 2004 (DHHS Reference No. E–188–2004/0–US–01).

*Licensing Contact:* Norbert Pontzer; 301/435–5502; *pontzern@mail.nih.gov*.

Nucleophile/nitric oxide adduct ions (materials containing the X–$N_2O_2$– functional group; known as diazeniumdiolates or NONOates) spontaneously dissociate at physiological pH to release nitric oxide (NO) with reproducible half-lives ranging from 2 seconds to 20 hours. The bulk of the known and patented NIH compositions and methods using diazeniumdiolates are derived from amine nucleophiles (*i.e.*, where X–is $R^1R^2N$–). These inventors more recently developed simple and efficient chemical methods to produce diazeniumdiolates by bonding the $N_2O_2$–functional group directly to carbon atoms. Using these methods, the NIH inventors have now produced and tested polymers in which the NO releasing group is attached directly to the carbon backbone of polyacrylonitrile containing polymers.

Available for licensing are compounds, compositions, medical devices, and methods of treatment using acrylonitrile-based polymers that release NO for a week or longer. Polyacrylonitrile itself, co-polymers, admixtures, and products such as cloth and hollow fiber hemofilters have been treated and shown to release NO over time. These polyacrylonitrile-based products could be useful in conjunction with medical devices where the many therapeutic actions of NO would be beneficial. Treatments using stents, extracorporeal blood tubing, shunts, wound dressings and many other devices could be greatly improved by NO actions including but not limited to prevention of clotting, promotion of tissue vascularization, and reduction of excessive tissue proliferation.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

**A New Antiviral Pathway that is Responsible for Viral Clearance: Modulation of ADAR1 Activities Enhance Antiviral Therapies and Virus Infection of Tissue Culture Systems**

Deborah R. Taylor *et al.* (FDA).

U.S. Provisional Application No. 60/605,238 filed 27 Aug 2004 (DHHS Reference No. E–121–2004/0–US–01).

*Licensing Contact:* Robert M. Joynes; 301/594–6565; *joynesr@mail.nih.gov.*

This technology relates to the finding that the antiviral activity of interferon (IFN) is mediated by the activation of an enzyme RNA adenosine deaminase (ADAR1). This enzyme acts by deaminating adenosine residues in dsRNA molecules of the virus into inosine residues. This, in turn, may lead to mutations, genomic instability and ultimately to complete degradation and elimination of the virus. The subject patent application focuses on Hepatitis C virus (HCV), but may be broadly applied to the other viruses.

Based on the above-described finding, the technology offers two important utilities in the medical field:

1. *Antiviral therapeutics:* Because ADAR is so potent as an inhibitor of the growth of HCV, an agonist of this pathway or specifically of ADAR should enhance the clearance of the virus from the cells. Methods to identify such ADAR agonists are described in the subject patent applications.

2. *HCV cell line for drug and vaccine research:* The finding described in the subject patent application may lead to an efficient cell line for growing HCV. Currently, there is not a good system to grow this virus. The addition of ADAR inhibitors (such as RNAi or chemicals that target the catalytic domain of ADAR) to the system will result in a system that can efficiently grow the virus. Such a cell line is important for vaccine development against HCV as well as the development of anti-viral therapeutics.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

**Compositions Comprising T Cell Receptors and Methods of Use Thereof**

Richard Morgan (NCI) and Steven Rosenberg (NCI).

PCT Application No. PCT/US2004/029608 filed 13 Sep 2004 (DHHS Reference No. E–106–2004/0–PCT–01).

*Licensing Contact:* Michelle A. Booden; 301/451–7337; *boodenm@mail.nih.gov.*

Historically, adoptive immunotherapy has shown promise in treating cancer. Traditionally, these adoptive techniques developed to date have relied on isolating and expanding T-cells reactive to a specific tumor associated antigen. However, the approach has been limited by number of isolatable T cells specific to a tumor-associated antigen in a cancer patient's immune system and a very time consuming procedure to isolate and expand the appropriate T-cells.

This invention describes the composition and use of nucleic acid sequences that encode polypeptides capable of forming a T cell receptor (TCR) in a genetically engineered cell. Specifically, these nucleic acid sequences will encode TCR's specific to tumor associated antigens (TAA), gp100, NY–ESO–1, and MART–1. T Cells engineered with these tumor associated antigen specific TCRs show specific immune responses against TAA expressing cancer cells. This observation has a profound effect on the potential efficiency of new adoptive therapies targeted towards cancer.

An adoptive therapy method has been developed using the TAA specific TCR nucleic acids to engineer isolated, non-specific T-cells. This method could eliminate the need to isolate and expand T-cells that may or may not be present in a cancer patient. Clinical trials are currently underway to prove the efficacy of this new adoptive therapy in malignant melanoma.

Details of this invention are published in:

1. Morgan RA, Dudley ME, Yu YY, Zheng Z, Robbins PF, Theoret MR, Wunderlich JR, Hughes MS, Restifo NP, Rosenberg SA. High efficiency TCR gene transfer into primary human lymphocytes affords avid recognition of melanoma tumor antigen glycoprotein 100 and does not alter the recognition of autologous melanoma antigens. J Immunol. 2003 Sep 15;171(6):3287–95.

2. Zhao Y, Zheng Z, Robbins PF, Khong HT, Rosenberg SA, Morgan RA. Primary human lymphocytes transduced with NY–ESO–1 antigen-specific TCR genes recognize and kill diverse human tumor cell lines. J Immunol. 2005 Apr 1;174(7):4415–23.

3. Hughes MS, Yu YY, Dudley ME, Zheng Z, Robbins PF, Li Y, Wunderlich J, Hawley RG, Moayeri M, Rosenberg SA, Morgan RA. Transfer of a TCR Gene Derived from a Patient with a Marked Antitumor Response Conveys Highly Active T-Cell Effector Functions. Hum Gene Ther. 2005 Apr;16(4):457–72.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

**Retrovirus-Like Particles and Retroviral Vaccines**

David E. Ott (NCI).

PCT Application filed 27 Oct 2003 (DHHS Reference No. E–236–2003/0–PCT–01).

*Licensing Contact:* Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

This technology describes retrovirus-like particles and their production from retroviral constructs in which the gene encoding all but seven amino acids of the nucleocapsid (NC) protein was deleted. This deletion functionally eliminates packaging of the genomic RNA, thus resulting in non-infectious retrovirus-like particles. These particles can be used in vaccines or immunogenic compositions. Specific examples using HIV–1 constructs are given. Furthermore, efficient formation of these particles requires inhibition of the protease enzymatic activity, either by mutation to the protease gene in the construct or by protease inhibitor thereby ensuring the production of non-infectious retrovirus-like particles. This technology is further described in Ott *et al.*, Journal of Virology, 2003, 77(5), 5547.

Dated: May 26, 2005.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer,National Institutes of Health.*

[FR Doc. 05–11221 Filed 6–6–05; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in secions 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Advisory Council.

*Date:* June 16, 2005.

*Open:* 8:30 a.m. to 1 p.m.

*Agenda:* Discussion of program policies and issues.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

*Closed:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892. 301/435–0260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page *http://www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: May 31, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11218 Filed 6–6–05; 8:45 am]

BILLING CODE 4410–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological Sciences and Disorders C, June 14, 2005, 8 a.m. to June 15, 2005, 5 p.m. Wyndham Washington, DC 1400 M Street, NW., Washington, DC 20005 which was published in the **Federal Register** on April 27, 2005, 70 FR Doc: 05–8413.

The meeting will be held for one day on June 14, 2005 from 8 a.m. to 5 p.m. The meeting is closed to the public.

Dated: May 27, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11222 Filed 6–6–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of persoanl privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–84, Review K22.

*Date:* June 30, 2005.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Soheyla Saadi, PhD, Scientific Review Administrator, Intern, Scientific Review Branch, 45 Center Dr. Rm 4AN32A, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4805, *saadisoh@nidcr.nih.gov*.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–79, Review R13s.

*Date:* July 6, 2005.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mary Kelly, Scientific Review Specialist, National Institute of

Dental & Craniofacial Res., 45 Center Drive, Natcher Bldg., RM 4AN38J, Bethesda, MD 20892–6402, (301) 594–4809,, mary_kelly@nih.gov.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–74, Review R03.

*Date:* July 8, 2005.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Soheyla Saadi, PhD, Scientific Review Administrator, Intern, Scientific Review Branch, 45 Center Dr. Rm 4AN32A, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4805, *saadisoh@nidcr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93–121, Oral Diseases and Disorders Research, National Institutes of Health, HHS.)

Dated: May 27, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11226 Filed 6–6–05; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NIAID, Division of Intramural Reserach, Board of Scientific Counselors.

*Date:* June 6–8, 2005.

*Time:* 8 a.m. to 11 a.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 50, 50 Center Drive, Bethesda, MD 20892.

*Contact Person:* Thomas J. Kindt, PhD, Director, Division of Intramural Research, National Institute of Allergy and Infectious Diseases, Building 10, Room 4A31, Bethesda, MD 20892, (301) 496–3006, *tk9c@nih.gov.*

This meeting is being published less than 15 days before the meeting date because of a clerical error. In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research, 93.856, Microbiology and Infectious Diseases Research, National Institutes of Healath, HHS).

Dated: May 27, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11227 Filed 6–6–05; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Disease Special Emphasis Panel Review of an Unsolicited Protozoa P01 application.

*Date:* June 23, 2005.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3123, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Alec Ritchie, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NID/DHHS, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–1614, *aritchie@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel Lymphocyte Survival and Death.

*Date:* June 29, 2005.

*Time:* 1 p.m. to 4 p.m..

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

*Contact Person:* Paul A. Amstad, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 402–7098, *pamstad@niaid.nih.gov.*

Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 27, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11228 Filed 6–6–05; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the first meeting of the NIH Public Access Working Group under the National Library of Medicine's (NLM) Board of Regents.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The mission of the NIH Public Access Working Group is to advise the NLM Board of Regents on implementation of the new NIH Public Access Policy. This policy responds to strong Congressional interest in improving the public's access to the published results of NIH-funded research. Under the policy, NIH-

supported investigators are encouraged to submit manuscripts electronically to the National Library of Medicine's PubMed Central (PMC). The PMC is the NIH digital repository of full-text, peer-reviewed biomedical, behavioral, and clinical research journals. The policy included the establishment of this working group with representation from a broard range of interested stakeholders. The Working Group will: (1) Review statistical evidence on the impact of the policy, e.g., number of manuscripts submitted, summary data on embargo periods, connections to other NIH information resources, level of use, etc.; (2) provide suggestions for improving the implementation of the manuscript submission system and procedures; (3) assess the extent to which the policy is achieving its stated goals; and (4) suggest any changes to the policy that might further these goals.

*Name of Committee:* NIH Public Access Working Group.

*Date:* July 11, 2005.

*Time:* 10 a.m. to 3 p.m.

*Agenda:* NIH Public Access Policy Research and Discussion.

*Place:* National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

*Contact Person:* Donald A.B. Lindberg, M.D., Director, National Library of Medicine, National Institutes of Health, Building 38, Room 2E17, Bethesda, MD 20894, 301–496–6221.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Dated: May 27, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11225 Filed 6–6–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 6, 2005, 12 p.m. to June 6, 2005, 1 p.m., Lathan Hotel, 3000 M Street, NW., Washington, DC 20007 which was published in the **Federal Register** on May 6, 2005, 70 FR 24099–24102.

The meeting will be held June 6, 2005, 12 p.m. to June 7, 2005, 12 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 31, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11219 Filed 6–6–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, June 24, 2005, 9 a.m. to June 24, 4 p.m., Marriott Bethesda North Conference Center, 5701 Marinelli Rd, Bethesda, MD 20852 which was published in the **Federal Register** on May 26, 2005, 70 FR 30475–30477.

The meeting is cancelled due to the reassignment of the applications.

Dated: May 31, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11220 Filed 6–6–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National institutes of Health

### Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Biomaterials and Biointerfaces Study Section, June 27, 2005, 8 a.m. to June 28, 2005, 5 p.m., Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD, 20814 which was published in the **Federal Register** on May 26, 2005, 70 FR 30475–30477.

The meeting is cancelled due to a lack of quorum.

Dated: May 27, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11223 Filed 6–6–05; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Head and Neck Cancer Genetics.

*Date:* June 23, 2005.

*Time:* 4 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Joanna M. Watson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–G, MSC 7804, Bethesda, MD 20892, 301–435–1048, *watsonjo@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Special Review in Cognition and Perception.

*Date:* June 24, 2005.

*Time:* 8:30 a.m. to 9:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Radisson Barcelo, 2121 P St, NW., Washington, DC 20037.

*Contact Person:* Dana Jeffrey Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7848, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Mating in Mosquitoes.

*Date:* June 24, 2005.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, (301) 435–1149, *elzaataf@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: May 27, 2005.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 05–11224 Filed 6–6–05; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

**[Docket No. TSA–2005–20118]**

### Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of One Current Public Collection of Information; Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC, Metropolitan Area Flight Restricted Zone

**AGENCY:** Transportation Security Administration (TSA), DHS.

**ACTION:** Notice.

**SUMMARY:** TSA invites public comment on one currently approved information collection requirement abstracted below that will be submitted to OMB for renewal in compliance with the Paperwork Reduction Act.

**DATES:** Send your comments by August 8, 2005.

**ADDRESSES:** Comments may be mailed or delivered to Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wawer at the above address or by telephone (571) 227–1995 or facsimile (571) 227–2594.

**SUPPLEMENTARY INFORMATION:**

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission to renew clearance of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*1652–0029; Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC, Metropolitan Area Flight Restricted Zone (Maryland Three Airports (MD–3)) 49 CFR part 1562.* The Federal Aviation Administration initially required this collection under Special Federal Aviation Regulation (SFAR) 94, for which OMB granted approval under control number 2120–0677. The responsibility for the collection was transferred to TSA and assigned OMB control number 1652–0029 with the implementation of an interim final rule (IFR) published on February 10, 2005 (70 FR 7150). This IFR codified and transferred responsibility for ground security requirements and procedures at three Maryland airports that are located within the Washington, DC, Metropolitan Area Flight Restricted Zone, and for individuals operating aircraft to and from these airports, from FAA to TSA. These three airports (Maryland Three Airports) are College Park Airport (CGS), Potomac Airfield (VKX), and Washington Executive/Hyde Field (W32). The information collected is used to determine compliance with 49 CFR part 1562.

Part 1562 allows an individual who is approved by TSA to operate an aircraft to or from one of the Maryland Three Airports. In order to be approved an individual is required to successfully complete a security threat assessment. As part of this threat assessment, an individual is required to undergo a criminal history records check. An individual (pilot or airport security coordinator) also is required to undergo a terrorist threat analysis. This may include a check of terrorist watch lists and other databases to determine whether an applicant poses a security threat or to confirm an applicant's identity. An individual will not receive TSA approval under this analysis if TSA determines or suspects the individual of being a threat to national or transportation security, or of posing a threat of terrorism. The following information must be provided to TSA by prospective pilots and airport security coordinators: full name, social security number, date of birth, address, phone number; and fingerprints.

The current estimated annual reporting burden is 8,299 hours.

Issued in Arlington, Virginia, on June 1, 2005.

**Lisa S. Dean,**

*Privacy Officer.*

[FR Doc. 05–11263 Filed 6–6–05; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4971-N–29]**

### Notice of Submission of Proposed Information Collection to OMB; Land Survey Report for Insured Multifamily Projects

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

To secure a marketable title and title insurance for their property, multifamily projects submit a land survey and related information. HUD is requesting an extension of the currently approved collection.

**DATES:** *Comments Due Date:* July 7, 2005.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0010) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer, or downloaded from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the

Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Land Survey Report for Insured Multifamily Projects.

*OMB Approval Number:* 2502–0010.

*Form Numbers:* HUD–2457.

*Description of the Need for the Information and Its Proposed Use:* To secure a marketable title and title insurance for their property, multifamily projects submit a land survey and related information,

*Frequency of Submission:* Twice: during application period and closing period.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting burden | 1,300 | 2 | | 0.5 | | 1300 |

*Total Estimated Burden Hours:* 1,300.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 31, 2005.

**Wayne Eddins,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer*.

[FR Doc. E5–2878 Filed 6–6–05; 8:45 am]

**BILLING CODE 4210–27–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK964–1410–HY–P, F–14861–B, BSA–2]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, DOI.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Golovin Native Corporation, for the lands in T. 13 S., R. 20 W., Tps. 11 and 13 S., R. 21 W., and T. 12 S., R. 22 W., Kateel River Meridian, located in the vicinity of Golovin, Alaska, containing approximately 4,388 acres. Notice of the decision will also be published four times in the *Nome Nugget.*

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 7, 2005, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

**FOR FURTHER INFORMATION CONTACT:** Eileen Ford, by phone at (907) 271–5715, or by e-mail at *Eileen_Ford@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Ford.

**Eileen Ford,**

*Land Law Examiner, Branch of Adjudication II.*

[FR Doc. 05–11201 Filed 6–6–05; 8:45 am]

**BILLING CODE 4310–$$–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK040–1410–EQ]**

### Notice of Realty Action; FLPMA Section 302 Lease, Goodnews River, AK

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The State of Alaska, Department of Fish & Game (proponent) submitted a proposal for a land use authorization to continue operating a salmon weir and associated camp on public land pursuant to Section 302 of the Federal Land Policy and Management Act of 1976 and regulations at Title 43 CFR 2920. The land, consisting of approximately 1 acre, is on the Middle Fork of the Goodnews River approximately 10 miles upstream from the village of Goodnews Bay: located within a portion of the NW1/4SW1/4 of Section 3, T. 12 S., R. 72 W., Seward Meridian.

**DATES:** Interested parties may submit comments until July 22, 2005.

**ADDRESSES:** Mail comments to Gary Reimer, Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599.

**FOR FURTHER INFORMATION CONTACT:** Carl Persson, (907) 267–1277 or (800) 478–1263.

**SUPPLEMENTARY INFORMATION:** This is a notice of a proposal for a land use authorization. No additional proposals will be accepted. The proponent will reimburse the United States for reasonable administrative fees and other costs incurred by the United States in processing the proposed authorization. The proposed authorization would authorize the proponent's improvements to remain on the land.

1 Fish weir consisting of a 130 ft resistance board weir

2 Wall tents

1 Weatherport tent

1 Wooden steam bath

Various camp structures such as wooden tables, grated walking platforms, work benches and storage shelving

1 Wooden outhouse

The proposed authorization would be offered to the Applicant for a term of 10 years and would require rent to be paid to the United States at fair market value. In the absence of a timely objection, this

proposal may become the final decision of the Department of the Interior.

**Clinton Hanson,**

*Acting Field Manager, Anchorage Field Office.*

[FR Doc. 05–11202 Filed 6–6–05; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO200–1430–ES, ET; COC–63837]**

### Notice of Realty Actions

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty actions.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and conveyance under the provisions of the Recreation and Public Purposes Act approximately 102.91 acres of public land located Boulder County. The realty would be developed and used for hiking and other recreational pursuits.

**DATES:** Comments as to the proposed classification and the lease and conveyance application must be received by BLM on or before July 22, 2005.

**ADDRESSES:** Comments should be sent to the Field Manager, Royal Gorge Field Office, Bureau of Land Management, 3170 East Main Street, Cañon City, Colorado 81212.

**FOR FURTHER INFORMATION, CONTACT:** Debbie Bellew, Land Law Examiner, BLM Royal Gorge Field Office, (719) 269–8514.

**SUPPLEMENTARY INFORMATION:** The Board of County Commissioners for Boulder, County, Colorado, has filed a petition-application under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*), for classification, and for a lease and subsequent conveyance of the following described public land:

T. 1 N., R. 73 W., Sixth Principal Meridian, Colorado,
Section 12, lots 33, 43, 47, 48, 50, 59, and 65, containing approximately 102.91 acres.

The BLM has examined the above-described land in Boulder County and finds it is suitable for classification lease and subsequent conveyance to the County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The land would be used for hiking and other recreational purposes and would include a parking area, trailhead, interpretive signs, and trails. The above-described public land is not needed for any federal purpose and has been identified for disposal in the Northeast Colorado Resource Management Plan (September 1986). Leasing and subsequent disposal of the land to Boulder County for recreational purposes is consistent with current BLM land use planning and would complement the County's public outdoor recreation program. The lease would be issued for an initial term of five years to allow Boulder County sufficient time to develop the parking area, trailhead and interpretive signs. The BLM would subsequently convey the land to Boulder County after recreational development activities have been completed.

The lease and subsequent patent, if issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.
2. A reservation to the United States of a right-of-way for ditches and canals constructed by the authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).
3. A reservation to the United States of all minerals, together with the right to prospect for, mine, and remove the minerals under applicable laws and regulations established by the Secretary of the Interior.
4. All valid existing rights.
5. Terms, covenants and conditions identified through the applicable environmental analysis or that the authorized officer determines appropriate to ensure public access and the proper use and management of the realty.

You may obtain additional detailed information concerning this Notice of Realty Action from the Royal Gorge Field Office of the BLM, 3170 East Main Street, Cañon City, Colorado 81212.

On June 7, 2005, the above-described public land is segregated from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, except for leasing or conveyance under the Recreation and Public Purposes Act.

#### Classification Comments

You may submit comments regarding the proposed classification of the above-described public land as suitable for use by Boulder County as a recreation area, to include a parking area, trailhead, interpretive signs, and trail management to the Royal Gorge Field Manager, Bureau of Land Management, 3170 East Main Street, Cañon City, Colorado 81212, on or before July 22, 2005. Comments on the proposed classification are restricted to the following four criteria, which are outlined in the regulations at 43 CFR 2410.1:

1. Whether the land is physically suited for the purpose for which it is classified;
2. Whether the proposed use will maximize the future use or uses of the land and minimize disturbance to or dislocation of existing users;
3. Whether the proposed use is consistent with local planning and zoning requirements; and
4. Whether the proposed use is consistent with state and federal programs.

The BLM Colorado State Director will review any adverse comments received on the proposed classification. In the absence of any adverse comments, the classification will become effective on August 8, 2005.

#### Application Comments

You may also submit comments regarding the specific uses and facilities proposed in Boulder County's Recreation and Public Purposes Act application and plan of development, or any other factor not directly related to the suitability of the land for recreational use and development. Your comments on Boulder County's application should be sent to the Royal Gorge Field Manager, Bureau of Land Management, 3170 East Main Street, Cañon City, Colorado 81212, on or before July 22, 2005.

(Authority: 43 CFR 2741.5(h)(1) and (h)(3)).

**Roy L. Masinton,**

*Royal Gorge Field Manager.*

[FR Doc. 05–11203 Filed 6–6–05; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 21, 2005. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280,

Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW, 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 22, 2005.

**John W. Roberts,**

*Acting Chief, National Register/National Historic Landmarks Program.*

**Connecticut**

Hartford County
Moore, Rosswell, II, House, (Colonial Houses of Southington TR) 1166 Andrews St., Southington, 05000629

**Maryland**

Anne Arundel County
Marley Neck Rosenwald School, (Rosenwald Schools of Anne Arundel County, Maryland MPS) 7780 Solley Rd., Glen Burnie, 05000630

**Missouri**

Jackson County
Old Town Historic District (Boundary Increase), 119, 207 and 213 Walnut St., Kansas City, 05000632
St. Louis Independent City, Wolfner, Henry L., Memorial Library for the Blind, 3842–44 Olive St., St. Louis (Independent City), 05000631

**New Mexico**

Santa Fe County
Route 66 and National Old Trails Road Historic District at La Bajada, (Route 66 through New Mexico MPS) Appox. 0.5 mi. NE of N terminus of NM 16, La Bajada Village, 05000633

**New York**

Greene County
Platte Clove Post Office, Old, 2340 Platte Clove Rd., Elka Park, 05000637

Orange County
Sawyer Farmhouse, 178 Maple Ave., Goshen, 05000636
Wisner, George T., House, 145 South St., Goshen, 05000634

Orleans County
Blood, Jackson, Cobblestone House, (Cobblestone Architecture of New York State MPS) 142 S. Main St., Lyndonville, 05000635

**Oregon**

Benton County
Watson—Price Farmstead, 23380 Hoskins Rd., Philomath, 05000638

Clackamas County
Willamette River (Oregon City) Bridge (No. 357), Spanning the Williamette River on Oswego Hwy 3(Ore-43) bet. Oregon City and West Linn, Oregon City, 05000639

Josephine County
Rogue Theatre, 143 SE ''H'' St., Grants Pass, 05000640

Multnomah County
Auto Freight Transport Building of Oregon and Washington, 1001 SE Water Ave., Portland, 05000641

**Virginia**

Fredericksburg Independent City, Carl's, 2200 Princess Anne St., Fredericksburg (Independent City), 05000642

**Wisconsin**

Portage County
Nelson Hall, 1209 Fremont St., Stevens Point, 05000643

To assist in the preservation of the following historic property the comment period has been shortened to three (3) days:

**Georgia**

Pickens County
Georgia Marble Company and Tate Historic District, Centered on GA 53 bet GA 5 and Long Swamp Creek, Tate, 05000644

[FR Doc. 05–11204 Filed 6–6–05; 8:45 am]

**BILLING CODE 4312–51–P**

---

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## Notice of Proposed Information Collection for 1029–0027 and 1029–0036

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collections of information under 30 CFR part 740, Surface Coal Mining and Reclamation Operations on Federal Lands; and 30 CFR part 780, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plans. These information collection activities were previously approved by the Office of Management and Budget (OMB), and assigned clearance numbers 1029–0027 and –0036, respectively.

**DATES:** Comments on the proposed information collection must be received by August 8, 2005 **Federal Register**, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

**SUPPLEMENTARY INFORMATION:** OMB regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR part 740, General requirements for surface coal mining and reclamation operations on Federal lands (1029–0027); and (2) 30 CFR part 780, State-Federal cooperative agreements (1029–0092). OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection requests to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

*Title:* 30 CFR part 740—General requirements for surface coal mining and reclamation operations on Federal lands.

*OMB Control Number:* 1029–0027.

*Summary:* Section 523 of SMCRA requires that a Federal lands program be established to govern surface coal mining and reclamation operations on Federal lands. The information requested is needed to assist the regulatory authority determine the eligibility of an applicant to conduct surface coal mining operations on Federal lands.

*Frequency of Collection:* Once.

*Description of Respondents:* Applicants for surface coal mine permits on Federal lands, and State Regulatory Authorities.

*Total Annual Responses:* 42.

*Total Annual Burden Hours for Applicants:* 2,602.

*Total Annual Burden Hours for States:* 800.

*Total Annual Burden for All Respondents:* 3,402.

*Title:* 30 CFR part 780—Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan.

*OMB Control Number:* 1029–0036.

*Summary:* Sections 507(b), 508(a), 510(b), 515(b), and (d), and 522 of Public Law 95–87 require applicants to submit operations and reclamation plans for coal mining activities. Information collection is needed to determine whether the plans will achieve the reclamation and environmental protections pursuant to the Surface Mining Control and Reclamation Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* Applicants for surface coal mine permits on Federal lands, and State Regulatory Authorities.

*Total Annual Responses:* 505.

*Total Annual Burden Hours for Applicants:* 146,376.

*Total Annual Burden Hours for States:* 88,752.

*Total Annual Burden for All Respondents:* 235,128.

*Total Annual Burden Costs for All Respondents:* $2,258,045.

Dated: June 1, 2005.

**Stephen C. Parsons,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 05–11294 Filed 6–6–05; 8:45 am]

**BILLING CODE 4310–05–M**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–511]**

## In the Matter of Certain Pet Food Treats; Issuance of a Limited Exclusion Order Against a Respondent Found in Default; Termination of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order against a respondent found in default in the above-captioned investigation and has terminated the investigation.

**FOR FURTHER INFORMATION CONTACT:** Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by complainants, Thomas J. Baumgartner and Hillbilly Smokehouse, Inc., both of Rogers, Arkansas. 69 FR 32044 (June 8, 2004). The complainants alleged 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 pet food treats by reason of infringement of United States Design Patent No. 383,866 (the ''866 patent''). The amended complaint named six respondents, including TsingTao ShengRong Seafood, Inc. of China (''TsingTao China''). The Commission has terminated the investigation as to the five other respondents based on findings of non-infringement, failure to prosecute, or settlement agreements. No petitions for review of the ALJ's Initial Determinations (''IDs'') were filed.

On August 19, 2004, complainants filed a motion for an order directed to several respondents, including TsingTao China, to show cause why they should not be found in default for failing to respond to the complaint and notice of investigation. TsingTao China did not file a response to complainants' motion. On October 4, 2004, the ALJ issued an order (Order No. 6) requiring TsingTao China to show cause why it should not be found in default. TsingTao China did not respond to the show cause order. On November 10, 2004, the ALJ issued an ID (Order No. 8), which was not reviewed by the Commission, finding respondent TsingTao China in default. On November 22, 2004, the complainants filed a motion for immediate relief against TsingTao China based on the '866 patent.

On April 13, 2005, the Commission issued a notice indicating (1) that it had determined not to review the ALJ's ID granting the Commission investigative attorney's (''IA'') motion for summary determination of no violation because of noninfringement of the '866 patent by Pet Center, Inc., and (2) that it was terminating the investigation as to the last respondent, Pet Center. 70 FR 20596 (April 20, 2005). The Commission also requested briefing on the issues of remedy, the public interest, and bonding relating to the default finding of unlawful importation and sale of infringing products by TsingTao China. *Id.* The IA submitted his brief on remedy, the public interest, and bonding and his proposed order on April 25, 2005. The complainants did not submit a brief or a proposed order and the respondent did not file a reply submission.

The Commission found that each of the statutory requirements of section 337(g)(1)(A)–(E), 19 U.S.C. 1337(g)(1)(A)–(E), has been met with respect to defaulting respondent TsingTao China. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission rule 210.16(c) 19 CFR 210.16(c), the Commission presumed the facts alleged in the amended complaint to be true. The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of pet food treats covered by the '866 patent that are manufactured abroad by or on behalf of, or imported by or on behalf of, TsingTao China or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the amount of bond to permit temporary importation during the Presidential review period shall be in the amount of 100 percent of the entered value of the infringing imported pet food treats. The Commission's order was delivered to the President on the day of its issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.16(c) of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c)).

Issued: June 1, 2005.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05–11215 Filed 6–6–05; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 05–2]**

### Stuart A. Bergman, M.D., Revocation of Registration

On September 16, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Stuart A. Bergman, M.D., (Respondent) of San Antonio, Texas, notifiying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BB0187953 as a practitioner pursuant to 21 U.S.C. 824(a)(3) and (4), and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f).

As a basis for revocation, the Order to Show Cause alleged, in sum, that Respondent's Texas medical license had been temporarily suspended and he did not have authority to handle controlled substances in that state; that he issued prescriptions to a physician's assistant for non-therapeutic resaons and failed to keep medical records on that individual; that he failed to respond to inquiries from pharmacies and the Texas State Board of Medical Examiners (Texas Board) about those prescriptions; that he left threatening voicemails for a staff attorney from the Texas Board; and that he purchased excessive quantities of controlled substances and told investigators he distributed them to family members without keeping medical charts on those individuals.

Respondent, through counsel, timely requested a hearing in this matter and Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued an Order for Prehearing Statements. On November 17, 2004, in lieu of filing a prehearing statement, the Government filed its Motion for Summary Disposition and Motion to Stay the Filing of Prehearing Statements (Motion). In its Motion the Government asserted the Texas Board had temporarily suspended Respondent's license to practice medicine, effective July 27, 2004, and that he was no longer authorized to handle controlled substances in Texas, where he is registered with DEA. As a result, the Government argued that further proceedings in this matter were not required. Attched to the Government's Motion was a copy of the Texas Board's Order Granting Temporary Suspension, temporarily suspending Respondent's medical license, effective July 27, 2004, until such time as that action was superseded by a subsequent order of the Board.

On November 18, 2004, Judge Bittner issued a Memorandum to Counsel providing Respondent until December 6, 2004, to respond to the Government's Motion. Respondent filed an opposition and an amended opposition to the Government's Motion and on December 17, 2004, his counsel requested that Judge Bittner delay her ruling on the Government's Motion until after February 2, 2005, when a hearing was scheduled before the Texas Board, which could impact the suspension status of his license. Over the Government's objections, Judge Bittner granted Respondent a delay until March 1, 2005, in order to file documentation showing he was then-authorized to handle controlled substances in Texas.

On March 1, 2005, Respondent filed an Advisory Memorandum with the Administrative Law Judge. In that document he did not claim his Texas medical license had been reinstated. However he asserted that during the February 2nd hearing, the Texas Board had offered to return his license, subject to certain conditions. However, Respondent claimed that when he received the draft Agreed Order, he would not sign it, as he felt it contained findings and conditions to which he had not agreed. Because he did not sign the Agreed Order, the matter would be proceeding to a formal disciplinary hearing and Respondent asked Judge Bittner to ''temporarily suspend'' his DEA registration until the Texas Board had rendered its final decision.

On March 8, 2005, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner denied Respondent's request to temporarily suspend his registration and granted the Government's Motion for Summary Disposition, finding Respondent lacked authorization to handle controlled substances in Texas, the state in which he is registered with DEA and recommending that Respondent's DEA Certificate of Registration be revoked and any pending applications denied.

No exceptions were filed by either party to Judge Bittner's Opinion and Recommended Decision and on April 14, 2005, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent holds DEA Certificate of Registration BB0187953 as a practitioner. The Deputy Administrator further finds that effective July 27, 2004, Respondent's license to practice medicine in Texas was temporarily suspended after the Texas Board concluded ''Respondent's continuation in the practice of medicine would constitute a continuing threat to the public welfare.'' That action was based primarily upon facts similar to those alleged in DEA's Order to Show Cause and there is no evidence that the temporary suspension has been set aside, stayed or modified.

The Deputy Administrator therefore finds Respondent is currently not licensed to practice medicine in Texas and lacks authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Stephen J. Graham, M.D., 69 FR 11,661 (2004), Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988). Denial or revocation is also appropriate when a state license has been suspended, but with the possibiity of future reinstatement. *See* Paramabaloth Edwin, M.D., 69 FR 58,540 (2004); Alton E. Ingram, Jr., M.D., 69 FR 22,562 (2004); Anne Lazar Thorn, M.D., 62 FR 847 (1997).

Here, it is clear Respondent is not currently licensed to handle controlled substances in Texas, the jurisdiction in which he is registered with DEA. Therefore, he is not entitled to registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BB0187953, issued to Stuart A. Bergman, M.D., be, and it hereby is, revoked. The Deputy

Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective July 7, 2005.

Dated: May 25, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 05–11244 Filed 6–6–05; 8:45 am]

**BILLING CODE 4410-09-M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Robert M. Canon, M.D., Revocation of Registration

On February 11, 2005, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert M. Canon, M.D. (Dr. Canon) of Tullahoma, Tennessee, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AC2221707 under 21 U.S.C. 824(a)(3) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that Dr. Canon is not currently authorized to practice medicine or handle controlled substances in Tennessee, his state of registration and practice. The Order to Show Cause also notified Dr. Canon that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Dr. Canon at his registered address at 600 East Carroll Street, Tullahoma, Tennessee 37388. However, that letter was unclaimed by Dr. Canon and eventually returned by postal authorities to DEA, as he apparently did not provide the post office a forwarding address. DEA has not received a request for hearing or any other reply from Dr. Canon or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that thirty days having passed since the attempted delivery of the Order to Show Cause to the registrant's address of record and no request for hearing having been received, concludes that Dr. Canon is deemed to have waived his hearing right. *See* Thomas J. Mulhearn, III, M.D., 70 FR 24,625 (2005); James E. Thomas, M.D., 70 FR 3,654 (2005); Steven A. Barnes, M.D., 69 FR 51,474 (2004); David W. Linder, 67 FR 12,579 (2002).

After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds Dr. Canon currently possesses DEA Certificate of Registration AC2221707, as a practitioner authorized to handle controlled substances. The Deputy Administrator further finds that on August 18, 2004, the State of Tennessee Board of Medical Examiners (Tennessee Board) issued an Order suspending Dr. Canon's license to practice medicine in Tennessee.

That suspension was based upon the Tennessee Board's findings that on March 1, 2004, Dr. Canon was convicted in the United States District Court for the Eastern District of Tennessee of 95 felony counts of False Statements Relating to a Healthcare Matter and Health Care Fraud, in violation of 18 U.S.C. 1035 and 1347. He was sentenced to 41 months imprisonment on each count, to be served concurrently and was ordered to pay over three million dollars in restitution. That judgment is currently on appeal to the United States Court of Appeals for the Sixth Circuit and Dr. Canon is free on bond pending resolution of his appeal. The Tennessee Board's Order provides that the suspension of Dr. Canon's medical license is to remain in effect until his criminal case has been fully adjudicated.

The investigative file contains no evidence that the Tennessee Board's Order has been stayed, modified or terminated or that Dr. Canon's medical license has been reinstated. Therefore, the Deputy Administrator finds Dr. Canon is not currently authorized to practice medicine in the State of Tennessee. As a result, it is reasonable to infer he is also without authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Stephen J. Graham, M.D., 69 FR 11,661 (2004); Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988). Revocation is also appropriate when a state license has been suspended, but with possibility of future reinstatement. *See* Alton E. Ingram, Jr., M.D., 69 FR 22,562 (2004); Anne Lazar Thorn, M.D. 62 FR 847 (1997).

Here, it is clear Dr. Canon's medical license has been suspended and he is not currently licensed to handle controlled substances in Tennessee, where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AC2221707, issued to Robert M. Canon, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective July 7, 2005.

Dated: May 24, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 05–11245 Filed 6–6–05; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 03–025]**

### Carlin Paul Graham, Jr., M.D. Revocation of Registration

On November 8, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Carlin Paul Graham, Jr., (Respondent) of Talladega, Alabama, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BG2476186 as a practitioner pursuant to 21 U.S.C. 824(a) and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that Respondent's license to practice medicine in Alabama had been indefinitely suspended and he was no longer authorized to handle controlled substances in that state.

Respondent, through counsel, timely requested a hearing in this matter. One January 19, 2005, the Presiding Administrative Law Judge Gail A. Randall (Judge Randall) issued the Government, as well as Respondent, an Order for Prehearing Statements.

In lieu of filing a prehearing statement, the Government filed a Request for Stay of Proceedings and

Motion for Summary Disposition (Motion). In that Motion the Government asserted the Medical Licensure Commission of Alabama (Alabama Commission), had indefinitely suspended Respondent's Alabama State Medical License and, as a result, he was no longer authorized to handle controlled substances in the state where he is registered with DEA. Attached to the Government's Motion was a copy of the Alabama Commission's Order dated October 30, 2003, indefinitely suspending Respondent's medical license.

On January 31, 2005, Judge Randall issued an order allowing Respondent until February 22, 2005, to respond to the Government's Motion. Respondent did not file any response and on March 25, 2005, Judge Randall issued her Order, Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). In it, she granted the Government's Motion, finding Respondent lacked authorization to handle controlled substances in his state of DEA registration and recommended that his registration be revoked.

No exceptions were filed by either party to the Opinion and Recommended Decision and on April 26, 2005, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order, based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds Respondent currently holds DEA Certificate of Registration BG2476186 as a practitioner and that on October 30, 2003, the Alabama Commission indefinitely suspended his license to practice medicine in that State. The suspension was predicated on the Commission's findings that Respondent engaged in unprofessional conduct, had staff privileges terminated, revoked or restricted by a hospital and was ''unable to practice medicine with reasonable skill and safety to patients by reason of illness or as a result of a mental or physical condition.''

The Deputy Administrator's therefore finds Respondent is currently not licensed to practice medicine in Alabama and lacks authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Stephen J. Graham, M.D., 69 FR 11,661 (2004), Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988). Denial or revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement. See Paramabaloth Edwin, M.D., 69 FR 58,540 (2004); Alton E. Ingram, Jr., M.D., 69 FR 22,562 (2004); Anne Lazar Thorn, M.D., 62 FR 847 (1997).

Here, it is clear Respondent is not currently licensed to handle controlled substances in Alabama, the jurisdiction in which he holds a DEA registration. Therefore, he is not entitled to registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.014, hereby orders that DEA Certificate of Registration BG2476186, issued to Carlin Paul Graham Jr., M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective July 7, 2005.

Dated: May 25, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 05–11247 Filed 6–6–05; 8:45 am]

BILLING CODE 4410–09–M

---

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 03–35]**

### Joy's Ideas, Revocation of Registration

On June 13, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Joy's Ideas (Joy's Ideas/Respondent) proposing to revoke its DEA Certificate of Registration 003278JIY as a distributor of list I chemicals and deny its pending application for renewal under 21 U.S.C. 824(a)(4) and 823(h) as being inconsistent with the public interest. The Order to Show Cause alleged, in sum, that Respondent was distributing list I chemicals to what DEA has identified as the ''gray market'' and that a September 2001 audit by DEA Diversion Investigators showed the company had serious record keeping deficiencies.

Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Gail A. Randall. Following pre-hearing procedures, a hearing was held in Memphis, Tennessee, on March 11 and 12, 2004. At the hearing, both parties called witnesses to testify and introduced documentary evidence. Subsequently, both parties filed Proposed Findings of Fact, Conclusions of Law, and Argument.

On September 29, 2004, Judge Randall issued her Recommended Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Opinion and Recommended Ruling), recommending that Respondent's registration to distribute pseudoephedrine and ephedrine products be continued and its application for renewal be granted, subject to enumerated monitoring conditions. She recommended denying the request to distribute phenylpropanolamine. The Government filed Exceptions to the Opinion and Recommended Ruling, to which Respondent submitted a Reply and on November 8, 2004, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law hereinafter set forth. Except as otherwise set forth in this final order, the Deputy Administrator adopts the findings of fact and conclusions of law of the Administrative Law Judge. The Deputy Administrator agrees with the recommendation that Respondent be denied registration to distribute phenylpropanolamine, but disagrees with Judge Randall's recommendation that Respondent be registered to distribute ephedrine and pseudoephedrine, even under close monitoring conditions.

Respondent is a sole proprietorship owned and operated by Ms. Joy Carter which is located in Memphis, Tennessee. It has been a DEA registrant since March 1998 and holds DEA Certificate of Registration 003278JIY. On November 10, 2003, Ms. Carter filed an application for renewal of that registration, which was due to expire on December 31, 2003. In it, she sought registration to distribute list I products

containing pseudoephedrine, ephedrine and phenylpropanolamine. Having filed a timely application for renewal, Respondent has been allowed to continue distributing listed chemicals during the pendency of these proceedings. *See* 21 CFR 1309.45.

In September 2001, DEA Diversion Investigators conducted a routine regulatory investigation of Respondent and met Ms. Carter at her residence, which is also the registered premises. The physical security and monitoring systems were found to be adequate and Ms. Carter testified at the hearing that she had never had any listed chemical products stolen or lost.

As a part of their investigation, the Diversion Investigators conducted a two day accountability audit. However, the results were hampered by Respondent's lack of an accurate inventory and investigators assigned a beginning inventory of zero as their starting inventory. Ms. Carter was cooperative and provided investigators all purchase and sales records for the period covering March 1, 2001 to September 12, 2001. At the conclusion of the audit, investigators found there were overages of four listed chemical products and shortages of two such products. Ms. Carter was unable to account for 15 100-count bottles of ''Efedrin'' and 557 60-count bottles of ''Mini-thins.'' The overages involved 6-count packages and 60-count bottles of ''Efedrin,'' 60-count bottles of ''Max Brand Two Way'' and 6-count packages of ''Mini Thins.''

Evidence was introduced that overages can be anticipated when a zero starting inventory is used and/or they may be attributable to improperly maintained records. Shortages can result from improperly maintained records or from theft or loss of the product. At the hearing, a mathematical error impacting the overage of one product was discovered and a former DEA Diversion Investigator testified that more often than not, these audits do not result in perfectly balanced inventories, particularly when a zero opening balance is used.

At the hearing Ms. Carter testified that before receiving the Order to Show Cause, she was unfamiliar with procedures for ensuring accountability of listed chemicals or how to conduct an audit. After receiving that Order, she began working with her attorney and certified pubic accountant to establish procedures for accurately recording purchase and sales data and initiated weekly physical inventories of listed chemicals. This system was put into operation in November 2003 and records introduced at the hearing showed that Ms. Carter was adhering to the improved accountability procedures.

The Respondent is a wholesale distributor of about 200 sundry products to convenience stores and gas stations. Seven of her approximately 60 customers are located in Arkansas and Mississippi and the balance are in Memphis. Each of these customers buy listed chemicals from Joy's Ideas, which makes up between 20 to 30 percent of Respondent's total sales. Most customers purchase approximately $100.00 of list I chemical products from Respondent each month.

Ms. Carter, the sole employee, testified she personally delivers the listed chemicals and places them on customer's shelves. As a result, she believed she could monitor her customers' stocks and tell if she was their only supplier of listed products. Affidavits from several long term customers were also introduced which affirmed they only purchased listed chemicals from Respondent and their retail customers did not buy more than two weeks packets or bottles of listed chemicals at a time. According to records introduced at the hearing, Respondent also did not exceed the threshold quantities of sales to a single purchaser which are established by the Comprehensive Methamphetamine Control Act of 1996. Ms. Carter further testified that she instructed her customers to not sell more than two bottles of ephedrine products to any single customer.

Ms. Carter has never been charged or convicted under Federal or state law of any crime involving controlled substances or listed chemicals. Joy's Ideas is her only source of income and she expressed fear that if she were not able to provide customers listed chemicals, they would take their entire business to other wholesalers, who could provide ''one stop'' shopping.

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substance Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals which are legitimately manufactured and distributed in single entity and combination forms as decongestants and bronchodilators, respectively. Both are used as precursor chemicals in the illicit manufacture of methamphetamine and amphetamine.

Phenylpropanolamine, also a list I chemicals, is a legitimately manufactured and distributed product used to provide relief of symptoms resulting from inflammation of the sinus, nasal and upper respiratory tract tissues and for weight control. Phenylpropanolamine is also used as a precursor in the illicit manufacture of methamphetamine and amphetamine. In November 2000, the United States Food and Drug Administration issued a public health advisory requesting drug companies to discontinue marketing products containing phenylpropanolamine, due to risk of hemorrhagic stroke. As a result, pharmaceutical companies have stopped using phenylpropanolamine as an active ingredient. *See,* Gazaly Trading, 69 FR 22,561 (2004).

As testified to by government witnesses and as addressed in previous DEA final orders, methamphetamine is an extremely potent central nervous system stimulant and its abuse is a persistent and growing problem in the United States. *See, e.g.,* Direct Wholesale, 69 FR 11,654 (2004); Branex, Inc., 69 FR 8,682 (2004); Denver Wholesale, 67 FR 99,986 (2002); Yemen Wholesale Tobacco and Candy Supply, Inc., 67 FR 9,997 (2002).

The Government introduced documentary and testimonial evidence regarding the rapid proliferation of clandestine methamphetamine laboratories in Tennessee and its adjoining states and described local methods of production, as well as the multiple health hazards and social costs stemming from production and abuse of methamphetamine. As discussed in several recently published final orders, Tennessee leads the DEA Atlanta Region in the number of clandestine laboratories seized. *See, e.g.,* Elk International Inc., d.b.a. Tri City Wholesale (Elk International), 70 FR 24,615 (2005); Prachi Enterprises, Inc., 69 FR 69,407 (2004); CWK Enterprises, Inc., 69 FR 69,400 (2004). Further, DEA has found that local ''[d]istributors or retailers serving the illicit methamphetamine trade observe no borders and trade across state lines.'' *Id.* 69 FR at 69,401.

A DEA Special Agency credibly testified that the list I chemical product of choice found in about eighty percent of illicit laboratories in Tennessee is distributed under the off-name brand ''Max Brand'' label and is usually obtained from convenience stores. Judge Randall found Respondent has distributed this product. However, there was no direct evidence showing a known diversion of Respondent's products to illicit manufacturing.

By written declaration, a DEA Diversion Investigator contrasted the ''traditional'' market for list I chemicals with what DEA has termed the ''gray market'' for these products. The traditional market, characterized by a short distribution chain from

manufacturer to distributor to retailer, typically includes large chain grocery stores, chain pharmacies, large convenience stores and large discount stores. The gray market is characterized by additional layers of distribution and includes such non-traditional retailers as small convenience stores, gas stations and other retail establishments where customers do not usually purchase over-the-counter medications. These non-traditional retailers typically sell higher-strength products in larger package sizes, such as 60, 100 or 120-county bottles of 60 mg. pseudoephedrine. The Diversion Investigator also identified the off-name brands found in disproportionate numbers during clandestine laboratory seizures. These included Max Brand, Mini Two Way, MiniThin and Action-Pseudo products.

In previous final orders DEA has identified convenience stores as the ''primary source'' for the purchase of ''Max Brand products, which are the preferred brand for use by illicit methamphetamine producers.* * *'' *See,* Elk International, *supra,* 70 FR 24,615; Express Wholesale, 69 FR 62,086, 62,087 (2004); *see also,* RAM, Inc. d/b/a American Wholesale Distribution Corp., 70 FR 11,693 (2005).

By declaration, the Government introduced evidence regarding ephedrine and pseudoephedrine sales and the convenience store market from Mr. Jonathan Robbin, a consultant in marketing information systems and databases, who is an expert in statistical analysis and quantitative marketing research.

Using the 1997 United States Economic Census of Retail Trade, Mr. Robbin tabulated data indicating that over 97% of all sales of non-prescription drug products, including non-prescription cough, cold and nasal congestion remedies, occur in drug stores and pharmacies, supermarkets, large discount merchandisers, mail-order houses and through electronic shopping. He characterized these five retail industries as the traditional marketplace where such goods are purchased by ordinary customers.

Analyzing national sales data specific to over-the-counter, non-prescription drugs containing pseudoephedrine, Mr. Robbin's research and analysis showed that a very small percentage of the sales of such goods occur in convenience stores; only about 2.6% of the Health and Beauty Care category of merchandise or 0.05% of total in-store (non-gasoline) sales. He determined that the normal expected retail sales of pseudoephedrine tablets in a convenience store would range between $10.00 and $30.00 per month, with an average monthly sales figure of about $20.00 and that sales of more than $100.00 in a month would be expected to occur in a random sampling about once in one million to the tenth power.

According to Mr. Robbin, after evaluating Tennessee convenience store sales data, half of the Tennessee stores analyzed showed implied sales over ten times expectation, with ten of them over twenty times expectation. These differences were extremely significant statistically and in his expert opinion, ''[t]he implausible nature of such exceptionally large hypothetical sales at retail leads to a virtually incontrovertible conclusion that the goods are not actually being purveyed at retail to ordinary customers in the store's trading area at all, but are being diverted to some other channel 'under the counter.' '' He concluded that many small Tennessee convenience stores were not selling pseudoephedrine and ephedrine products for their intended purpose as non-prescription drugs in the legitimate market and the assumption that they were supplying a ''gray market'' was statistically supported ''many times over * * *''

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for a Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest, as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are considered in the disjunctive; the Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g.,* Direct Wholesale, *supra,* 69 FR 11,654; Energy Outlet, 64 FR 14,269 (1999); Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

As to factor one, maintenance by the applicant of effective controls against diversion, the Deputy Administrator agrees with Judge Randall that Respondent's physical security system is adequate. With regard to the 2001 accountability audit's results, Judge Randall found the statistics ''questionable'' and based on the statistics alone, could not conclude that any listed chemical products distributed by Respondent had been diverted. She also concluded that Ms. Carter had a faulty accountability system at the time of the audit. However, that was mitigated by the significant accountability improvements crafted by her certified public accountant after receipt of the Order to Show Cause. Judge Randall also found Ms. Carter had a long standing relationship with her customers and personally delivered their listed chemical products and placed them on the shelves, allowing her to monitor whether or not they were obtaining listed chemicals from other wholesalers. Judge Randall concluded this factor weighted in favor of registration.

The Deputy Administrator agrees with the Government's Exceptions that the shortages established by the 2001 inventory would normally show up as overages, given that a zero opening balance was used, and that diversion may be inferred from such shortages. However, given the apparent good faith of Ms. Carter to avoid diversion and the inadequate accountability systems she was using at the time of the audit, under the facts of this case the inference of diversion attributable to the audit is not strong.

On the other hand, given the number of Respondent's retail customers and imprecise and unrecorded ''eyeball'' monitoring of what is on their shelves, the Deputy Administrator has concern over Ms. Carter's ability to know, with an acceptable degree of certainty, whether or not her customers are obtaining products from other distributors. DEA has previously found that gray markets retailers supplying chemicals for illicit use regularly acquire their product from multiple distributors in order to mask their acquisition of large amounts of listed chemicals. *See,* Elk International Inc., *supra*, 70 FR 24,615; Titan Wholesale, Inc., 70 FR 12,727 (2005).

Further, convenience store operators engaged in this illicit trade could be obtaining products from other wholesalers, yet not be displaying them on retail shelves, also compromising Ms. Carter's efforts to ensure she was the only supplier. Accordingly, so long as Respondent services this suspect

market, even the most sincere efforts by Ms. Carter to self-regulate her customers cannot guarantee that current and/or future customers will not be obtaining precursor chemicals from other distributors, as well as from Respondent, and then resell them for illicit purposes.

Nevertheless, given Ms. Carter's commendable actions to improve her accountability systems and her honest and credible desire to avoid contributing to the scourge of methamphetamine, in a ''close call,'' the Deputy Administrator agrees with Judge Randall that factor one weighs in favor of continued registration.

With regard to factor two, Respondent's compliance with applicable Federal, state and local law, Judge Randall concluded this factor also weighs in favor of registration. However, the significance for this factor and factor five as well, the Deputy Administrator notes that state legislatures throughout the United States are actively considering legislation designed to impede the ready availability of precursor chemicals. Many of these proposals are similar to legislation enacted by the State of Oklahoma, titled the ''Oklahoma Methamphetamine Reduction Act of 2004.'' Under that measure, as of April 6, 2004, pseudoephedrine tablets were designated as Schedule V controlled substances and may be sold only from licensed pharmacies within that state.

As a result, it is prohibited in Oklahoma to sell these products from gray market establishments, such as independent convenience stores, which have contributed so much to the methamphetamine abuse problem. *See, e.g.,* Express Wholesale, *supra,* 69 FR at 62,809 [denying DEA registration to an Oklahoma gray market distributor, in part, because of new state restrictions].

A review of data for 2004 reveals the Oklahoma law has resulted in an apparent reduction in the number of seizures involving clandestine methamphetamine laboratories in that state. These developments are encouraging and represent an important step in the ongoing battle to curb methamphetamine abuse in the United States. State legislation, such as Oklahoma's, reflects a positive trend and growing recognition that the diversion of precursor chemicals through the gray market insidiously impacts public health and safety. *See, e.g.,* Tysa Management, d/b/a Osmani Lucky Wholesale, 70 FR 12,732, 12,734 (2005) [denying registration to intended Oklahoma distributor, in part, on basis of enactment of recent state legislation]; Express Wholesale, *supra,* 69 FR at 62,089.

Of particular relevance to Joy's Ideas and similarly situated Tennessee applicants and registrants, after Judge Randall signed her Opinion and Recommended Ruling, legislation was enacted by the State of Tennessee patterned after the Oklahoma initiative. That legislation (Senate Bill 2318/House Bill 2334), collectively known as the ''Meth-Free Tennessee Act of 2005,'' was signed into law by Governor Phil Bredeson on March 31, 2005, and makes it unlawful for establishments, other than licensed pharmacies, to sell tableted pseudoephedrine products in Tennessee after April 1, 2005. This included both name brand and off-name brand products. *See, e.g.,* Elk International Inc., *supra,* 70 FR 24,615.

According to evidence introduced at the hearing, approximately 53 of Respondent's 60 customers are convenience stores and gas stations located in Tennessee. Therefore, with only a few exceptions, Respondent's entire customer base is now prohibited by state law from selling the pseudoephedrine products Respondent seeks DEA registration to distribute. Thus, factor two weighs heavily against registration. *See*, Elk International, *supra*, 70 FR at 24,618; Tysa Management, d/b/a Osmani Lucky Wholesale, *supra*, 70 FR at 12,734; Express Wholesale, *supra*, 69 FR at 62,089.

As to factor three, any prior conviction record relating to listed chemicals or controlled substances, the Deputy Administrator concurs with Judge Randall that there is no evidence of any prior convictions of Respondent or its owner relating to listed chemicals or controlled substances. Accordingly, this factor weighs in favor of registration.

With regard to factor four, the applicant's past experience in distributing listed chemicals, Judge Randall found that Ms. Carter's lack of knowledge concerning how to conduct accountability audits and lack of inventory control, which were uncovered in the 2001 audit, weighed against Respondent's continued handling of listed chemical products. However, this was balanced by Ms. Carter's aggressive actions to improve her inventory and accountability practices. She was also familiar with listed chemical products, as well as her customers, and never sold over-the threshold quantities.

The Administrative Law Judge concluded that while ''a close matter,'' because of Ms. Carter's willingness to create and maintain a viable inventory system and her familiarity with her customers' operations, factor four weighed in favor of continued registration, especially if close monitoring was maintained by DEA over Respondent. The Deputy Administrator disagrees with this conclusion.

The evidence showed Respondent was selling most of her convenience store customers about $100.00 of list I chemicals per month. As established by Mr. Robbin's expert opinion evidence, this far exceeds the amount of expected sales of these products for legitimate therapeutic purposes. Even though, as Judge Randall concluded, there was no direct evidence that Respondent contributed to the diversion of listed chemical products, she did find the record contained ''abundant statistical evidence that, without further explanation, would logically lead to the conclusion that the Respondent distributed more listed chemical products to its convenience store customers than could reasonably be sold at resale for legitimate use.''

The Deputy Administrator cannot find a plausible explanation in the record for this deviation from the expected norm, other than diversion at the retail level. Accordingly, while Ms. Carter may have been an unknowing and unintentional contributor to Tennessee's methamphetamine problem, it is logical to infer that the listed products she was distributing to area convenience stores were being diverted to illicit purposes. Accordingly, the Deputy Administrator finds that factor four weights against Respondent's continued registration.

With regard to factor five, other factors relevant and consistent with the public health and safety, Judge Randall acknowledged earlier DEA precedent applying this factor to deny registration to a gray market distributor based on statistical evidence. *See*, Xtreme Enterprises, Inc., 67 FR 76,195 (2002); Branex, Inc., *supra*, 69 FR 8,682, 8,693. However, based on the amounts of listed products being distributed by Respondent, their wholesale prices and Ms. Carter's apparent good faith and willingness to adhere to DEA requirements, given the facts of the case, Judge Randall was unwilling to conclude that Respondent's listed chemical products were being diverted or would likely be diverted in the future. She therefore found factor five weighed in favor of continued registration to distribute ephedrine and pseudoephedrine.

In Xtreme Enterprises, the Deputy Administrator found its owner had only a rudimentary knowledge of what

would constitute a suspicious order and no experience in the manufacture or distribution of listed chemicals. While given Ms. Carter's past experience, those findings do not apply to Respondent. However, most significant for this and similar cases, the Deputy Administrator also found that ''[v]irtually all of the Respondent's customers, consisting of gas station and convenience stores, are considered part of the grey market, in which large amounts of listed chemicals are diverted to the illicit manufacture of amphetamine and methamphetamine.'' Xtreme Enterprises, Inc., *supra*, 67 FR at 76,197.

DEA has expansively applied Xtreme Enterprises to a multitude of applicants and registrants seeking to do business in the gray market. *See e.g.*, Express Wholesale, *supra*, 69 FR 62,086; Value Wholesale, 69 FR 58,548 (2004); K & Z Enterprises, Inc., 69 FR 51,475 (2004); William E. ''Bill'' Smith d/b/a B & B Wholesale, 69 FR 22,559 (2004); Branex Incorporated, *supra*, 69 FR 8,682; Shop It for Profit. 69 FR 1,311 (2003); Shani Distributors, 69 FR 62,324 (2003).

As in those cases, Ms. Carter's lack of a criminal record, previous general compliance with the law and regulations and willingness to comply with regulations and guard against diversion, are far outweighed by her intent to continue selling ephedrine and pseudoephedrine exclusively in the gray market. Unlawful methamphetamine production and use is a growing public health and safety concern throughout the United States and specifically in the locality where Respondent does business. Pseudoephedrine and ephedrine are the precursor products used to manufacture methamphetamine and area laboratory operators have predominantly acquired their precursor chemicals from the customer base Respondent seeks to continue serving. While Ms. Carter may intend to avoid contributing to this problem, the risk of diversion once her listed chemicals enter the gray market is real, substantial and compelling.

This reasoning has also been applied by the Deputy Administrator in a series of final orders published after Judge Randall issued her Opinion and Recommended Ruling in the matter. *See,* Elk International, *supra,* 70 FR 24,615; TNT Distributors, Inc., *supra,* 70 FR 12,729; Titan Wholesale, Inc., *supra,* 70 FR 12,727; RAM, Inc. d/b/a American Wholesale Distribution Corp., *supra,* 70 FR 11,693; Al-Alousi, Inc., 70 FR 3,561 (2005); Volusia Wholesale, 69 FR 69,409, (2004); Prachi Enterprises, Inc., *supra,* 69 FR 69,407; CWK Enterprises, Inc. 69 FR 69,400 (2004); J & S Distributors, 69 FR 62,089 (2004); Express Wholesale, *supra,* 69 FR 62,086; Absolute Distributing, Inc., 69 FR 62,078 (2004).

In any event, Judge Randall's recommendation that Respondent be allowed to continue distributing listed chemicals to convenience stores in Tennessee, albeit with close monitoring by DEA through the submission of a monthly log and consent to inspection without an administrative inspection warrant, has been mooted by Tennessee's recent enactment of legislation requiring that all pill and tablet pseudoephedrine products, including those marketed under traditional brand names, be sold only through registered pharmacies. As this state statute, discussed more fully under factor two, effectively bars distribution of those products throughout Tennessee's gray market, it is also relevant under factor five and weighs heavily against Respondent's continued registration. *See, e.g.,* Elk International, *supra,* 70 FR at 24,618.

Finally, as recommended by Judge Randall, due to the apparent lack of safety associated with the use of phenylpropanolamine, factor five is also relevant to Respondent's initial proposal to distribute that product. DEA has previously determined that such a request constitute a ground under factor five for denial of an application for registration. *See* J & S Distributors, *supra,* 69 FR 62,089; Gazaly Trading *supra,* 69 FR 22,561; William E. ''Bill'' Smith d/b/a B & B Wholesale, *supra,* 69 FR 22,559; Shani Distributors, *supra,* 68 FR 62,324. However, it is noted that after the hearing and the Government's filing of its Exceptions to the Opinion and Recommended Ruling, Respondent's Reply indicated that it did not intend to carry products containing phenylpropanolamine.

Based on the foregoing, the Deputy Administrator concludes that continuing Respondent's registration and granting its pending application for renewal would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, 003278JIY, issued to Joy's Ideas, be, and it hereby is, revoked. Further, the pending application for renewal of said Certificate of Registration submitted by Joy's Ideas should be, and hereby is, denied.

This order is effective July 7, 2005.

Dated: May 25, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 05–11249 Filed 6–6–05; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 04–62]**

### Kennard Kobrin, M.D., Revocation of Registration

On June 28, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Kennard Kobrin, M.D., (Respondent) of Fall River, Massachusetts, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AK8615013 as a practitioner pursuant to 21 U.S.C. 824(a)(2), (3) and (4), and deny any pending applications for renewal or modification of that registration pursuant to 21 U.S.C. 823(f). As a basis for revocation, the Order to Show Cause alleged that Respondent had been convicted of three state felony counts, which involved illegal prescribing of a controlled substance and Medicaid fraud. As a part of his sentence, the court ordered Respondent to cease prescribing any medications for two years, effective August 28, 2003. Therefore, the Government alleged that Respondent was no longer authorized to handle controlled substances in Massachusetts, his state of practice and DEA registration.

Respondent, through counsel, timely requested a hearing in this matter and Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued an Order for Prehearing Statements. After various motions had been filed and addressed by Judge Bittner, on November 22, 2004, the Government filed its Request for Stay of Proceedings and Motion for Summary Disposition (Motion). In that Motion it was asserted that the Massachusetts Board of Registration in Medicine (Medical Board) had revoked Respondent's license to practice medicine in that state, effective December 17, 2004, and that as a result, he was no longer authorized to handle controlled substances in the state where he is registered with DEA. Attached to the Government's Motion was a copy of the Medical Board's Final Decision & Order, dated November 17, 2004, revoking Respondent's Massachusetts medical license as of December 17, 2004.

On November 29, 2004, Judge Bittner issued an order affording Respondent an opportunity to respond to the Government's Motion. On December 13 and 14, 2004, Respondent filed his response, objecting to a summary disposition of the proceeding and requesting an indefinite stay. In it, he argued that his state criminal convictions and the Medical Board's revocation order were then-pending appear and they should not be used as a basis for adverse action on his DEA registration. However, Respondent did not deny that as of December 17, 2004, he was no longer licensed to practice medicine in Massachusetts.

On December 27, 2004, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). In it, she granted the Government's Motion, finding Respondent lacked authorization to handle controlled substances in his state of DEA registration and she recommended that his registration be revoked.

No exceptions were filed by either party to the Opinion and Recommended Decision and on February 2, 2005, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order, based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds Respondent currently holds DEA Certificate of Registration AK8615013 as a practitioner and that on November 17, 2004, the Massachusetts Medical Board revoked his license to practice medicine in that state, effective as of December 17, 2004. That action was predicated on Respondent's criminal convictions which under Massachusetts law, either undermined the public's confidence in the integrity of the medical profession or showed Respondent's lack of moral character.

The Deputy Administrator therefore finds Respondent is not currently licensed to practice medicine in Massachusetts and lacks authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Stephen J. Graham, M.D., 69 FR 11,661 (2004), Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1998).

Here, it is clear Respondent is not currently licensed to handle controlled substances in Massachusetts, the jurisdiction in which he holds a DEA registration. Therefore, he is not entitled to registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AK8615013, issued to Kennard Kobrin, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective July 7, 2005.

Dated: May 25, 2005

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 05–11246 Filed 6–6–05; 8:45 am]

**BILLING CODE 4410–09–M**

---

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Scott H. Nearing, D.D.S., Grant of Restricted Registration

On January 27, 2003, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Scott H. Nearing, D.D.S. (Dr. Nearing/Respondent) of Wichita, Kansas. Dr. Nearing was notified of an opportunity to show cause as to why DEA should not deny this application for a DEA Certificate of Registration as a practitioner on the grounds that his registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f).

The Order to Show Cause alleged in sum, that between April 1989 and May 1993 Dr. Nearing wrote and presented more than 100 fictitious prescriptions to local pharmacies for controlled substances and ordered narcotic and benzodiazepine controlled substances from a wholesale drug company, all for his personal use and not for legitimate medical purposes. As a result of these actions, he surrendered his DEA Certificate of Registration on June 23, 1993, and on July 11, 1994, pled guilty to one count of violating 21 U.S.C. 843(a)(3) and was sentenced to four months home confinement and placed on probation for four years. It was further alleged that between 1994 and 2000, the Kansas State Dental Board (Dental Board) took several disciplinary actions against Respondent, ranging from license suspensions in 1994 and 1998 to discipline imposed in 2000 for practicing without a license.

Respondent, acting *pro se,* requested a hearing and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following pre-hearing procedures, a hearing was held in Topeka, Kansas, on July 15, 2004. At the hearing, both parties called witnesses to testify and introduced documentary evidence. Subsequently, both parties filed Proposed Findings of Fact, Conclusions of Law, and Argument.

On January 3, 2005, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Opinion and Recommended Ruling), recommending that Respondent's application for registration as a practitioner be granted, with the following restrictions: (1) Respondent shall not write any prescriptions for himself, and shall not obtain or possess for his use any controlled substance except upon the written prescription of another licensed medical professional, and (2) for at least two years from the date of the entry of a final order in this proceeding, Respondent shall continue to attend Caduceus meetings on a monthly basis. No Exceptions to the Opinion and Recommended Ruling were filed and on February 2, 2005, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law hereinafter set forth. The Deputy Administrator adopts in full, the recommended ruling, findings of fact and conclusions of law of the Administrative Law Judge and agrees Respondent's application should be approved, with restrictions.

The record before the Deputy Administrator shows Dr. Nearing graduated from the University of Missouri, Kansas City Dental School in 1983. In March 1984, he purchased a small dental practice from the widow of another dentist located in Overland Park, Kansas and nine years later, DEA began investigating Respondent after local pharmacies began questioning prescriptions he had written.

Based on records from approximately 30 Kansas City pharmacies, DEA Diversion Investigators determined that between 1989 and 1993, Respondent presented multiple fictitious prescriptions for narcotic controlled substances, using false names of patients. Most were for drugs containing hydrocodone, a Schedule III controlled substance, but some were for oxycodone, a Schedule II controlled substance. It was also determined Respondent had ordered narcotic and benzodiazepine controlled substances for his personal use from a wholesale drug company.

On June 22, 1993, Diversion Investigators went to Respondent's office and confronted him about the fictitious prescriptions. After initial denials, he cooperated and admitting writing the fraudulent prescriptions to feed his drug abuse problem. Dr. Nearing also executed a DEA Form 1204, voluntarily surrendered his DEA Certificate of Registration and agreed to not reapply for registration for a minimum of two years.

Records introduced at the hearing showed that between May 1, 1989 and April 27, 1993, Respondent issued approximately 188 fraudulent prescriptions for Schedule II and III controlled substances, most of which were for 16 or 20 dosage units. Further documentary evidence showed that between March 27 and June 10, 1993, Dr. Nearing ordered approximately 1700 dosage units of Vicodin, Darvocet N–100 and Valium from two drug wholesalers. Vicodin is the brand name for a product containing hydrocodone, Valium is the brand name of a product containing diazepam, a Schedule IV controlled substance and Darvocet N–100 is the brand name for a product containing propoxyphene, also a Schedule IV controlled substance. Dr. Nearing testified at the hearing that while most of the Valium was provided to patients, he probably personally used the other drugs. There is no evidence that Dr. Nearing ever diverted any of these controlled substances to others or that any patient was harmed as a result of his personal abuse problems.

As a result of this investigation, on June 8, 1994, Respondent was charged in a one-count information in the United States District Court for the District of Kansas, with violating 21 U.S.C. 843(a)(3) by fraudulently obtaining a Schedule III narcotic controlled substance. Dr. Nearing pled guilty to that offense and on September 19, 1994, was placed on probation for four years, sentenced to four months home confinement, ordered to participate in a substance abuse treatment program and required to pay a $1,000.00 fine.

On March 22, 1994, the Dental Board entered into a stipulation with Respondent under which his license to practice dentistry was suspended for one year. However, the suspension was stayed so long as he met certain conditions, including complying with a rehabilitation program and refraining from any use of alcohol or controlled substances. This program included attendance at twelve-step meetings, personal counseling, working with a sponsor, participation in an aftercare group and drug testing upon demand.

The administrator of the Impaired Provider Program (IPP) later advised the Dental Board that Respondent was not complying with the program's requirements because he had refused therapy. As a result, Respondent entered into a Stipulation Agreement and Enforcement Order with the Dental Board in December 1996. Under that Order, his license would be suspended for twelve months; however, this suspension was also not put into effect, as long as Respondent re-enrolled in IPP and adhered with its requirements.

Respondent did reenter IPP, however, as a result of a second refusal to undergo therapy, the administrator again advised the Dental Board that he was not in compliance with the program. As a consequence, in a Final Order dated January 16, 1998, Respondent's dental license was suspended for twelve months. During this period, Respondent failed to renew his license and it was cancelled, effective March 1, 1999. In late 1999, after his suspension period had run, Respondent was seen practicing dentistry by a state investigator and because he had not renewed his license, Respondent was then practicing without a license.

He applied for a new license and in a Stipulation and Final Agency Order dated May 20, 2000, the Dental Board granted his application. However, as a sanction, it suspended his license to practice while he underwent additional rehabilitation. Respondent then entered a program run by the Professional Renewal Center (Center) of Lawrence, Kansas. This included intensive psychotherapy and treatment for a previously undiagnosed problem, which the Center had discovered.

In January 2001, the Center's then-Director wrote the Dental Board supporting Respondent's request to return to practice, noting Dr. Nearing's significant progress, the support of his family and his significant motivation for change. The Director supported Dr. Nearing's resumption of practice under enumerated conditions, which included continued participation in Caduceus, a support group for health professionals patterned after Alcoholics Anonymous and Narcotics Anonymous. The Director further recommended that Dr. Nearing not engage in a solo practice, as the strains of running such a business had contributed to his original abuse problems.

Based on this recommendation, in an Order dated January 30, 2001, the Dental Board lifted Dr. Nearing's license suspension and as of the date of the DEA hearing, he is fully licensed to practice dentistry in Kansas.

Respondent testified at the hearing, describing his history of violations and rehabilitative efforts. Immediately after the June 1993 interview, where he was apprised that authorities were aware of his activities, he entered his first in-patient treatment program. From 1994 to 1997 he underwent rehabilitative treatment as recommended by the Dental Board. However, he did stop seeing the therapist which the program's director had recommended. Dr. Nearing attributed this to confusion over whether seeing the therapist was mandatory and his then-belief the therapy was not helping him. This resulted in the first letter to the Dental Board that he was not in compliance with the program. Although he discontinued therapy, his urine screens were all negative and he attended Alcoholics Anonymous meetings. Dr. Nearing was reinstated into the program but in 1998 was dropped once more, again apparently for not seeing a therapist as directed.

On the recommendation of the Dental Board, he finally entered the Center's program in Lawrence, which addressed problems that had previously gone undiagnosed and this led eventually to full reinstatement of his license to practice dentistry. Respondent testified that he has not used drugs since August 18, 1994, and has not consumed alcohol since at least August 1999.

At the time of the hearing, Dr. Nearing was the supervising dentist in a clinic owned by another dentist. He oversees the professional practice of several other dentists, but does not have the business responsibilities which contributed to his abuse problems while operating a solo practice. He described his current situation as a ''wonderful practice'' and there is no evidence he has relapsed or abused any drugs since 1994. Dr. Nearing continues to attend Caduceus meetings and testified that he would not object to having conditions placed on his registration if the application was granted.

The current director of the Center and Respondent's monitoring physician

jointly wrote DEA in support of his application for registration. They reported Dr. Nearing was in sustained full remission and characterized his dependence recovery as being ''remarkable.''

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny any pending application for registration if she determines that registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See* Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

With regard to factor one, the recommendation of the appropriate state licensing board or professional disciplinary authority, Judge Bittner found Respondent is now fully licensed by the State of Kansas to practice dentistry and has authority to handle controlled substances in that state. She therefore found this factor weighed in favor of registration. Nevertheless, as noted by the Administrative Law Judge, state licensure is a necessary, but not sufficient condition for registration, and therefore this factor is not dispositive. *See e.g.,* Wesley G. Harline, M.D., 65 FR 5,665–01 (2000); James C. LaJevic, D.M.D., 64 FR 55,962 (1999). The Deputy Administrator agrees.

With regard to factor two, Respondent's experience in handling controlled substances, he abused controlled substances after obtaining them through fictitious prescriptions and ordering them from wholesalers. Judge Bittner concluded that even though Respondent never inappropriately prescribed, administered or otherwise dispensed controlled substances to any patient, this factor weighed in favor of a finding that Respondent's registration would be inconsistent with the public interest. The Deputy Administrator concurs.

The record also establishes Respondent entered a guilty plea to a charge of violating federal law by fraudulently obtaining a Schedule III narcotic controlled substance. Thus, as also found by Judge Bittner, factor three weighs in favor of a finding that Respondent's registration would be inconsistent with the public interest.

With regard to factor four, compliance with applicable laws relating to controlled substances, Respondent's use of purported prescriptions with fictitious names violated statutory and regulatory requirements that prescriptions be issued only for legitimate medical purposes and must bear the full name and address of the patient. As found by Judge Bittner, this factor also weighs against registration.

Finally, with regard to factor five, beyond the violations addressed above, the Deputy Administrator agrees with Judge Bittner that Respondent has not engaged in other conduct that may threaten the public health or safety.

Applying the above factors, Judge Bittner concluded the record clearly establishes grounds for finding that Respondent's registration would be inconsistent with the public interest. However, she recommended that the Deputy Administrator, in the exercise of her discretion, grant Respondent's application, with restrictions.

Judge Bittner noted Respondent cooperated with DEA investigators when he was first confronted with his misconduct in 1994. He admitted his abuse of controlled substances and the fraudulent means used to acquire them. He immediately sought treatment and there is no evidence that Dr. Nearing has abused any controlled substances for almost 11 years. While terminated from his initial rehabilitation program over the therapy issue, he did not return to drug use and eventually Dr. Nearing successfully completed an intensive program for impaired professionals.

The Administrative Law Judge, who observed Respondent's demeanor during the hearing, credited his testimony that he has continued rehabilitation and concluded that Dr. Nearing is unlikely to repeat his past misconduct. She therefore found that granting Respondent's application would not be inconsistent with the public interest, subject to the enumerated restrictions.

The Deputy Administrator also finds that adequate grounds exist for denying Respondent's application for DEA registration. Having concluded that there is a lawful basis upon which to deny Respondent's application, the question remains as to whether the Deputy Administrator should, in the exercise of her discretion, grant or deny the application. Like Judge Bittner, the Deputy Administrator concludes that it would not be inconsistent with the public interest to grant Respondent's pending application. *See* Karen A. Kreuger, M.D., 69 FR 7,016 (2004) [grant of restricted registration]; Jeffrey Martin Ford, D.D.S., 68 FR 10,750 (2003) [same].

The Deputy Administrator finds significant Respondent's willingness to cooperate with investigators and accept responsibility, both administratively and criminally. Upon discovery of his activities he immediately entered rehabilitation and most recently completed an intensive program for health professionals tailored to a diagnosis made only upon Dr. Nearing's admission to that program.

Most importantly, there is no evidence he has misused any controlled substances for almost eleven years now and he is in a responsible professional situation that is conducive to his continued compliance with the laws and regulations governing controlled substances. In sum, it appears from these positive developments that Respondent has acknowledged his past problems and taken steps to ensure continued recovery.

However, given the concerns about Respondent's past mishandling of controlled substances, a restricted registration is warranted. Accordingly, the Deputy Administrator adopts the following restrictions upon the Respondent's DEA registration, as recommended by Judge Bittner:

1. Respondent shall not write any prescriptions for himself, and shall not obtain or possess for his use any controlled substance except upon the written prescription of another licensed medical professional.

2. For at least two years from the date of the entry of a final order in this proceeding, Respondent shall continue to attend Caduceus meetings on a monthly basis.

Additionally,

3. Respondent's controlled substance handling authority shall be limited to the administering of controlled substances in his office and the writing of prescriptions only.

4. Respondent shall inform the DEA, within 30 days of the event, of any adverse action taken by any state upon his license to practice dentistry or upon his authorization to handle controlled substances within that state.

Accordingly, the Deputy Administrator of the Drug Enforcement

Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for DEA Certificate of Registration submitted by Scott H. Nearing, D.D.S. be, and it hereby is, granted, subject to the above described restrictions. This order is effective July 7, 2005.

Dated: May 25, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 05–11251 Filed 6–6–05; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 02–28]**

### Felix K. Prakasam, M.D. Revocation of Registration

On February 6, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Felix K. Prakasam, M.D. (Respondent) notifying Respondent of an opportunity to show cause as to why DEA should not revoke his DEA Certificates of Registration BP3420344 and BP44160029, pursuant to 21 U.S.C. 824(a)(1) and (a)(4) on the grounds he had materially falsified four DEA renewal applications and that his continued registration would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4). The Order to Show Cause also proposed that any pending applications for renewal should be denied under 21 U.S.C. 823(f).

The Order to Show Cause alleged, in sum, that during 1995–1996, Respondent failed to maintain complete and accurate records of controlled substances dispensed at this medical offices located in Redlands and Salinas, California, and accountability audits during this period revealed overages and shortages of controlled substances at both registered locations. As a result, on March 10, 1997, after an informal administrative hearing at the DEA San Francisco office, Respondent entered into a Memorandum of Understanding with DEA in which he agreed to address the record-keeping violations and provide effective controls against theft and diversion of controlled substances.

The Order to Show Cause further alleged that on April 30, 1997, the California Medical Board (California Board) brought on Accusation against Respondent's California medical license. As a result, on February 11, 1998, the California Board revoked Respondent's medical license, effective March 13, 1998. However, the Board stayed the revocation, placing Respondent's license on probation for three years, with conditions. On March 20, 2001, as a result of the California action, Respondent entered into a Consent Order with the Louisiana State Board of Medical Examiners (Louisiana Board) in which he agreed to an indefinite suspension of his Louisiana medical license.

Finally, it was alleged that in February 1998 and February 2001, Respondent materially falsified a total of four applications for renewal of his DEA registrations by failing to disclose the California Board's action placing his medical license in a probationary status.

Respondent requested a hearing on the issues raised by the Order to Show Cause and following pre-hearing procedures, a hearing was held in San Francisco, California, on March 12 and 13, 2003. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law, and argument.

On January 30, 2004, Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner/ALJ) issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge (Opinion and Recommended Ruling) in which she recommended that Respondent's two DEA registrations be revoked and any pending applications for renewal denied. No exceptions were submitted by the parties, and on March 2, 2004, Judge Bittner transmitted the record of these proceedings to the then-Acting Deputy Administrator of DEA.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon finding of fact and conclusions of law as hereinafter set forth.

The Deputy Administrator adopts the findings of fact and recommendation of the Administrative Law Judge that Respondent's DEA Certificates of Registration be revoked.[1]

The record before the Deputy Administrator shows Respondent received his medical degree in 1971 from Christian Medical College in Vellore, India. He interned and completed a residency in Maryland and in 1981 was licensed to practice in California. He also practiced medicine in Louisiana from an undetermined date until 1992, when he moved to California and opened a practice in Redlands. He eventually began working in the Salinas office of Rinaldo Fong, M.D. and took over that practice when Dr. Fong was deported. Respondent has held DEA Certificate of Registration BP3420344 for the Redlands location since November 18, 1992, and DEA resignation BP4416029 for the Salinas office since May 8, 1995. While Respondent is Board eligible in anesthesiology, his specialty at all relevant times has been bariatric medicine *i.e.,* weight control.

In July 1996, after reports were received of Respondent's possible purchase of excessive quantities of controlled substances, DEA Diversion Investigators, accompanied by an investigator from the California Board, conducted an inspection and accountability audit at Respondent's Salinas office. The inspection revealed Respondent had not complied with multiple regulatory requirements, including failures: (1) Maintain an inventory of controlled substances as of a specific date and as of the opening or closing of business; (2) maintain

[1] In an evidentiary/discovery ruling which did not impact relevant findings of fact or her recommendation for revocation, the ALJ concluded the Government should have provided Respondent copies of several DEA–6 Reports of Investigation which had been prepared by a DEA Diversion Investigator while investigating the allegations, several years before the hearing. Before testifying for the Government, the Diversion Investigator had used the reports to refresh his memory and Respondent's request for the documents was made after the Diversion Investigator completed testifying on direct examination. Notwithstanding the ALJ's ruling, the Government declined to provide Respondent the reports, contending they were not releasable under the rules and statutes governing DEA administrative hearings. Transcript, pages 168–169; Opinion and Recommended Ruling, page 5, fn. 1.

The reports appear to be Jencks Act material (18 U.S.C. 3500) and the Deputy Administrator has previously ruled that ''pursuant to applicable law and regulations governing DEA administrative hearings, neither the principles of the Jencks decision nor the Jencks Act are applicable to these proceedings.'' *See e.g.,* Branex Inc., 69 FR 8,682, 8,685 (2004) (Emphasis added) [Confirming predecessor Deputy Administrator's interlocutory decision that the Government is not required to supply a respondent at an administrative hearing, statements made and adopted by Government witnesses during their direct testimony.]

Applying the principles of Branex and its predecessors, which addressed evidentiary/discovery standards applicable to DEA administrative hearing and detailed the Government's limited obligations to provide discovery before and during the course of hearings under the Administrative Procedures Act (5 U.S.C. 556(d)) and DEA regulations (21 CFR 1316.54–1316.59), the Deputy Administrator concludes the Government correctly declined to provide Respondent the reports in question here. *See e.g.,* Nicholas A. Sychak, d.b.a. Medicap Pharmacy, 65 FR 75,959, 75,960–75,961 (2000) [No requirement for Government to disclose potentially exculpatory information to respondents in DEA administrative hearings]; Rosalind A. Cropper, M.D., 66 FR 41,040, 41,041 (2001) [''the Federal Rules of Evidence do not apply directly to these proceedings'']. 

addresses of patients to whom Respondent directly dispensed controlled substances or the initials or name of the dispenser; (3) adequately document a return of controlled substances to a supplier; (4) document a transfer of controlled substances between his Redlands and Salinas offices; and (5) retain a purchase invoice.

An accountability audit performed in conjunction with the investigation in July 1996 indicated substantial overages of phentermine 30 mg. and 15 mg. and a substantial shortage of phentermine 37.5. However, Judge Bittner concluded the overages were most likely attributable to the use of a zero opening inventory and did not necessarily indicate diversion.

With regard to the shortage, there was a conflict in the evidence as to whether investigators had inventoried some 48,000 dosage units of phentermine 37.5 mg. which, if counted, would have resulted in an overage of that drug. A second inventory was performed at the Salinas Office on October 29 and 30, 1996, showing a substantial overage of phentermine 37.5 mg. and no significant shortages. Given the numbers, Judge Bittner concluded the second audit's overage indicated the 48,000 units of phentermine 37.5 mg. had actually been on hand in July, but not counted in the first audit.

The Deputy Administrator agrees with Judge Bittner that the record is inadequate to determine whether or not the July 1996 inventory was accurate. Therefore, it cannot be established whether or not Respondent was responsible for the shortage indicated by the first audit.

On February 6, 1997, a Notice of Hearing was issued by DEA informing Respondent an informal hearing would be held in San Francisco on March 10, 1997. The notice alleged the record keeping and regulatory violations from the 1996 DEA investigations. Respondent appeared, represented by counsel, and testified regarding the reasons for the regulatory violations, but disputed the accuracy of the inventories.

On May 8, 1997, Respondent executed a Memorandum of Understanding with DEA's San Francisco Field Division. In that Memorandum Respondent agreed to: (1) Comply with the provisions of the Controlled Substances Act and its implementing regulations at each of his registered locations; (2) take an inventory of controlled substances upon receiving a new DEA registration; (3) maintain dispensing logs that met regulatory requirements; (4) keep complete and accurate records; (5) keep required receiving records; (6) follow drug destruction procedures established by the DEA San Francisco office; and (7) provide effective controls against theft and diversion of controlled substances.

The California Board conducted additional investigations of Respondent and on April 30, 1997, issued an Accusation against Respondent alleging multiple violations, including the matters from the 1996 DEA inquiries. On February 11, 1998, the California Board issued a Decision, effective March 13, 1998, adopting a Stipulated Settlement and Decision (Stipulation) that Respondent and his then-attorney executed on January 5, 1998. In the Stipulation, Respondent waived various rights but did not admit engaging in any of the alleged misconduct.

The Stipulation revoked Respondent's medical license and license to supervise physician assistants, but stayed the revocations and placed his licenses on probation for three years. Among its provisions, the Stipulation required Respondent to take continuing medical education courses and courses in prescribing practices and ethics, to maintain records of all controlled substances he prescribed, dispensed or administered, to make these records available for inspection, to take and pass an oral clinical examination, to have a third party present while examining or treating female patients and to comply with a probation surveillance program.

The Stipulation provided that upon successful completion of probation, Respondent's California licenses would be reinstated. That, in fact, occurred and on May 11, 2001, Respondent was notified he had successfully completed probation. He has since been licensed to practice medicine in California without restriction. The evidence introduced at the DEA hearing indicates that since the 1996 DEA inquiry, he has complied with controlled substance record keeping requirements.

Respondent was also licensed to practice medicine in Louisiana for a period of time prior to 1998, when his license expired. Under Louisiana law, he was entitled to renew the license for a period of four years from its expiration. On Februry 2, 2001, Respondent entered into a Consent Order with the Louisiana Board, in which the Board indefinitely suspended Respondent's entitlement to reinstatement of his Louisiana medical license. It further imposed, as a condition of eventual reinstatement, that Respondent successfully complete all probationary conditions levied by the California Board and obtain an unrestricted license to practice medicine in California. Respondent was also required to notify and appear before the Louisiana Board, prior to seeking renewal or reinstatement of his Louisiana license and he would accept any terms or conditions the Louisiana Board might impose as a condition of reinstatement.

Respondent testified at the DEA hearing that when he signed the Memorandum of Understanding with DEA in May 1997, he understood ''that the matter would be laid to rest at that moment, and never again brought up; but it was not done so.'' He also testified he agreed to settle the California Board proceedings because he paid ''thousands of dollars'' in attorney fees and had no money left. However, he regretted that decision because he considered the allegations to be false. With regard to the Louisiana Consent Order, Respondent testified he signed it because he ''had not desire to go back to Louisiana.''

On February 25 and 28, 1998, Respondent executed renewal applications for the DEA registrations at his Redlands and Salinas locations. On both applications, Respondent checked ''No'' in response to the question, ''Has the applicant even been convicted of a crime in connection with controlled substances under State or Federal law or ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted, or denied or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted, *or placed on probation or is any such action pending against the applicant?*'' (Emphasis added). An applicant who responds affirmatively to this question is required to explain his answer on the back of the application. Respondent left this space blank on both applications.

On February 27 and 28, 2001, Respondent again executed renewal applications for his Salinas and Redlands offices. These applications included the so-called ''liability questions'' pertaining to individual applicants. Question 3(d) asked, ''Has the applicant *ever* had a state professional license or controlled substance registration revoked, suspended, denied, restricted, *or placed on probation*?'' (Emphasis added). Respondent answered this question in the negative on both applications and left the space for explanations of affirmative answers blank.

In June 2001, a Diversion Investigator from DEA's Riverside office looking into Respondent's February 2001 renewal applications, contacted the California Board and learned that Respondent's medical license for that state had been

placed on probation. In October 2001, the investigator wrote a report concluding Respondent had not truthfully answered the liability questions and recommend initiation of the instant Show Cause proceedings.

Respondent testified at the DEA hearing that when he executed the two February 1998 applications, no discipline had yet taken effect against either his California or Louisiana medical licenses. When asked his understanding of the relevant question, Respondent replied he thought the question applied only to a separate state license to handle controlled substances, such as he had in Louisiana, and that no action had been taken against that license. He further testified he would have expected someone from DEA to contact him if there was a problem with the 1998 applications and that did not occur.

On cross-examination, Respondent acknowledged that as of January 5, 1998, he was aware he was entering into an agreement with the California Board which would result in his California medical license being placed on probation and that the questions on his February 1998 applications referred to *pending* disciplinary actions, in addition to discipline already imposed. Nonetheless, when asked, ''isn't it true that, on February 25, 1998, you were aware that the California Medical Board was going to place [you] on probation?''—Respondent answered, ''Yes, but that's not how I read that.'' Asked further what he thought the correct answer to the application's question was, Respondent replied, ''My opinion would be the correct answer is no.''

Similarly, when asked whether the February 2, 2001, Consent Order with the Louisiana Board resulted in a suspension or probation of his Louisiana medical license, Respondent replied the Consent Order was based on the California settlement and he had agreed not to practice in Louisiana and not renewed his license in that state.

With respect to the two 2001 DEA applications, Respondent testified his answers to question 3(d) were correct because the probationary period for his California medical license had run by that time and he thought the question referred to his controlled substance license, rather than his medical license.

The Controlled Substances Act specifies in 21 U.S.C. 824(a)(1) that the Deputy Administrator may revoke a DEA Certificate of Registration if she finds the registrant has materially falsified any application for DEA registration. The Act also provides in section 824(a)(4) that the Deputy Administrator may revoke a registration if she determines the registrant has committed acts that would render his continued registration inconsistent with the public interest, as that term is determined under 21 U.S.C. 823(f). That section requires the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoced or an application for registration denied. See Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

With regard to the public interest factors, the Deputy Administrator finds, in agreement with Judge Bittner as to factor one, that Respondent has regained his unrestricted license to practice medicine in California and this weighs in favor of continued registration. However, inasmuch as State license is a necessary but not sufficient condition for DEA registration, this factor is not determinative. See Edson W. Redard, M.D., 65 FR 30,616, 30,619 (2000); James C. LaJevic, D.M.D., 64 FR 55,962, 55,964 (1999).

As to factor two, Respondent's experience in handling controlled substances, Judge Bittner concluded that the recordkeeping deficiencies disclosed in the 1996 investigation indicated that continued registration would not be in the public interest. However, with regard to the 1996 audits, Judge Bittner concluded the evidence introduced at the DEA hearing was insufficient to show Respondent responsible for any shortages of controlled substances and thus weighed in favor of continued registration. The Deputy Administrator agrees with these conclusions.

As to factor three, there is no evidence Respondent has ever been convicted of a crime relating to controlled substances.

As to factor four, his compliance with applicable laws relating to controlled substances, Respondent's falsification of the renewal applications and the regulatory violations discussed above, establish he has not complied with the laws relating to controlled substances. The Deputy Administrator agrees with Judge Bittner that this factor weighs against continued registration.

As to factor five, other conduct that may threaten the public health and safety, Judge Bittner noted that, although Respondent committed various regulatory violations prior to 1996, his subsequent recordkeeping apparently complied with DEA regulations. She therefore found this factor weighs in favor of continued registration. The Deputy Administrator agrees.

In sum, Judge Bittner concluded Respondent corrected the recordkeeping deficiencies uncovered in 1996 and under the circumstances, the audit results did not warrant a finding that Respondent mishandled controlled substances during the period July 1995 to October 1996. She concluded that the factors considered pursuant to 21 U.S.C. 832(f), other than those relating to falsification of applications, did not establish that Respondent's continued registration was inconsistent with the public interest under 21 U.S.C. 824(a)(4). The Deputy Administrator agrees revocation is unwarranted under that section.

However, as Judge Bittner concluded, the issue of Respondent's falsification of renewal applications ''is another matter.'' DEA has previously held that in finding there has been a material falsification of an application, it must be determined the applicant knew or should have known that the response given to the liability question was false. See Merlin E. Shuck, D.V.M., 69 FR 22,566 (2004); James C. LaJavic, D.M.D., *supra,* 64 FR 55,962; Martha Hernandez, M.D., 62 FR 61,145 (1997). In that regard, Judge Bittner found Respondent materially falsified four applications for renewal of his DEA registrations.

The two 1998 applications did not refer only to licenses to handle controlled substances, but to ''a state professional license or controlled substance registration,'' and it is clear that applicants were required to report actions against their medical or other professional licenses, both completed and then-pending. Further, although the probation of Respondent's California license did not take effect until March 13, 1998, the disciplinary action was obviously pending on February 25 and 28, 1998, when Respondent executed his applications. Also, regarding the two February 2001 applications, at that time Respondent's California license *had been* on probation and the fact that the

probationary period was over did not justify a negative answer to the question, as it asked whether the applicant ''ever'' had discipline take against a state license.

The Deputy Administrator also agrees with Judge Bittner's conclusions, made after observing Respondent's demeanor, that ''Respondent's explanations for the misstatements and his continued insistence that his answers were correct are disingenuous at best'' and that he materially falsified the applications, which establishes grounds for revoking his registrations under 21 U.S.C. 824(a)(1).[2]

As Judge Bittner notes in her Opinion and Recommended Ruling, the governing statute is discretionary. See Mary Thomson, M.D. 65 FR 75,969 (2000). In exercising discretion in determining the appropriate remedy in any given case, the Deputy Administrator considers all the facts and circumstances of the case. See Martha Hernandez, M.D., *supra,* 62 FR 61,145.

In recommending revocation of Respondent's registrations, Judge Bittner concluded,

> False statements on an application for DEA registration withhold from DEA information that is germane to the applicant's fitness to hold that registration. Kuen H. Chen, M.D., 58 FR 65401 (DEA 1993). Further, as discussed above, Respondent insisted that his answers to the questions on his 1998 and 2001 applications for renewal of his DEA registrations were accurate.
>
> They were not. In addition and also discussed above, Respondent's explanations of his answers on these applications were at best disingenuous. Respondent's cavalier attitude toward his responsibility to truthfully answer questions on the application raises serious concerns about whether he is willing to accept the other responsibilities inherent in a DEA registration.

The Deputy Administrator has examined the record and finds the facts and credibility determinations of Judge Bittner to be well supported by the evidence. While the record does not establish that Respondent's continued registration would be inconsistent with the public interest, he materially falsified four applications for renewal of registration, which constitutes an independent ground for revocation.

The Deputy Administrator shares Judge Bittner's concern regarding Respondent's on-going refusal or inability to acknowledge a registrant's responsibility to provide forthright and complete information to DEA, when required to do so as a matter of law or regulation. This attitude, reflected most recently in his testimony at the hearing under oath, does not auger well for his future compliance with the responsibilities of a registrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), and 0.104, hereby orders the DEA Certificates of Registration BP3420344 and BP4416029, issued to Felix K. Prakasam, M.D., be, and hereby are, revoked. The Deputy Administrator further orders that any pending applications to renew or modify said registrations be denied. This order is effective July 7, 2005.

Dated: May 25, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 05–11248 Filed 6–6–05; 8:45 am]

**BILLING CODE 4410–09–M**

[2] Respondent signed the Consent Order with the Louisiana Board on February 2, 2001, however it was not effective until March 20, 2001. Judge Bittner noted that the 2001 DEA applications, which Respondent signed on February 27 and 28, 2001, did not specifically ask whether any disciplinary proceedings were then ''pending.'' Accordingly, she concluded that, ''at least arguably, Respondent was not required to disclose the Louisiana action inasmuch as it was not effective until March 20, 2001.'' While, given the wording of the application's questions, Respondent's omissions in failing to report this action may not have amounted to material misrepresentations under 21 USC 824(a)(1), it demonstrates his willingness to draw exceptionally fine lines in dealing with DEA regulators.

---

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 05–9]**

### Roger A. Rodriguez, M.D., Denial of Registration

On October 8, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Roger A. Rodriguez, M.D. (Respondent) of Peoria, Illinois, notifying him of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration as a practitioner pursuant to 21 U.S.C. 823(f).

As a basis for denial, the Order to Show Cause alleged, in substance, that Respondent: (1) Issued prescriptions and dispensed controlled substances to undercover law enforcement personnel on multiple occasions without an adequate physical examination or bona fide medical reason; (2) failed to maintain required controlled substance records; and (3) surrendered a prior DEA registration on June 19, 2003, and then used another practitioner's DEA registration number to issue a prescription for controlled substances.

Respondent, through counsel, timely requested a hearing in this matter. On November 22, 2004, the Presiding Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued the Government, as well as Respondent, an Order for Prehearing Statements.

In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition. In its motion the Government asserted that as of December 20, 2004, Respondent was no longer authorized to handle controlled substances in Illinois, his state of applied-for registration. As a result, further proceedings in this matter were not required. Attached to the Government's motion was a copy of the Illinois Department of Financial and Professional Regulation, Division of Professional Regulation (Illinois Board) Order dated December 20, 2004. That Order temporarily suspended Respondent's Illinois medical license and state Controlled Substances Registration, pending further proceedings before the Illinois Board.

On January 4, 2005, Judge Bittner issued a Memorandum to Counsel providing Respondent until January 18, 2005, to respond to the Government's motion. Respondent then filed a motion on January 14, 2005, seeking an extension of time to file his response to the Government's motion. In it, he claimed there was a hearing scheduled before the Illinois Board on January 18, 2005, which could impact the suspension order. Over the Government's objections, Judge Bittner granted Respondent an extension until February 8, 2005, to file his response.

On February 8, 2005, Respondent filed his Response to the Motion for Summary Disposition. In that response he did not contest that his medical and controlled substance licenses were then-suspended, but asserted he was in negotiations with the Illinois Board that might result in an agreed-to four-month suspension of his medical license. Respondent asked Judge Bittner to stay action on the Government's motion until the state disciplinary proceeding was resolved.

On February 16, 2005, Judge Bittner issued her Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Bittner denied Respondent's request to stay the proceedings and granted the Government's Motion for Summary Disposition, finding Respondent lacked authorization to handle controlled substances in Illinois, the jurisdiction

where he was applying for registration. Judge Bittner recommended that Respondent's application for a DEA Certificate of Registration be denied.

No exceptions were filed by either party to Judge Bittner's Opinion and Recommended Decision and on March 22, 2005, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent previously held DEA Certificate of Registration BR4105032, which he surrendered on June 19, 2003, while a Federal Search Warrant was being executed upon his medical office. Three weeks later, Respondent filed the application for DEA registration which is the subject of these proceedings.

The Deputy Administrator further finds that, effective December 20, 2004, Respondent's license to practice medicine in Illinois and his Illinois Controlled Substances Registration were temporarily suspended, pending further proceedings, after the Illinois Board found ''the public interest, safety, and welfare imperatively require emergency action to prevent the continued practice of the Respondent, in that Respondent's actions constitute an immediate danger to the public.'' The Illinois Board's action was based primarily on the facts alleged in DEA's Order to Show Cause, coupled with Respondent's violation of an Agreement of Care, Counseling and Treatment, which he had entered into with state authorities.

The Deputy Administrator therefore finds Respondent is currently not licensed to practice medicine in Illinois and lacks authorization to handle controlled substances in that state.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Stephen J. Graham, M.D., 69 FR 11,661 (2004), Dominick A. Ricci, M.D., 58 FR 51,104 (1993); Bobby Watts, M.D., 53 FR 11,919 (1988). Denial or revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement. *See* Paramabaloth Edwin, M.D., 69 FR 58,540 (2004); Alton E. Ingram, Jr., M.D., 69 FR 22,562 (2004); Anne Lazar Thorn, M.D., 62 FR 847 (1997).

Here, it is clear Respondent is not currently licensed to handle controlled substances in Illinois, the jurisdiction in which he has applied for a DEA registration. Therefore, he is not entitled to registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Roger A. Rodriguez, M.D., be, and it hereby is, denied. This order is effective July 7, 2005.

Dated: May 25, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 05–11243 Filed 6–6–05; 8:45 am]

**BILLING CODE 4410–09–M**

---

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Robert A. Smith, M.D., Revocation of Registration

This order serves as a correction of the final order previously issued in this matter and published on May 10, 2005. On September 29, 2004, the Deputy Administrator, Drug Enforcement Administration (DEA), issued an Order to Show Cause/Immediate Suspension of Registration to Robert A. Smith, M.D. (Dr. Smith) who was notified of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AS6932669 under 21 U.S.C. 824(a)(4) and deny any pending applications for renewal or modification of that registration under 21 U.S.C. 823(f). Dr. Smith was further notified that his registration was being immediately suspended under 21 U.S.C. 824(d) as an imminent danger to the public health and safety.

The Order to Show Cause alleged in relevant part, that Dr. Smith diverted controlled substances for a substantial time by knowingly issuing fraudulent prescriptions to individuals, without a bona fide doctor-patient relationship or legitimate medical purpose. The Order to Show Cause also notified Dr. Smith that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

On October 20, 2004, a DEA investigator personally served the Order to Show Cause/Immediate Suspension of Registration on Dr. Smith's attorney at Respondent's medical office in Philadelphia, Pennsylvania. Since that date, DEA has not received a request for a hearing or any other reply from Dr. Smith or anyone purporting to represent him in this matter.

Therefore, the Deputy Administrator of DEA, finding that (1) thirty days having passed since personal delivery of the Order to Show Cause/Immediate Suspension of Registration to the registrant and (2) no request for hearing having been received, concludes that Dr. Smith is deemed to have waived his hearing right. *See* David W. Linder, 67 FR 12,579 (2002). After considering material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Smith is registered with DEA as a practitioner under Certificate of Registration AS6932669 with a registered location at 1420 Locust Street, Suite 200, Philadelphia, Pennsylvania. In May 2003, DEA began investigating Dr. Smith as a result of complaints from area pharmacies that were encountering large numbers of young, seemingly healthy individuals, filling prescriptions issued by Dr. Smith for OxyContin and Percocet, both schedule II controlled substances. These individuals paid cash for their prescriptions and appeared to be traveling long distances to have them prescribed and filled.

On June 27, 2003, Independence Blue Cross (IBC) insurance investigators interviewed IBC beneficiary ''H.B.'' regarding prescriptions for OxyContin, Percocet and Methadone which had been issued by Dr. Smith under her name and insurance data. H.B. had never seen or heard of Dr. Smith and had no medical conditions warranting the prescriptions. It was also established that H.B.'s son's father, ''M.P.,'' was a heroin addict and that M.P.'s sister, ''L.P.,'' who also had a history of narcotic's abuse, worked for Dr. Smith as his office assistant.

On July 9, 2003, NBC investigators interviewed ''C.P.,'' who was L.P.'s sister. IBC's records reflected that on May 10, 2003, Dr. Smith issued prescriptions for Percocet and Alprazolam (Xanax), a schedule IV controlled substance, using C.P.'s name and policy, which were then paid for by insurance company. Investigators determined C.P. had never met or been examined by Dr. Smith, that she did not receive the prescriptions written in her name and had no medical conditions warranting them.

On November 6, 2003, DEA Diversion Investigators responded to the Lombard Apothecary in Philadelphia to interview ''D.N.,'' who had attempted to fill a prescription for OxyContin issued by Dr. Smith using D.N.'s mother's name and insurance. D.N. admitted that her mother had no knowledge of the prescription and was not a patient of Dr. Smith. D.N. had asked Dr. Smith to issue her fraudulent prescriptions, as she had no medical insurance of her own. He also had written her a prescription for OxyContin, using her brother's name and insurance data. D.N. then used the OxyContin to feed her personal narcotics addiction.

On November 26, 2003, ''J. S.'' was interviewed by local law enforcement authorities, with DEA Diversion Investigators present. She admitted receiving seven to ten prescriptions for OxyContin from Dr. Smith, per visit, on a weekly basis. These prescriptions would be written in J.S.'s name, as well as her father's and fiancee's names. She paid $65.00 per visit and an additional $100.00, each time, to ensure Dr. Smith would continue providing her fraudulent prescriptions. Additionally, Dr. Smith would ask J.S. for sexual favors during her office visits. While she personally declined to fulfill his requests, as a substitute, she paid another woman $100.00 to perform a sexual act upon Dr. Smith. J.S. also reported that Dr. Smith's office assistant, L.P., had provided her blank prescriptions in return for $40.00 and OxyContin pills.

Dr. Smith also wrote prescriptions for ''A.D.,'' who had heard of Respondent's ''street'' reputation for providing controlled substance prescriptions. A.D. was first seen by Dr. Smith in February 2003 and the only examination involved measuring A.D.'s blood pressure. In March and April 2003, Dr. Smith issued prescriptions for OxyContin and Percocet, using both A.D.'s and his wife's names. In February 2004, Dr. Smith also wrote ten prescriptions for A.D. using A.D.'s name, his wife's name and a friend's name.

On February 22, 2004, ''S.K.'' was found, apparently unresponsive, by her mother-in-law, who called 911. S.K. died of a drug overdose and a few weeks later S.K.'s mother-in-law contacted DEA Diversion Investigators and advised that S.K. had been addicted to narcotics and Dr. Smith was the source of her prescriptions. The Philadelphia Medical Examiner's Office provided DEA investigators 31 prescription bottles recovered from S.K.'s residence. All of their labels indicated they were prescribed by Dr. Smith and the majority was for schedule II and IV controlled substances.

On May 20, 2004, a Confidential Source (CS) was provided $400.00 to purchase fraudulent prescriptions written by Dr. Smith. The CS used that money to obtain twelve separate prescriptions from an individual who, in turn, had received them from Dr. Smith.

On May 27, 2004, Diversion Investigators interviewed ''J.G.'' who, for six or eight months, had been seeing Dr. Smith on a weekly basis. J.G. would give Dr. Smith a list of fictitious names and types of controlled substances he desired and Dr. Smith would issue three prescriptions under each name, usually for Percocet, OxyContin and Xanax. Dr. Smith issued between nine and fifteen fraudulent prescriptions for controlled substances per visit and received $100.00 for each set of three prescriptions. J.G. then sold the prescriptions to a third party who, in turn, sold the drugs on the street. Dr. Smith was aware of and knowingly participated in this scheme.

On June 1, 17 and 19, 2004, a CS visited Dr. Smith's medical office. On each occasion, he obtained fraudulent prescriptions for Xanax, OxyContin and Percocet, paying Dr. Smith $500.00 for fifteen prescriptions, written under five different fraudulent identities.

On June 29, 2004, Diversion Investigators were contacted by Family Meds, a mail order pharmacy in Connecticut. On June 22, 2004, the pharmacy received five prescriptions for controlled substances written by Dr. Smith for ''M.B.'' Family Meds had contacted Dr. Smith, who verified issuing the prescriptions. However, the pharmacy ultimately refused to fill them and verified that on June 6, 2004, M.B. had filled identical prescriptions issued by Dr. Smith at another pharmacy.

A review of reports from the Pennsylvania Attorney General's Office, Bureau of Narcotics Investigation and Drug Control showed that from January 14, 2002, to April 30, 2004, Dr. Smith issued over 6,500 prescriptions for schedule II narcotic controlled substances. These prescriptions constituted a significant portion of the total schedule II prescriptions filled in the Philadelphia and New Jersey area.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications for renewal of such registration, if she determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or state laws relating to the manufacture, distribution, and dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. See *Henry J. Schwartz, Jr., M.D.,* 54 FR 16,422 (1989).

As to factor one, the recommendation of the appropriation state licensing board or professional disciplinary authority, there is no evidence in the investigative file that the State of Pennsylvania has yet taken adverse action against Dr. Smith's medical license. However, ''inasmuch as State licensure is a necessary but not sufficient condition for a DEA registration* * * this factor is not dispositive.'' See *Edson W. Redard, M.D.,* 65 FR 30,616, 30,619 (2000).

With regard to factors two and four, Respondent's experience in handling controlled substances and his compliance with applicable controlled substance laws, the investigative file contains overwhelming evidence that Dr. Smith unlawfully prescribed and diverted controlled substances over an extensive period of time. He knowingly prescribed controlled substances to individuals without bona fide doctor-patient relationships and issued fraudulent prescriptions destined to feed the recipient's personal addiction or to be sold on the street. He did so in a calculated manner, for financial gain, violating multiple state and federal laws and abysmally failing to meet the rudimentary responsibilities of a physician and registrant. Thus, factors two and four weigh in favor of a finding that continued registration would be inconsistent with the public interest.

Factor three, the applicant's conviction record under Federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances, is not relevant for consideration, as there is no evidence Dr. Smith has yet been convicted of any

crime related to controlled substances. However, it is noted the investigation has been provided to Federal authorities for possible initiation of criminal charges.

With respect to factor five, other conduct that may threaten the public health and safety, Respondent's actions discussed above are also relevant under this factor. The Deputy Administrator is particularly troubled by Dr. Smith's efforts to enrich himself at the expense of the public health and safety. Not only has a large quantity of controlled substances been diverted over an extensive period of time as a result of his illegal activities, at least one patient has died of a drug overdose after taken medications prescribed by Dr. Smith.

The exact degree of suffering and costs, both social and economic, stemming from Dr. Smith's activities will never be known. Suffice it to say, his unprofessional and criminal conduct has resulted in the diversion of large quantities of controlled substances in the Philadelphia area for a lengthy period of time, with correspondingly severe consequences for public health and safety.

In sum, Dr. Smith's cavalier disregard for the law and abandonment of his responsibilities as a physician and registrant cannot be tolerated. They weigh, irresistibly, in favor of a finding that continued registration would not be in the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b), and 0.104, hereby orders that DEA Certificate of Registration AS6932669, issued to Robert A. Smith, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective July 7, 2005.

Dated: May 25, 2005.

**Michele M. Leonhart,**

*Deputy Administrator.*

[FR Doc. 05–11250 Filed 6–6–05; 8:45 am]

**BILLING CODE 4410–09–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–33656]**

## Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for PPD, Inc.'s (formerly PPD Development and PPD Pharmaco) Facility in Richmond, VA

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**FOR FURTHER INFORMATION CONTACT:** John Nicholson, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5236, fax (610) 337–5269; or by e-mail: *jjn@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The Nuclear Regulatory Commission (NRC) is issuing a license amendment to PPD, Inc. for Materials License No. 45–25314–01, to authorize release of its facility in Richmond, Virginia for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this notice.

### II. EA Summary

The purpose of the action is to authorize the release of the licensee's Richmond, Virginia facility for unrestricted use. PPD, Inc. was authorized by NRC from November 23, 1994, to use radioactive materials for research and development purposes at the site. On November 18, 1997, PPD, Inc. requested that NRC release the facility for unrestricted use. PPD, Inc. has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in subpart E of 10 CFR part 20 for unrestricted use.

The NRC staff has prepared an EA in support of the license amendment. The facility was remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by PPD, Inc. Based on its review, the staff has determined that there are no additional remediation activities necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in subpart E of 10 CFR part 20, a Finding of No Significant Impact is appropriate.

### III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to release the facility for unrestricted use. The NRC staff has evaluated PPD, Inc.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has found that the radiological environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). The staff also found that the non-radiological impacts are not significant. On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

### IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: The Environmental Assessment [ML051510116], NRC Inspection Report No. 45–25314–01/98–01 [ML050450536] and Final Radiological Survey Report for 2246C Dabney Circle dated October 1997 prepared by RSO, Inc., for PPD Pharmaco [ML050450524]. 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 (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Documents related to operations conducted under this license not specifically referenced in this notice may not be electronically available and/or may not be publicly available.

Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html.*

Dated in King of Prussia, Pennsylvania this 31st day of May, 2005.

For the Nuclear Regulatory Commission.

**James P. Dwyer,**

*Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. 05–11217 Filed 6–6–05; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATE:** Weeks of June 6, 13, 20, 27, July 4, 11, 2005.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and closed.

**MATTERS TO BE CONSIDERED:**

**Week of June 6, 2005**

There are no meetings scheduled for the week of June 6, 2005.

**Week of June 13, 2005—Tentative**

There are no meetings scheduled for the week of June 13, 2005.

**Week of June 20, 2005—Tentative**

There are no meetings scheduled for the week of June 20, 2005.

**Week of June 27, 2005—Tentative**

Tuesday, June 28, 2005.

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, June 29, 2005.

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1).

**Week of July 4, 2005—Tentative**

There are no meetings scheduled for the week of July 4, 2005.

**Week of July 11, 2005—Tentative**

There are no meetings scheduled for the week of July 11, 2005.

* 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: June 2, 2005.

**Dave Gamberoni,**

*Office of the Secretary.*

[FR Doc. 05–11350 Filed 6–3–05; 9:41 am]

**BILLING CODE 7590–01–M**

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

**Background**

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 13, 2005 to May 25, 2005. The last biweekly notice was published on May 24, 2005 (70 FR 29785).

**Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it

will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://*

*www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

*Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan*

*Date of amendment request:* May 18, 2005.

*Description of amendment request:* The proposed amendment would revise Fermi 2 Technical Specifications (TSs) to add Actions to Limiting Condition for Operation (LCO) 3.8.1, ''AC Sources—Operating,'' for one offsite circuit inoperable, for two offsite circuits inoperable, and for one offsite circuit and one or both emergency diesel generators (EDGs) in one Division inoperable, in accordance with Regulatory Guide 1.93, ''Availability of Electric Power Sources.'' The current Fermi 2 TSs contain only a single Action for one or two offsite circuits inoperable.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to replace the existing LCO 3.8.1 Action C for one or two offsite circuits inoperable with a required Completion Time of 12 hours to be in MODE 3, and 36 hours to be in MODE 4, with new Actions C, D, and E to allow a single offsite circuit to be inoperable for up to 72 hours, two offsite circuits to be inoperable for up to 24 hours, and one offsite circuit and one or both EDGs in one Division to be inoperable for up to 12 hours, provided other Required Actions are taken is consistent with the NUREG 1433, ''Standard Technical Specifications General Electric Plants, BWR/4,'' criteria, and with the guidelines in Regulatory Guide 1.93. There is no change in plant design, and [Title 10 of the Code of Federal Regulations (10 CFR)] 10 CFR 50, Appendix A, General Design Criteria 17, ''Electric Power Systems'' will continue to be met. Increasing the Completion Times for inoperable offsite circuits will not significantly increase the potential for a loss of offsite power. This is due to the redundancy and diversity of the offsite electrical configuration at Fermi 2. Inoperability of an offsite circuit does slightly increase the potential for a loss of divisional power. The probability of losing the opposite division of offsite power in this condition is extremely small due to the physical separation of the offsite power sources that feed Fermi 2. Furthermore, the 10 CFR 50.65(a)(4) program monitors the condition of the offsite electrical system and switchyard configuration for each entry into the extended completion time to ensure that there is no significant increase in the probability or consequences of an accident.

The proposed change does not alter the operation of any plant equipment assumed to function in response to an analyzed event or otherwise increase its failure probability. Therefore, this change does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the design, configuration, or method of operation of the plant. It simply provides longer Completion Times for inoperable offsite circuits. No physical or operational changes to the components of the A. C. power systems are being made by this change; therefore, no new system interactions are being created. The proposed change does not produce any parameters or conditions that could contribute to the initiation of accidents different from those already evaluated. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The change does not involve a significant reduction in the margin of safety.

The proposed change will replace the existing LCO 3.8.1 Action C for one or two offsite circuits inoperable with a required Completion Time of 12 hours to be in MODE 3, and 36 hours to be in MODE 4, with new Actions C, D, and E to allow a single offsite circuit to be inoperable for up to 72 hours, two offsite circuits to be inoperable for up to 24 hours, and one offsite circuit and one or both EDGs in one Division to be inoperable for up to 12 hours, provided other Required Actions are taken. This change is consistent with NUREG 1433, ''Standard Technical Specifications General Electric Plants, BWR/4,'' and with the guidelines in Regulatory Guide 1.93. The proposed change does not affect any analysis that is used to establish safety margins, nor does it alter the design, configuration, or method of operation of the plant. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David G. Pettinari, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

*NRC Section Chief:* L. Raghavan.

*Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington*

*Date of amendment request:* April 19, 2005.

*Description of amendment request:* The proposed amendment would revise technical specifications (TS) testing frequency for the surveillance requirement (SR) in TS 3.1.4, ''Control Rod Scram Times.'' Specifically, the proposed change would revise the frequency for SR 3.1.4.2, Control Rod Scram Time Testing, from ''120 days cumulative operation in MODE 1'' to ''200 days cumulative operation in MODE 1.''

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in licensing amendment applications in the **Federal Register** on August 23, 2004 (69 FR 51864). The licensee affirmed the applicability of the model NSHC determination in its application dated April 19, 2005.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The frequency of surveillance testing is not an initiator of any accident previously evaluated. The frequency of surveillance testing does not affect the ability to mitigate any accident previously evaluated, as the tested component is still required to be operable. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change does not result in any new or different modes of plant operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change extends the frequency for testing control rod scram time

testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change continues to test the control rod scram time to ensure the assumptions in the safety analysis are protected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, the proposed change presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of ''no significant hazards consideration'' is justified.

*Attorney for licensee:* Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

*NRC Section Chief:* Robert A. Gramm.

**Entergy Nuclear Operations, Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3 (IP2 and 3), Westchester County, New York**

*Date of amendment request:* April 22, 2005.

*Description of amendment request:* The amendments would revise the surveillance requirements (SRs) for Technical Specification (TS) 3.3.5, ''Loss of Power (LOP) Diesel Generator (DG) Start Instrumentation.'' Specifically, a note would be added to IP2 TS SR 3.3.5.2 to indicate that the verification of the setpoint is not required for the 480 volt (V) bus degraded voltage function when performing the trip actuating device operational test (TADOT). A similar note would be added to IP3 TS SR 3.3.5.1 for the 480V degraded voltage and undervoltage functions.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated[?]

*Response:* No.

The proposed change adds a note to indicate that the IP2 and IP3 degraded voltage relays and the IP3 undervoltage relays do not require setpoint verification when the TADOT required by TS surveillances is performed on a monthly basis. Setpoint verification of these relays occurs as part of the channel calibration that is performed at either an 18 month or a 24 month frequency. These relays are used to sense either degraded voltage or undervoltage on the 480 volt safety related buses and to initiate the start of the EDG [emergency diesel generator] for all events where the loss of offsite power is postulated. This function has no effect on the probability of an accident previously evaluated since it is not associated with the initiation of any accident. The relay setpoint verification frequency of 18 or 24 months has no significant effect on the consequences of an accident because the relays are intended to be calibrated on this frequency. This frequency of calibration is based on operating experience, and is consistent with industry practice. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change adds a note to indicate that the IP2 and IP3 degraded voltage relays and the IP3 undervoltage relays do not require setpoint verification when the TADOT required by TS surveillances is performed on a monthly basis. This effectively changes the frequency required by the surveillance requirement from 31 days to either 18 months or 24 months. The change does not affect the function of the relays or otherwise affect the design and operation of plant systems and components and therefore no new accident scenarios would be created. The change does not affect the manner is which equipment is operated but does affect the manner in which it is maintained by extending the frequency for setpoint verification. The frequency change continues to provide adequate verification of the operability of equipment and limits the time which the relay function is inoperable or degraded while performing verification. Therefore, no new failure modes are being introduced that could lead to different accidents.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change adds a note to indicate that the IP2 and IP3 degraded voltage relays and the IP3 undervoltage relays do not require setpoint verification when the TADOT required by TS surveillances is performed on a monthly basis. Setpoint verification of these relays occurs as part of the channel calibration that is performed at either an 18 month or a 24 month frequency. The margin associated with these relays is the assurance that these relays will properly sense either degraded voltage or undervoltage on the 480 volt safety related buses and to initiate the start of the EDG for all events where the loss of offsite power is postulated. The proposed frequency of calibration is based on operating experience, and is consistent with industry practice. These indicate that setpoint verification at 18 month or 24 month [frequency] is adequate to assure performance of the function. Verification of setpoints on a monthly basis either degrades the reliability of the function or makes it inoperable. Therefore, the proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

*NRC Section Chief:* Richard J. Laufer.

*Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois*

*Date of amendment request:* April 13, 2005.

*Description of amendment request:* The proposed amendments would extend the completion time (CT) for required Action A.1, ''Restore Residual Heat Removal Service Water (RHRSW) subsystem to OPERABLE status,'' associated with Technical Specification (TS) Section 3.7.1 from 7 days to 10 days. This proposed change would only be used during the upcoming Unit 1 2006 refueling outage. The establishment of a 6 day (for Division 2 core standby cooling system (CSCS) maintenance) or 10 day (for Division 1 CSCS maintenance ) CT for TS Section 3.7.2 when one or more required diesel generator cooling water (DGCW) subsystem(s) are inoperable. This proposed change will only be used during each of the upcoming Unit 1 2006, and Unit 2 2007, refueling outages, and during the subsequent Unit 1 2008, refueling outage. An extension of the CT for required Action C.4, ''Restore required Diesel Generator (DG) to OPERABLE status,'' associated with TS Section 3.8.1 from 72 hours to 6 days. This proposed change will only be used during the upcoming Unit 2 2007 refueling outage, and during subsequent Unit 1, 2008, refueling outage. An extension of the CT for required Action F.1, ''Restore one required Diesel Generator (DG) to OPERABLE status,'' associated with TS Section 3.8.1 from 2 hours to 6 days. This proposed change will only be used during the upcoming Unit 2, 2007, refueling outage, and during subsequent Unit 1, 2008, refueling outage.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes have been evaluated using the risk-informed processes described in RG [Regulatory Guide] 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' dated July 1998, and RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decision Making: Technical Specifications,'' dated August 1998. The risk associated with the proposed change was found to be acceptable.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. No active or passive failure mechanisms that could lead to an accident are affected. Non-code line stops required to isolate the Unit 1 portion of the common discharge header from the Unit 2 portion of the header during the specified CSCS maintenance will maintain the availability of the online unit's Division 2 CSCS system. The non-code line stops being used to isolate the system during the specified refueling outages are being designed to the same pressure rating and seismic requirements as the CSCS piping.

Redundancy is provided by designing the CSCS system as multiple independent subsystems. Separation between subsystems assures that no single failure can affect more than one subsystem. Therefore, assuming a single failure in any subsystem including the subsystem shared between units, two subsystems in each unit will remain unaffected. These two subsystems can supply the minimum required cooling water for safe shutdown of a unit or mitigate the consequences of an accident.

The proposed limited use of increased CT's of the operating unit's CSCS system maintains the design basis assumptions; therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change involves the temporary installation of new equipment (mechanical line stops) that will be designed and installed to the same pressure rating and seismic design as the CSCS piping. The currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. Based on this evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change does not alter any existing setpoints at which protective actions are initiated and no new setpoints or protective actions are introduced. The design and operation of the CSCS system remains unchanged. The risk assessment with the proposed increase in the CTs for TS 3.7.1, TS 3.7.2, and TS 3.8.1 were evaluated using the risk-informed processes described in RG 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' dated July 1998, and RG 1.177, ''An Approach for Plant-Specific, Risk-Informed Decision Making: Technical Specifications,'' dated August 1998. The risk was shown to be acceptable. Based on this evaluation, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Section Chief :* Gene Y. Suh.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit No. 2 (BVPS–2), Beaver County, Pennsylvania*

*Date of amendment request:* April 11, 2005.

*Description of amendment request:* The proposed amendment would revise the BVPS–2 Technical Specification (TS) 3.4.5 to change the scope of the steam generator (SG) tubesheet examinations required in the SG tubesheet region by using the F* inspection methodology. Specifically, the proposed amendment would alter the tube inspection to exclude the portion of the SG tube within the tubesheet below the F* distance and to exclude the tube-to-tubesheet weld, by crediting the methodology described in Westinghouse Topical Report, WCAP–16385, Revision 1. The F* distance is the distance from the top of the tubesheet to the bottom of the F* length (the maximum length of tubing below the bottom of the roll transition (BRT) which must be demonstrated to be non-degraded and which is defined as 1.97 inches on the hot leg side) plus the distance to the BRT and non-destructive examination uncertainties. The licensee's proposed amendment also would revise the TS requirements to require tubes with service-induced degradation identified in the F* distance or less than or equal to 3.0 inches below the top of the tubesheet, whichever is greater, to be repaired or removed from service upon detection. The TS Index, affected TS pages and Bases would also be revised and repaginated as necessary to reflect the proposed TS change.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change modifies the BVPS Unit 2 TSs to incorporate steam generator tube inspection scope based on WCAP–16385, Revision 1. Of the various accidents previously evaluated in the BVPS Unit 2 Updated Final Safety Analysis Report (UFSAR), the proposed changes only affect the steam generator tube rupture (SGTR) event evaluation and the postulated steam line break (SLB) accident evaluation. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a safe shutdown earthquake (SSE); however, the seismic analysis of Model 51M SGs has shown that axial loading of the tubes is negligible during an SSE.

For the SGTR event, the required structural margins of the steam generator tubes will be maintained by the presence of the tubesheet. Tube rupture is precluded for cracks in the tube expansion region due to the constraint provided by the tubesheet. Therefore, Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [pressurized-water reactor] Steam Generator Tubes,'' margins against burst are maintained for both normal and postulated accident conditions.

The F* length supplies the necessary resistive force to preclude pullout loads under both normal operating and accident conditions. The contact pressure results from the tube expansion process used during manufacturing and from the differential pressure between the primary and secondary side. The proposed changes do not affect other systems, structures, components or operational features. Therefore, the proposed change results in no significant increase in the probability of the occurrence of an SGTR or SLB accident.

The consequences of an SGTR event are affected by the primary-to-secondary leakage flow during the event. Primary-to-secondary leakage flow through a postulated broken tube is not affected by the proposed change since the tubesheet enhances the tube integrity in the region of the expansion by precluding tube deformation beyond its initial expanded outside diameter. The resistance to both tube rupture and collapse is strengthened by the tubesheet in that region. At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) below the F* length is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by

the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region.

SLB leakage is limited by leakage flow restrictions resulting from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of crack face opening compared to free span indications. The total leakage (i.e., the combined leakage for all such tubes) meets the industry performance criterion, plus the combined leakage developed by any other alternate repair criteria, and will be maintained below the maximum allowable SLB leak rate limit, such that off-site doses are maintained less than 10 CFR [Part] 100 guideline values and the limits evaluated in the BVPS Unit 2 UFSAR.

Therefore, based on the above evaluation, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes do not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity will continue to be maintained for all plant conditions upon implementation of the F* methodology.

The proposed changes do not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed changes maintain the required structural margins of the steam generator tubes for both normal and accident conditions, including the planned uprated power level of 2910 Mwt. NRC [Nuclear Regulatory Commission] Regulatory Guide (RG) 1.121 is used as the basis in the development of the F* methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC staff for meeting General Design Criteria 14, 15, 31, and 32 by reducing the probability and consequences of an SGTR. RG 1.121 concludes that by determining the limiting safe conditions of tube wall degradation beyond which tubes with unacceptable cracking, as established by inservice inspection, should be removed from service or repaired, the probability and consequences of an SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For primarily axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. WCAP–16385, Revision 1, defines a length, F*, of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure-induced forces (with applicable safety factors applied). Application of the F* criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the F* criteria.

Plugging of the steam generator tubes reduces the reactor coolant flow margin for core cooling. Implementation of F* methodology at Beaver Valley Unit 2 will result in maintaining the margin of flow that may have otherwise been reduced by tube plugging.

Based on the above, it is concluded that the proposed changes do not result in a significant reduction of margin with respect to plant safety as defined in the Final Safety Analysis Report Update or bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Section Chief:* Richard J. Laufer.

*Florida Power and Light Company, Docket No. 50–389, St. Lucie Plant, Unit No. 2 (SL2), St. Lucie County, Florida*

*Date of amendment request:* March 31, 2005.

*Description of amendment request:* The proposed amendment would revise Administrative Technical Specification Section 6.8.4.h, ''Containment Leakage Rate Testing Program,'' to allow a one-time extension of the currently approved 15-year test interval to approximately 15.5 years.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment of the Technical Specifications adds a one-time extension to the current surveillance interval for Type A testing (ILRT [integrated leak rate testing]). The current test interval of 15 years from the last Type A test would be extended to end prior to startup from the SL2–17 refueling. This is anticipated to be an approximately six-month addition to the 15 year interval. The proposed extension to the Type A testing interval does not significantly increase the probability of an accident previously evaluated since the containment Type A test is not a modification, nor a change in the way that plant systems, structures or components (SSC) are operated, and is not an activity that could lead to equipment failure or accident initiation. The proposed extension of the test interval does not involve a significant increase in the consequences of an accident since research documented in NUREG–1493 has found that generically, very few potential leak paths are not identified with Type B and C tests (LLRT [local leak-rate test]). The Type B and C testing are unaffected by this proposed change. The NUREG concluded that an increase in the Type A test interval to twenty years resulted in an imperceptible increase in risk. St. Lucie Unit 2 provides a high degree of assurance through testing and inspection that the containment will not degrade in a manner only detectable by Type A testing. Inspections required by the ASME [American Society of Mechanical Engineers] Code, the containment leakage rate testing program, the plant protective coatings program, and Maintenance Rule are performed in order to identify indications of containment degradation that could affect leak tightness. Type B and C testing required by 10 CFR 50, Appendix J, are not affected by this proposed extension to the Type A test interval and will identify openings in containment penetrations that would otherwise require a Type A test.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not result in facility operation that would create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed extension to Type A testing does not create a new or different type of accident for St. Lucie because no physical plant changes are made and no compensatory measures are being imposed that could potentially lead to a failure. There are no operational changes that could introduce a new failure mode or create a new or different kind of accident. The proposed change only adds an extension to the current interval for Type A testing and does not change implementation aspects of the test.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed change would not result in operation of the facility involving a significant reduction in a margin of safety. The proposed license amendment adds a one-time extension to the current interval for Type A testing (ILRT). The current one-time test interval of 15 years from the last Type A test would be extended to end prior to startup from the SL2–17 refueling outage. This is anticipated to be an approximately six month addition to the 15 year interval.

The NUREG–1493 generic study of the effects of extending the Type A test interval out to 20 years concluded that there is an imperceptible increase in plant risk. A plant specific risk calculation obtained results consistent with the generic conclusions regarding risk which show a slight but negligible increase in risk. Inspections required by the ASME code and maintenance rule are performed to ensure that the containment will not degrade in a manner that is only detectable by Type A testing (ILRT).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*NRC Section Chief:* Michael L. Marshall, Jr.

*Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska*

*Date of amendment request:* April 13, 2005.

*Description of amendment request:* The proposed amendment would incorporate several Technical Specification Task Force (TSTF) changes to the licensee's Technical Specifications (TSs). The specific TSTF changes that would be incorporated are:

1. TSTF–222–A, Revision 1, ''Control Rod Scram Time Testing''—This change modifies TS Section 3.1.4, ''Control Rod Scram Times,'' to clarify that control rod scram time testing is required only for core cells in which work on the control rod or drive has been performed or fuel has been moved or replaced.

2. TSTF–275–A, Revision 0, ''Clarify Requirement for EDG [emergency diesel generator] start signal on RPV [reactor pressure vessel] Level—Low, Low, Low during RPV cavity flood-up''—This change modifies the TS Section 3.3.5.1, ''ECCS [emergency core cooling system] Instrumentation,'' to clarify that the ECCS initiation instrumentation, identified as being required in modes 4 and 5, is required to be operable only when the associated ECCS subsystems are required to be operable as defined in limiting condition of operation (LCO) 3.5.2, ''ECCS—Shutdown.''

3. TSTF–300–A, Revision 0, ''Eliminate DG [diesel generator] LOCA [loss-of-coolant accident]—Start SRs [surveillance requirements] while in S/D [shutdown] when no ECCS is Required''—This change modifies the TS Section 3.8.2, ''AC [alternating current] Sources—Shutdown,'' to add an additional note to the surveillance that verifies automatic start of the emergency diesel generators and automatic load shedding from the emergency buses, is considered to be met without the ECCS initiation signals operable when ECCS initiation signals are not required to be operable per Table 3.3.5.1–1, ECCS Instrumentation.

4. TSTF–225, Revision 2, ''Fuel movement with inoperable refueling equipment interlocks''—This change modifies TS Section 3.9.1, ''Refueling Equipment Interlocks,'' to add required actions to allow insertion of a control rod withdrawal block and verification that all control rods are fully inserted as alternate actions to suspending in-vessel fuel movement in the event that one or more required refueling equipment interlocks are inoperable.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

1. *Revision of CNS [Cooper Nuclear Station] TS SR 3.1.4.1 and SR 3.1.4.4.* The frequency at which control rod scram time is verified is not a precursor of an accident. A scram time slower than required might result in an increase in the consequences of an accident. However, revising the frequency for verifying the scram time of the control rods does not impact the scram time. Verifying that the scram time is acceptable will continue to be required prior to plant startup following fuel movement or work on the control rods or control rod drive system. Therefore, revising the frequency for verifying insertion time to clarify when it is required does not involve a significant increase in the probability of an accident or an increase in the consequences of an accident.

2. *Revision of TS Table 3.3.5.1–1.* Clarifying when certain ECCS instrumentation must be operable with the plant shut down will not increase either the probability of an accident or the consequences of the accident. The ECCS instrumentation is required to be operable only when the associated ECCS subsystems are required to be operable. This continues to ensure that the instrumentation will be operable when it is required.

3. *Revision of TS SR 3.8.2.1.* The frequency of verifying certain actions by surveillances is not a precursor to accidents. Clarifying that the actions required in response to an ECCS initiation signal are not required when the ECCS initiation signals are not required to be operable does not result in increased probability of an accident or increased consequences of an accident. Not requiring that a DG automatically start in response to the ECCS initiation signal when the ECCS subsystems that are supported by the DG are not required to be operable does not reduce the required ECCS protection.

4. *Revision of TS 3.9.1., Condition A Required Action.* The actions taken when a refueling equipment interlock is inoperable are not initiators of any accident previously evaluated. The level of protection against withdrawing a control rod during the insertion of a fuel assembly or loading a fuel assembly into the vessel with a control rod withdrawn, provided by the proposed alternate Required Actions, is equivalent to that provided by the current Required Action. The radiological consequences of an accident described in the Updated Safety Analysis Report (USAR) while taking the proposed alternate Required Actions are not different from the consequences of an accident under the current Required Actions.

Based on the above NPPD [Nebraska Public Power District] concludes that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes to the CNS operating license involve revisions to the requirements for when certain surveillances are to be performed (change no. 1 and no. 3), clarification of when ECCS instrumentation is required to be operable (change no. 2), and addition of alternative Required Actions if certain plant components are inoperable (change no. 4). These changes will not result in revision of plant design, physical alteration of a plant structure, system, or component (SSC), or installation of a new or different type of equipment. The changes do not involve any revision of how the plant, an SSC, or a refueling equipment interlock, are operated. Based on this, the proposed changes do not create the possibility of a new or different kind of accident.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

1. *Revision of CNS TS SR 3.1.4.1 and SR 3.1.4.4.* Sufficiently rapid insertion of control rods following certain accidents (scram time) will prevent fuel damage, and thereby maintain a margin of safety to fuel damage. No change is being made to the required insertion rate specified in plant technical specifications. Clarifying when control rod insertion times must be verified following movement of fuel assemblies, without actually changing the requirement (verification of insertion times will continue to be required whenever work that might impact the rod insertion time is done), does not reduce the margin of safety related to fuel damage.

2. *Revision of TS Table 3.3.5.1–1.* Clarifying when certain ECCS instrumentation is required to be operable when CNS is in a shutdown mode does not change the requirement. Not requiring ECCS signals that initiate a DG to be operable when the ECCS subsystems that are supported by

the DG are not required to be operable does not result in a reduction of a margin of safety for the safety related equipment that is required to be operable.

3. *Revision of TS SR 3.8.2.1.* Clarifying that automatic start of the DGs in response to the ECCS initiation signal is not required when the ECCS subsystems that are supported by the DG are not required to be operable does not result in a reduction in a margin of safety.

4. *Revision of TS 3.9.1, Condition A Required Action.* The proposed alternate Required Actions to be taken when a refueling interlock is inoperable provide a level of protection against inadvertent criticality while inserting or moving fuel in the reactor vessel that is equivalent to the level provided by the current Required Action. As a result, the proposed alternate Required Actions do not result in a significant reduction in a margin of safety related to protection against inadvertent criticality when inserting or moving fuel assemblies.

Based on the above NPPD concludes that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

*NRC Section Chief:* David Terao.

*PSEG Nuclear, LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of amendment request:* February 25, 2005.

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) 3.1.3.1, ''Control Rod Operability,'' such that scram discharge volume (SDV) vent or drain lines with inoperable valves would be isolated instead of requiring that the valve be restored to Operable status or the unit be placed in Hot Shutdown within 12 hours.

The NRC staff issued a Notice of Opportunity for Comment in the **Federal Register** on February 24, 2003 (68 FR 8637), on possible amendments to revise the action for one or more SDV vent or drain lines with an inoperable valve, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a Notice of Availability of the models for referencing license amendment applications in the **Federal Register** on April 15, 2003 (68 FR 18294). The licensee affirmed the applicability of the model NSHC determination (modified slightly to address plant-specific TS format) in its application dated February 25, 2005.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A change is proposed to allow the affected SDV vent and drain line to be isolated when there are one or more SDV vent or drain lines with inoperable valves instead or requiring the valves to be restored to operable status or the unit be in hot shutdown within 12 hours. With SDV vent or drain valves inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the SDV. Following the completion of the required action, the isolation function is fulfilled since the associated line is isolated. The ability to vent and drain the SDV is maintained and controlled through administrative controls. This requirement assures the reactor protection system is not adversely affected by the inoperable valves. With the safety functions of the valves being maintained, the probability or consequences of an accident previously evaluated are not significantly increased.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in [a] margin of safety.

The proposed change ensures that the safety functions of the SDV vent and drain valves are fulfilled. The isolation function is maintained by redundant valves and by the required action to isolate the affected line. The ability to vent and drain the SDV is maintained through administrative controls. In addition, the reactor protection system will prevent filling of the SDV to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the SDV and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety.

Based on the reasoning presented above, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

*NRC Section Chief:* Darrell J. Roberts.

*R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York*

*Date of amendment request:* March 10, 2005.

*Description of amendment request:* The amendment would revise Technical Specification Section 5.5.15, ''Containment Leakage Rate Testing Program,'' to allow a one-time extension of the interval between the Type A, integrated leakage rate tests (ILRTs), from 10 years to no more than 15 years.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change to Technical Specification 5.5.15, Containment Leakage Rate Testing Program, involves a one-time extension to the current interval for Type A containment testing. The current test interval of ten (10) years would be extended on a one-time basis to no longer than fifteen (15) years from the last Type A test.

The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner which the plant is operated or controlled. The reactor containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such the reactor containment itself and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident.

The proposed change involves only the extension of the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications. Industry experience has shown, as documented in NUREG–1493, that Type B and C containment leakage tests have identified a very large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is very small. The Ginna ILRT test history supports this conclusion. In NUREG–1493 Section 10, Summary of Technical Findings, it is concluded, in part, that reducing the frequency of Type A containment leak tests to once per twenty (20) years leads to an imperceptible increase in risk.

The proposed change does not result in an increase in core damage frequency since the containment system is used for mitigation purposes only. Containment Leakage Rate Testing Program local leak rate test requirements and administrative controls such as design change control, ASME [American Society of Mechanical Engineers] Section XI Inservice Inspection (ISI) Program Containment Repair and Replacement Program and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the reactor containment itself combined with the containment inspections performed in accordance with the ASME Section XI Inservice Inspection (ISI) Program Containment Program, Boric Acid Corrosion Program, inspections in accordance with Regulatory Guide 1.163 position C.3 and the Maintenance Rule serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing.

Therefore, the proposed Technical Specification change does not involve a significant increase in the consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change to Technical Specification 5.5.15 involves a one-time extension to the current interval for Type A containment testing. The reactor containment and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve the prevention or identification of any precursors of an accident. The proposed Technical Specification change does not involve a physical change to the plant (*i.e.*, no new or different type of equipment will be installed) or changes in the methods in which the plant is operated or controlled.

Therefore, the proposed Technical Specification change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change to Technical Specifications involves a one-time extension to the current interval for Type A containment testing. The proposed Technical Specification change does not alter the manner in which safety limits, limiting safety system set points, or limiting conditions for operation are determined. The specific requirements and conditions of the Primary Containment Leakage Rate Testing Program, as defined in Technical Specifications, exist to ensure that the degree of reactor containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leakage rate limit specified by Technical Specifications is maintained. The proposed change involves only the extension of the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications.

Ginna and industry experience strongly supports the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with the ASME Section XI Inservice Inspection (ISI) Program Containment Program, Boric Acid Corrosion Program, inspections in accordance with Regulatory Guide 1.163 position C.3 and the Maintenance Rule serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing. The combination of these factors ensures that the margin of safety that is inherent in plant safety analysis is maintained.

Therefore, the proposed Technical Specification change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

*NRC Section Chief:* Richard J. Laufer.

*R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York*

*Date of amendment request:* April 29, 2005.

*Description of amendment request:* The amendment would revise Technical Specification Section 3.7.3, ''Main Feedwater Regulating Valves (MFRVs), Associated Bypass Valves, and Main Feedwater Pump Discharge Valves (MFPDVs),'' to allow the use of the main feedwater isolation valves in lieu of the main feedwater pump discharge valves to provide isolation capability to the steam generators in the event of a steam line break.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes involve a modification to the plant configuration to ensure the acceptability of containment response for Steam Line Breaks (SLB) inside containment.

The changes have also been evaluated to ensure the core response for steam system piping breaks remains acceptable. The changes to the Technical Specifications (TS) are necessary to properly accommodate the changes in plant configuration and ensure proper testing of the modified components.

The proposed changes do not adversely affect accident initiators or precursors nor significantly alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed changes cannot affect the probability of an accident occurring since they reflect a change in plant design consistent with current design which is not an accident initiator. The proposed changes cannot increase the consequences of postulated accidents since they reflect a change in plant design that will continue to mitigate the effects of feedwater addition to a faulted steam generator for a main steam line break inside containment.

Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes involve a modification to the plant configuration to ensure the acceptability of containment response for Steam Line Breaks (SLB) inside containment. The changes have also been evaluated to ensure the core response for steam system piping breaks remains acceptable. The changes to the Technical Specifications (TS) are necessary to properly accommodate the changes in plant configuration and ensure proper testing of the modified components.

The change in plant configuration significantly reduces the available water volume and therefore the mass and energy released to the containment in the event of an SLB with failure of a feedwater regulating valve. Existing feedwater flow paths or piping are not significantly altered. An existing manual valve in the flow path to each steam generator is utilized as the main feedwater isolation valve by the addition of an air actuator to provide automatic isolation capability. The changes do not involve a significant change in the methods governing normal plant operation. The TS changes modify the limiting condition for operation, required action statements, associated completion times and surveillance requirements to those that are consistent with those previously approved for Westinghouse

plants in the Standard Technical Specifications found in NUREG–1431. The proposed TS changes do not create the possibility of a new or different [kind] of accident from those previously evaluated since they reflect a design change that will accomplish the same feedwater isolation function as previously performed by the main feedwater pump discharge isolation valves with no significant change to the manner in which the feedwater system operates.

Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes involve a modification to the plant configuration to ensure the acceptability of containment response for Steam Line Breaks (SLB) inside containment. The changes have also been evaluated to ensure the core response for steam system piping breaks remains acceptable. The changes to the Technical Specifications (TS) are necessary to properly accommodate the changes in plant configuration and ensure proper testing of the modified components.

The level of safety of facility operation is unaffected by the proposed changes since there is no change in the intent of the TS requirements of assuring proper main feedwater isolation in the event of a steam line break inside containment. The response of the plant systems to accidents and transients reported in the Updated Final Safety Analysis Report (UFSAR) is not adversely affected by this change. Therefore, the capability to satisfy accident analysis acceptance criteria is not adversely affected. The TS changes modify the limiting condition for operation, required action statements, associated completion times and surveillance requirements to those that are consistent with those previously approved for Westinghouse plants in the Standard Technical Specifications found in NUREG–1431. The proposed TS changes do not involve a significant reduction in [a] margin of safety since they are based upon a modification that will maintain [a] margin of safety with respect to feedwater addition for a main steam line break inside containment to the previously analyzed condition. Therefore, the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

*NRC Section Chief:* Richard J. Laufer.

*R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York*

*Date of amendment request:* April 29, 2005.

*Description of amendment request:* The amendment would revise Technical Specification (TS) 3.5.1, ''Accumulators,'' and TS 3.5.4, ''Refueling Water Storage Tank (RWST),'' to reflect the results of revised analyses performed to accommodate a planned power uprate for the facility and revise TS 5.6.5, ''Core Operating Limits Report (COLR),'' to permit the use of NRC-approved methodology for large-break and small-break loss-of-coolant accidents (LOCAs).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes include revising accumulator volume and boron concentration requirements and Refueling Water Storage Tank (RWST) boron concentration requirements that are necessary to accommodate expected changes in the nuclear fuel (*e.g.*, higher enrichment) that are associated with the planned power uprate. Additionally, the change would allow Ginna to utilize analysis methodologies that have been previously approved for use at Westinghouse nuclear plants. The changes to the TS are necessary to ensure the acceptability of these systems to perform their intended function in the event of an accident.

The proposed changes do not adversely affect accident initiators or precursors nor significantly alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed changes cannot affect the probability of an accident occurring since they reflect a necessary change in plant design consistent with current design which is not an accident initiator. The proposed changes cannot increase the consequences of postulated accidents since they reflect a change in plant design that will continue to mitigate the effects of potential accidents. Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes include revising accumulator volume and boron concentration requirements and RWST boron concentration requirements that are necessary to accommodate expected changes in the nuclear fuel (*e.g.*, higher enrichment) that are associated with the planned power uprate. Additionally, the change would allow Ginna to utilize analysis methodologies that have been previously approved for use at Westinghouse nuclear plants. The changes to the TS are necessary to ensure the acceptability of these systems to perform their intended function in the event of an accident.

The proposed changes involve changes to accumulator volume and boron concentration requirements and RWST boron concentration requirements to ensure the continued acceptability of LOCA and post LOCA analysis results. The changes to the Technical Specifications (TS) are necessary to properly accommodate the changes in plant design. The changes ensure applicable acceptance criteria will continue to be met. The changes do not involve a significant change in the methods governing normal plant operation. The proposed TS changes do not create the possibility of a new or different [kind] of accident from those previously evaluated since they reflect a change that will ensure the accumulators and RWST will continue to perform their intended function in the event of an accident.

Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes include revising accumulator volume and boron concentration requirements and RWST boron concentration requirements that are necessary to accommodate expected changes in the nuclear fuel (*e.g.*, higher enrichment) that are associated with the planned power uprate. Additionally, the change would allow Ginna to utilize analysis methodologies that have been previously approved for use at Westinghouse nuclear plants. The changes to the TS are necessary to ensure the acceptability of these systems to perform their intended function in the event of an accident.

The level of safety of facility operation is not significantly affected by the proposed changes since there is no change in the intent of the TS requirements of assuring proper plant response in the event of an accident. The response of the plant systems to accidents and transients reported in the Updated Final Safety Analysis Report (UFSAR) is not adversely affected by this

change. Therefore, the capability to satisfy accident analysis acceptance criteria is not adversely affected. The proposed TS change cannot involve a significant reduction in [a] margin of safety since it is based upon changes that will maintain a substantial margin of safety with respect to accumulators and RWST functions. Therefore, the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

*NRC Section Chief:* Richard J. Laufer.

*R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York*

*Date of amendment request:* April 29, 2005.

*Description of amendment request:* The amendment would revise Technical Specifications (TSs) to allow the use of Relaxed Axial Offset Control (RAOC) methodology in reducing operator action required to maintain conformance with power distribution control TS and increasing the ability to return to power after a plant trip or transient while still maintaining margin to safety limits under all operating conditions.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not initiate an accident. Evaluations and analyses of accidents, which are potentially affected by the parameters and assumptions, associated with the RAOC and $F_Q(Z)$ methodologies have shown that design standards and applicable safety criteria will continue to be met. The consideration of these changes does not result in a situation where the design, material, or construction standards that were applicable prior to the change are altered. Therefore, the proposed changes will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident.

The proposed changes associated with the RAOC and $F_Q(Z)$ methodologies do not affect plant systems such that their function in the control of radiological consequences is adversely affected. The actual plant configurations, performance of systems, or initiating event mechanisms are not being changed as a result of the proposed changes. The design standards and applicable safety criteria limits will continue to be met; therefore, fission barrier integrity is not challenged. The proposed changes associated with the RAOC and $F_Q(Z)$ methodologies have been shown not to adversely affect the plant response to postulated accident scenarios. The proposed changes will therefore not affect the mitigation of the radiological consequences of any accident described in the Updated Final Safety Analysis Report (UFSAR).

Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed changes do not challenge the performance or integrity of any safety-related system. The possibility for a new or different type of accident from any accident previously evaluated is not created since the proposed changes do not result in a change to the design basis of any plant structure, system or component. Evaluation of the effects of the proposed changes has shown that design standards and applicable safety criteria continue to be met.

Equipment important to safety will continue to operate as designed and component integrity will not be challenged. The proposed changes do not result in any event previously deemed incredible being made credible. The proposed changes will not result in conditions that are more adverse and will not result in any increase in the challenges to safety systems.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes will not involve a significant reduction in a margin of safety.

The proposed changes will assure continued compliance within the acceptance limits previously reviewed and approved by the NRC for RAOC and $F_Q(Z)$ methodologies. The appropriate acceptance criteria for the various analyses and evaluations will continue to be met.

The projected impact associated with the implementation of RAOC on peak cladding temperature (PCT) has been incorporated into the LOCA [loss-of-coolant accident] analyses for the planned extended power uprate. It has [been] determined that implementation of RAOC at the extended power uprate power level does not result in a significant reduction in a margin of safety. The analysis performed for EPU [extended power uprate] bounds operation at the current power level.

Therefore, the proposed changes do not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

*NRC Section Chief:* Richard J. Laufer.

## Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

*Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin*

*Date of amendment request:* May 5, 2005.

*Brief description of amendment request:* The proposed amendment would change the Technical Specifications to modify the auxiliary feedwater (AFW) pump suction protection requirements and change the design basis as described in the Updated Safety Analysis Report to revise the functionality of the discharge pressure switches to provide pump runout protection, which requires operator actions to restore the AFW pumps for specific post-accident recovery activities.

*Date of publication of individual notice in **Federal Register**:* May 13, 2005 (70 FR 25619).

*Expiration date of individual notice:* June 13, 2005.

*PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2 (SSES 1 and 2), Luzerne County, Pennsylvania*

*Date of amendment request:* April 27, 2005, as supplemented May 4, 2005.

*Description of amendment request:* The proposed amendment would revise the SSES 1 and 2, Technical Specification 3.8.4, ''DC Sources-Operating,'' to address new required actions for the condition in which a 125 volt direct current (VDC) charger is taken out of service for the purposes of a special inspection and related activities. The proposed changes would be in effect until the special inspection and related activities are completed on each of the 125 VDC Class 1E battery chargers but no later than 60 days following the issuance of the Unit 1 and 2 amendments. Specifically, required Action A.2.1 would require that surveillance requirement 3.8.6.1 be performed within 2 hours and once-per-12 hours thereafter; and, required Action A.2.2 would restrict the restoration time for the inoperable electrical power subsystem to 36 hours.

*Date of publication of individual notice in **Federal Register**:* May 12, 2005 (70 FR 25122).

*Expiration date of individual notice:* Comments, May 27, 2005; Hearing, July 11, 2005.

**Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

**Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the Federal Register as indicated.**

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

*AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of application for amendment:* October 21, 2004, as supplemented January 4, 2005.

*Brief description of amendment:* The amendment deleted the Technical Specification (TS) requirements to submit monthly operating reports and annual occupational radiation exposure reports. The change is consistent with Revision 1 of NRC-approved Industry/Technical Specifications Task Force (TSTF) Standard TS Change Traveler, TSTF–369, ''Removal of Monthly Operating Report and Occupational Radiation Exposure Report.'' This TS improvement was announced in the **Federal Register** (69 FR 35067) on June 23, 2004, as part of the Consolidated Line Item Improvement Process (CLIIP).

*Date of issuance:* May 20, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 165.

*Facility Operating License No. NPF–62:* The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* April 12, 2005 (70 FR 19114).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 2005.

*No significant hazards consideration comments received:* No.

*Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*

*Date of application of amendments:* February 14, 2005.

*Brief description of amendments:* The amendments revised the Technical Specification Surveillance Requirement 3.3.7.1 to extend the frequency of the channel functional test for the Engineered Safeguards Protective System digital actuation logic channels from once every 31 days to once every 92 days.

*Date of Issuance:* May 19, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment Nos.:* 345, 347 and 346.

*Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register**: March 15, 2005 (70 FR 12745).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 2005.

*No significant hazards consideration comments received:* No.

*Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas*

*Date of amendment request:* December 20, 2004, as supplemented by letter dated April 12, 2005.

*Brief description of amendment:* The amendment deletes TS 6.6.1, ''Occupational Radiation Exposure Report'' and TS 6.6.4, ''Monthly Operating Reports,'' as described in the Notice of Availability published in the **Federal Register** on June 23, 2004 (69 FR 35067).

*Date of issuance:* May 13, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment No.:* 259.

*Facility Operating License No. NPF–6:* Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register***: January 18, 2005 (70 FR 2890). The supplement dated April 12, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 13, 2005.

*No significant hazards consideration comments received:* No.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* December 22, 2004.

*Brief description of amendment:* The requested change deletes Technical Specification (TS) 6.9.1.5, ''Occupational Radiation Exposure Report,'' and 6.9.1.6, ''Monthly Operating Reports,'' as described in the Notice of Availability published in the **Federal Register** on June 23, 2004 (69 FR 35067).

*Date of issuance:* May 25, 2005.

*Effective date:* As of the date of issuance and shall be implemented 90 days from the date of issuance.

*Amendment No.:* 202.

*Facility Operating License No. NPF–38:* The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register***: March 15, 2005 (70 FR 12746).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 2005.

*No significant hazards consideration comments received:* No.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3 (Waterford 3), St. Charles Parish, Louisiana*

*Date of amendment request:* April 27, 2005, as supplemented by letter dated May 12, 2005.

*Brief description of amendment:* The amendment removed the license condition on instrument uncertainty that was imposed on the Waterford 3 license with the issuance of License Amendment 199 for the extended power uprate.

*Date of issuance:* May 23, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 201.

*Facility Operating License No. NPF–38:* The amendment revised the Operating License.

*Date of initial notice in **Federal Register***: May 5, 2005 (70 FR 23892). The May 12, 2005, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 2005.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois*

*Date of application for amendments:* September 15, 2004.

*Brief description of amendments:* The amendments deleted the Technical Specification (TS) requirements related to hydrogen recombiners. The TS changes support implementation of the revisions to Title 10 of the Code of Federal Regulations (10 CFR) section 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' that became effective on October 16, 2003. The changes are consistent with Revision 1 of the NRC-approved Industry/Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–447, ''Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors.''

*Date of issuance:* May 19, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 120 days.

*Amendment Nos.:* 137, 137, 143, 143.

*Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77:* The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** February 1, 2005 (70 FR 5243).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 2005.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3,York and Lancaster Counties, Pennsylvania*

*Date of application for amendments:* June 15, 2004, as supplemented January 12, 2005.

*Brief description of amendments:* These amendments changed Surveillance Requirement (SR) 3.8.1.3, monthly diesel surveillance test; SR 3.8.1.10, diesel full load rejection test; SR 3.8.1.14.3.b, diesel 24-hour run test; and, SR 3.8.1.15, diesel hot restart test, to permit these tests to be run at a higher load up to 2800 kW.

*Date of issuance:* May 20, 2005.

*Effective date:* As of the date of issuance, and shall be implemented within 30 days.

*Amendments Nos.:* 253 and 256.

*Renewed Facility Operating License Nos. DPR–44 and DPR–56:* The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** July 20, 2004, (69 FR 43461). The January 12, 2005, supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on July 20, 2004 (69 FR 43461).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 2005.

*No significant hazards consideration comments received:* No.

*Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska*

*Date of amendment request:* May 21, 2004, as supplemented by letters dated September 16, and December 14, 2004.

*Brief description of amendment:* The amendment revised the Technical Specification Bases Section to allow the containment spray pumps to be secured during a loss-of-coolant accident, when certain conditions are met, to minimize the potential for containment sump clogging.

*Date of issuance:* May 20, 2005.

*Effective date:* As of the date of issuance, and shall be implemented within 120 days of issuance.

*Amendment No.:* 235.

*Renewed Facility Operating License No. DPR–40:* The amendment revised the Technical Specifications Bases.

*Date of initial notice in **Federal Register:*** June 22, 2004 (69 FR 34703). The September 16, and December 14,

2004, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated May 20, 2005.

*No significant hazards consideration comments received:* No.

*South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina*

*Date of application for amendment:* May 21, 2004.

*Brief description of amendment:* The amendment revises Technical Specifications related to the reactor coolant pump flywheel inspection program by relocating the requirements from the limiting conditions for operation to the administrative controls section and increasing the inspection interval to 20 years.

*Date of issuance:* May 9, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 172.

*Renewed Facility Operating License No. NPF–12:* Amendment revises the Technical Specifications.

*Date of initial notice in **Federal Register***: March 1, 2005 (70 FR 9995).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 9, 2005.

*No significant hazards consideration comments received:* No.

*STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas*

*Date of amendment request:* October 21, 2004, as supplemented December 13 and 22, 2004, and February 23 and March 1, 2005.

*Brief description of amendments:* Conforming license amendments to remove AEP Texas Central Company as an ''Owner'' in the facility operating licenses.

*Date of issuance:* May 19, 2005.

*Effective date:* As of the date of issuance and shall be implemented within 365 days of issuance.

*Amendment Nos.:* Unit 1–172; Unit 2–160

*Facility Operating License Nos. NPF–76 and NPF–80:* The amendments revised the licenses.

*Date of initial notice in **Federal Register***: December 14, 2004 (69 FR 76019). The supplements dated December 13 and 22, 2004, and February 23 and March 1, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 2005.

*No significant hazards consideration comments received:* No.

**Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management

System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HearingDocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

*Tennessee Valley Authority, Docket No. 50–260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama*

*Date of amendment request:* April 26, 2005, as supplemented on April 29 and on May 3, 2005.

*Description of amendment request:* Revises the Completion Time for the Action associated with an inoperable low pressure Emergency Core Cooling System injection/spray system to 14 days on a one-time basis.

*Date of issuance:* May 9, 2005.

*Effective date:* As of date of issuance and shall be implemented within 7 days.

*Amendment No.:* 294.

*Facility Operating License No. DPR–52:* Amendment revises the Technical Specifications.

*Public comments requested as to proposed no significant hazards consideration (NSHC):* No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of NSHC determination are contained in a Safety Evaluation dated May 9, 2005.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

*NRC Section Chief:* Michael L. Marshall, Jr.

Dated in Rockville, Maryland, this 27th day of May 2005.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. E5–2848 Filed 6–6–05; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27978]**

## Notice of Proposal To Amend Articles of Incorporation; Order Authorizing the Solicitation of Proxies

June 1, 2005.

Notice is hereby given that the following filing has been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the declaration for complete statements of the proposed transactions summarized below. The declaration and any amendments are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the declaration should submit their views in writing by June 24, 2005 to the Secretary, Securities and Exchange Commission, Washington DC 20549–0609 and serve a copy on the declarant at the address specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should specifically identify the issues of facts or law that are disputed. A person who so desires will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After June 24, 2005, the declaration, as filed or amended, may be granted or permitted to become effective.

**Exelon Corporation (70–10291)**

Exelon Corporation (''Exelon''), 10 South Dearborn Street, 37th Floor, Chicago, Illinois, 60603, a registered holding company, has filed a declaration, as amended (''Declaration'') under sections 6(a), 7 and 12(e) of the Public Utility Holding Company Act of 1935 as amended (''Act''), and rules 54 and 62 under the Act.

Exelon seeks authority to amend its Amended and Restated Articles of Incorporation to increase the amount of the Exelon's authorized capital stock and authority to solicit the proxies of the holders of common stock of Exelon.

On December 20, 2004, Exelon and Public Service Enterprise Group Incorporated (''PSEG''), an electric and gas utility holding company that claims exemption from registration pursuant to rule 2 under section 3(a)(1) of the Act, entered into an Agreement and Plan of Merger (''Merger Agreement'').[1] Under the terms of the Merger Agreement, PSEG would merge into Exelon (''Merger''), thereby ending the separate corporate existence of PSEG. Each PSEG shareholder will be entitled to receive 1.225 shares of Exelon common stock for each PSEG share held and cash in lieu of any fraction of an Exelon share that a PSEG shareholder would have otherwise been entitled to receive. Exelon common stock will be unaffected by the Merger, with each issued and outstanding share remaining outstanding following the Merger as a share in the surviving company. Upon completion of the Merger, Exelon will change its name to Exelon Electric & Gas Corporation (''Exelon'').

As the surviving company in the Merger, Exelon will remain the ultimate corporate parent of Commonwealth Edison Company (''ComEd''), PECO Energy Company (''PECO''), Exelon Generation Company, LLC (''Exelon Generation'') and the other Exelon subsidiaries, and become the ultimate corporate parent of Public Service Electric and Gas Company (''PSE&G''), a public utility company under the Act, and the other PSEG subsidiaries.

Exelon will continue to be a registered public utility holding company under the Act, and ComEd, PECO and PSE&G will continue to be operating franchised public utility companies. Exelon will remain headquartered in Chicago, but will also have energy trading and nuclear headquarters in southeastern Pennsylvania and generation headquarters in Newark, New Jersey. PSE&G will remain headquartered in Newark. PECO will remain headquartered in Philadelphia and ComEd will remain headquartered in Chicago.

Under the terms of the Merger Agreement, Exelon and PSEG have agreed to convene meetings of their respective shareholders for the purpose of obtaining required stockholder approvals relating to the Merger. Exelon will seek to obtain the affirmative vote of a majority of votes cast by holders of the outstanding shares of the common stock of Exelon (''Exelon Shares'') represented at the Exelon shareholders meeting (''Exelon Shareholders Meeting'') (provided that at least a majority of the Exelon Shares are represented in person or by proxy at such meeting). Exelon is seeking authority to solicit proxies with respect to proposals for Exelon shareholders to approve the issuance of shares of Exelon common stock as contemplated by the Merger Agreement, and an amendment to Exelon's Amended and Restated Articles of Incorporation to increase the number of authorized shares of Exelon common stock from 1,200,000,000 to 2,000,000,000. In addition, Exelon's shareholders will be asked to vote on the election of five directors to Exelon's Board of Directors, the ratification of the Company's independent accountants for 2005, and the approval of the Exelon 2006 Long-Term Incentive Plan and the Exelon Employee Stock Purchase Plan for Unincorporated Subsidiaries.

Exelon further asks the Commission to issue an order authorizing Exelon to amend its Amended and Restated Articles of Incorporation to increase the number of authorized shares of Exelon common stock from 1,200,000,000 to 2,000,000,000.

Fees and expenses in the estimated amount of $2,140,750.00 are expected by Exelon to be incurred in connection

[1] The Merger is subject to a number of conditions, including the approval of the Commission under the Act and other regulatory approvals. On March 15, 2005 Exelon filed an application with this Commission seeking approval of the Merger and related transactions. SEC File No. 70–10294.

with the proposed transactions (including costs associated with the solicitation of proxies). Exelon states that no state or federal commission, other than this Commission, has jurisdiction over the transactions proposed in the Application.

Exelon has filed its proxy solicitation materials and requests that its proposal to solicit proxies be permitted to become effective immediately, as provided in rule 62(d) under the Act. It appears to the Commission that the Declaration, with respect to the proposed solicitation of proxies, should be permitted to become effective immediately under rule 62(d).

*It is ordered*, under rule 62 under the Act, that the Declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2898 Filed 6–6–05; 8:45 am]

**BILLING CODE 8010–01–P**

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51770; File No. SR–Amex–2005–040]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 to Extend Until June 5, 2006, a Pilot Program for Listing Options on Selected Stocks Trading Below $20 at One-Point Intervals

May 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. The Amex filed Amendment Nos. 1 and 2 to the proposal on May 10, 2005, and May 18, 2005, respectively.[3] The Amex filed the proposal, as amended, pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon the filing with the Commission of Amendment No. 2 to the proposal.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Commentary .05 to Amex Rule 903, ''Series of Options Open for Trading,'' to extend until June 5, 2006, its pilot program for listing options series on selected stocks trading below $20 at one-point intervals (''Pilot Program''). The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the Amex's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Pilot Program was established in June 2003,[7] with a one-year extension through June 5, 2005, granted by the Commission in June 2004.[8] The Amex believes that the Pilot Program has operated as designed, providing investors with greater flexibility in achieving their investment strategies in connection with stocks trading below $20. Accordingly, the Amex believes that a one-year extension, through June 5, 2006, is reasonable and consistent with the intent of the Pilot Program.

The Pilot Program permits the Exchange to select a total of five individual stocks on which options series may be listed at $1 strike price intervals. To be eligible for the Pilot Program, an underlying stock must close below $20 on its primary market on the previous trading day. If selected, the Exchange may list $1 strike prices at $1 intervals from $3 to $20, consistent with the terms of the Pilot Program. Under the Pilot Program, a $1 strike price may not be listed that is greater than $5 from the underlying stock's closing price on its primary market on the previous day. The Exchange may also list $1 strikes on any other options class designated by another options exchange that employs a similar pilot program approved by the Commission.

The Pilot Program prohibits the Exchange from listing $1 strikes on any series of individual equity options classes that have greater than nine months until expiration. In addition, the Exchange is restricted from listing any series that would result in strike prices being $0.50 apart.

To date, the Exchange believes that the Pilot Program has been beneficial to investors and the options market by providing investors with greater flexibility in the trading of equity options that overlie stocks trading below $20. In this manner, options investors are able to better tailor their strategies through the availability of $1 strikes. The Pilot Program Report, attached as Exhibit 3, provides data regarding the Pilot Program as required in the Pilot Program Extension Notice.[9] The Amex notes that, as the data indicates, the $1 strikes exhibited higher volume and open interest than the ''standard'' strike price intervals. Specifically, the five options classes selected by the Amex for $1 strikes had a trading volume of 595,836 contracts, while the ''standard'' strikes for the same options classes had a trading volume of 342,553 contracts. Of even greater significance is the difference in open interest between the $1 strikes and ''standard'' strikes. As of

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 replaced and superseded the original filing and Amendment No. 1 in their entirety. Amendment No. 2 revises the proposal to change it from a filing made pursuant to Section 19(b)(2) of the Act to a filing made pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. In addition, Amendment No. 2 requests a one-year extension of the $1 strikes pilot program, through June 5, 2006, rather than permanent approval of the pilot.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] As noted above, Amendment No. 2 changed the proposal from a filing made pursuant to Section 19(b)(2) of the Act to a filing made pursuant to Section 19(b)(3)(A) of the Act. The Amex has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* Securities Exchange Act Release No. 48024 (June 12, 2003), 68 FR 36617 (June 18, 2003) (order approving File No. SR–Amex–2003–36) (''Pilot Approval Order'').

[8] *See* Securities Exchange Act Release No. 49813 (June 4, 2004), 69 FR 33088 (June 14, 2004) (notice of filing and immediate effectiveness of File No. SR–Amex–2004–45) (''Pilot Program Extension Notice'').

[9] *See* note 8, *supra.*

March 8, 2005, $1 strikes open interest totaled 883,471 contracts versus 677,553 contracts for ''standard'' strikes. Given the limited nature of the Pilot Program, the Exchange submits that the impact on systems has been minimal. Accordingly, the Amex believes that an extension of the Pilot Program for one year through June 5, 2006, is warranted.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with the Section 6(b) of the Act,[10] in general, and furthers the objective of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Amex believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Amex has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] Because the foregoing proposed 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) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 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. In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Amex has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay so that the proposal will be effective on June 5, 2005.

The Commission waives the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Pilot Program to continue without interruption through June 5, 2006.[14] For this reason, the Commission designates that the proposal become operative on June 5, 2005.[15]

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 No. SR–Amex-2005–040 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 No. SR–Amex-2005–040. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex-2005–040 and should be submitted on or before June 28, 2005.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] As set forth in the Commission's initial approval of the Pilot Program, if the Amex proposes to: (1) extend the Pilot Program; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, it must submit a Pilot Program report to the Commission along with the filing of its proposal to extend, expand, or seek permanent approval of the Pilot Program. The Amex must file any such proposal and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report must cover the entire time the Pilot Program was in effect and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the Amex selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the Amex's, the Options Price Reporting Authority's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Amex addressed them; (6) any complaints that the Amex received during the operation of the Pilot Program and how the Amex addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. *See* Pilot Approval Order, *supra* note 7.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2897 Filed 6–6–05; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51771; File No. SR–CBOE–2005–37]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend until June 5, 2006, a Pilot Program for Listing Options on Selected Stocks Trading Below $20 at One-Point Intervals

May 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 9, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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 CBOE. The CBOE filed the proposal 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 CBOE proposes to amend Commentary .01 to CBOE Rule 5.5, ''Series of Option Contracts Open for Trading,'' to extend until June 5, 2006, its pilot program for listing options series on selected stocks trading below $20 at one-point intervals (''Pilot Program''). The text of the proposed rule change is available on the CBOE's Web site (*http://www.cboe.com*), at the CBOE's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program for an additional year.[6] The Pilot Program allows the CBOE to select a total of five individual stocks on which option series may be listed at $1 strike price intervals. To be eligible for inclusion in the Pilot Program, the underlying stock must close below $20 on its primary market on the previous trading day. If selected for the Pilot Program, the Exchange may list strike prices at $1 intervals from $3 to $20, but no $1 strike price may be listed that is greater than $5 away from the underlying stock's closing price on its primary market on the previous day. The Exchange also may list $1 strikes on any other options class designated by another options exchange that employs a similar pilot program under its rules. Under the terms of the Pilot Program, the Exchange may not list long-term option series (''LEAPS'' ®) at $1 strike price intervals for any class selected for the Pilot Program. The Exchange also is restricted from listing any series that would result in strike prices being $0.50 apart.

As stated in its previous filings establishing and extending the Pilot Program,[7] the CBOE believes that $1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower-priced stocks[8] by allowing investors to establish equity options positions that are better tailored to meet their investment objectives.[9] As reflected in the Pilot Extension Notice, the trading volume in a wide majority of the classes selected for the Pilot Program increased significantly within the first year after being selected for the Pilot Program.[10] In ten of the 22 classes originally selected, average daily trading volume (''ADV'') increased over 100%, and in some classes ADV more than tripled.[11] Now, almost two years since the inception of the Pilot Program, the CBOE notes that ADV in several options classes remains significantly higher than immediately prior to their selection for the Pilot Program.[12] It should be noted that, as reflected in the Pilot Program Report, ADV also has dropped in several options classes since their selection for the Pilot Program, although it is difficult to identify the specific market factors that may contribute to the increase or decrease in options trading volume from one particular class to another, especially considering the time removed since the inception of the Pilot Program. However, the Exchange still believes that the practice of offering customers strike prices for lower-priced stocks at $1 intervals contributes to the overall volume of the participating options classes.

With regard to the impact on system capacity, the CBOE's analysis of the Pilot Program also suggests that the impact on the CBOE's, the Options Price Reporting Authority's (''OPRA''), and market data vendors' respective automated systems has been minimal. Specifically, the CBOE notes that in February 2005, the 21 classes participating in the Pilot Program accounted for 8,482,369 quotes per day or 2.26% of the industry's 374,547,949 average quotes per day. These 21 classes averaged 285,509 contracts per day or 5.11% of the industry's 5,589,841 average contracts per day. The classes involved totaled 881 series or 2.47% of all series listed.[13] It should be noted that these quoting statistics may overstate

[16] 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 CBOE has 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).

[6] The Commission approved the Pilot Program on June 5, 2003. See Securities Exchange Act Release No. 47991 (June 5, 2003), 68 FR 35243 (June 12, 2003) (order approving File No. SR–CBOE–2001–60) (''Pilot Approval Order''). The Pilot Program was extended for an additional year on June 3, 2004. *See* Securities Exchange Act Release No. 49799 (June 3, 2004), 69 FR 32642 (June 10, 2004) (notice of filing and immediate effectiveness of File No. SR–CBOE–2004–34) (''Pilot Extension Notice''). Under Interpretation and Policy .01(a) to CBOE Rule 5.5, the Pilot Program is scheduled to expire on June 5, 2005.

[7] *See* Pilot Approval Order and Pilot Extension Notice, *supra* note 6.

[8] To be eligible for inclusion in the Pilot Program, the underlying stock must close below $20 per share on its primary market on the previous trading day.

[9] See Pilot Approval Order and Pilot Extension Notice, *supra* note 6.

[10] *See* Pilot Extension Notice, *supra* note 6.

[11] *See* Pilot Extension Notice, *supra* note 6.

[12] Pursuant to the Pilot Extension Notice, the CBOE is submitting a report (the ''Pilot Program Report''), as Exhibit 3 to the proposal. Among other things, the Pilot Program Report contains analyses of the ADV and open interest (''OI'') for the options classes that have been selected for the Pilot Program since its inception.

[13] *See* Pilot Program Report, *infra* Exhibit 3.

the contribution of $1 strike prices because these figures also include quotes for series listed in intervals higher than $1 (*i.e.*, $2.50 strikes) in the same options classes. Even with the non-$1 strike series quoting being included in these figures, the CBOE believes that the overall impact on capacity is still minimal.

2. Statutory Basis

The Exchange believe that an extension of the Pilot Program is warranted because the data indicates that there is strong investor demand for $1 strikes and because the Pilot Program has not adversely impacted systems capacity. For these reasons, the Exchange believe the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5)[15] that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believes that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The CBOE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17] Because the foregoing proposed 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) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. As required under Rule 19b–4(f)(6)(iii), the CBOE provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 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 CBOE has asked the Commission to waive the 30-day operative delay to permit the Pilot Program extension to become effective at the time the Commission waives the 30-day operative delay.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Pilot Program to continue without interruption through June 5, 2006.[18] For this reason, the Commission designates that the proposal become operative on June 5, 2005.[19]

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 No. SR–CBOE–2005–37 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 No. SR–CBOE–2005–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] As set forth in the Commission's initial approval of the Pilot Program, if the CBOE proposes to: (1) Extend the Pilot Program; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, it must submit a Pilot Program report to the Commission along with the filing of its proposal to extend, expand, or seek permanent approval of the Pilot Program. The CBOE must file any such proposal and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report must cover the entire time the Pilot Program was in effect and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the CBOE selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the CBOE's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the CBOE addressed them; (6) any complaints that the CBOE received during the operation of the Pilot Program and how the CBOE addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. *See* Pilot Approval Order, *supra* note 6.

2005–37 and should be submitted on or before June 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2891 Filed 6–6–05; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51766; File No. SR–CBOE–2004–54]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change and Partial Amendment No. 1 To Amend Rules Relating to Margin Treatment on Stock Transactions Effected by an Options Market Maker to Hedge Options Positions

May 31, 2005.

### I. Introduction

On July 30, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4[2] thereunder, a proposed rule change seeking to amend rules relating to margin treatment on stock transactions effected by an options market maker to hedge options positions. On February 22, 2005, the CBOE filed a partial amendment to its proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on April 13, 2005.[4] The Commission received no comments on the proposal.

### II. Description

The Exchange has proposed to eliminate a rule that essentially disallows favorable margin treatment on stock transactions initiated by options market makers to hedge an option position if the exercise price of the option is more than two standard exercise price intervals above the price of the stock in the case of a call option, or below in the case of a put option. When options market makers hedge their option positions by taking a long or short position in the underlying security, the underlying security is allowed ''good faith'' margin treatment, provided the underlying security meets the definition of a ''permitted offset.'' To qualify as a permitted offset, CBOE Rule 12.3(f)(3) requires, among other things, that the transaction price of the underlying security be not more than two standard exercise price intervals below the exercise price of the option being hedged in the case of a call option, or above in the case of a put option. The term ''in-or-at-the-money'' is used in CBOE Rule 12.3(f)(3) to refer to the two standard strike price interval requirement. Stated another way, ''in-or-at-the-money'' means the option being hedged cannot be ''out-of-the-money'' by more than two standard exercise price intervals.

The Exchange has stated that the intent of this requirement was to confine good faith margining of transactions in the underlying security to those that constituted meaningful hedges of an option position. The Exchange has proposed to remove the ''in-or-at-the-money'' requirement.[5]

The Exchange noted that the ''in-or-at-the-money'' requirement is not consistent with current options market-maker hedging technique. Options market-makers will take a less than 100 share position in the underlying security per option being hedged so that any gain/loss on that position in dollar terms closely tracks that of the dollar gain/loss on the option position. When options market-makers hedge in this manner, known as ''delta neutral hedging,'' they cannot benefit from any gain on a position in the underlying security because it is equally offset by a loss in the option being hedged.

The Exchange further noted that the ''in-or-at-the-money'' requirement is unnecessary because, when a clearing firm extends good faith margin on a security underlying an option, it must reduce its net capital by any amount by which the deduction required by Rule 15c3–1 under the Securities Exchange Act of 1934 (the ''haircut'') exceeds the amount of equity in the options market maker's account.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[7], which requires that the rules of the exchange be designed, among other things, to remove impediments to and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. The Commission finds that amending the rules relating to margin treatment on stock transactions effected by an options market maker to hedge options positions, by eliminating the ''in-or-at-the-money'' requirement, is consistent with the requirements of Section 6(b)(5), in that the ''in-or-at-the-money'' requirement impedes options market makers from hedging, on a good faith margin basis, ''out-of-the-money'' options having standard exercise price intervals of less than five points.

### IV. Conclusion.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CBOE–2004–54), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2889 Filed 6–6–05; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51763; File No. SR–CHX–2005–15]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Participant Fees and Credits

May 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SR–CBOE–2004–54: Amendment No. 1. Under the partial amendment, the options market maker must be able to demonstrate that it effected its permitted offset transactions for market-making purposes.

[4] *See* Securities Exchange Act Release No. 51497 (April 6, 2005), 70 FR 19536 (April 13, 2005).

[5] The New York Stock Exchange (''NYSE'') also has filed a proposed rule change to remove the ''in-or-at-the-money'' language from its rules on permitted offsets. Although the language of the NYSE's proposed rule change differs from the language of the CBOE's proposed rule change, the proposed changes from the two exchanges are substantively identical. The Commission is publishing a notice to solicit comments on the NYSE's proposed rule change.

[6] 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).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2005, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On May 23, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Participant Fee Schedule (the ''Fee Schedule'') to (1) eliminate the assignment fee for listed securities that are not assigned in competition; and (2) modify the Exchange's fixed fee for specialists trading Nasdaq/NM securities. The text of the proposed rule change is available on the CHX's Web site (*www.chx.com*), at the CHX's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX 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 CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify its Fee Schedule in two ways. Specifically, the Exchange proposes to (1) eliminate the assignment fee for listed securities that are not assigned in competition; and (2) modify the Exchange's fixed fee for specialists trading Nasdaq/NM securities.

*Eliminating certain assignment fees.* Under the current Fee Schedule, the Exchange charges a fee to a specialist that receives the assignment of a listed security when other firms are not competing for the assignment. To encourage firms to trade additional listed securities by reducing their costs of doing so, the Exchange proposes to eliminate this assignment fee.[4] The Exchange previously had waived this fee on a temporary basis, through the end of 2004; the current proposal would eliminate the fee altogether.[5]

*Modifying the fixed fee.* The Exchange currently charges specialists trading Nasdaq/NM securities a base fixed fee that is the greater of (a) $20,000 or (b) the firm's pro rata share of $60,000. The Exchange now believes that it is appropriate to modify the calculation to impose a flat base fee of $20,000. This modified calculation allows the Exchange to recoup many of the fixed costs of running its OTC specialist program, while not imposing unnecessary fees on specialist firms.[6]

The Exchange believes that these changes to the Fee Schedule represent a fair allocation of the costs associated with the Exchange's specialist programs. As noted above, the changes are also intended to provide specialists with an appropriate incentive to increase the number of issues that they trade (consistent with the specialist's duties as a specialist), which could allow the Exchange's participants to offer their customers access to a wider array of specialist-traded securities.

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)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its 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 proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder,[10] because it establishes or changes a due, fee, or other charge imposed by the CHX. 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.[11]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2005–15 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–CHX–2005–15. This file

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical corrections to the rule text of the proposed rule change. The effective date of the original proposed rule change is May 2, 2005, and the effective date of the amendment is May 23, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 23, 2005, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[4] The Exchange would continue to charge specialist assignment fees with respect to securities that are assigned to a specialist firm in competition with other firms, reflecting the increased administrative costs associated with allocating stocks in competition.

[5] *See* Securities Exchange Act Release No. 50657 (November 12, 2004), 69 FR 67615 (November 18, 2004) (SR–CHX–2004–34).

[6] At a basic level, many of the Exchange's costs of supporting the OTC specialist program do not vary based on the number of OTC specialist firms or the number of issues traded. These costs, however, can increase with substantial increases in trading volume or can decrease with substantial decreases in trading volume or in the number of firms that trade Nasdaq/NM securities. The Exchange's proposed changes to the fixed fee are consistent with these principles.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] *See supra* note 3.

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 CHX. 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–CHX–2005–15 and should be submitted on or before June 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2888 Filed 6–6–05; 8:45 am]

**BILLING CODE 8010–01–P**

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51769; File No. SR–ISE–2005–22]**

## Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend Until June 5, 2006, a Pilot Program for Listing Options on Selected Stocks Trading Below $20 at One-Point Intervals

May 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 10, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the ISE. The ISE filed the proposal 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend Supplementary Material .01 to ISE Rule 504, ''Series of Options Contracts Open for Tracing,'' to extend until June 5, 2006, its pilot program for listing options series on selected stocks trading below $20 at one-point intervals (''Pilot Program''). The text of the proposed rule change is available on the ISE's Web site *(http://www.iseoptions.com),* at the ISE's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On June 16, 2003, the Commission approved the ISE's Pilot Program, which allows the ISE to list series with $1 strike price intervals on equity option classes that overlie up to five individual stocks, provided that the strike prices are $20 or less, but not less than $3, subject to the terms of the Pilot Program.[6] Although the ISE may select only up to five individual stocks to be included in the Pilot Program, the ISE is also permitted to list options on other individual stocks at $1 strike price intervals if other options exchanges listed those series pursuant to their respective rules. The ISE selected the following five options classes to participate in the Pilot Program: AMR Corp. [AMR], Clapine Corp. [CPN], EMC Corp. [EMC], El Paso Corp. [EP], and Sun Microsystems Inc. [SUNW]. The Pilot Program, after being extended on two prior occasions,[7] is set to expire on June 5, 2005.[8] The ISE believes the Pilot Program has been successful. Thus, the ISE proposes to extend the Pilot Program until June 5, 2006. In support of this proposed rule change, and as required by the Pilot Program Approval Order and the Pilot Extension Notices, the Exchange is submitting to the Commission a report (the ''Pilot Program Report''), attached as Exhibit 3 to the proposal, that details the Exchange's experience with the Pilot Program. Specifically, the Pilot Program Report contains data and written analysis regarding the five options classes included in the Pilot Program for the period between May 1, 2004, and February 28, 2005.

The Exchange believes there is sufficient investor interest and demand to extend the Pilot Program for another year. The Exchange continues to believe that the Pilot Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals.

2. Statutory Basis

The ISE believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the ISE believes the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act that the rules of a national securities exchange be designed to

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The ISE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 48033 (June 13, 2003), 68 FR 37036 June 20, 2003) (order approving File No. SR–ISE–2003–17) (''Pilot Program Approval Order'').

[7] *See* Securities Exchange Act Release Nos. 49827 (June 8, 2004), 69 FR 33966 (June 17, 2004) (notice of filing and immediate effectiveness of File No. SR–ISE–2004–21) (extending the $1 Strike Pilot Program until August 5, 2004); and 50060 (July 22, 2004), 69 FR 45864 (July 30, 2004) (notice of filing and immediate effectiveness of File No. SR–ISE–2004–26) (extending the $1 Strike Pilot Program until June 5, 2005) (collectively, the ''Pilot Extension Notices'').

[8] *See* Securities Exchange Act Release No. 50060, *supra* note 7.

[9] 15 U.S.C. 78f(b).

promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, 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 ISE believes that extension of the Pilot Program until June 5, 2006, will result in a continuing benefit to investors by allowing them to more closely tailor their investment decisions, and will allow the ISE to further study investor interest in $1 strike price intervals.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested persons.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The ISE has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] Because the foregoing proposed 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) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 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. In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The ISE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay to prevent a lapse in the operation of the Pilot Program.

The Commission waives the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Pilot Program to continue without interruption through June 5, 2006.[12] For this reason, the Commission designates that the proposal become operative on June 5, 2005.[13]

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 No. SR–ISE–2005–22 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 No. SR–ISE–2005–22. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2005–22 and should be submitted on or before June 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2899 Filed 6–6–05; 8:45 am]

**BILLING CODE 8010–01–P**

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] As set forth in the Commission's initial approval of the Pilot Program, if the ISE proposes to: (1) extend the Pilot Program; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, it must submit a Pilot Program report to the Commission along with the filing of its proposal to extend, expand, or seek permanent approval of the Pilot Program. The ISE must file any such proposal and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report must cover the entire time the Pilot Program was in effect and must include: (1) data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the ISE selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the ISE's, the Options Price Reporting Authority's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the ISE addressed them; (6) any complaints that the ISE received during the operation of the Pilot Program and how the ISE addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. *See* Pilot Program Approval Order, *supra* note 6.

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51757; File No. SR–NASD–2005–037]**

## 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 To Modify Certain Fees for Connecting to the Nasdaq Market Center and Nasdaq's Brut Facility for Non-Members

May 27, 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 March 24, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On May 10, 2005, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change, as amended.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010 to modify certain fees for connecting to the Nasdaq Market Center (''NMC'') and Nasdaq's Brut Facility (''Brut''). The text of the proposed change to NASD Rule 7010 is below. Additions are in italics and deletions are in brackets.

* * * * *

**7000. Charges for Services and Equipment**

*7010. System Services*

(a)—(e) No change

(f) Access Services.

The following charges are assessed by Nasdaq for connectivity to the Nasdaq Market Center *(NMC) and, where indicated, to Nasdaq's Brut Facility (Brut).*

(1) and (2) No change.

(3) Computer to computer interface (CTCI) and Financial Information Exchange (FIX)

| Options | Price |
|---|---|
| Option 1: Dual 56kb lines (one for redundancy), single hub and router, and optional single FIX port. | $1275/month. |
| Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), dual routers (one for redundancy), and optional single FIX port. | $1600/month. |
| Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), dual routers (one for redundancy), and optional single FIX port. Includes base bandwidth of 128kb. | $8000/month (CTCI or CTCI/FIX lines) $4000/month (FIX-only lines). |
| FIX *Trading* Port *(NMC and Brut)* [Charge] | $[300] *400*/port/month. |
| *FIX Port for Services Other than Trading* | *$500/port/month.* |
| Dedicated FIX server | $1,000/*server*/month. |
| *Dedicated FIX server (Brut)* | *3,000/server/month; initial term of not less than 12 months is required.* |
| Option 1, 2, or 3 with Message Queue software enhancement Bandwidth 20% | Fee for Option 1, 2, or 3 (including any Enhancement Fee) plus. |
| Disaster Recovery Option: Single 56kb line with single hub and router and optional single FIX port. (For remote disaster recovery sites only.). | $975/month. |
| Bandwidth Enhancement Fee (for T1 subscribers only) | $600/month per 64kb increase above 128kb T1 base. |
| Installation Fee | $2000 per site for dual hubs and routers.<br>$1000 per site for single hub and router. |
| Relocation Fee (for the movement of TCP/IP-capable lines within a single location) | $1700 per relocation. |

FIX connectivity through Options 1, 2, or 3 or the Disaster Recovery Option will not be available to new subscribers that are (i) NASD members after January 1, 2004, or (ii) not NASD members after the effective date of SR–NASD–2003–196.

(4) No change. (g)—(v) 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposed rule change would apply to non-members certain rule changes that were immediately effective with respect to NASD members.[4] According to Nasdaq, an important objective of this proposal is to ensure uniform treatment under the rules of members and non-members alike. As further described below, these changes modify certain fees and establish new options for connecting to the NMC and Brut.

Today, Nasdaq offers participants Financial Information Exchange (''FIX'') protocol connectivity for entering orders to buy and sell securities into the NMC and Brut. Effective April 1, 2005, the port charge for such a connection will be set at $400 per month for both the NMC and Brut. For NMC users, this represents a $100 per month increase from the current $300 monthly charge; for Brut users, this is a new charge,[5] which is being instituted in order to harmonize NMC and Brut charges for similar services.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4, dated May 10, 2005 (''Amendment No. 1''). Amendment No. 1 replaced the original rule filing in its entirety.

[4] *See* SR–NASD–2005–036.

[5] To assure service quality, a Brut FIX port has been provisioned as a port pair, in which a

This charge better reflects the market conditions and the costs associated with providing the service. The $100/month increase in the charge for an NMC FIX port is necessary in light of the higher-than-expected infrastructure costs that Nasdaq is currently incurring in providing this service. In estimating its costs, Nasdaq considers the cost of necessary hardware, software, maintenance and staff.

In response to subscriber demand, Nasdaq also intends to make FIX connectivity available for services other than trading (*i.e.*, other than the entry of orders). As such, on April 1, 2005, Nasdaq expects to enable FIX connectivity to the NMC for the purpose of accepting trade reports from those participants that are eligible to submit such reports to the NMC. In the future, it may become possible to use such non-trading FIX connection for additional Nasdaq services.

The proposed port charge for this connection is slightly higher than the charge for a trading port, which is a reflection of current market conditions and costs. It is based on the expected level of demand for this type of service and the expected infrastructure costs (including hardware, software and staff costs). Initially, this port will be used for the purpose of accepting trade reports from those participants that are eligible to submit such reports to the NMC. In the future, it may become possible to use this connection for other existing or to-be-established services. Of course, Nasdaq will submit rule change filings with respect to any new services whenever required to do so pursuant to Section 19(b)(1) of the Act [6] and Rule 19b-4 thereunder.[7]

Nasdaq is currently offering a dedicated-to-a-specific-firm FIX server that can be used to connect to the NMC. A dedicated server is not necessary for a proper FIX connection to the NMC, but some participants may choose it as an option.[8] In response to participant interest, Nasdaq is also making available a dedicated FIX server for Brut. The charge for a dedicated Brut FIX server will reflect the costs of providing it. In order to further ensure that all initial costs of activating a dedicated server are allocated properly, Nasdaq intends to require a one-year minimum term for a dedicated Brut FIX server. Users will be responsible for the full first year's charges even if they wish to terminate their contract early.

The monthly charge for a dedicated FIX server at Brut is higher than the charge for a dedicated FIX server at the NMC. This difference in charges is in large part a reflection of the differences in the cost of necessary hardware, maintenance fees, software licensing fees, and staff support costs. A Brut dedicated FIX server also entails higher initial costs, and the requirement of a 12-month minimum term is designed to reduce Nasdaq's financial exposure in the event that a user decides to terminate the arrangement after less than a year (although Nasdaq's expectation is that users that choose the dedicated server option continue with this option for longer than a year). The initial and operating costs of an NMC dedicated FIX server are lower, and in the event of an early termination of this option by a user, the equipment used to provide such service can be more readily (than the Brut equipment) converted to other uses.

Nasdaq carefully monitors incoming and outgoing message traffic on all servers used for Brut access in order to ensure that connectivity to and from Brut is not degraded because of insufficient capacity on such servers. This process will not change with the implementation of dedicated servers. Nasdaq regularly reviews the performance statistics for each user connected to Nasdaq's and Brut's servers. If it appears that a server is reaching its capacity limits (for example, if a particular user is experiencing greater volumes than in the past), Nasdaq would reassign servers and users to ensure that there is no degradation in the speed of transmission. As a result, the choice a user makes between a shared and a dedicated server has no impact on transmission speed. Nasdaq will install additional non-dedicated servers whenever necessary to provide a high level of support across all FIX servers.

A dedicated FIX server at Brut would also be capable of being converted to provide access to the NMC if at any time Nasdaq decided to make the appropriate system modifications. The use of such a server for connectivity to and from the NMC would not confer any transmission speed advantage or disadvantage upon this server's users.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,[9] in general, and Section 15A(b)(5) [10] of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Nasdaq has neither solicited nor received comments on the proposed rule change.

**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–2005–037 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–2005–037. 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

redundant second port is included for use as backup. Nasdaq does not intend to change this practice at this time. Therefore, a Brut user will receive both ports in the pair for a single payment of $400/month.

[6] 15 U.S.C. 78s(b)(1).

[7] 17 CFR 240.19b–4.

[8] *See* Securities Exchange Act Release No. 51170 (Feb. 9, 2005), 70 FR 7988 (Feb. 16, 2005) (SR–NASD–2005–002) (explains that Nasdaq will carefully monitor message traffic on all dedicated and non-dedicated servers to ensure that dedicated servers will not provide firms that receive them with any transmission speed advantage).

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(5).

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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–037 and should be submitted on or before June 28, 2005.

## IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.[11] In particular, the Commission believes that the proposed rule change is consistent with the requirements of Section 15A(b)(5) of the Act,[12] which requires that the rules of the self-regulatory organization provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which it operates or controls. Specifically, the Commission notes that this proposal would permit the schedule for non-NASD members to mirror the schedule applicable to NASD members that was effective pursuant to SR–NASD–2005–036.

The Commission finds good cause for accelerating approval of the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed fees for non-NASD members are identical to those in SR–NASD–2005–036, which implemented these fees for NASD members and which became effective pursuant to Section 19(b)(3)(A) of the Act.[13] The Commission notes that this change will promote consistency in Nasdaq's fee schedule by applying the same pricing schedule with the same date of effectiveness for both NASD members and non-NASD members. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[14] to approve the proposed rule change, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NASD–2005–037), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2890 Filed 6–6–05; 8:45 am]

**BILLING CODE 8010–01–P**

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51756; File No. SR–NASD–2005–036]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Modify Certain Fees for Connecting to the Nasdaq Market Center and Nasdaq's Brut Facility

May 27, 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 March 24, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On May 10, 2005, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010 to modify certain fees for connecting to the Nasdaq Market Center (''NMC'') and Nasdaq's Brut Facility (''Brut''). The text of the proposed change to NASD Rule 7010 is below. Additions are in italics and deletions are in brackets.

* * * * *

7000. Charges for Services and Equipment

7010. System Services

(a)—(e) No change

(f) Access Services.

The following charges are assessed by Nasdaq for connectivity to the Nasdaq Market Center *(NMC) and, where indicated, to Nasdaq's Brut Facility (Brut).*

(1) and (2) No change.

(3) Computer to computer interface (CTCI) and Financial Information Exchange (FIX)

| Options | Price |
|---|---|
| Option 1: Dual 56kb lines (one for redundancy), single hub and router, and optional single FIX port. | $1275/month. |
| Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), dual routers (one for redundancy), and optional single FIX port. | $1600/month. |
| Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), dual routers (one for redundancy), and optional single FIX port. Includes base bandwidth of 128kb. | $8000/month (CTCI or CTCI/FIX lines)<br>$4000/month (FIX-only lines). |
| FIX *Trading* Port (*NMC and Brut*) [Charge] | $[300] *400*/port/month. |
| *FIX Port for Services Other than Trading* | *$500/port/month.* |

[11] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78o–3(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 15 U.S.C. 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4, dated May 10, 2005 (''Amendment No. 1''). Amendment No. 1 clarified the substance of and basis for the proposal.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] Nasdaq is simultaneously filing, and requesting accelerated approval for, another rule change proposal, which would make the changes described herein also applicable to non-members.

| Options | Price |
|---|---|
| *Dedicated FIX server* | $1,000/*server*/month. |
| *Dedicated FIX server (Brut)* | *3,000/server/month; initial term of not less than 12 months is required.* |
| Option 1, 2, or 3 with Message Queue software enhancement | Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%. |
| Disaster Recovery Option: Single 56kb line with single hub and router and optional single FIX port. (For remote disaster recovery sites only.). | $975/month. |
| Bandwidth Enhancement Fee (for T1 subscribers only) | $600/month per 64kb increase above 128kb T1 base. |
| Installation Fee | $2000 per site for dual hubs and routers.<br>$1000 per site for single hub and router. |
| Relocation Fee (for the movement of TCP/IP-capable lines within a single location) | $1700 per relocation. |

FIX connectivity through Options 1, 2, or 3 or the Disaster Recovery Option will not be available to new subscribers that are (i) NASD members after January 1, 2004, or (ii) not NASD members after the effective date of SR–NASD–2003–196.

(4) No change.

(g)–(v) 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Today, Nasdaq offers participants Financial Information Exchange (''FIX'') protocol connectivity for entering orders to buy and sell securities into the NMC and Brut. Effective April 1, 2005, the port charge for such a connection will be set at $400 per month for both the NMC and Brut. For NMC users, this represents a $100 per month increase from the current $300 monthly charge; for Brut users, this is a new charge,[7] which is being instituted in order to harmonize NMC and Brut charges for similar services.

This charge better reflects the market conditions and the costs associated with providing the service. The $100/month increase in the charge for an NMC FIX port is necessary in light of the higher-than-expected infrastructure costs that Nasdaq is currently incurring in providing this service. In estimating its costs, Nasdaq considers the cost of necessary hardware, software, maintenance and staff.

In response to subscriber demand, Nasdaq also intends to make FIX connectivity available for services other than trading (*i.e.*, other than the entry of orders). As such, on April 1, 2005, Nasdaq expects to enable FIX connectivity to the NMC for the purpose of accepting trade reports from those participants that are eligible to submit such reports to the NMC. In the future, it may become possible to use such non-trading FIX connection for additional Nasdaq services.

The proposed port charge for this connection is slightly higher than the charge for a trading port, which is a reflection of current market conditions and costs. It is based on the expected level of demand for this type of service and the expected infrastructure costs (including hardware, software and staff costs). Initially, this port will be used for the purpose of accepting trade reports from those participants that are eligible to submit such reports to the NMC. In the future, it may become possible to use this connection for other existing or to-be-established services. Of course, Nasdaq will submit rule change filings with respect to any new services whenever required to do so pursuant to Section 19(b)(1) of the Act [8] and Rule 19b–4 thereunder.[9]

Nasdaq is currently offering a dedicated-to-a-specific-firm FIX server that can be used to connect to the NMC. A dedicated server is not necessary for a proper FIX connection to the NMC, but some participants may choose it as an option.[10] In response to participant interest, Nasdaq is also making available a dedicated FIX server for Brut. The charge for a dedicated Brut FIX server will reflect the costs of providing it. In order to further ensure that all initial costs of activating a dedicated server are allocated properly, Nasdaq intends to require a one-year minimum term for a dedicated Brut FIX server. Users will be responsible for the full first year's charges even if they wish to terminate their contract early.

The monthly charge for a dedicated FIX server at Brut is higher than the charge for a dedicated FIX server at the NMC. This difference in charges is in large part a reflection of the differences in the cost of necessary hardware, maintenance fees, software licensing fees, and staff support costs. A Brut dedicated FIX server also entails higher initial costs, and the requirement of a 12-month minimum term is designed to reduce Nasdaq's financial exposure in the event that a user decides to terminate the arrangement after less than a year (although Nasdaq's expectation is that users that choose the dedicated server option continue with this option for longer than a year). The initial and operating costs of an NMC dedicated FIX server are lower, and in the event of an early termination of this option by a user, the equipment used to provide such service can be more readily (than the Brut equipment) converted to other uses.

Nasdaq carefully monitors incoming and outgoing message traffic on all servers used for Brut access in order to ensure that connectivity to and from Brut is not degraded because of insufficient capacity on such servers. This process will not change with the implementation of dedicated servers.

[7] To assure service quality, a Brut FIX port has been provisioned as a port pair, in which a redundant second port is included for use as backup. Nasdaq does not intend to change this practice at this time. Therefore, a Brut user will receive both ports in the pair for a single payment of $400/month.

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

[10] *See* Securities Exchange Act Release No. 51170 (Feb. 9, 2005), 70 FR 7988 (Feb. 16, 2005) (SR–NASD–2005–002) (explains that Nasdaq will carefully monitor message traffic on all dedicated and non-dedicated servers to ensure that dedicated servers will not provide firms that receive them with any transmission speed advantage).

Nasdaq regularly reviews the performance statistics for each user connected to Nasdaq's and Brut's servers. If it appears that a server is reaching its capacity limits (for example, if a particular user is experiencing greater volumes than in the past), Nasdaq would reassign servers and users to ensure that there is no degradation in the speed of transmission. As a result, the choice a user makes between a shared and a dedicated server has no impact on transmission speed. Nasdaq will install additional non-dedicated servers whenever necessary to provide a high level of support across all FIX servers.

A dedicated FIX server at Brut would also be capable of being converted to provide access to the NMC if at any time Nasdaq decided to make the appropriate system modifications. The use of such a server for connectivity to and from the NMC would not confer any transmission speed advantage or disadvantage upon this server's users.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,[11] in general, and Section 15A(b)(5)[12] of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Nasdaq 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and subparagraph (f)(2) of Rule 19b–4 thereunder.[14] 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.[15]

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–036 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–2005–036. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–036 and should be submitted on or before June 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2895 Filed 6–6–05; 8:45 am]

**BILLING CODE 8010–01–P**

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78*o*–3(b)(5).

[13] 15 U.S.C. 78s(b)(3)(a).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 *See* 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on May 10, 2005, the date Nasdaq filed Amendment No. 1. The effective date of the original proposed rule change is March 24, 2005, and the effective date of the amendment is May 10, 2005.

[16] 17 CFR 200.30–3(a)(12).

---

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51765; File No. SR–NSX–2005–02]**

## Self-Regulatory Organizations; National Stock Exchange; Notice of Filing of Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to the Composition of NSX's Board of Directors and Committees

May 31, 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 March 31, 2005, the National Stock Exchange℠ (the ''Exchange'' or ''NSX''℠) 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 NSX. On March 31, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 19, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its By-Laws to make modifications to the composition of its Board of Directors (''Board'') and committees. These changes are being made in connection with a termination of rights agreement entered into between NSX and the Chicago Board Options Exchange (''CBOE'') and in order to comport with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange corrected page numbering errors in the initial filing. Amendment No. 1 replaced the original filing in its entirety.

[4] In Amendment No. 2, the Exchange revised the proposed definition of ''Independent Director.''

industry trends and anticipated changes in regulatory requirements.

Below is the amended text of the proposed rule change. Proposed new language is in italics; proposed deletions are in [brackets].

* * * * *

**CODE OF REGULATIONS (BY-LAWS) OF NATIONAL STOCK EXCHANGE**

*ARTICLE I. Definitions*

Section 1. When used in this Code of Regulations (By-Laws), unless the context otherwise requires—

(a)–(e). No change.

*(f) The term ''CBOE'' shall mean the Chicago Board Options Exchange, Incorporated.*

*(g) The term ''CBOE member(s)'' shall mean an individual CBOE member or a CBOE member organization that is a regular member of CBOE as described in Article II, Section 2.1(b) of the CBOE Constitution or that is a special member of CBOE as described in Article II Section 2.1(d) of the CBOE Constitution as such CBOE members may exist from time to time.*

[(f)] *(h)* The term ''Commission'' means the United States Securities and Exchange Commission.

[(g)] *(i)* The term ''Exchange'' means National Stock Exchange.

[(h)] *(j)* The term ''Exchange Rules'' means those rules adopted by the Exchange pursuant to the provisions of Article X of these By-Laws.

*(k) The term ''Independent Director'' means a member of the Board that the Board has determined to have no material relationship with the Exchange or any affiliate of the Exchange, any member of the Exchange or any affiliate of any such member, other than as a member of the Board.*

[(i)] *(l)* The term ''person'' means a natural person, company, government, or political subdivision, agency or instrumentality of a government.

[(j)] *(m)* The terms ''person associated with a member'' or ''associated person of a member'' mean any partner, officer, director, or branch manager of a member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with the member, of any employee of such member, except that any person associated with a member whose functions are solely clerical or ministerial shall not be included in the meaning of such terms.

[(k)] *(n)* The term ''Proprietary Member'' means a person who was a ''Regular Member'' prior to the effective date of these By-Laws or a person who, pursuant to the provisions of Article II of these By-Laws, has applied for, and been admitted to, membership as a proprietary member subsequent to the effective date of these By-Laws.

[(l)] *(o)* The term ''statutory disqualification'' shall mean any statutory disqualification as defined in the Act.

[(m) The term ''CBOE'' shall mean the Chicago Board Options Exchange, Incorporated.]

[(n) The term ''CBOE member(s)'' shall mean an individual CBOE member or a CBOE member organization that is a regular member of CBOE as described in Article II, Section 2.1(b) of the CBOE Constitution or that is a special member of CBOE as described in Article II Section 2.1(d) of the CBOE Constitution as such CBOE members may exist from time to time, except that in the case of a transferable regular CBOE membership which is subject to a lease agreement, the lessee and not the lessor shall be deemed to be the CBOE member].

* * * * *

*ARTICLE V. Exchange Organization and Administration*

Section 1. Board of Directors

[1.1. General]

*(a) General Composition.* The management and administration of the affairs of the Exchange shall be vested in a Board of Directors, which shall be composed of thirteen *(subject to Section 1(b))* voting Directors *(a majority of whom will be independent pursuant to Section 1(b)),* as follows:

[(a)] *(i)* the *Chief Executive Officer of the* Exchange [President];

[(b) two] *(ii) three* Proprietary Members, or executive officers of Proprietary Member organizations[, who are Designated Dealers in the National Securities Trading System (''Designated Dealer Directors''); (c) one Proprietary Member or an executive officer of a Proprietary Member organization, who conducts a nonmember public customer business on the Exchange (''At-Large] *(''Member* Directors'');

*(iii) six Independent Directors (subject to increase under Section 1(b) below); and*

[(d) the Chairman of CBOE (''CBOE Director''); (e) the President of CBOE (''CBOE Director''); (f) four] *(iv) three executive officers of CBOE,* CBOE members or executive officers of CBOE member organizations (''CBOE Directors'')[; and (g) three representatives of issuers and investors who shall not be associated with any member of the Exchange or with any registered broker or dealer or with another self-regulatory organization, other than as a public trustee or director (''Public Director'')].

Excepting affiliations with national securities exchanges, no two or more Directors may be partners, officers of directors of the same person or be affiliated with the same person.

(b) *Changes in Composition on the Occurrence of Certain Events. Notwithstanding the provisions of Section 1(a) of this Article V:*

*(i) The current terms of the Directors currently serving as of the effective date of this provision of these By-laws (the ''Effective Date'') shall be unchanged.*

*(ii) Following the Effective Date, the three new Independent Directors who are authorized by Section 1(a)(iii) (''New Independent Directors'') shall be either (as determined by the Board) (y) selected in accordance with Sections 2.1(c) and 2.2(b) of this Article V, except that each candidate for New Independent Director shall be submitted by the Nominating Committee to the Board for approval or disapproval as soon as practical, or (z) appointed in accordance with Sections 2.1(c) and 3 of this Article V.*

*(iii) On the date of the first Subsequent Closing (as defined below) to occur after January 18, 2005, the number of positions on the Board to be filled by CBOE Directors shall be reduced from three to two and the number of positions to be filled by Independent Directors shall be increased from six to seven. Following the first Subsequent Closing, a new Independent Director shall be either (as determined by the Board) (y) selected in accordance with Sections 2.1(c) and 2.2(b) of this Article V, except that the candidate for Independent Director shall be submitted by the Nominating Committee to the Board for approval or disapproval as soon as practical, or (z) appointed in accordance with Sections 2.1(c) and 3 of this Article V.*

*(iv) If no Subsequent Closing has occurred prior to February 15, 2006, then in order to achieve a majority of Independent Directors serving on the Board, the Board may, in its discretion, add up to two new Independent Directors and thereby increase the number of Directors serving on the Board from thirteen to not more than fifteen. In such event the two new Independent Directors authorized hereby shall be either (as determined by the Board) (y) selected in accordance with Sections 2.1(c) and 2.2(b) of this Article V, except that each candidate for Independent Director shall be submitted by the Nominating Committee to the Board for approval or disapproval as soon as practical, or (z) appointed in*

*accordance with Sections 2.1(c) and 3 of this Article V.*

*(v) On the date of the second Subsequent Closing to occur after January 18, 2005, the number of positions on the Board to be filled by CBOE Directors shall be reduced from two to one, and the Board may, in its discretion, increase by one the number of positions to be filled by either Independent Directors or Member Directors. Following the second Subsequent Closing, a new Director may be either (as determined by the Board) (y) elected or appointed in accordance with Sections 2.1 and 2.2 of this Article V, except that the requisite action may be taken as soon as practical, or (z) appointed in accordance with Sections 2.1 and 3 of this Article V.*

*(vi) On the earliest to occur of (A) the date on which CBOE owns less than five percent (5%) of the outstanding certificates of proprietary membership of the Exchange or (B) the third anniversary of the fourth Subsequent Closing (the earliest of these to occur being the ''CBOE Withdrawal Date''), the number of positions on the Board to be filled by CBOE Directors shall be reduced from one to zero, and the Board may, in its discretion, increase by one the number of positions to be filled by either Independent Directors or Member Directors. The remaining CBOE Director shall be deemed to have resigned from the Board as of the CBOE Withdrawal Date. Following the CBOE Withdrawal Date, a new Director may be either (as determined by the Board) (y) elected or appointed in accordance with Sections 2.1 and 2.2 of this Article V, except that the requisite action may be taken as soon as practical, or (z) appointed in accordance with Sections 2.1 and 3 of this Article V.*

*(vii) ''Subsequent Closing'' has the meaning given to it in the Termination of Rights Agreement between CBOE and the Exchange dated as of September 27, 2004.*

[1.2. Term

Notwithstanding Paragraphs 1.1 and 2.1 and 2.2 below, from the effective date of this provision of these By-Laws to the first Board of Directors meeting after the annual election meeting in 1988, 1989 or 1990, as appropriate, the initial terms of the Exchange Directors shall be as follows:

Public Director—1990
Public Director—1989
Public Director—1988
President of the Exchange—1988
Designated Dealer Director—1990
Designated Dealer Director—1989
At-Large Director—1988
Chairman of CBOE—1988
President of CBOE—1988
CBOE Director—1988
CBOE Director—1988
CBOE Director—1988
CBOE Director—1988]

Section 2. Election of Directors

2.1. Terms of Office

(a) The *board* term of *the Chief Executive Officer shall expire when such individual ceases to be Chief Executive Officer of the Exchange.*

[(a)] *(b) The* [a Designated Dealer] *Member* Directors [, At-Large Director or Public Director] shall be *divided into* three *classes, each initially composed of no more than one Member Director. Each Member Director shall be elected for a term expiring at the third successive annual meeting of the membership, or when such Director's successor is thereafter elected and qualified, and shall be identified as being of the same class as the Director such Director succeeds. Notwithstanding the foregoing, in the case of any new Member Director subject to initial election or appointment pursuant to Section 1(b) of this Article V, such Director shall be added to a class, as determined by the Board at the time of such Director's initial election or appointment, and shall have an initial term expiring at the same time as the term of the class to which such Director has been added. In no case will any Member Director be added to a class that is already composed of two Member Directors* [years or until a successor is elected and qualified].

*(c) The Independent Directors shall be divided into three classes, each initially composed of no more than two Independent Directors. Each Independent Director shall be selected for a term expiring at the third successive annual meeting of the membership or when such Director's successor is thereafter elected and qualified, and shall be identified as being of the same class as the Director such Director succeeds. Notwithstanding the foregoing, in the case of any new Independent Director subject to initial selection or appointment pursuant to Section 1(b) of this Article V, such Director shall be added to a class, as determined by the Board at the time of such Director's initial selection or appointment, and shall have an initial term expiring at the same time as the term of the class to which such Director has been added.*

[(b)] *(d)* The term of a CBOE Director shall be one year or until a successor is elected and qualified.

2.2. Candidate Selection

(a) *The* [three] candidates for election to the Board [either] as [Designated Dealer Directors or as At-Large] *Member* Directors shall be selected by the Nominating Committee. The Committee shall select at least one candidate for the position to be voted upon. An additional candidate or candidates may be nominated by a petition signed by ten percent or more of the Proprietary Members and delivered to the Secretary of the Exchange, provided that such candidate or candidates conforms to the requirements for the open position(s). There shall be an annual election [on the second Monday of January of each year (if such day is a legal holiday, then on the next business day)] *during the annual meeting of the membership,* at which only Proprietary Members can vote.

*(b) The Independent Directors shall be selected by means of the following process. The Nominating Committee shall select, after receipt of input from interested parties, the candidate(s) to be submitted to the Board for approval or disapproval at the first Board meeting following the annual membership meeting.*

[(b)] *(c)* The [four] CBOE *Directors* [members or executive officers of CBOE member organizations] shall be elected to the Board by the CBOE Board of Directors at their January meeting or as soon thereafter as possible.

[(c) The three Public Directors shall be selected by means of the following process. The Exchange's Chairman shall submit a name or names of a candidate(s) to the Nominating Committee. The Nominating Committee shall approve the candidate(s) to be submitted to the Board for approval or disapproval at the first Board meeting following the annual membership meeting.]

* * * * *

*ARTICLE VI. Committees*

Section 1. Establishment of Committees

* * * * *

1.4. Selection of Members

The membership of such committees shall be chosen in such a way as to assure fair representation of *the public and, as appropriate,* all classes of members in the administration of the Exchange. Each committee shall be comprised of at least three *persons* [members, at least one of whom shall be a member of the Board, except that all members of the Executive Committee, if any, shall be members of the Board].

* * * * *

Section 3. Special Provisions Relating to Certain Committees

3.1. Securities Committee

[(a) The Securities Committee shall have as members at least one Proprietary Member with a certificate and at least one representative of issuers and investors who is not associated with a member or a broker or dealer. Notwithstanding anything in these By-Laws to the contrary, from the effective date of this provision of these By-Laws to the first Board meeting in 1989, the members of the Securities Committee shall be those members appointed to the Committee as of the effective date of this provision of the By-Laws.

(b)] The Securities Committee shall have the authority to adopt operating procedures necessary and appropriate for the Exchange's automated interface with the Intermarket Trading System (ITS). The Securities Committee also may delegate its authority in Rule 11.9 to approve Designated Dealers and Designated Issues to an officer of the Exchange.

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposal and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On November 14, 1986, NSX and CBOE entered into an agreement of affiliation pursuant to which CBOE held 162 certificates of proprietary membership in NSX, and CBOE and its members had certain rights associated with NSX.[5] NSX and CBOE have recently taken steps to terminate or amend certain aspects of their affiliation and, in connection therewith, CBOE has agreed to transfer certain of its certificates 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 a termination of rights agreement entered into between NSX and CBOE on September 27, 2004 (the ''Termination Agreement'').

One of the conditions to the initial closing of the Termination Agreement called for amendments to the NSX By-Laws to eliminate the right of CBOE members to become NSX members without purchasing membership certificates, and thus the elimination of the ''CBOE Exerciser Member'' membership class,[6] the elimination of the Exchange's Special Nominating Committee, and the removal of certain special limitations on changes to certain By-Laws and Rules. These changes were approved by the Commission on January 13, 2005.[7]

On January 18, 2005, the initial closing under the Termination Agreement took place. As part of that closing, NSX paid CBOE cash consideration in exchange for the relinquishment of three of CBOE's six NSX Board positions and other rights, as well as the transfer of a number certificates of proprietary membership to the Exchange. The Termination Agreement also anticipates subsequent closings or events whereby NSX shall pay CBOE cash and/or other consideration in exchange for the relinquishment of the remainder of CBOE's three NSX Board positions and other rights, as well as the transfer of additional certificates of proprietary membership to the Exchange.

As a result of the relinquishment of the three NSX Board positions by CBOE and in anticipation of future relinquishments of NSX Board positions pursuant to the terms of the Termination Agreement, revisions to the NSX By-Laws are necessary to describe changes to the composition of the Board respecting those positions. The Exchange is also proposing additional revisions to its Board composition requirements to include a new category of directors known as ''Independent Directors.'' This category will replace the current ''Public Directors'' category. The Exchange is also proposing to provide a transition schedule for making a majority of its thirteen member Board be Independent Directors. These independence-related revisions are being proposed to comport with industry trends and in anticipation of governance requirements that the Commission may be imposing upon self-regulatory organizations.[8] Various other related changes to the composition of the Board and its committees, which are described below, are also being proposed. The specific changes being proposed are described below.

a. Board Composition, Terms and Candidate Selection

Immediately preceding the initial closing date under the Termination Agreement, the Board consisted of thirteen Directors: (A) The NSX President; (B) two Designated Dealer Directors; (C) an At-Large Member Director; (D) the CBOE Chairman, the CBOE President and four CBOE Member Directors (collectively referred to as the six ''CBOE Directors''); and (E) three Public Directors.[9] The composition of the Board is proposed to be revised to consist of the following Directors: the NSX Chief Executive Officer; three Member Directors; six Independent Directors; and three CBOE Directors.

In sum, the Exchange is proposing to: (A) Change the position reserved for the President of the Exchange in favor of the

[5] *See* Securities Exchange Act Release No. 24090 (February 12, 1987), 52 FR 5225 (February 19, 1987)(order approving proposed rule change by the Cincinnati Stock Exchange relating to an affiliation with CBOE).

[6] As part of the 1986 affiliation agreement between the Exchange and CBOE, the Exchange's By-Laws had been amended to provide that CBOE members were eligible to become Proprietary Members of NSX without having to purchase and own a certificate of proprietary membership, provided that each such CBOE member met all other eligibility requirements for NSX membership. This class of NSX membership was known as ''Proprietary Members without certificates'' and these NSX members were commonly referred to as ''CBOE Exerciser Members.''

[7] In eliminating the ''CBOE Exerciser Member'' class of membership, a ninety day transition period was provided for whereby any CBOE Exerciser Members existing on the effective date, January 13, 2005 (the ''Effective Date''), will have ninety days from the Effective Date (which is April 13, 2005) to purchase a certificate of proprietary membership. During the ninety day period, a CBOE Exerciser Member who has not purchased a certificate shall have the rights and obligations of a Proprietary Member without certificate as those rights and obligations existed prior to the Effective Date. At the conclusion of the ninety day period, any CBOE Exerciser Member who does not own a certificate shall automatically cease to qualify for membership on the Exchange and may not again become a member of the Exchange without first complying with all the procedures and requirements set forth in the NSX By-Laws and Rules.

[8] To the extent that the proposed rule change, as amended, runs counter to the Commission's recent governance and transparency proposals, Securities Exchange Act Release No. 50699 (November 18, 2004), 69 CFR 71125 (December 8, 2004), NSX represents that upon adoption of final rulemaking it will conform its By-laws accordingly. Telephone conversation among Jennifer M. Lamie, Assistant General Counsel & Secretary, NSX and Geraldine Idrizi, Attorney, Division of Market Regulation, Commission, on May 23, 2005.

[9] The current members of the Board are David Colker (NSX President); Peter B. Madoff and Cameron Smith (Designated Dealer Directors); Antoine C. Kemper, Jr. (At-Large Member Director); James M. Anderson, J. Carter Beese and Donald L. Calvin (Public Directors); and William J. Brodsky, Mark F. Duffy and Gary P. Lahey (CBOE Directors). As discussed elsewhere, there are also three vacant CBOE Director positions.

NSX's Chief Executive Officer;[10] (B) combine the two Designated Dealer and one At-Large Member positions into a single ''Member Director'' category, which would be defined in proposed Article V, Section 1(a)(ii) of the NSX By-Laws as ''Proprietary Members or executive officers of Proprietary Member organizations;'' (C) eliminate the existing Public Director[11] category in favor of an ''Independent Director'' category, which would be defined in proposed Article I, Section 1(k) of the NSX By-Laws as ''a member of the Board that the Board has determined to have no material relationship with the Exchange or any affiliate of the Exchange, any member of the Exchange or any affiliate of any such member, other than as a member of the Board'' and increased from three to six positions; and (D) combine the CBOE Chairman, CBOE President and CBOE Member Director categories into a single ''CBOE Director'' category, which would be defined in proposed Article V, Section 1(a)(iv) of the NSX By-Laws as ''executive officers of CBOE, CBOE members or executive officers of CBOE member organizations'' and decreased from six to three positions. Corresponding references throughout the NSX By-Laws are proposed to be amended accordingly.

The ten Directors now serving on the Board shall remain and their current terms shall continue unchanged.[12] As determined by the Board, the three new Independent Directors (who will be replacing the three CBOE Director positions that were vacated as part of the initial closing) will be either (i) selected in accordance with the applicable candidate selection processes set out in proposed Sections 2.1 and 2.2 of Article V of the NSX By-Laws (described below), except that each candidate will be submitted by the Nominating Committee to the Board for approval or disapproval as soon as practical rather than following the annual membership meeting; or (ii) appointed in accordance with proposed Section 2.1 of the NSX By-Laws and the procedures for filling intraterm vacancies set out in Section 3 of Article V of the NSX By-Laws (collectively referred to hereinafter as the ''New Director Selection Procedures''). The initial terms of the three new Independent Directors shall be staggered to expire at the same times as the current terms of the three existing Independent Directors in accordance with proposed Article V, Section 2.1(c) of the NSX By-Laws.

The terms of office for the four categories of Director described in Article V, Section 2.1 of the NSX By-Laws will remain for the most part unchanged. The Chief Executive Officer's board term shall expire when such individual ceases to be Chief Executive Officer, each Member Director and Independent Director will be appointed for a three-year term or until a successor is thereafter elected and qualified, and each CBOE Director will be appointed for a one-year term or until a successor is elected and qualified. Modifications to provisions regarding Directors' terms of office are, however, being proposed to add procedures to account for when new Member Directors' and new Independent Directors' initial terms would begin.

The candidate selection process described in Article V, Section 2.2 of the NSX By-Laws will be modified as follows. The procedures for the election of Member Director candidates are proposed to be modified to clarify the language and existing Exchange practice that the annual election, at which Proprietary Members vote for the candidate(s), occurs during the annual meeting of the membership, which occurs in January in accordance with Article II, Section 10.1 of the NSX By-Laws. Reference to the procedures for the selection of Public Directors will be deleted and the proposed procedures for the selection of Independent Directors will be added to provide that the Nominating Committee shall select, after receipt of input from interested parties, the candidate(s) to be submitted to the Board for approval or disapproval at the first Board meeting following the annual membership meeting. The CBOE Directors shall continue to be elected to the NSX Board by the CBOE's board of directors at their January meeting or as soon thereafter as possible.

b. Subsequent Changes in Board Composition

The Termination Agreement anticipates subsequent closings or events whereby NSX shall pay CBOE cash and/or other consideration in exchange for the relinquishment of the reminder of CBOE's three NSX Board positions and other rights, as well as the transfer of additional certificates of proprietary membership to the Exchange. The Exchange is therefore proposing to adopt additional provisions to accommodate the resultant changes in composition to the Board that would occur upon such closing(s) and in order to achieve a majority of Independent Directors serving on the Board should there be no subsequent closings. These provisions will be reflected in proposed Article V, Section 1(b) of the NSX By-Laws and would provide:

- On the date of the first ''Subsequent Closing''[13] to occur after January 18, 2005, the number of positions on the Board to be filled by CBOE Directors shall be reduced from three to two and the number of positions to be filled by Independent Directors shall be increased from six to seven. Following the first Subsequent Closing, a new Independent Director shall be selected, as determined by the Board, pursuant to the New Director Section Procedures.
- If no Subsequent Closing has occurred prior to February 15, 2006, then in order to achieve a majority of Independent Directors serving on the Board, the Board may, in its discretion, add up to two new Independent Directors and thereby increase the number of Directors serving on the Board from thirteen to not more than fifteen. In such event, the two new Independent Directors shall be selected, as determined by the Board, pursuant to the New Director Selection Procedures.
- On the date of the second Subsequent Closing to occur after January 18, 2005, the number of positions on the Board to be filled by CBOE Directors will be reduced from two to one, and the Board may, in its discretion, increase by one the number of positions to be filled by either Independent Directors or Member Directors. Following the second Subsequent Closing, a new Director may be selected, as determined by the Board, pursuant to the New Director Selection Procedures.

[10] The President and Chief Executive Officer are currently the same person.

[11] ''Public Directors'' are defined as ''representatives of issuers and investors who shall not be associated with any member of the Exchange or with any registered broker or dealer or with another self-regulatory organization, other than as a public trustee or director[.]'' Article V, Section 1.1(g) of the NSX By-Laws.

[12] The members of the Board immediately following approved of the proposed revisions will be David Colker (NSX Chief Executive Officer); Antoine J. Kemper, Jr., Peter B. Madoff and Cameron Smith (Member Directors); James M. Anderson, J. Carter Beese and Donald L. Calvin (Independent Directors); and William J. Brodsky, Mark F. Duffy and Gary P. Lahey (CBOE Directors). There will also be three new Independent Directors selected in accordance with Article V, Section 2.2 of the NSX By-Laws.

[13] ''Subsequent Closing'' would be defined in proposed Article V, Section 1(b)(vii) of the NSX By-Laws to have meaning given to it in the Termination Agreement.

• On the earliest to occur of (A) the date on which CBOE owns less than five percent (5%) of the outstanding certificates of proprietary membership of the Exchange or (B) the third anniversary of the fourth Subsequent Closing (the earliest of these to occur being the ''CBOE Withdrawal Date''), the number of positions on the Board to be filled by CBOE Directors shall be reduced from one to zero, and the Board may, in its discretion, increase by one the number of positions to be filled by either Independent Directors or Member Directors. The remaining CBOE Director shall be deemed to have resigned from the Board as of the CBOE Withdrawal Date. Following the CBOE Withdrawal Date, a new Director may be selected, as determined by the Board, pursuant to the New Director Selection Procedures.

c. Changes in Committee Composition

In order to comport with industry practice and anticipated changes in regulatory requirements, the Exchange is proposing to revise the general composition requirements for committees contained in Article VI, Section 1.4 of the NSX By-Laws to provide that membership of such committees shall be chosen in such a way to assure fair representation of the public and, as appropriate, all classes of members. The Exchange is also proposing to delete references in: (i) Article VI, Section 1.4 of the NSX By-Laws to the requirements that at least one member of each committee be a member of the Board and that all members of the Executive Committee be members of the Board, and (ii) Article VI, Section 3.1 of the NSX By-Laws to the requirements that the Securities Committee have at least one Proprietary Member and at least one representative of issuers and investors who is not associated with a member or a broker or dealer, and composition requirements that were no longer applicable after 1989.

d. Definition Changes

As indicated above, the Exchange is proposing to adopt a definition for ''Independent Director.'' The Exchange is also proposing to modify the definition of ''CBOE member(s)'' to delete reference to the requirement, in the case of a transferable regular CBOE membership that is subject to a lease agreement, that the lessee and not the lessor be deemed to the CBOE member. Finally, the Exchange is proposing to reorganize the list of definitions in alphabetical order and renumber the provisions accordingly.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act[14] in general, and furthers the objectives of Section 6(b)(5)[15] in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest. The Exchange believes that the proposed rule change, as amended, also furthers the objectives of Section 6(b)(1),[16] in that it helps to assure that the Exchange is so organized and has 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.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were solicited or received in connection with the proposed rule change, as amended.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change, as amended; or

(b) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2005–02 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–NSX–2005–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 NSX. 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–NSX–2005–02 and should be submitted on or before June 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2892 Filed 6–6–05; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(1).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51767; File No. SR-PCX–2005–69]**

## Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend Until June 5, 2006, a Pilot Program for Listing Options on Selected Stocks Trading Below $20 at One-Point Intervals

May 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 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 PCX filed the proposal 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 Commentary .04 to PCX Rule 6.4, ''Series of Options Open for Trading,'' to extend until June 5, 2006, its pilot program for listing options series on selected stocks trading below $20 at one-point intervals (''Pilot Program''). The text of the proposed rule change is available on the PCX's Web site (*http://www.pacificex.com*), at the PCX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposal is to extend for one year the PCX's Pilot Program. The current Pilot Program expires on June 5, 2005. The PCX notes that Member Firms have expressed a continued interest in listing additional strike prices on low-priced stocks so that they can provide their customers with greater flexibility in their investment choices. For this reason, the Exchange proposes to extend the Pilot Program. The Exchange notes that all of the issues eligible to be included in the Pilot Program, the procedures for adding $1 strike prices, the procedures for phasing out $2.50 strike prices, the prohibition against listing long-term options (also known as ''LEAPS'') in equity option classes at $1 strike intervals, the procedures for adding expiration months, and the procedures for deleting $1 strike prices will remain the same. In support of the Exchange's proposal to extend the Pilot Program until June 5, 2006, the Exchange is submitting to the Commission a report (the ''Pilot Program Report''), attached as Exhibit 3 to the proposal, that offers detailed data from, and analysis of, the Pilot Program.

2. Statutory Basis

The PCX believes that the continuation of $1 strike prices will stimulate customer interest in options overlying lower-priced stocks by creating greater trading opportunities and flexibility. The Exchange further believes that continuation of $1 strike prices will provide customers with the ability to more closely tailor investment strategies to the precise movement of the underlying security. For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the PCX believes the proposed rule change is consistent with the requirements under Section 6(b)(5) of the Act that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The PCX has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] Because the foregoing proposed 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) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 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. In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The PCX has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay to allow the PCX to continue to list the same options series listed on other options exchanges and to provide the public with the benefits of

[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 has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

price competition and added liquidity in these series.

The Commission waives the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Pilot Program to continue without interruption through June 5, 2006.[9] For this reason, the Commission designates that the proposal become operative on June 5, 2005.[10]

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 No. SR–PCX–2005–69 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 No. SR–PCX–2005–69. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–PCX–2005–69 and should be submitted on or before June 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2893 Filed 6–6–05; 8:45 am]

**BILLING CODE 8010–01–P**

[9] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] As set forth in the Commission's initial approval of the Pilot Program and in its order extending the operation of the Pilot Program through June 5, 2005, if the PCX proposes to: (1) Extend the Pilot Program; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, it must submit a Pilot Program report to the Commission along with the filing of its proposal to extend, expand, or seek permanent approval of the Pilot Program. The PCX must file any such proposal and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report must cover the entire time the Pilot Program was in effect and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the PCX selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the PCX's, the Options Price Reporting Authority's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the PCX addressed them; (6) any complaints that the PCX received during the operation of the Pilot Program and how the PCX addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. *See* Securities Exchange Act Release Nos. 48945 (June 17, 2003), 68 FR 37594 (June 24, 2003) (File No. SR–PCX–2003–28) (order approving the Pilot Program through June 5, 2004); and 50152 (August 5, 2004), 69 FR 49931 (August 12, 2004) (File No. SR–PCX–2004–61) (order approving the extension of the Pilot Program through June 5, 2005).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51752; File No. SR–PCX–2005–34]**

## Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 thereto Relating to ETP Holders Borrowing from or Lending to Their Customers

May 27, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 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, which Items have been prepared by PCX. The proposed rule change has been filed by the PCX as a ''non-controversial'' rule change pursuant to Rule 19b–4(f)(6) under the Act.[3] On May 25, 2005, the PCX filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX, through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to adopt a new rule restricting registered persons of ETP Holders from borrowing from or lending to their customers, except pursuant to the conditions specified in the rule. The text of the proposed rule change is set forth below. Proposed new language is in *italics.*

* * * * *

*Rule 9.29. Borrowing From or Lending to Customers*

*(a) No person associated with an ETP Holder in any registered capacity may borrow money from or lend money to any customer of such person unless:*

*(1) The ETP Holder has written procedures allowing the borrowing and lending of money between such*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Amendment No. 1 revised and clarified the statutory basis for the proposed rule change. *See* Letter Dated May 23, 2005, from Melanie Grace, Office of the Corporate Secretary, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation.

*registered persons and customers of the ETP Holder; and*

*(2) The lending or borrowing arrangement meets one of the following conditions:*

*(A) the customer is a member of such person's immediate family;*

*(B) the customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business;*

*(C) the customer and the registered person are both registered persons of the same ETP Holder;*

*(D) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the associated person not maintained a relationship outside of the broker/customer relationship; or*

*(E) the lending arrangement is based on a business relationship outside of the broker/customer relationship;*

*(b) Procedures.*

*(1) ETP Holders must pre-approve in writing the lending or borrowing arrangements described in subparagraphs (a)(2)(C), (D), and (E) above.*

*(2) With respect to the lending or borrowing arrangements described in subparagraph (a)(2)(A) above, an ETP Holder's written procedures may indicate that registered persons are not required to notify the ETP Holder, or receive ETP Holder approval either prior to or subsequent to entering into such lending or borrowing arrangements.*

*(3) With respect to the lending or borrowing arrangements described in subparagraph (a)(2)(B) above, an ETP Holder's written procedures may indicate that registered persons are not required to notify the ETP Holder or receive their approval either prior to or subsequent to entering into such lending or borrowing arrangements, provided that the loan has been made on commercial terms that the customer generally makes available to members of the public similarly situated as to need, purpose, and creditworthiness. For purposes of this subparagraph, the ETP Holder may rely on the registered person's representation that the terms of the loan meet the above-described standards.*

*(c) The term immediate family shall include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and shall also include any other person whom the registered person supports, directly or indirectly, to a material extent.*

* * * * *

## 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, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to adopt a rule that prohibits registered persons of an ETP Holder from borrowing money from or lending money to a customer unless each of the following applies: (1) The ETP Holder has written procedures allowing such borrowing or lending arrangements; and (2) the borrowing or lending arrangement falls within one of five permissible types of lending arrangements.[5] In certain cases, the ETP Holder must also pre-approve the loan in writing. The five types of permissible lending arrangements are:

(i) The customer is a member of the registered person's immediate family (as defined in the proposed rule);

(ii) The customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business;

(iii) The customer and the registered person are both registered persons of the same ETP Holder;

(iv) The lending arrangement is based on a personal relationship outside of the broker-customer relationship; or

(v) The lending arrangement is based on a business relationship outside of the broker-customer relationship.

The proposed rule change establishes a regulatory framework that would give ETP Holders greater control over, and more specific supervisory responsibilities for, lending arrangements between registered persons and their customers. ETP Holders could choose to permit their registered persons to borrow from or lend to specified customers consistent with the requirements of the rule. If ETP Holders choose to permit their registered persons to engage in lending arrangements with those customers, the proposed rule change would require ETP Holders to have written procedures allowing the borrowing and lending of money between registered persons and customers or ETP Holders. As stated above, ETP Holders would be permitted to approve loans only if the loan falls within one of the five types of permissible lending arrangements set forth in the rule.

The proposed rule would require ETP Holders to pre-approve in writing three out of the five types of lending arrangements permitted by the rule. It would exempt from the rule's notice and approval requirements lending arrangements involving a registered person and his/her customer that is (1) a member of his/her immediate family (as defined in the proposed rule); or (2) a financial institution regularly engaged in the business of providing credit, financing, or loans (or other entity or persons that regularly arranges or extends credit in the ordinary course of business), provided the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose, and creditworthiness. PCX believes the requirement in the proposed rule that certain types of lending and borrowing arrangements must be pre-approved by the ETP Holder would enhance the ETP Holder's ability to supervise such lending and borrowing activities of registered personnel.

PCX also believes that the proposed rule change would enhance PCX's ability to monitor loans between registered persons and their customers. Currently, under controlling Commission decisions, to bring a disciplinary action against a registered person who has entered into an unethical lending arrangement with a customer, PCX generally must prove that the arrangement is inconsistent with just and equitable principles of trade because the registered person has acted in bad faith or unethically. This can be difficult to prove in cases in which the customer is unable or unavailable to testify, or refuses to testify because he or she is relying on the registered person for financial advice. The proposed rule change

[5] The proposed rule is substantially similar to NASD Rule 2370. *See* Securities Exchange Act Release No. 48242 (August 29, 2003), 68 FR 52806 (September 5, 2003). NASD Rule 2370 was amended in Securities Exchange Act Release No. 49269 (February 18, 2004), 69 FR 8718 (February 25, 2004). *See also* Securities Exchange Act Release No. 50874 (December 16, 2004), 69 FR 76803 (December 22, 2004) (SR–CBOE–2004–66).

would better enable PCX to monitor and bring disciplinary actions in cases involving such loans.

PCX notes that the safeguards provided under the proposed rule, including bringing disciplinary actions for violations of the rule, are in addition to the general powers that PCX has to bring disciplinary actions against a registered person who has entered into an unethical lending arrangement with a customer. It is also important to note that this proposal does not change the applications of Regulation T to lending activities by associated persons. Specifically, the definition of ''creditor'' under Regulation T extends to associated persons of broker-dealers and therefore, certain loans to customers by associated persons may require compliance with the provisions of Regulation T.

2. Statutory Basis

For the above reasons, PCX believes that the proposed rule change would enhance competition. PCX believes that the proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster competition and to protect investors and the public interest. PCX believes that the proposed rule change is designed to accomplish these ends by establishing a regulatory framework that will give ETP Holders greater control over lending arrangements by permitting ETP Holders to permit such arrangements only if they fall within the five types of permissible arrangements, or, as was the case before the proposal of this new rule, prohibit such arrangements altogether. ETP Holders that permit such arrangements would be required to keep written procedures. These procedures would enable both ETP Holders and PCX to proscribe certain customer-broker loans and monitor those that have been approved.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

PCX has stated that the foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) 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. 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.[10] The PCX provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[11] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[12] Accelerating the operative date will allow for an immediately effective mechanism for proscribing certain customer-broker loans and monitoring those that have been approved. For these reasons, the Commission designates that the proposed rule change has become effective and operative immediately.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on May 25, 2005, when Amendment No. 1 was filed.

[11] Id.

[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).

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–34 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–2005–34. 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 the principal office of 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–2005–34 and should be submitted on or before June 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2894 Filed 6–6–05; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51751; File No. SR–PCX–2005–33]**

## Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to OTP Holders and OTP Firms Borrowing From or Lending to Their Customers

May 27, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 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 PCX. The proposed rule change has been filed by the PCX as a ''non-controversial'' rule change pursuant to Rule 19b–4(f)(6) under the Act.[3] On May 23, 2005, the PCX filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to adopt a new rule restricting registered persons of OTP Holders or OTP Firms from borrowing from or lending to their customers, except pursuant to the conditions specified in the rule. The text of the proposed rule change is set forth below. Proposed new language is in *italics.*

* * * * *

*Rule 9.29. Borrowing From or Lending to Customers*

*(a) No person associated with an OTP Holder or OTP Firm in any registered capacity may borrow money from or lend money to any customer of such person unless:*

*(1) The OTP Holder or OTP Firm has written procedures allowing the borrowing and lending of money between such registered persons and customers of the OTP Holder or OTP Firm; and*

*(2) The lending or borrowing arrangement meets one of the following conditions:*

*(A) the customer is a member of such person's immediate family;*

*(B) the customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business;*

*(C) the customer and the registered person are both registered persons of the same OTP Holder or OTP Firm;*

*(D) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the associated person not maintained a relationship outside of the broker/customer relationship; or*

*(E) the lending arrangement is based on a business relationship outside of the broker/customer relationship;*

*(b) Procedures.*

*(1) OTP Holders or OTP Firms must pre-approve in writing the lending or borrowing arrangements described in subparagraphs (a)(2)(C), (D), and (E) above.*

*(2) With respect to the lending or borrowing arrangements described in subparagraph (a)(2)(A) above, an OTP Holder's or OTP Firm's written procedures may indicate that registered persons are not required to notify the OTP Holder or OTP Firm, or receive OTP Holder or OTP Firm approval either prior to or subsequent to entering into such lending or borrowing arrangements.*

*(3) With respect to the lending or borrowing arrangements described in subparagraph (a)(2)(B) above, an OTP Holder's or OTP Firm's written procedures may indicate that registered persons are not required to notify the OTP Holder or OTP Firm or receive their approval either prior to or subsequent to entering into such lending or borrowing arrangements, provided that the loan has been made on commercial terms that the customer generally makes available to members of the public similarly situated as to need, purpose, and creditworthiness. For purposes of this subparagraph, the OTP Holder or OTP Firm may rely on the registered person's representation that the terms of the loan meet the above-described standards.*

*(c) The term immediate family shall include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and shall also include any other person whom the registered person supports, directly or indirectly, to a material extent.*

* * * * *

### 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, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to adopt a rule that prohibits registered persons of an OTP Holder or OTP Firm from borrowing money from or lending money to a customer unless each of the following applies: (1) The OTP Holder or OTP Firm has written procedures allowing such borrowing or lending arrangements; and (2) the borrowing or lending arrangement falls within one of five permissible types of lending arrangements.[5] In certain cases, the OTP Holder or OTP Firm must also pre-approve the loan in writing. The five types of permissible lending arrangements are:

(i) The customer is a member of the registered person's immediate family (as defined in the proposed rule);

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Amendment No. 1 revised and clarified the statutory basis for the proposed rule change. *See* Letter Dated May 23, 2005, from Melanie Grace, Office of the Corporate Secretary, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation.

[5] The proposed rule is substantially similar to NASD Rule 2370. *See* Securities Exchange Act Release No. 48242 (August 29, 2003), 68 FR 52806 (September 5, 2003). NASD Rule 2370 was amended in Securities Exchange Act Release No. 49269 (February 18, 2004), 69 FR 8718 (February 25, 2004). *See also* Securities Exchange Act Release No. 50874 (December 16, 2004), 69 FR 76803 (December 22, 2004) (SR–CBOE–2004–66).

(ii) the customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business;

(iii) the customer and the registered person are both registered persons of the same OTP Holder or OTP Firm;

(iv) the lending arrangement is based on a personal relationship outside of the broker-customer relationship; or

(v) the lending arrangement is based on a business relationship outside of the broker-customer relationship.

The proposed rule change establishes a regulatory framework that would give OTP Holders and OTP Firms greater control over, and more specific supervisory responsibilities for, lending arrangements between registered persons and their customers. OTP Holders and OTP Firms could choose to permit their registered persons to borrow from or lend to specified customers consistent with the requirements of the rule. If OTP Holders or OTP Firms choose to permit their registered persons to engage in lending arrangements with those customers, the proposed rule change would require OTP Holders and OTP Firms to have written procedures allowing the borrowing and lending of money between registered persons and customers or OTP Holders or OTP Firms. As stated above, OTP Holders and OTP Firms would be permitted to approve loans only if the loan falls within one of the five types of permissible lending arrangements set forth in the rule.

The proposed rule would require OTP Holders and OTP Firms to pre-approve in writing three out of the five types of lending arrangements permitted by the rule. It would exempt from the rule's notice and approval requirements lending arrangements involving a registered person and his/her customer that is (1) a member of his/her immediate family (as defined in the proposed rule); or (2) a financial institution regularly engaged in the business of providing credit, financing, or loans (or other entity or persons that regularly arranges or extends credit in the ordinary course of business), provided the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose, and creditworthiness. PCX believes the requirement in the proposed rule that certain types of lending and borrowing arrangements must be pre-approved by the OTP Holder or OTP Firm would enhance the OTP Holder's and OTP Firm's ability to supervise such lending and borrowing activities of registered personnel.

PCX also believes that the proposed rule change would enhance PCX's ability to monitor loans between registered persons and their customers. Currently, under controlling Commission decisions, to bring a disciplinary action against a registered person who has entered into an unethical lending arrangement with a customer, PCX generally must prove that the arrangement is inconsistent with just and equitable principles of trade because the registered person has acted in bad faith or unethically. This can be difficult to prove in cases in which the customer is unable or unavailable to testify, or refuses to testify because he or she is relying on the registered person for financial advice. The proposed rule change would better enable PCX to monitor and bring disciplinary actions in cases involving such loans.

PCX notes that the safeguards provided under the proposed rule, including bringing disciplinary actions for violations of the rule, are in addition to the general powers that PCX has to bring disciplinary actions against a registered person who has entered into an unethical lending arrangement with a customer. It is also important to note that this proposal does not change the applications of Regulation T to lending activities by associated persons. Specifically, the definition of ''creditor'' under Regulation T extends to associated persons of broker-dealers and therefore, certain loans to customers by associated persons may require compliance with the provisions of Regulation T.

2. Statutory Basis

For the above reasons, PCX believes that the proposed rule change would enhance competition. PCX believes that the proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster competition and to protect investors and the public interest. PCX believes that the proposed rule change is designed to accomplish these ends by establishing a regulatory framework that will give OTP Holders and OTP Firms greater control over lending arrangements by permitting OTP Holders and OTP Firms to permit such arrangements only if they fall within the five types of permissible arrangements, or, as was the case before the proposal of this new rule, prohibit such arrangements altogether. OTP Holders and OTP Firms that permit such arrangements would be required to keep written procedures. These procedures would enable both OTP Holders and OTP Firms and PCX to proscribe certain customer-broker loans and monitor those that have been approved.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

PCX has stated that the foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) 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. 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.[10] The PCX provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on May 23, 2005, when Amendment No. 1 was filed.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[11] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[12] Accelerating the operative date will allow for an immediately effective mechanism for proscribing certain customer-broker loans and monitoring those that have been approved. For these reasons, the Commission designates that the proposed rule change has become effective and operative immediately.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2005–33 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–2005–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in 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 the principal office of 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–2005–33 and should be submitted on or before June 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2896 Filed 6–6–05; 8:45 am]

BILLING CODE 8010–01–P

[11] Id.

[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).

[13] 17 CFR 200.30–3(a)(12).

---

## SECURITITES AND EXCHANGE COMMISSION

**[Release No. 34–51768; File No. SR–Phlx–2005–35]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Until June 5, 2006, a Pilot Program for Listing Options on Selected Stocks Trading Below $20 at One-Point Intervals

May 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Phlx filed the proposal 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Commentary .05 to Phlx Rule 1012, ''Series of Options Open for Trading,'' to extend until June 5, 2006, its pilot program for listing options series on selected stocks trading below $20 at one-point intervals (''Pilot Program''). As set forth in Phlx Rule 1012, Commentary .05, the Pilot Program allows the Phlx to list options classes overlying five individual stocks with strike price intervals of $1.00 where, among other things, the underlying stock closes below $20 on its primary market on the day before the Phlx selects the stock for the Pilot Program. The Phlx also may list $1 strike prices on any options classes selected by other options exchanges that have adopted similar pilot programs.[6] The text of the proposed rule change is available on the Phlx's Web site (*http://www.phlx.com*), at the Phlx's principal office, and at the Commission's Public Reference Room.

[5] The Phlx has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

[6] The Commission approved the Phlx's Pilot Program on June 11, 2003, and extended it through June 5, 2005. *See* Securities Exchange Act Release Nos. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (order approving File No. SR–Phlx–2002–55) (approving the Pilot Program through June 5, 2004) (''Phlx Approval Order''); and 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (notice of filing and immediate effectiveness of File No. SR–PHLX–2004–38) (extending the Pilot Program through June 5, 2005) (''Phlx Pilot Extension''). The other options exchanges have similar pilot programs that likewise were extended through June 5, 2005. *See, e.g.*, Securities Exchange Act Release Nos. 49813 (June 4, 2004), 69 FR 33088 (June 14, 2004) (notice of filing and immediate effectiveness of File No. SR–Amex–2004–45) (extending the $1 strike price pilot program of the American Stock Exchange LLC, through June 5, 2005); 49799 (June 3, 2004), 69 FR 32542 (June 10, 2004) (notice of filing and immediate effectiveness of File No. SR–CBOE–2004–34) (extending the $1 strike price pilot program of the Chicago Board Options Exchange, Incorporated, through June 5, 2005); 50060 (July 22, 2004), 69 FR 45864 (July 30, 2004) (notice of filing and immediate effectiveness of File No. SR–ISE–2004–26) (extending the $1 strike price pilot program of the International Securities Exchange, Inc., through June 5, 2005); and 50152 (August 5, 2004), 69 FR 49931 (August 12, 2004) (order approving File No. SR–PCX–2004–61) (extending the $1 strike price pilot program of the Pacific Exchange, Inc., through June 5, 2005).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program for one year so that the Exchange may continue to list options at $1 strike price intervals within the parameters specified in Phlx Rule 1012, Commentary .05.

Because of the large number of stocks that have precipitously declined in price over the last four years and the increasing number of options overlying this lowest tier of stocks, the Commission approved the Pilot Program and extended it through June 5, 2005.[7] The Exchange proposes to extend the Pilot Program for a period of one year, through June 5, 2006. The Pilot Program will remain unchanged so that, under the terms of the Pilot Program, the Phlx may establish $1 strike price intervals on options classes overlying no more than five individual stocks designated by the Exchange where the underlying stock closes below $20 on its primary market on the trading day before the Exchange selects the stock for the Pilot Program. Under the terms of the Pilot Program, the strike prices listed pursuant to the Pilot Program must be between $3 and $20 and may be no more than $5 above or below the closing price of the underlying stock on the preceding day. In addition, strike prices listed pursuant to the Pilot Program may not be listed within $.50 of an existing $2.50 strike price, and $1 strike prices are not applied to long term options series (''LEAPS''). Pursuant to the Pilot Program, the Exchange may list $1 strike prices on options classes selected by other options exchanges for inclusion in their $1 strike price pilot programs.

In July 2003, the Phlx chose and listed five options classes with $1 strike price intervals, and thereafter listed $1 strike prices in options classes selected by other options exchanges for inclusion in their $1 strike price pilot programs. The Phlx currently lists 22 options classes with $1 strike prices.[8] According to the Phlx, the Exchange's ability to list options at $1 strike price intervals pursuant to the Pilot Program has given investors the opportunity to more closely and effectively tailor their options investments to the price of the underlying stock, has allowed the Exchange to take advantage of competitive opportunities to list options at $1 strike prices, and has stimulated price competition among the options exchanges in these options.

In its notice extending the Pilot Program through June 5, 2005, the Commission indicated that if the Phlx sought to extend, expand, or request permanent approval of the Pilot Program, it would be required to include a Pilot Program report with its filing.[9] The Phlx's Pilot Program Report (''Pilot Program Report''), included as Exhibit 3 to the proposal, reviews the Exchange's experience with the Pilot Program. According to the Phlx, the Pilot Program Report clearly supports the Exchange's belief that extension of the Pilot Program is proper. Among other things, the Phlx believes that the Pilot Program Report shows the strength and efficacy of the Pilot Program on the Exchange, as reflected by the increase in the percentage of $1 strikes in comparison to total options volume traded on the Phlx (from 37.23% in the 2004 report to 51.59% in 2005 Pilot Program Report) and the continuing robust open interest of options traded on the Phlx at $1 strike price intervals. The Phlx believes that the Pilot Program Report establishes that the Pilot Program has not created and in the future should not create capacity problems for the systems of the Exchange or the Options Price Reporting Authority (''OPRA''). In addition, the Pilot Program Report explains that most delistings of $1 strike price options series occurred to ensure that the chosen $1 strike price issues remained within the parameters of the Pilot Program.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and to promote just an equitable principles of trade. The Phlx believes the proposal would achieve this by allowing the continued listing of options at $1 strike price intervals within certain parameters, thereby stimulating customer interest in options overlying the lowest tier of stocks and creating greater trading opportunities and flexibility and providing customers with the ability to more closely tailor investment strategies to the precise movement of the underlying stocks.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Phlx has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] Because the foregoing proposed 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) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 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. In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule

[7] *See* Phlx Approval Order and Phlx Pilot Extension, *supra* note 6.

[8] The Phlx continues to list the $1 strike prices in the options classes that it initially chose for the Pilot Program: TYCO International, LTD (TYC), Micron Tech. (MU), Oracle Co. (ORQ), Brocade Comm. (UBF), and Juniper Networks (JUP).

[9] *See* Phlx Pilot Extension, *supra* note 6.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Phlx has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay to allow the Exchange to continue listing $1 strike prices without a lapse in the operation of the Pilot Program.

The Commission waives the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will permit the Pilot Program to continue without interruption through June 5, 2006.[14] For this reason, the Commission designates that the proposal become operative on June 5, 2005.[15]

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.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] As set forth in the Commission's initial approval of the Pilot Program, if the Phlx proposes to: (1) Extend the Pilot Program; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, it must submit a Pilot Program report to the Commission along with the filing of its proposal to extend, expand, or seek permanent approval of the Pilot Program. The Phlx must file any such proposal and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report must cover the entire time the Pilot Program was in effect and must include: (1) data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of $1 strike price intervals for the options the Phlx selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the Phlx's, OPRA's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Phlx addressed them; (6) any complaints that the Phlx received during the operation of the Pilot Program and how the Phlx addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. *See* Phlx Approval Order, *supra* note 6.

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2005–35 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 No. SR–Phlx–2005–35. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also 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 No. SR–Phlx–2005–35 and should be submitted on or before June 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5–2900 Filed 6–6–05; 8:45 am]

**BILLING CODE 8010–01–P**

[16] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Wisconsin District Advisory Council; Public Meeting

The U.S. Small Business Administration, Wisconsin District Advisory Council will be hosting its first meeting to discuss such matters that may be presented by members, and staff of the U.S. Small Business Administration, or others present. The meeting will be held on Thursday, June 16, 2005, starting at 1:30 p.m. The meeting will take place at the U.S. Small Business Administration, Wisconsin District—Milwaukee, 310 West Wisconsin Avenue, Suite 400, Milwaukee, Wisconsin.

Anyone wishing to attend must contact Cindy Merrigan in writing or by fax. Cindy Merrigan, Small Business Administration, 740 Regent Street, Suite 100, Madison, Wisconsin 53715, phone (608) 441–5560, fax (202) 481–0815, e-mail: *cindy.merrigan@sba.gov.*

**Matthew K. Becker,**

*Committee Management Officer.*

[FR Doc. 05–11296 Filed 6–6–05; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

### Region III Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Hearing

The U.S. Small Business Administration (SBA), Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Friday, June 24, 2005, starting at 9 a.m. The meeting will be held at the William J. Green Federal Building, Ceremonial Courtroom, located at 76 North 6th Street, Philadelphia, PA 19106. Please contact the office at (215) 580–2701, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Ana Gallardo in writing or by fax, in order to be put on the agenda. Ana Gallardo, Business Development Specialist, SBA Philadelphia District Office, 900 Market Street, 5th Floor, Philadelphia, PA 19107, phone (215) 580–2707, fax (202) 481–0193, e-mail: *ana.gallardo@sba.gov.*

For more information, see our Web site at *www.sba.gov/ombudsman*.

**Matthew K. Becker,**

*Committee Management Officer.*

[FR Doc. 05–11295 Filed 6–6–05; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 4869]**

### Charter for the Enterprise for the Americas Board

*Approval of a charter for advisory committee:* This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), and advises of the approval of a charter for the Enterprise for the Americas Board.

*Purpose of the advisory committee:* The Enterprise for the Americas Board advises the Secretary of State on the negotiations of the Enterprise for the Americas Framework and Tropical Forest Conservation Act Agreements. In addition, the Board, in consultation with appropriate governmental and nongovernmental representatives, helps ensure that a suitable administering body is identified for each fund in-country created under these agreements. Finally, the Board reviews the programs, operations and fiscal audits of each administering body.

*Contact for information:* The Bureau of Oceans and International Environmental and Scientific Affairs, Office of Ecology and Terrestrial Conservation is the organization within the Department of State supporting this advisory committee. For additional information, contact Linda Allen, Department of State, 2201 C St., NW., Washington DC 20204, telephone (202) 647–3710.

Dated: May 16, 2005.

**Patricia S. Harrison,**

*Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 05–11283 Filed 6–6–05; 8:45 am]

BILLING CODE 4710–09–P

## DEPARTMENT OF STATE

**[Public Notice 5066]**

### Announcement of Meeting of the International Telecommunication Advisory Committee

**SUMMARY:** The International Telecommunication Advisory Committee announces a meeting to prepare positions for the next meeting of the ITU–T Study Group 3 (Tariff and accounting principles including related telecommunication economic and policy issues). Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Directions to the meeting location and conference bridge information may be obtained from *minardje@state.gov*.

The International Telecommunication Advisory Committee (ITAC) will meet on Thursday, June 16, 2005 to initiate preparation of U.S. contributions to ITU–T Study Group 3 (Tariff and accounting principles including related telecommunication economic and policy issues) and discuss other matters associated with U.S. participation in the next Study Group 3 meeting. The meeting will be held at the AT&T Innovation Center, 1133 21st Street, Suite 210, Washington, DC 20036.

Dated: May 25, 2005.

**Anne Jillson,**

*Foreign Affairs Officer, International Communications & Information Policy, Department of State.*

[FR Doc. 05–11285 Filed 6–6–05; 8:45 am]

BILLING CODE 4710–09–P

## DEPARTMENT OF STATE

**[Public Notice 5065]**

### Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, June 14, 2005, in Room 1303 of the United States Coast Guard Headquarters building, 2100 Second Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the thirty-second session of the Facilitation Committee (FAL 32) of the International Maritime Organization (IMO), to be held from July 4 to 8, 2005, at IMO Headquarters in London, England.

The primary matters for discussion for FAL 32 will include the following:.

- Convention on Facilitation of International Maritime Traffic.
- Consideration and adoption of proposed amendments to the Annex to the Convention.
- Electronic means for the clearance of ships.
- Application of the Committee's Guidelines.
- General review of the Convention including harmonization with other international instruments.
- Prevention and suppression of unlawful acts at sea or in port—Facilitation aspects.
- Prevention and control of illicit drug trafficking—Facilitation aspects.
- Measure to enhance maritime security—Facilitation aspects.
- Measures and procedures for the treatment of people rescued at sea—Facilitation aspects.
- Ship/port interface.
- Formalities connected with the arrival, stay and departure of ships.
- Formalities connected with the arrival, stay and departure of persons—Stowaways.
- Facilitation aspects of other IMO forms and certificates.
- Technical co-operation sub-programme for facilitation.

Please note that hard copies of documents associated with FAL 32 will not be available at this meeting. Documents will be available in Adobe Acrobat format on CD–ROM. To request documents, please contact Mr. David Du Pont via e-mail at *DDuPont@comdt.uscg.mil* or write to the address provided below.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. David Du Pont, Commandant (G–MSR), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 1400, Washington, DC 20593–0001 or by calling (202) 267–0971.

Dated: May 24, 2005.

**Clay Diamond,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 05–11284 Filed 6–6–05; 8:45 am]

BILLING CODE 4710–09–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed the Week Ending May 20, 2005

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2005–21312.

*Date Filed:* May 20, 2005.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC2 EUR 0603 dated 26 April 2005; TC2 Within Europe Expedited Resolutions r1–r21; Minutes:

PTC2 EUR 0604 dated 20 May 2005; Intended effective date: 1 June 2005.

**Maria Gulczewski,**

*Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.*

[FR Doc. 05–11288 Filed 6–6–05; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending May 20, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–2005–21281.

*Date Filed:* May 16, 2005. *Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 6, 2005.

*Description:* Application of Pacific Island Aviation, Inc., giving notice of intent to resume interstate/foreign scheduled air transportation under 49 U.S.C. Section 41102.

*Docket Number:* OST–2005–21286.

*Date Filed:* May 18, 2005.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 8, 2005.

*Description:* Application of Platinum Airlines, Inc., requesting a certificate of public convenience and necessity authorizing it to engage in interstate charter air transportation of persons, property and mail.

*Docket Number:* OST–2005–21287.

*Date Filed:* May 18, 2005.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 8, 2005.

*Description:* Application of Platinum Airlines, Inc., requesting a certificate of public convenience and necessity authorizing it to engage in foreign charter air transportation of persons, property and mail.

*Docket Number:* OST–2005–21307.

*Date Filed:* May 19, 2005.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 9, 2005.

*Description:* Application of ASTAR Air Cargo, Inc., requesting an amendment to its certificate of public convenience and necessity for Route 725, to provide scheduled foreign air transportation of property and mail between the city pair: Los Angeles, CA and Mexico City, Mexico.

**Maria Gulczewski,**

*Acting Program Manager, Docket Operations, Alternate Federal Register Liaison.*

[FR Doc. 05–11287 Filed 6–6–05; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 31, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 7, 2005 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0094.

*Form Number:* IRS Form 1041–A.

*Type of Review:* Extension.

*Title:* U.S. Information Return-Trust Accumulation of Charitable Amounts.

*Description:* Form 1041–A is used to report the information required in 26 U.S.C. 6034 concerning accumulation and distribution of charitable amounts. The data is used to verify that amounts for which a charitable deduction was allowed are used for charitable purposes.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 18,000.

*Estimated Burden Hours Respondent/ Recordkeeper:*

Recordkeeping—24 hr., 9 min.
Learning about the law or the form—3 hr., 25 min.
Preparing the form—8 hr., 37 min
Copying, assembling, and sending the form to the IRS—1 hr., 20 min.

*Frequency of response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 675,900 hours.

*OMB Number:* 1545–1381.

*Regulation Project Number:* CO–49–88 Final.

*Type of Review:* Extension.

*Title:* Limitations on Corporate Net Operating Loss.

*Description:* This regulation provides rules for the allocation of a loss corporation's taxable income or net operating loss between the periods before and after an ownership change under section 382 of the Code, including an election to make the allocation based on a closing of the books as of the change date.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents:* 2,000.

*Estimated Burden Hours Respondent:* 6 minutes.

*Frequency of response:* On occasion, Other (when needed).

*Estimated Total Reporting Burden:* 200 hours.

*OMB Number:* 1545–1486.

*Regulation Project Number:* REG–209793–95 Final.

*Type of Review:* Extension.

*Title:* Simplification of Entity Classification Rules.

*Description:* These rules allow certain unincorporated business organizations to elect to be treated as corporations or partnerships for federal tax purposes. The information collected on the election will be used to verify the classification of electing organizations.

*Respondents:* Business or other for-profit, State, Local or Tribal Government.

*Estimated Number of Respondents:* 1.

*Estimated Burden Hours Respondent:* 1 hour.

*Frequency of response:* Annually.

*Estimated Total Reporting Burden:* 1 hour.

*OMB Number:* 1545–1641.

*Revenue Procedure Number:* Revenue Procedure 99–17.

*Type of Review:* Extension.

*Title:* Mark to Market Election for Commodities Dealers and Securities and Commodities Traders.

*Description:* The revenue procedure prescribes the time and manner for dealers in commodities and traders in securities or commodities to elect to use the mark-to-market method of accounting under § 475(e) or (f) of the Internal Revenue Code. The collections of information in sections 5 and 6 of this

revenue procedure are required by the IRS in order to facilitate monitoring taxpayers changing accounting methods resulting from making the elections under § 475(e) or (f).

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 1,000.

*Estimated Burden Hours Respondent/ Recordkeeper:* 30 minutes.

*Frequency of response:* Other (one time).

*Estimated Total Reporting/ Recordkeeping Burden:* 500 hours.

*OMB Number:* 1545–1643.

*Regulation Project Number:* REG–209484–87 Final.

*Type of Review:* Extension.

*Title:* Federal Insurance Contributions Act (FCA) Taxation of Amounts Under Employee Benefit Plans.

*Description:* This regulation provides guidance as to when amounts deferred under or paid from a nonqualified deferred compensation plan are taken into account as wages for purposes of the employment taxes imposed by the Federal Insurance Contributions Act (FICA). Section 31.3121(v)(2)–1(a)(2) requires that the material terms of a plan be set forth in writing.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents/ Recordkeepers:* 2,500.

*Estimated Burden Hours Respondent/ Recordkeeper:* 5 hours.

*Frequency of response:* On occasion, Other (once).

*Estimated Total Reporting/ Recordkeeping Burden:* 12,500 hours.

*OMB Number:* 1545–1759.

*Form Number:* IRS Form 720X.

*Type of Review:* Extension.

*Title:* Amended Quarterly Federal Excise Tax Return.

*Description:* Representatives of the motor fuel industry, statement governments, and the Federal government are working to ensure compliance with excise taxes on motor fuels. This joint effort has resulted in a system to track the movement of all products to and from terminals. Form 720–TO is an information return that will be used by terminal operators to report their monthly receipts and disbursements of products.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 5,500.

*Estimated Burden Hours Respondent/ Recordkeeper:*

Recordkeeping—6 hr., 13 min.
Learning about the law or the form—18 min.
Preparing, copying, and sending the form to the IRS—24 min.

*Frequency of response:* Quarterly.

*Estimated Total Reporting/ Recordkeeping Burden:* 152,460 hours.

*OMB Number:* 1545–1763.

*Form Numbers:* IRS Form 8302.

*Type of Review:* Extension.

*Title:* Direct Deposit of Refund of $1 Million or More.

*Description:* This form is used to request a deposit of a tax refund of $1 million or more directly into an account at any U.S. bank or other financial institution.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 400.

*Estimated Burden Hours Respondent/ Recordkeeper:*

Recordkeeping—1 hr., 40 min.
Learning about the law or the form—30 min.
Preparing, copying, assembling, and sending the form to the IRS—33 min.

*Frequency of response:* On occasion, Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 988 hours.

*OMB Number:* 1545–1776.

*Form Numbers:* IRS Form 1041–N.

*Type of Review:* Extension.

*Title:* U.S. Income Tax Return for Electing Alaska Native Settlement Trusts.

*Description:* An Alaska Native Settlement Trust (ANST) may elect under section 646 to have the special income tax treatment of that section apply to the trust and its beneficiaries. This one-time election is made by filing Form 1041–N and the form is used by the ANST to report its income, etc., and to compute and pay any income tax. Form 1041–N is also used for the special information reporting requirements that apply to ANSTs.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 20.

*Estimated Burden Hours Respondent/ Recordkeeper:*

Recordkeeping—22 hr., 43 min.
Learning about the law or the form—2 hr., 3 min.
Preparing the form—3 hr., 27 min.
Copying, assembling, and sending the form to the IRS—16 min.

*Frequency of response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 680 hours.

*OMB Number:* 1545–1926.

*Notice Number:* Notice 102132–05.

*Type of Review:* Extension.

*Title:* Domestic Reinvestment Plans and Other Guidance under Section 965.

*Description:* The document provides guidance under new section 965 enacted by the American Jobs Creation Act of 2004 (P. L. 108–357). In general, and subject to limitations and conditions, section 965(a) provides that a corporation that is a U.S. shareholder of a controlled foreign corporation (CFC) may elect, for one taxable year, an 85 percent dividend received deduction (DRD) with respect to certain cash dividends it receives from its CFCs. Section 965(f) provides that taxpayers may elect the application of section 965 for either the taxpayer's last taxable year which begins before October 22, 2004, or the taxpayer's first taxable year which begins during the one-year period beginning on October 22, 2004. In general, a taxpayer elects to apply section 965 to a taxable year by filing Form 8895 with its timely-filed tax return (including extensions) for such tax year. If, however, a taxpayer files its tax return for the taxable year to which the taxpayer intends to election section 965 to apply prior to the issuance of Form 8895, the election must be made on a statement that is attached to its timely-filed tax return (including extensions) for such taxable year. In addition, because the taxpayer must establish to the satisfaction of the Commissioner that it has satisfied the conditions to take the DRD, the taxpayer is required under this guidance to report specified information and provide specified documentation.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 25,000.

*Estimated Burden Hours Respondent/ Recordkeeper:* 150 hours.

*Frequency of response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 3,750,000 hours.

*Clearance Officer:* Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 05–11277 Filed 6–6–05; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 1, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 7, 2005, to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0879.

*Regulation Project Number:* IA–195–78 Final.

*Type of Review:* Extension.

*Title:* Certain Returned Magazines, Paperbacks or Records.

*Description:* The regulations provide rules relating to an exclusion from gross income for certain returned merchandise. The regulations provide that in addition to physical return of the merchandise, a written statement listing certain information may constitute evidence of the return. Taxpayers who receive physical evidence of the return may, in lieu of retaining physical evidence, retain documentary evidence of the return. Taxpayers in the trade or business of selling magazines, paperbacks, or records, who elect to use a certain methods of accounting are affected.

*Respondents:* Business or other for-profit.

*Estimated Number of Recordkeepers:* 19,500.

*Estimated Burden Hours Recordkeeper:* 25 minutes.

*Estimated Total Reporting/Recordkeeping Burden:* 8,125 hours.

*OMB Number:* 1545–1269.

*Regulation Project Number:* PS–7–90 Final.

*Type of Review:* Extension.

*Title:* Nuclear Decommissioning Fund Qualification Requirements.

*Description:* If a taxpayer requests, in connection with a request for a schedule of ruling amounts, a ruling as to the classification of certain unincorporated organizations, the taxpayer is required to submit a copy of the documents establishing or governing the organization.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 50.

*Estimated Burden Hours Respondent:* 3 hours.

*Frequency of response:* On occasion.

*Estimated Total Reporting Burden:* 150 hours.

*OMB Number:* 1545–1768.

*Revenue Procedure Number:* Revenue Procedure 2002–16.

*Type of Review:* Extension.

*Title:* Optional Election to Make Monthly § 706 Allocations.

*Description:* This revenue procedure allows certain partnerships with money market fund partners to make an optional election to close the partnership's books on a monthly basis with respect to the money market fund partners.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 1,000.

*Estimated Burden Hours Respondent/Recordkeeper:* 30 minutes.

*Frequency of response:* Monthly, Other.

*Estimated Total Reporting/Recordkeeping Burden:* 500 hours.

*OMB Number:* 1545–1918.

*Form Number:* IRS Form 12885.

*Type of Review:* Extension.

*Title:* Supplement to OF–612, Optional Application for Federal Employment.

*Description:* Form 12885 is used as a supplement to the OF–612 to provide additional space for capturing work history.

*Respondents:* Individuals or households, Federal Government.

*Estimated Number of Respondents:* 24,823.

*Estimated Burden Hours Respondent:* 30 minutes.

*Frequency of response:* On occasion.

*Estimated Total Reporting Burden:* 12,406 hours.

*OMB Number:* 1545–1921.

*Form Number:* IRS Form 12114.

*Type of Review:* Extension.

*Title:* Continuation Sheet for Item #16 (Additional Information) OF–306, Declaration for Federal Employment

*Description:* Form 12114 is used as a continuation to the OF–306 to provide additional space for capturing additional information.

*Respondents:* Individuals or households, Federal Government.

*Estimated Number of Respondents:* 24,813.

*Estimated Burden Hours Respondent:* 15 minutes.

*Frequency of response:* On occasion.

*Estimated Total Reporting Burden:* 6,203 hours.

*Clearance Officer:* Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224. (202) 622–3428.

*OMB Reviewer:* Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. (202) 395–7316.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 05–11278 Filed 6–6–05; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted in San Francisco, CA. The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, June 30, 2005, and Friday, July 1, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Thursday, June 30, 2005 from 8 am to 4:30 pm Pacific Time and Friday, July 1, 2005 from 8 am to noon Pacific Time at 333 O'Farrell Street, San Francisco, CA 94102. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *www.improveirs.org*. Due to limited

space, notification of intent to participate must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: June 1, 2005.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E5–2909 Filed 6–6–05; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and Puerto Rico)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference).

The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, July 5, 2005 from 11 a.m. to 12 p.m. ET.

**FOR FURTHER INFORMATION CONTACT:** Sallie Chavez at 1–888–912–1227, or 954–423–7979.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Tuesday, July 5, 2005, from 11 a.m. to 12 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: June 1, 2005.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E5–2910 Filed 6–6–05; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### United States Mint

### Proposed Collection; Comment Request for Application for Commercial Product License and Application for Intellectual Property Use Forms

**AGENCY:** United States Mint (Mint).

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury invites the general public and other Federal agencies to take this opportunity to comment on two information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the United States Mint, a bureau of the Department of the Treasury, is soliciting comments on the United States Mint Application for Commercial Product License and Application for Intellectual Property Use forms.

**DATES:** Written comments should be received on or before August 8, 2005 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Cathy Laperle, Senior Licensing Specialist, Office of Sales and Marketing, United States Mint, 801 9th Street, NW., 5th Floor, Washington, DC 20220; (202) 354–7519 (this is not a toll free number); *CLaperle@usmint.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection package should be directed to Brenda Butler, Program Analyst, Records Management, United States Mint, 799 9th Street, NW., 4th Floor, Washington, DC 20220; (202) 772–7413 (this is not a toll-free number); *BrButler@usmint.treas.gov.*

**SUPPLEMENTARY INFORMATION:**

*Titles:* Application for Commercial Product License and Application for Intellectual Property Use.

*OMB Number:* 1525–0013.

*Abstract:* The two application forms allow individuals and entities to apply for permissions and licenses to use United States Mint owned or controlled intellectual property.

*Current Actions:* The United States Mint reviews and assesses permission requests and applications for United States Mint intellectual property licenses.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households and businesses or other-for-profit.

*Estimated Number of Respondents:* The estimated annual number of respondents is 120 respondents.

*Estimated Total Burden Hours:* The estimated number of annual burden hours is 131 hours.

*Requests for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 2, 2005.

**Yvonne Pollard,**

*Chief, Records Management Division, United States Mint.*

[FR Doc. 05–11269 Filed 6–6–05; 8:45 am]

BILLING CODE 4810–37–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0216]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the

nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 7, 2005.

*For Further Information or a Copy of the Submission Contact:* Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0216.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0216'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Accrued Amounts Due a Deceased Beneficiary, VA Form 21–601.

*OMB Control Number:* 2900–0216.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The information collected on VA Form 21–601 is used to determine claimant's entitlement to accrued benefits due a veteran but not paid prior to the veteran's death. Each survivor claiming a share of the accrued benefits must complete a separate VA Form 21–601; however, if there are no living survivors who are entitled on the basis of relationship, accrued benefits may be payable as reimbursement to the person or persons who bore the expenses of the veteran's last illness and burial expenses.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 4, 2005, at page 6078.

*Affected Public:* Individuals or households and Business or other for-profit.

*Estimated Annual Burden:* 2,300 hours.

*Estimated Average Burden Per Respondent:* 30 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 4,600.

Dated: May 26, 2005.

By direction of the Secretary.

**Loise Russell,**

*Director, Records Management Service.*

[FR Doc. E5–2901 Filed 6–6–05; 8:45 am]

**BILLING CODE 8320–01–P**

---

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–New]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501—3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 7, 2005.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–New.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Statement of Radiation Exposure during Military Service, VA Form 21–0783.

*OMB Control Number:* 2900–New.

*Type of Review:* New collection.

*Abstract:* VA will use the information collected on VA Form 21–0783 to assist claimants in obtaining supporting documentation to substantiate their claim of radiation exposure during military service and, when applicable, a radiation dose assessment. The information collected will be used to establish claimants' eligibility for disability benefit.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 2, 2005, at pages 10168–10169.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,680 hours.

*Estimated Average Burden Per Respondent:* 60 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 1,680.

Dated: May 26, 2005.

By direction of the Secretary:

**Loise Russell,**

*Director, Records Management Service.*

[FR Doc. E5–2902 Filed 6–6–05; 8:45 am]

**BILLING CODE 8320–01–P**

---

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0055]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 7, 2005.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0055.'' Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to

''OMB Control No. 2900–0055'' in any correspondence.

**SUPPLEMENTARY INFORMATION:** *Title:* Request for Determination of Loan Guaranty Eligibility—Unmarried Surviving Spouses, VA Form 26–1817.

*OMB Control Number:* 2900–0055.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 26–1817 is completed by unmarried surviving spouse of veterans as a formal request for a certificate of eligibility for home loan benefits. An unmarried surviving spouse may be entitled to home loan benefits if the veteran's death occurred while serving on active duty or was a direct result of service-connected disabilities. VA uses the data collected to verify the veteran's service-connected death and status of the applicant as unmarried surviving spouse.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 25, 2005, at pages 3581–3582.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 250 hours.

*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 1,000.

Dated: May 26, 2005.

By direction of the Secretary.

**Loise Russell,**

*Director, Records Management Service.*

[FR Doc. E5–2903 Filed 6–6–05; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0067]**

### 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 for which approval has expired and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's eligibility for automobile allowance and adaptive equipment.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 8, 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: *nancy.kessinger@mail.va.gov.* Please refer to ''OMB Control No. 2900–0067'' 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:* Application for Automobile or other Conveyance and Adaptive Equipment (under 38 U.S.C. 3901–3904), VA Form 21–4502.

*OMB Control Number:* 2900–0067.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Veterans and servicepersons complete VA Form 21–4502 to apply for automobile or other conveyance allowance, and reimbursement for the cost and installation of adaptive equipment. The claimants must possess one of the following disabilities that resulted from injury or a disease that was incurred or aggravated during active military service: (1) Loss or permanent loss of use of one or both feet, or hands; (2) permanent impairment of vision in both eyes with a central visual acuity of 20/200 or less in the better eye with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field had contracted to such an extent that the widest diameter of visual field has an angular distance no greater than 20 degrees in the better eye. VA uses the information to determine the claimant's eligibility for such benefits.

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 388.

*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 1,552.

Dated: May 26, 2005.

By direction of the Secretary.

**Loise Russell,**

*Director, Records Management Service.*

[FR Doc. E5–2904 Filed 6–6–05; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0458]**

### 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 the information needed to determine a veteran's child between the ages of 18 and 23 years old is attending school.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 8, 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: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0458'' 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:* Certification of School Attendance or Termination, VA Forms 21–8960 and 21–8960–1.

*OMB Control Number:* 2900–0458.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Claimants complete VA Form 21–8960 and VA Form 21–8960–1 to certify that a child between the ages of 18 and 23 years old is attending school. VA uses the information collected to determine the child's continued entitlement to benefits. Benefits are discontinued if the child marries, or no longer attending school.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 11,667 hours.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 70,000.

Dated: May 26, 2005.

By direction of the Secretary.

**Loise Russell,**

*Director, Records Management Service.*

[FR Doc. E5–2905 Filed 6–6–05; 8:45 am]

**BILLING CODE 8320–01–P**

---

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0613]**

### 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 this notice. This notice solicits comments on the information needed to determine if courses offered by a flight school should be approved.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 8, 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: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0613'' 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:* Recordkeeping at Flight Schools (38 U.S.C. 21.4263 (h)(3).

*OMB Control Number:* 2900–0613.

*Type of Review:* Extension of a previously approved collection.

*Abstract:* Flight schools are required to maintain records on students to support continued approval of their courses. VA uses the data collected to determine whether the courses and students meet the requirement for flight training benefits and to properly pay the students.

*Affected Public:* Business or other for-profit, Not-for-profit institutions, and Federal Government.

*Estimated Annual Burden:* 8600 hours.

*Estimated Average Burden Per Respondent:* 20 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 250.

*Estimated Annual Responses:* 1,800.

Dated: May 26, 2005.

By direction of the Secretary.

**Loise Russell,**

*Director, Records Management Service.*

[FR Doc. E5–2906 Filed 6–6–05; 8:45 am]

**BILLING CODE 8320–01–P**

---

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0061]**

### 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 this notice. This notice solicits comments for information needed to determine whether supplies requested for a veteran's rehabilitation program are necessary.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 8, 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: *nancy.kessinger@mail.va.gov.* Please refer to ''OMB Control No. 2900–0061'' 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.

*Titles:* Request for Supplies (Chapter 31–Vocational Rehabilitation), VA Form 28–1905m.

*OMB Control Number:* 2900–0061.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 28–1905m is used to request supplies for veterans in rehabilitation programs. The official at the facility providing rehabilitation services to the veteran completes the form and certifies that the veteran needs the supplies for his or her program and that the veteran does not have the requested item in his or her possession. The veteran also certifies that he or she is not in possession of any of the supplies listed on the form.

*Affected Public:* Not-for-profit institutions, individuals or households, business or other for-profit, and farms.

*Estimated Annual Burden:* 1,000 hours.

*Estimated Average Burden Per Respondent:* 60 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 1,000.

Dated: May 26, 2005.

By direction of the Secretary:

**Loise Russell,**

*Director, Records Management Service.*

[FR Doc. E5–2907 Filed 6–6–05; 8:45 am]

BILLING CODE 8320–01–P

---

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0107]**

## 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 this notice. This notice solicits comments on the information needed to audit accountings of fiduciaries.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 8, 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: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0107'' 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:* Certificate as to Assets, VA Form 21–4709.

*OMB Control Number:* 2900–0107.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Fiduciaries are required to complete VA Form 21–4709 to report investment in savings, bonds and other securities that he or she received on behalf of beneficiaries who are incompetent or under legal disability. Estate analysts employed by VA use the data collected to verify the fiduciaries accounting of the beneficiary's estate.

*Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

*Estimated Annual Burden:* 863 hours.

*Estimated Average Burden Per Respondent:* 12 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 4,316.

Dated: May 26, 2005.

By direction of the Secretary:

**Loise Russell,**

*Director, Records Management Service.*

[FR Doc. E5–2908 Filed 6–6–05; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
June 7, 2005

# Part II

# Department of Agriculture

## Animal Plant and Health Inspection Service

## 7 CFR Parts 300, 301, 305, et al.

## Phytosanitary Treatments; Location of Treatment Schedules and Other Requirements; Final Rule

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Parts 300, 301, 305, 318, and 319**

**[Docket No. 02–019–1]**

# Phytosanitary Treatments; Location of Treatment Schedules and Other Requirements

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the plant health regulations by adding to 7 CFR part 305 treatment schedules and related requirements that now appear in the Plant Protection and Quarantine Treatment Manual and by removing the Plant Protection and Quarantine Treatment Manual from the list of material that is incorporated by reference into the regulations. We are taking this action to simplify the process for amending treatment schedules and related requirements and to more clearly distinguish between treatment-related requirements and nonbinding administrative information, which the Plant Protection and Quarantine Treatment Manual also contains.

**EFFECTIVE DATE:** June 7, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith C. Jones, Regulatory Coordination Specialist, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236; (301) 734–7467.

**SUPPLEMENTARY INFORMATION:**

## Background

The regulations in 7 CFR parts 300 to 399 (referred to below as the regulations) are intended, among other things, to prevent the introduction or spread of plant pests and noxious weeds into or within the United States. Under the regulations, certain plants, fruits, vegetables, and other articles must be treated before they may be moved into the United States or interstate. Most of the phytosanitary treatments authorized by the Animal and Plant Health Inspection Service (APHIS) are contained in the Plant Protection and Quarantine (PPQ) Treatment Manual. Among other things, the PPQ Treatment Manual contains approximately 400 treatment schedules, detailed instructions for administering the treatments, and requirements for certification of facilities that administer the treatments.

Prior to this rule, the PPQ Treatment Manual was incorporated by reference into the regulations at 7 CFR 300.1. In this document, we are amending 7 CFR part 300, ''Incorporation by Reference,'' to remove the PPQ Treatment Manual from the list of materials incorporated.

We are adding the portions of the PPQ Treatment Manual that prescribe the treatment schedules, instructions for administering the treatments, and requirements for certification of facilities that administer the treatments to 7 CFR part 305, ''Phytosanitary Treatments.'' The purpose of part 305 is to provide treatment schedules and other requirements related to approved treatments; it does not indicate whether treatment is required for a particular article to be imported or moved interstate. Whether treatment is required for a commodity will continue to be indicated in the regulations in 7 CFR part 301, the domestic quarantine notices; part 318, the Hawaiian and territorial quarantine notices; part 319, the foreign quarantine notices; on a permit; or by an inspector.

One of the reasons that we are adding the treatment schedules and other requirements to part 305 is to distinguish the treatment schedules and other treatment-related requirements from administrative information in the PPQ Treatment Manual that has no regulatory purpose. In addition to the treatment provisions, the PPQ Treatment Manual contains useful information such as operational procedures for port inspectors, conversion tables, instructions for using treatment and safety equipment, and a reference guide to commercial suppliers of treatment and safety equipment. It also contains copies of U.S. Coast Guard regulations related to shipboard fumigation, as well as other technical information. We believe that placing the treatment schedules and other requirements related to treatments in part 305 will clearly distinguish those requirements that APHIS intends to enforce from other, nonbinding information.

Another reason for placing the treatment schedules and other requirements in part 305 is to simplify and improve the efficiency of our rulemaking process for rules involving phytosanitary treatments. Materials that have been incorporated by reference into the CFR have the same force and effect as the regulations themselves, without taking up what may be a large number of pages in the CFR. The Office of the Federal Register must approve the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. If that material is later revised, and the agency wishes to have the revision incorporated by reference, the revision must also be approved by the Office of the Federal Register for incorporation by reference. While incorporation by reference can save time and space in the CFR by allowing an agency to refer to an already published document rather than duplicating that material in the CFR, the process is inefficient when the document that is incorporated by reference is frequently updated, as occurs with the PPQ Treatment Manual.

For example, on October 1, 2002, we published a proposed rule in the **Federal Register** to amend 7 CFR part 319 allow the importation of various fruits and vegetables into the United States under specified conditions (Docket No. 02–026–1, 67 FR 61547–61564). In some cases, the specified conditions included treatments, which needed to be added to the PPQ Treatment Manual. Therefore, before the final rule could be published, the changes to the PPQ Treatment Manual had to be reviewed and approved by the Office of the Federal Register, and the final rule, in addition to amending part 319, also amended part 300 to show that revisions to the PPQ Treatment Manual had been approved for incorporation by reference (Docket No. 02–026–4, 68 FR 37904–37923, published and effective on June 25, 2003). Including the treatment provisions directly in the regulations rather than incorporating them by reference will eliminate the separate approval process required for material incorporated by reference and could make new and amended treatment provisions available to the public sooner.

In conjunction with adding treatment schedules and other requirements to part 305, we are amending the regulations in parts 301, 318, and 319 by removing references to the PPQ Treatment Manual and adding references to part 305. Except as discussed below, we have not moved treatment schedules that are already in the CFR in parts 301, 318, and 319 to part 305. We intend to move those treatment schedules to part 305 in future rulemakings.

## Treatment Schedules Moved to Part 305 From Other Parts

Sections 318.13–4a and 318.58–4a of part 318 and § 319.56–2c of part 319 authorize the use of quick freeze treatment for certain fruits and vegetables. We have moved the provisions of these sections that pertain directly to treatment to part 305. Specifically, we have included in § 305.1 a definition of the term *quick freeze* that is derived from paragraph (a) of those sections. This definition reads: ''A commercially acceptable method of

quick freezing at subzero temperatures with subsequent storage and transportation at not higher than 20 °F. Methods that accomplish this are known as quick freezing, sharp freezing, cold pack, or frozen pack, but may be any equivalent commercially acceptable freezing method.'' We have also moved to part 305 provisions from those sections regarding inspection of the fruits and vegetables upon arrival. These provisions state that the fruits or vegetables may not be removed from the vessel or vehicle transporting them until an inspector has determined that they are in a satisfactory frozen state upon arrival (*i.e.*, at 20 °F or below). They further state that if the temperature of the fruits or vegetables in any part of a shipment is found to be above 20 °F at the time of inspection upon arrival, the entire shipment must remain on board the vessel or vehicle under such safeguards as may be prescribed by the inspector until the temperature of the shipment is below 20 °F, or the shipment is transported outside the United States or its territorial waters, or is otherwise disposed of to the satisfaction of the inspector.

Since the definition of quick freeze and the requirements for maintaining this frozen state have been moved from §§ 318.13–4a, 318.58–4a, and 319.56–2c to part 305, we have amended all three sections to state that quick freezing is authorized in accordance with part 305. Because the Agency's liability for treatment is discussed in § 305.2, we have removed the paragraphs from each section that pertain to treatment liability. In addition, we have made minor, nonsubstantive changes to those sections, such as changing ''Deputy Administrator'' to ''Administrator'' and redesignating paragraphs, and replacing a reference to the Caroline Islands with references to Palau and the Federated States of Micronesia.

Section 319.75–4 of part 319 contained treatment schedules for khapra beetle. These schedules had typographical errors and inconsistencies with the treatment schedules for khapra beetle in the PPQ Treatment Manual. For example, a treatment schedule at § 319.74(a)(3)(iii) indicated that methyl bromide could be applied at temperatures below 40 °F—a temperature range that is not authorized by the U.S. Environmental Protection Agency (EPA) and that would not effectively neutralize the pest. The correct schedules from the PPQ Treatment Manual are now included in part 305, and we have removed the treatment schedules from § 319.75–4 and added a reference to part 305. This eliminates duplication of the treatment schedules and the errors contained in § 319.75–4.

**Duplication of Some Treatment Schedules**

In a few cases, we are adding treatment schedules now located in parts 301 and 318 to part 305, without, at this time, removing the treatment schedules from parts 301 and 318. In these cases, the fruits and vegetables may be moved interstate from areas within the United States that are under Federal quarantine if they are treated either according to treatment schedules found in the PPQ Treatment Manual or according to different treatment schedules found in parts 301 and 318. To ensure that persons referring to part 305 find all approved treatments for these fruits and vegetables will be able to find all applicable treatment schedules in one place in the CFR, we have duplicated in part 305 the treatment schedules for these fruits and vegetables that had only been found in parts 301 and 318. We are leaving the treatment schedules in parts 301 and 318 temporarily to ensure that readers know they are still valid. The format of these treatment schedules in part 305 has, in some cases, been altered to be consistent with the other schedules we are adding to part 305.

We are not duplicating in part 305 any of the treatment schedules found in part 319. We intend to move all the treatment schedules in part 319 to part 305 in a separate rulemaking.

**Removal of Some Treatment Schedules From the CFR**

In § 319.40–7 of part 319, paragraph (f) set out requirements for fumigation with methyl bromide of logs, lumber, and other unmanufactured wood products. Paragraph (f) referred to specific treatment schedules in the PPQ Treatment Manual and set out other schedules that could be used in lieu of the PPQ Treatment Manual schedules. In lieu of treatment schedule T–404 in the PPQ Treatment Manual, paragraphs (f)(1)(ii), (f)(2), and (f)(3)(ii) provided for fumigation to be conducted with an initial methyl bromide concentration of at least 120 grams per cubic meter with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration. However, this standard is impossible to achieve given normal decreases in fumigant concentration and is therefore never used. We have, therefore, removed this alternative schedule from § 319.40–7(f)(1)(ii), (f)(2), and (f)(3)(ii). The alternative treatment schedules in § 319.40–7(f)(1)(i) and (f)(3)(i) remain. We have replaced references to the PPQ Treatment Manual with references to part 305.

**Correction of Some Treatment Schedules**

We have also corrected errors contained in treatment schedules in the PPQ Treatment Manual. Specifically, in a treatment for corn seed (treatment schedule T510–2), the temperature for steam is shown as 40 °F in the PPQ Treatment Manual. The correct temperature of at least 240 °F is now given in part 305. A methyl bromide treatment schedule for khapra beetle (T301–b–1–2) incorrectly stated that the treatment is to be conducted at normal atmospheric pressure. We have corrected that treatment schedule in part 305 to specify that the treatment is to be conducted in vacuum fumigation chambers. A treatment for citrus seeds from countries where citrus canker exists (T511–1) specified a 0.525 percent concentration of sodium hypochlorite for a chemical dip treatment, while the regulations at § 319.37–6(e) specified a concentration of 200 parts per million. The regulations are correct, and part 305 contains the corrected treatment schedule. Both the regulations at § 319.56–2ii(b) and the PPQ Treatment Manual stated that a vapor heat treatment for mangoes from the Philippines (T106–d–1) was approved for all *Bactrocera* spp. fruit flies; in fact, it is only approved for *Bactrocera occipitalis* and *B. philippinensis*. Part 305 contains the corrected treatment schedule. Finally, in a cold treatment schedule for pecans and hickory nuts (T107–g), the PPQ Treatment Manual lists the temperature range within which the treatment is to be conducted as 32 °F or below; the correct temperature range is 0 °F or below, and part 305 contains the corrected treatment schedule.

Except to correct the errors just discussed, part 305 retains the descriptions of treated articles, treatment schedules, and instructions for administering treatments that had been contained in the PPQ Treatment Manual. In some cases, this has meant retaining schedules and administration instructions that appear to be substantively identical; the three hot water immersion treatment schedules in § 305.22, for example, differ only in wording. In other cases, we have retained language that may be ambiguous; in vapor heat treatment schedule T106–e, the treatment instructions state that fruit must be held at 114.8 °F or above for 20 minutes, without stating whether 20 minutes is a minimum time or the exact time for

which that temperature must be held. We are currently reviewing the provisions of the PPQ Treatment Manual that we have moved into part 305 in this final rule, and we may amend part 305 in the future to address issues such as those described above. If we undertake such amendments, we will do so through notice-and-comment rulemaking.

In the course of transferring the requirements for treatment facilities to part 305 from the Treatment Manual, we edited the requirements to make them more performance based, clear, and concise, and to eliminate redundancy. However, these requirements were not changed in any substantive way.

The amended content of part 305 is discussed below in general terms; specific requirements for phytosanitary treatments are contained in the rule portion of this document.

**Amended Part 305**

*Definitions*

We are amending § 305.1 by adding several definitions for types of treatments and terms related to administering treatments. Specifically, we are adding definitions for the following terms: *Autoclaving, cold treatment, forced hot air, fumigant, fumigation, hitchhiker pest, hot water immersion dip, irradiation, methyl bromide, phosphine, quick freeze, Section 18 of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), sulfuryl fluoride, steam heat, vacuum fumigation*, and *vapor heat*. The definitions for each of these terms are located below in the rule portion of the document, along with the terms and definitions that were already included in part 305, prior to this rule.

We are also amending the definition of *inspector*, which had previously been defined as ''Any employee of the Animal and Plant Health Inspection Service or other person authorized by the Administrator to inspect and certify the plant health status of plants and products under this part,'' to reflect the fact that some inspection responsibilities have been transferred to the Department of Homeland Security's Bureau of Customs and Border Protection.

**Approved Treatments**

Prior to this rule, § 305.2 contained provisions for the irradiation treatment of imported fruits and vegetables for certain fruit flies and a mango seed weevil. Since irradiation treatment of imported fruits and vegetables will now be one of a number of treatments located in part 305, we are reorganizing the part, and we have redesignated the section concerning irradiation of imported fruits and vegetables as § 305.31. Section 305.2 now lists the commodities for which approved treatments are available.

The listed commodities are alpha grass and handicrafts; bags, bagging materials, and covers; broomcorn and broomcorn articles; cotton and cotton products; cut flowers and greenery; equipment; fruits and vegetables; garbage; hay, baled; materials or products that could be infested by khapra beetle; miscellaneous nonfood, nonfeed commodities; plants, bulbs, corms, tubers, rhizomes, and roots; railroad cars (empty); rice straw and hulls; seeds; ships, containers, and surrounding area; skins (goatskins, lambskins, and sheepskins); soil; sugarcane; and wood products. The commodities, except for fruits and vegetables, are primarily arranged alphabetically by the type of commodity, followed by pests of concern and approved treatment schedules.

The list of fruits and vegetables is arranged first by the area of origin of the fruit or vegetable, including specific foreign countries and quarantined areas in the United States. Currently, treatment is authorized for fruits and vegetables from specific regions in 7 CFR parts 301, 318, and 319 or in departmental permits issued in accordance with 7 CFR part 319. Although the origin of fruits and vegetables is seldom identified in the PPQ Treatment Manual, we have included this information in the list of approved treatments for fruits and vegetables, when possible, to assist importers, individuals who administer the treatments, and others in determining whether a treatment is available for admissible fruits or vegetables from a specific country or quarantined area within the United States. In cases where a treatment is approved for a commodity but not associated with a specific country or other area of origin, the commodity is listed under ''All.'' Beside each area of origin, we list specific fruits and vegetables from those areas for which a treatment is authorized. Alongside the specific commodity for which treatment is authorized, the list shows the pest of concern followed by the treatment schedule that may be used to treat the commodity for that pest.

Some treatment schedules are set out in § 305.2, but in most cases, the treatment schedules identified are located in a subsequent subpart according to the type of treatment—chemical, cold, quick freeze, heat, irradiation, various treatments for garbage, and miscellaneous. Most listed treatments are identified by a combination of capital letters and a ''T'' (treatment) number (*e.g.*, MB T104–a–1). The capital letters indicate the type of treatment (*e.g.*, MB refers to methyl bromide fumigation), and the ''T'' number (*e.g.*, T104–a–1) refers to a specific treatment schedule. Listed treatments that duplicate schedules in part 301 have acronymic identifiers; for example, a treatment schedule to neutralize Oriental fruit fly in fruits and vegetables using fumigation with methyl bromide is identified as MBOFF. (It was not necessary to introduce acronymic identifiers for listed treatments that duplicate schedules in part 318; irradiation is the only treatment for which a schedule was duplicated from part 318, and it is identified by the generic abbreviation IR.)

**Chemical Treatments**

The first section (§ 305.5) within the subpart for chemical treatments contains requirements for facility certification, treatment monitoring, and treatment procedures. One of the requirements is that all chemical applications must be administered in accordance with an EPA-approved pesticide label and the APHIS-approved treatment schedule. It is possible that EPA may cancel the approval for use of a pesticide on a commodity before APHIS has had the opportunity to remove the associated treatment schedule for that commodity. If EPA cancels the approval for use of a pesticide on a commodity, the schedule is no longer authorized. If the commodity is not listed on the label or does not have a section 18 exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), then no chemical treatment is available.

The next five sections provide the treatment schedules for administering methyl bromide (§ 305.6); phosphine (§ 305.7); sulfuryl fluoride (§ 305.8); aerosol spray for aircraft (§ 305.9); combination treatments (§ 305.10), which combine chemical treatments with nonchemical treatments, such as fumigation with methyl bromide and cold treatment; and miscellaneous chemical treatments (§ 305.11). The treatment schedules set out requirements that are within the limits authorized by EPA. However, to ensure that an actionable pest is neutralized with minimal effect on the quality of the commodity, the schedules may be more specific than what is stated on the pesticide label.

**Nonchemical Treatments**

Nonchemical treatments are organized into six subparts: Cold treatment, quick freeze, heat treatment, irradiation, various treatment for garbage, and miscellaneous treatments.

The subpart for cold treatment contains treatment requirements (§ 305.15) and treatment schedules (§ 305.16). The treatment requirements in § 305.15 cover facility and carrier approval, treatment enclosures, treatment monitoring, compliance agreements for cold treatment facilities located in the United States, work plans for cold treatment facilities located outside the United States, and treatment procedures.

The subpart for quick freeze treatment lists commodities for which quick freeze is authorized and prohibited in § 305.17 and sets out treatment schedule T110 in § 305.18.

The subpart for heat treatments includes treatment requirements (§ 305.20) and treatment schedules for hot water dip (§ 305.21), hot water immersion (§ 305.22), steam sterilization (§ 305.23), vapor heat (§ 305.24), dry heat (§ 305.25), heat treatment for materials or products that could be infested by khapra beetle (§ 305.26), forced hot air (§ 305.27), and kiln sterilization (§ 305.28). The treatment requirements in § 305.20 cover facility certification, treatment monitoring, compliance agreements for heat treatment facilities located in the United States, work plans for facilities located outside the United States, and treatment procedures.

(**Note:** APHIS certification of facilities that administer approved phytosanitary treatments always involves the preparation of a compliance agreement for facilities within the United States, or the preparation of a work plan for facilities outside the United States. The compliance agreement or work plan sets out the procedures the facilities will follow and is signed by officials from APHIS and the facility (in the case of a compliance agreement) or by officials from APHIS, the facility, and the national plant protection organization of the country of export (in the case of a work plan). The PPQ Treatment Manual specifically mentions the need for a work plan in sections pertaining to certification of facilities for some types of heat treatment, but not all, and does not mention compliance agreements. For clarity and transparency, we are referencing both types of documents in part 305 under each type of heat treatment.)

The subpart for irradiation includes four sections authorizing irradiation treatment for commodities from different areas and for different pests. Irradiation treatment for imported fruits and vegetables, which was the only treatment provided for in part 305 prior to this final rule, has been moved to § 305.31. This new section includes all the provisions previously in § 305.2, plus two requirements from the PPQ Treatment Manual: (1) All containers or vans that will transport treated commodities must be free of pests prior to loading the treated commodities and (2) each shipment of fruits and vegetables treated outside the United States must be accompanied into the United States by a phytosanitary certificate. All of these requirements are now in § 305.31. The subpart for irradiation also includes three sections, §§ 305.32 through 305.34, that duplicate the irradiation treatments in § 301.64–10(g), for regulated articles moved interstate from areas under Federal quarantine for Mexican fruit fly; in § 301.78–10(c), for regulated articles moved interstate from areas under Federal quarantine for Mediterranean fruit fly; and in § 318.13–4f, for certain commodities moved interstate from Hawaii.

The subpart for garbage treatments contains treatment schedules and requirements for caterers conducting the treatments under compliance agreements (§ 305.40). The subpart lists three treatment schedules for neutralizing insect pests and pathogens: Incineration, dry heat, and grinding and discharge into a sewer system.

The miscellaneous treatments subpart contains treatment schedules for soapy water and wax for certain fruits; warm soapy water and brushing for durian and other large fruits, such as breadfruit; and alternative treatments for plant material not tolerant to fumigation (§ 305.42).

*Miscellaneous*

We have made minor, nonsubstantive changes to parts 301, 318, and 319. In § 319.56–2k, we have replaced a reference to the Union of Soviet Socialist Republics with a reference to Armenia, Azerbaijan, Belarus, Estonia, Georgia, Latvia, Lithuania, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. In parts 301, 318, and 319, we have changed references to ''he'' or ''him'' to terms that are more inclusive (*e.g.*, ''he or she'' or ''the inspector''). Because the Oxford Plant Protection Center has moved to the Center for Plant Health Science and Technology, we have amended the address in the regulations. We have also corrected typographical errors in the regulations.

**Internal Agency Management**

This rule relates to internal agency management. Therefore, this rule is exempt from the provisions of Executive Orders 12866 and 12988. Moreover, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required for this rule, and it may be made effective less than 30 days after publication in the **Federal Register**. In addition, under 5 U.S.C. 804, this rule is not subject to congressional review under the Congressional Review Act of 1996, Pub. L. 104–121. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

**Paperwork Reduction Act**

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

**List of Subjects**

*7 CFR Part 300*

Incorporation by reference, Plant diseases and pests, Quarantine.

*7 CFR Part 301*

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

*7 CFR Part 305*

Agricultural commodities, Chemical treatment, Cold treatment, Garbage treatment, Heat treatment, Imports, Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Quick freeze, Reporting and recordkeeping requirements, Transportation.

*7 CFR Part 318*

Cotton, Cottonseed, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

*7 CFR Part 319*

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

Accordingly, we are amending 7 CFR chapter III as follows:

## PART 300—INCORPORATION BY REFERENCE

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

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

**§ 300.1 [Removed and reserved]**

■ 2. Section 300.1 is removed and reserved.

## PART 301—DOMESTIC QUARANTINE NOTICES

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

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

**§ 301.45–1 [Amended]**

■ 4. In § 301.45–1, the definition of *treatment manual* is amended by removing the words ''and the Plant Protection and Quarantine Treatment Manual'' and by removing footnote 3.

**§ 301.45–4 [Amended]**

■ 5. Section 301.45–4 is amended by redesignating footnote 4 as footnote 3.

**§ 301.45–5 [Amended]**

■ 6. In § 301.45–5, paragraph (a)(3) is amended by adding the words ''and part 305 of this chapter'' immediately after the words ''treatment manual''.

**§ 301.45–6 [Amended]**

■ 7. In § 301.45–6, paragraph (a) is amended by adding the words ''and part 305 of this chapter'' immediately after the words ''treatment manual''.

**§ 301.48–1 [Amended]**

■ 8. Section 301.48–1 is amended by removing the definition of *Treatment Manual.*

**§ 301.48–4 [Amended]**

■ 9. In § 301.48–4, paragraph (d)(4) is amended by removing the words ''with the Treatment Manual'' and adding the words ''with part 305 of this chapter'' in their place; and by removing the words ''the Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

**§ 301.52–1 [Amended]**

■ 10. Section 301.52–1 is amended by removing the definition of *treatment manual* and footnote 2.

**§ 301.52–3 [Amended]**

■ 11. Section 301.52–3 is amended by redesignating footnote 3 as footnote 2.

**§ 301.52–4 [Amended]**

■ 12. Section 301.52–4 is amended as follows:

■ a. In paragraph (a)(3), by removing the words ''the treatment manual'' and adding the words ''part 305 of this chapter'' in their place.

■ b. In paragraph (b), by removing the words ''the treatment manual'' and adding the words ''part 305 of this chapter'' in their place; and by removing the word ''he'' and adding the words ''the inspector'' in its place.

■ c. In paragraph (f), by removing the word ''he'' and adding the words ''the inspector'' in its place.

**§ 301.52–5 [Amended]**

■ 13. In § 301.52–5, paragraph (b) is amended by removing the word ''he'' and adding the words ''the inspector'' in its place.

■ 14. Section 301.64–10 is amended as follows:

■ a. In paragraph (a), by removing the words ''the PPQ Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place; and by removing the second sentence.

■ b. In paragraphs (d) and (e), by removing the words ''the PPQ Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

■ c. By revising paragraph (f) to read as set forth below.

■ d. In footnote 10 and in paragraph (g)(7), by removing the address ''Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27565'' and adding the address ''Center for Plant Health Science and Technology, 1017 Main Campus Drive, suite 2500, Raleigh, NC 27606'' in its place.

**§ 301.64–10 Treatments.**

* * * * *

(f) *Citrons, litchis, longans, persimmons, and white sapotes.* Cold treatment in accordance with the following schedule, which is also found in part 305 of this chapter:

| Treatment (°F) | Exposure period (days) |
|---|---|
| 33 or below | 18 |
| 34 or below | 20 |
| 35 or below | 22 |

* * * * *

**§ 301.75–4 [Amended]**

■ 15. In § 301.75–4, paragraph (d)(2) is amended by removing the word ''guarantined'' and adding the word ''quarantined'' in its place, both times it occurs.

**§ 301.78–10 [Amended]**

■ 16. Section 301.78–10 is amended as follows:

■ a. In the introductory text, by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place; and by removing the second sentence.

■ b. In footnote 10 and in paragraph (c)(7), by removing the address ''Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27565'' and adding the address ''Center for Plant Health Science and Technology, 1017 Main Campus Drive, suite 2500, Raleigh, NC 27606'' in its place.

**§ 301.81–4 [Amended]**

■ 17. In § 301.81–4, paragraph (b) is amended by removing the words ''the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place.

**§ 301.85–1 [Amended]**

■ 18. Section 301.85–1 is amended by removing the definition of *treatment manual.*

**§ 301.85–2 [Amended]**

■ 19. Section 301.85–2, paragraph (d) is amended by adding the words ''or she'' immediately after the word ''he'', both times it occurs.

**§ 301.85–4 [Amended]**

■ 20. Section 301.85–4 is amended as follows:

■ a. In paragraph (a), by removing the word ''he'' and adding the words ''the inspector'' in its place.

■ b. In paragraphs (a)(2), (b), and (e), second sentence, by removing the words ''the treatment manual'' and adding the words ''part 305 of this chapter'' in their place.

■ c. In paragraph (f), by adding the words ''or she'' after the word ''he'' and by adding the words ''or her'' after the word ''his''.

**§ 301.85–5 [Amended]**

■ 21. In § 301.85–5, paragraph (c), first sentence, is amended by removing the word ''he'' and adding the words ''the inspector'' in its place.

**§§ 301.93–10, 301.97–10 [Amended]**

■ 22. The introductory text of §§ 301.93–10, 301.97–10, is amended by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place; and by removing the second sentence.

**§ 301.98–10 [Amended]**

■ 23. Section 301.98–10 is amended as follows:

■ a. In the introductory text, by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place; and by removing the second sentence.

■ b. In paragraph (b), by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

**§ 301.99–10 [Amended]**

■ 24. Section 301.99–10 is amended as follows:

■ a. In the introductory text, by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place; and by removing the second and third sentences.

■ b. In paragraph (b), first sentence, by removing the words ''as an alternative to treating the fruits as provided in the Plant Protection and Quarantine Treatment Manual''.

■ c. In paragraph (c), first sentence, by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

■ 25. Part 305 is revised to read as follows:

## PART 305—PHYTOSANITARY TREATMENTS

Sec.
305.1 Definitions.
305.2 Approved treatments.
305.3–305–4 [Reserved]

**Subpart—Chemical Treatments**

305.5 Treatment requirements.
305.6 Methyl bromide fumigation treatment schedules.
305.7 Phosphine treatment schedules.
305.8 Sulfuryl fluoride treatment schedules.
305.9 Aerosol spray for aircraft treatment schedules.
305.10 Treatment schedules for combination treatments.
305.11 Miscellaneous chemical treatments.
305.12–14 [Reserved]

**Subpart—Cold Treatments**

305.15 Treatment requirements.
305.16 Cold treatment schedules.

**Subpart—Quick Freeze Treatments**

305.17 Authorized treatments; exceptions.
305.18 Quick freeze treatment schedule.
305.19 [Reserved]

**Subpart—Heat Treatments**

305.20 Treatment requirements.
305.21 Hot water dip treatment schedule for mangoes.
305.22 Hot water immersion treatment schedules.
305.23 Steam sterilization treatment schedules.
305.24 Vapor heat treatment schedules.
305.25 Dry heat treatment schedules.
305.26 Khapra beetle treatment schedule for feeds and milled products.
305.27 Forced hot air treatment schedules.
305.28 Kiln sterilization treatment schedule.
305.29–305.30 [Reserved]

**Subpart—Irradiation Treatments**

305.31 Irradiation treatment of imported fruits and vegetables for certain fruit flies and mango seed weevils.
305.32 Irradiation treatment of regulated fruit to be moved interstate from areas quarantined for Mexican fruit fly.
305.33 Irradiation treatment of regulated articles to be moved interstate from areas quarantined for Mediterranean fruit fly.
305.34 Administrative instructions prescribing methods for irradiation treatment of certain fruits and vegetables from Hawaii.
305.35–305.39 [Reserved]

**Subpart—Treatments for Garbage**

305.40 Garbage treatment schedules for insect pests and pathogens.
305.41 [Reserved]

**Subpart—Miscellaneous Treatments**

305.42 Miscellaneous treatment schedules.

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

**§ 305.1 Definitions.**

The following definitions apply for the purposes of this part:

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person delegated to act for the Administrator in matters affecting this part.

*APHIS.* The Animal and Plant Health Inspection Service, United States Department of Agriculture.

*Autoclaving.* The introduction of steam at 212 °F into a pressurized enclosure containing a commodity to kill spores and other treatment-resistant pests.

*Cold treatment.* Exposure of a commodity to a specified cold temperature that is sustained for a specific time period to kill targeted pests, especially fruit flies.

*Dose mapping.* Measurement of absorbed dose within a process load using dosimeters placed at specified locations to produce a one-, two-, or three-dimensional distribution of absorbed dose, thus rendering a map of absorbed-dose values.

*Dosimeter.* A device that, when irradiated, exhibits a quantifiable change in some property of the device that can be related to absorbed dose in a given material using appropriate analytical instrumentation and techniques.

*Dosimetry system.* A system used for determining absorbed dose, consisting of dosimeters, measurement instruments and their associated reference standards, and procedures for the system's use.

*Forced hot air.* Hot air blown uniformly across commodities in a shipment until the pulp of each unit in the shipment of the commodity reaches a specified temperature.

*Fumigant.* A gaseous chemical that easily diffuses and disperses in air and is toxic to the target organism.

*Fumigation.* Releasing and dispersing a toxic chemical in the air so that it reaches the target organism in a gaseous state.

*Hitchhiker pest.* A pest that is carried by a commodity or a conveyance and, in the case of plants and plant products, does not infest those plants or plant products.

*Hot water immersion dip.* Complete immersion of a commodity in heated water to raise the temperature of the commodity to a specific temperature for a specified time. This treatment is usually used to kill fruit flies.

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

*Irradiation.* The use of irradiated energy to kill or devitalize organisms.

*Methyl bromide.* A colorless, odorless biocide used to fumigate a wide range of commodities.

*Phosphine.* Flammable gas generated from either aluminum phosphide or magnesium phosphide and used to treat stored product commodities.

*Quick freeze.* A commercially acceptable method of quick freezing at subzero temperatures with subsequent storage and transportation at not higher than 20 °F. Methods that accomplish this are known as quick freezing, sharp freezing, cold pack, or frozen pack, but may be any equivalent commercially acceptable freezing method.

*Section 18 of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).* An emergency exemption granted by the U.S. Environmental Protection Agency to Federal or State agencies authorizing an unregistered use of a pesticide for a limited time.

*Sulfuryl fluoride.* An odorless, colorless, and nonflammable compressed fumigant that is used primarily to kill pests of wood.

*Steam heat.* The introduction of steam at 212 °F or higher into an enclosure containing a commodity to kill targeted organisms.

*Vacuum fumigation.* Fumigation performed in a gas-tight enclosure. Most

air in the enclosure is removed and replaced with a small amount of fumigant. The reduction in pressure reduces the required duration of the treatment.

*Vapor heat.* Heated air saturated with water vapor and used to raise the temperature of a commodity to a required point for a specific period.

**§ 305.2 Approved treatments.**

(a) Certain commodities or articles require treatment, or are subject to treatment, prior to the interstate movement within the United States or importation or entry into the United States. Treatment is required as indicated in parts 301, 318, and 319 of this chapter, on a permit, or by an inspector.

(1) Treatment schedules provided in this part must be followed to neutralize pests.

(2) More information about treatment schedules is contained in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is available on the Internet at *http://www.aphis.usda.gov/ppq/manuals/online_manuals.html* or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 69 Thomas Johnson Drive, Suite 100, Frederick, MD 21702.

(3) Treatment requirements provided in this part must be followed to adequately administer treatment schedules.

(4) APHIS is not responsible for losses or damages incurred during treatment and recommends that a sample be treated first before deciding whether to treat the entire shipment.

(b) *Alpha grass and handicrafts (Stipa tenacissima, Ampelodesmos mauritanicus).* For treatment schedules, see § 305.6 for methyl bromide (MB) fumigation.

| Pest | Treatment |
|---|---|
| *Harmolita* spp. | MB T304–a or MB T304–b. |

(c) *Bags, bagging materials, and covers (used).* The treatment schedules for which administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation, § 305.23 for steam sterilization (SS), and § 305.25 for dry heat (DH).

| Used material | Pest | Treatment |
|---|---|---|
| Bags and bagging material or covers used to contain root crops. | *Globodera rostochiensis* | MB T306–a. |
| Bags and bagging used for commodities grown in soil. | Potato cyst nematode | MB T502–1. |
| Bags and bagging material or covers used for cotton only. | *Pectinophora* spp. | MB T306–b. |
| Bags and bagging used for small grains | Downy mildews and *Physoderma* diseases of maize. | T503–1–2: Soak in water slightly below boiling (212 °F) for 1 hour; or SS T503–1–3; or DH T503–1–4. |
| | Flag smut | DH T504–1–1 or SS T504–1–2. |
| Bags and bagging material or covers | *Trogoderma granarium* | MB T306–c–1 or MB T306–c–2. |
| Bagging from unroasted coffee beans | Various | MB T306–d–1 or MB T306–d–2. |
| Covers used for commodities grown in soil | Potato cyst nematode | MB T502–2. |
| Covers used for small grains | Downy mildews and *Physoderma* diseases of maize. | T503–2–2: Soak in water slightly below boiling (212 °F) for 1 hour; or SS T503–2–3; or DH T503–2–4. |
| Covers used for wheat | Flag smut | DH T504–2–1 or SS T504–2–2. |

(d) *Broomcorn and broomcorn articles.* The treatment schedules for which administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation and § 305.23 for steam sterilization (SS).

| Pest | Treatment |
|---|---|
| Corn-related diseases (pre-cautionary treatment). | T566–1 (broomcorn) and T566–2 (broomcorn articles): Completely submerge in hot water at 102 °F. |
| *Ostrinia nubilalis,* ticks, and saw flies. | MB T309–a or MB T309–b–1or MB T309–b–2 or SS T309–c. |

(e) *Cotton and cotton products.* The treatment schedules for which administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation and § 305.7 for phosphine (PH).

| Material | Pest | Treatment |
|---|---|---|
| Baled lint or linters | *Pectinophora* spp | MB T301–a–3. |
| Baled lint, linters, waste, piece goods, gin trash. | *Trogoderma granarium* | MB T301–b–1–1 or MB T301–b–1–2. |
| Cottonseed (samples and bulk) | *Pectinophora* spp | T301–a–7: (1) Delint the cottonseed by applying sufficient heat (145 °F) or acid or both; or (2) raise the temperature of the delinted seed during the subsequent drying process to 145 °F for no less than 45 seconds or at least 140 °F for no less than 8 minutes. |
| Cottonseed, cottonseed products, or samples. | *T. granarium* | MB T301–b–2. |
| Cottonseed meal | *T. granarium* | MB T301–b–3. |
| Cotton and cotton products | *Globodera rostochiensis* | MB T301–c. |
| Cotton and cotton products | *Anthonomus grandis* | MB T301–d–1–1 or PH T301–d–1–2. |

| Material | Pest | Treatment |
|---|---|---|
| Lint, linters, cottonseed, cottonseed hulls, gin trash, waste, cottonseed meal, or other baled or bulk commodities (except samples). | *Pectinophora* spp | MB T301–a–1–1 or MB T301–a–1–2. |
| Lint, linters, and cottonseed (bulk, sacked, or packaged cottonseed, lint or linters, cottonseed hulls, gin trash, and all other baled or bulk cotton commodities). | *Pectinophora* spp | PH T301–a–6. |
| Lint (except baled lint or linters), cottonseed (except packaged cottonseed), cottonseed hulls, gin trash, waste, cottonseed meal, or other baled or bulk commodities (excluding samples). | *Pectinophora* spp | MB T301–a–2. |
| Packaged cottonseed | *Pectinophora* spp | MB T301–a–4. |
| Samples of cotton and cotton products | *Pectinophora* spp | MB T301–a–5–1 or MB T301–a–5–2. |

(f) *Cut flowers and greenery.* The treatment schedules for which administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation.

| Pest | Treatment |
|---|---|
| External feeders, leafminers, hitchhikers (except for snails and slugs), surface pests | MB T305–a. |
| Borers or soft scales | MB T305–b. |
| Mealybugs | MB T305–c. |

(g) *Equipment.* The treatment schedules for which administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation, § 305.9 for aerosol, and § 305.23 for steam sterilization (SS).

| Article | Pest | Treatment |
|---|---|---|
| Aircraft | *Trogoderma granarium* | T409–a: Contact PPQ Regional Director for specific instructions. |
| | Hitchhiker pests (other than *T. granarium,* fruit flies, and soft-bodied insects). | Aerosol T409–b. |
| | Fruit flies and soft-bodied insects | Aerosol T409–c–1 or Aerosol T409–c–3. |
| Automobiles | *Globodera rostochiensis* | T406-c, steam cleaning: Steam at high pressure until all soil is removed. Treated surfaces must be thoroughly wet and heated. |
| Construction equipment with cabs | *G. rostochiensis* | MB T406–b. |
| Construction equipment without cabs | *G. rostochiensis* | SS T406–d. |
| Containers | *G. rostochiensis* | MB T406–b. |
| Containers | Potato cyst nematode | MB T506–1. |
| Field and processing equipment (*Saccharum*) | *Xanthomonas albilineans* and X. vasculorum | T514–4: Remove all debris and soil from equipment with water at high pressure (300 pounds per square inch minimum) or with steam. |
| Mechanical cotton pickers and other cotton equipment. | *Pectinophora gossypiella* | MB T407. |
| Used farm equipment with cabs | *G. rostochiensis* | T406–c, steam cleaning: Steam at high pressure until all soil is removed. Treated surfaces must be thoroughly wet and heated. |
| Used farm equipment with cabs | *G. rostochiensis* | MB T406–b. |
| Used farm equipment without cabs | *G. rostochiensis* | SS T406–d. |
| Used containers | *G. rostochiensis* | SS T406–d. |

(h) *Fruits and vegetables.* (1) Treatment of fruits and vegetables from foreign localities by irradiation in accordance with § 305.31 may be substituted for other approved treatments for the mango seed weevil Sternochetus mangiferae (Fabricus) or for one or more of the following 11 species of fruit flies: *Anastrepha fraterculus, A. ludens, A. obliqua, A. serpentina, A. suspensa, Bactrocera cucurbitae, B. dorsalis, B. tryoni, B. jarvisi, B. latifrons,* and *Ceratitis capitata.*

(2) The treatment schedules for which administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation, § 305.10(a) for methyl bromide fumigation and cold treatment (MB&CT), § 305.10(b) for cold treatment and methyl bromide fumigation (CT&MB), § 305.11 for miscellaneous chemical treatments (CMisc.), § 305.16 for cold treatment (CT), § 305.18 for quick freeze, § 305.21 for hot water dip (HWD), § 305.22 for hot water immersion (HWI), § 305.24 for vapor heat (VH), § 305.27 for forced hot air (FHA), §§ 305.31 through 305.34 for irradiation (IR), and § 305.42 for miscellaneous (Misc.).

(i) *Treatment for shipments from foreign localities.*

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| All | All imported fruits and vegetables | Hitchhiker pests or surface pests, except mealybugs. | MB T104–a–1. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| | | Mealybugs | MB T104–a–2. |
| | | Most | Quick freeze T110. |
| | Acorns, chestnuts (see § 319.56–2b of this chapter). | *Cydia splendana* and *Curculio* spp.. | MB T101–t–1 or MB T101–u–1. |
| | Banana | External feeders such as Noctuidae spp., *Thrips* spp., *Copitarsia* spp.. | MB T101–d–1. |
| | Beet | Internal feeders | MB T101–g–1. |
| | Beet | External feeders | MB T101–g–1–1. |
| | Blackberry | External feeders such as *Noctuidae* spp., *Thrips* spp., *Copitarsia* spp., *Pentatomidae* spp., and *Tarsonemus* spp.. | MB T101–h–1. |
| | Broccoli (includes Chinese and rapini). | External feeders and leafminers | MB T101–n–2. |
| | Brussel sprouts | External feeders and leafminers | MB T101–n–2. |
| | Cabbage (European and Chinese) | External feeders | MB T101–j–1. |
| | Cabbage (bok choy, napa, Chinese mustard). | External feeders and leafminers | MB T101–n–2. |
| | Cantaloupe | External feeders | MB T101–k–1. |
| | Carrot | External feeders | MB T101–l–1. |
| | Carrot | Internal feeders | MB T101–m–1. |
| | Cauliflower | External feeders and leafminers | MB T101–n–2. |
| | Celeriac (celery root) | External feeders | MB T101–n–1. |
| | Celery (above ground parts) | External feeders | MB T101–o–1. |
| | Chayote (fruit only) | External feeders | MB T101–p–1. |
| | Cherry | Insects other than fruit flies | MB T101–r–1. |
| | Cherry | *Rhagoletis indifferens* and *Cydia pomonella*. | MB T101–s–1. |
| | Chicory (above ground parts) | External feeders | MB T101–v–1. |
| | Chicory root | External feeders | MB T101–n–1. |
| | Copra | External feeders | MB T101–x–1. |
| | Corn-on-the-cob | *Ostrinia nubilalis* | MB T101–x–1–1. |
| | Cucumber | External feeders | MB T101–y–1. |
| | Dasheen | External feeders | MB T101–z–1. |
| | Dasheen | Internal feeders | MB T101–a–2. |
| | Durian and other large fruits such as breadfruit. | External feeders | Misc. T102–c. |
| | Endive | External feeders | MB T101–b–2. |
| | Fava bean (dried) | Bruchidae | MB T101–c–2.<br>MB T101–d–2. |
| | Garlic | *Brachycerus* spp. and *Dyspessa ulula*. | MB T101–e–2. |
| | Ginger (rhizome) | Internal feeders | MB T101–f–2. |
| | Ginger (rhizome) | External feeders | MB T101–g–2. |
| | Grapefruit and other citrus | *Aleurocanthus woglumi* | MB T101–j–2. |
| | Herbs and spices (dried) | Various stored product pests, except khapra beetle. | MB T101–n–2–1–1. |
| | Herbs, fresh (includes all fresh plant parts except seeds). | External feeders and leafminers.. | |
| | Kiwi | External feeders, *Nysius huttoni* | MB T101–m–2. |
| | Leeks | Internal feeders | MB T101–q–2. |
| | Lentils (dried) | Bruchidae | MB T101–e–1. |
| | Litchi | Mealybugs (Pseudococcidae) | MB T101–b–1–1. |
| | Lime | Mealybugs and other surface pests. | HWI T102–e. |
| | Melon (including honeydew, muskmelon, and watermelon). | External feeders such as Noctuidae spp., *Thrips* spp., *Copitarsia* spp.. | MB T101–o–2. |
| | Onion | Internal feeders and leafminers | MB T101–q–2. |
| | Papaya | *Cercospora mamaonis* and *Phomopis carica-papayae*. | T561: Dip in hot water at 120.2 °F for 20 minutes. |
| | Parsnip | Internal feeders | MB T101–g–1. |
| | Peas (dried) | Bruchidae | MB T101–e–1. |
| | Pecans and hickory nuts | *Curculio caryae* | CT T107–g. |
| | Peppers | Internal pests (except fruit flies) and external pests (except mealybugs). | MB T101–a–3. |
| | Pineapple | Internal feeders | MB T101–r–2 |
| | Plantain | External feeders such as Noctuidae spp., *Thrips* spp., *Copitarsia* spp.. | MB T101–t–2. |
| | Potato (white or Irish) | *Graphognathus* spp. | MB T101–u–2. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| | Potato (white or Irish) | *Ostrinia nubilalis, Phthorimaea operculella.* | MB T101–v–2. |
| | Pulses (dried) | Bruchidae | MB T101–e–1. |
| | Pumpkin (includes calabaza varieties). | External feeders | MB T101–w–2. |
| | Radish | Internal feeders | MB T101–g–1. |
| | Raspberry | External feeders such as Noctuidae spp., *Thrips* spp., *Copitarsia* spp.. | MB T101–x–2. |
| | Shallots | Internal feeders including leafminers. | MB T101–q–2. |
| | Squash (winter, summer, and chayote). | External feeders | MB T101–y–2. |
| | Sweet potato | External and internal feeders | MB T101–b–3–1. |
| | Strawberry | External feeders | MB T101–z–2. |
| | Tuna and other cactus fruit | External feeders and leafminers | MB T101–e–3. |
| | Turnip | Internal feeders | MB T101–g–1. |
| | Yam (see § 319.56–21 of this chapter). | Internal and external feeders | MB T101–f–3. |
| | Zucchini | *Ceratitis capitata, Bactrocera cucurbitae, B. dorsalis.* | VH T106–b–8. |
| | Zucchini | External feeders | MB T101–h–3. |
| Albania | Horseradish | *Baris lepidii* | MB T101–l–2. |
| Algeria | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grapefruit, tangerine | *Ceratitis capitata* | CT T107–a. |
| | Pear, plum, ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| Antigua and Barbuda | Bean (pod), pigeon pea (pod) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| Argentina | Apple, apricot, cherry, kiwi, peach, pear, plum, nectarine, quince, pomegranate. | Species of *Anastrepha* (other than *Anastrepha ludens*), *Ceratitis capitata.* | CT T107–a–1. |
| | Blueberry | *Ceratitis capitata* | MB T101–i–1–1. |
| | Grape | Species of *Anastrepha* (other than *Anastrepha ludens*), *Ceratitis capitata.* | CT T107–a–1. |
| | | Insects other than *Ceratitis capitata* and *Lobesia botrana.* | MB T101–i–2. |
| Armenia | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Australia | Apple | *Austrotortrix* spp. and *Epiphyas* spp., *Bactrocera tryoni, Ceratitis capitata,* and other fruit flies. | CT&MB T109–d–1. |
| | | *Bactrocera tryoni* | CT T107–d. |
| | | Tortricidae | MB T101–a–1. |
| | | External feeders, apple moth | MB T101–a–1. |
| | Asparagus | External feeders such as *Noctuidae* spp., *Thrips* spp. (except *Scirtothrips dorsalis* from Thailand), *Copitarsia* spp.. | MB T101–b–1. |
| | | *Halotydeus destructor* | T101–b–1–1. |
| | Citrus—oranges, grapefruits, limes, lemons, mandarins, satsumas, tangors, tangerines, and other fruits grown from this species or its hybrids (*C. reticulata*). | *Bactrocera tryoni* | CT T107–d. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| | Citrus—oranges, grapefruits, limes lemons, mandarins, satsumas, tangors, tangerines, and other fruits grown from this species or its hybrids (*C. reticulata*). | *Ceratitis capitata* | CT T107–a. |
| | Grape | *Austrotortrix* spp. and *Epiphyas* spp., *Bactrocera tryoni, Ceratitis capitata,* and other fruit flies. | MB&CT T108–b or CT&MB T109–d–1. |
| | Kiwi | *Bactrocera tryoni* | CT T107–d. |
| | Pear | *Austrotortrix* spp., *Epiphyas* spp., *Bactrocera tryoni, Ceratitis capitata,* and other fruit flies. | CT&MB and T109–d–1. |
| | | *Bactrocera tryoni* | CT T107–d. |
| | | Tortricidae | MB T101–a–1. |
| Austria | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Aruba | Bean, garden (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and *leafminers.* | MB T101–k–2 or MB T101–k–2–1. |
| | Green bean | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and *leafminers.* | MB T101–k–2. |
| Azerbaijan | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–1–2. |
| Bahamas | Bean (pod) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| | Pigeon pea (pod) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| Barbados | Bean (pod or shelled), pigeon pea (pod). | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| Belarus | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Belgium | Bean, garden (pod or shelled), pea (pod or shelled). | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–1–2. |
| Belize | Bean (pod or shelled), pigeon pea (pod or shelled). | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Carambola | Species of *Anastrepha* (other than *Anastrepha ludens*). | CT T107–c. |
| | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grapefruit, orange, tangerine | *Anastrepha ludens* | CT T107–b. |
| | Papaya | *Ceratitis capitata, Bactrocera cucurbitae, B. dorsalis.* | FHA T103–d–2 (see § 319.56–2(j) of this part). |
| Bolivia | Blueberry | *Ceratitis capitata* | MB T101–i–1–1. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| Bosnia | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Brazil | Apple, grape (prohibited into California). | Species of *Anastrepha* (other than *Anastrepha ludens*), *Ceratitis capitata.* | CT T107–a–1. |
| | Mango | *Ceratitis capitata, Anastrepha* spp., *Anastrepha ludens.* | HWD T102–a. |
| | Okra | *Pectinophora gossypiella* | MB T101–p–2. |
| Bulgaria | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Cayman Islands | Bean (pod or shelled), pigeon pea (pod). | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| Chile (all provinces except provinces of Region 1 or Chanaral Township of Region 3). | Apricot, nectarine, peach, plum, plumcot. | External feeders | MB T101–a–3. |
| | Cherimoya | *Brevipalpus chilensis* | Misc. T102–b (see § 319.56–2z of this chapter for additional treatment information) |
| | Grape | External feeders | MB T101–i–2–1. |
| | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–1–2. |
| | Lemon (smooth skin) | External feeders, *Brevipalpus chilensis.* | MB T101–n–2–1. |
| | Lime | *Brevipalpus chilensis* | Misc. T102–b–1. |
| | | External feeders, *Brevipalpus chilensis.* | MB T101–n–2–1. |
| | Passion fruit | *Brevipalpus chilensis* | Misc. T102–b–2. |
| | Tomato | External feeders | MB T101–a–3. |
| Chile (all provinces of Region 1 or Chanaral Township of Region 3). | Apple, cherry, pear, quince | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Apricot | *Ceratitis capitata* and external feeders. | CT T107–a and MB T101–a–3. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Avocado | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Babaco (fruit) | *Ceratitis capitata, Bactrocera cucurbitae, B. dorsalis.* | VH T106–b–3. |
| | | External feeders | MB T103–d–1. |
| | Blueberry | *Ceratitis capitata* | MB T101–i–1–1. |
| | Grape | *Ceratitis capitata* | CT T107–a. |
| | | External feeders | MB T101–i–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–1–2. |
| | Kiwi | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Lemon (smooth skinned) | External feeders, *Brevipalpus chilensis.* | MB T101–n–2–1. |
| | Lime | *Brevipalpus chilensis* | Misc. T102–b–2. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| | | External feeders, *Brevipalpus chilensis*. | MB T101–n–2–1. |
| | Loquat | *Ceratitis capitata* | CT T107–a. |
| | Mango | *Anastrepha* spp., *Anastrepha ludens, Ceratitis capitata*. | HWD T102–a. |
| | Mountain papaya | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | VH T106–b–3 or FHA T103–d–1. |
| | Nectarine | *Ceratitis capitata* | CT T107–a. |
| | | External feeders | MB T101–a–3. |
| | Papaya | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | VH T106–b–4 or FHA T103–d–2. |
| | Peach | *Ceratitis capitata* | CT T107–a. |
| | | External feeders | MB T101–a–3. |
| | Persimmon, sand pear | *Ceratitis capitata* | CT T107–a. |
| | Plum, plumcot | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana*. | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | | External feeders | MB T101–a–3. |
| | *Opuntia* spp. | *Ceratitis capitata* | MB T101–d–3. |
| | Tomato | *Scrobipalpula absoluta, Rhagoletis tomatis*. | MB T101–c–3–1. |
| China | Litchi | *Bactrocera cucurbitae, B. dorsalis, Conopomorpha sinensis*. | CT T107–h. |
| | Longan | *Bactrocera dorsalis and B. curcubitae*. | CT T107–j. |
| | Pear (Ya variety), Shandong Province only. | *Bactrocera cucurbitae, B. dorsalis, Eutetranychus orientalis*. | CT T107–f. |
| | Sand pear | *Bactrocera cucurbitae, B. dorsalis, Eutetranychus orientalis*. | CT T107–f. |
| Colombia | Bean, garden | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2 or MB T101–k–2–1. |
| | Cape gooseberry | *Ceratitis capitata* | CT T107–a. |
| | Grape | Species of *Anastrepha* (other than *Anastrepha ludens*). | CT T107–c. |
| | Grapefruit, orange, plum, tangerine, pomegranate. | *Anastrepha ludens* | CT T107–b. |
| | Okra | *Pectinophora gossypiella* | MB T101–p–2. |
| | Tuna | *Ceratitis capitata* | MB T101–d–3. |
| | Yellow pitaya | *Ceratitis capitata* and *Anastrepha fraterculus*. | VH T106–e. |
| Costa Rica | Bean, garden | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2 or MB T101–k–2–1. |
| | Bean, lima (pod or shelled), pigeon pea (pod or shelled). | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leaf miners. | MB T101–k–2. |
| | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera MB&CT cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana*. | T108–a–1 or T108–a–2 or T108–a–3. |
| | Grapefruit, orange, tangerine | *Anastrepha ludens* | CT T107–b. |
| | Mango | *Ceratitis capitata, Anastrepha* spp., *Anastrepha ludens*. | HWD T102–a. |
| Croatia | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana*. | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Cyprus | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana*. | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grapefruit, orange, tangerine | *Ceratitis capitata* | CT T107–a. |
| Czech Republic | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Denmark | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–1–2. |
| Dominica | Bean (pod), pigeon pea (pod) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| Dominican Republic | Bean (pod) | *Cydia fabivora, Epinotia aporema, Maruca testulalis, and leafminers.* | MB T101–k–2. |
| | Goa bean (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis, and leaf miners.* | MB T101–k–2. |
| | Grape | Species of *Anastrepha* (other than *Anastrepha ludens*). | CT T107–c. |
| | Hyacinth bean | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leaf miners. | MB T101–k–2–1. |
| | Pigeon pea (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis, Melanagromyza obtusa* and leaf miners. | MB T101–k–2 or MB T101–k–2–1. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| | Yard long bean (pod) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| Ecuador | Apple | Species of *Anastrepha* (other than *Anastrepha ludens*), *Ceratitis capitata.* | CT T107–a–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Bean (pod or shelled), pigeon pea (pod or shelled). | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Blueberry | *Ceratitis capitata* | MB T101–i–1–1. |
| | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grapefruit, orange, tangerine | Species of *Anastrepha* (other than *Anastrepha ludens*), *Ceratitis capitata.* | CT T107–a–1. |
| | Mango | *Ceratitis capitata*, *Anastrepha* spp., *Anastrepha ludens.* | HWD T102–a. |
| | Okra | *Pectinophora gossypiella* | MB T101–p–2. |
| | Pea (pod) | *Cydia fabivora*, *Epinotia aporema*, *Maruca testulalis*, and leafminers. | MB T101–k–2 or MB T101–k–2–1. |
| Egypt | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata*, *Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Orange | *Ceratitis capitata* | CT T107–a. |
| | Pea (pod or shelled) | *Cydia fabivora*, *Epinotia aporema*, *Maruca testulalis*, and leafminers. | MB T101–k–2 or MB T101–k–2–1. |
| | Pear | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| El Salvador | Bean, garden and lima | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and *leafminers.* | MB T101–k–2 or MB T101–k–2–1. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grapefruit, orange, tangerine | *Anastrepha ludens* | CT T107–b. |
| | Pigeon pea (pod or shelled) | *Cydia fabivora*, *Epinotia aporema*, *Maruca testulalis*, and leafminers. | MB T101–k–2. |
| Estonia | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae*, *B. dorsalis*, *B. tryoni*, *Brevipalpus chilensis*, *Ceratitis capitata*, *Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | Baris lepidii | MB T101–1–2. |
| Finland | Horseradish (to Hawaii) | Baris lepidii | MB T101–1–2. |
| France | Apple, pear | *Ceratitis capitata* | CT T107–a. |
| | Ethrog, kiwi | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae*, *B. dorsalis*, *B. tryoni*, *Brevipalpus chilensis*, *Ceratitis capitata*, *Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata*, *Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–1–2. |
| Georgia, Republic of | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata*, *Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Germany | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, E B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Greece (includes Rhodes) | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| | Kiwi, tangerine, ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Orange, pomegranate | *Ceratitis capitata* | CT T107–a. |
| Grenada | Bean (pod) | *Cydia fabivora, Epinotia aporema, Maruca testulais*, and leafminers. | MB T101–k–2. |
| | Okra | *Pectinophora gossypiella* | MB T101–p–2. |
| | Pigeon pea (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis*, and leafminrs. | MB T101–k–2. |
| Guadeloupe, Dept of (FR) and St. Barthelemy. | Okra (pod) | *Pectinophors gossypiella* | MB T101–p–2. |
| | Pigeon pea (pod or shelled), bean (pod). | *Cydia fabivora, Epinotia aporema, Maruca testulalis*, and leafminers. | MB T101–k–2. |
| Guatemala | Ethrog | *Ceratitis capitata* | CT T107–a. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grapefruit, orange, plum, tangerine. | *Anastrepha ludens* | CT T107–b. |
| | Mango | *Ceratitis capitata, Anastrepha* spp., *Anastrepha ludens.* | HWD T102–a. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| | Pigeon pea (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis*, and leafminers. | MB T101–k–2. |
| | Tuna | *Ceratitis capitata* | MB T101–d–3. |
| Guyana | Apple, orange | Species of *Anastrepha* (other than *Anastrepha ludens*). | CT T107–c. |
| | Bean (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis*, and leafminers. | MB T101–k–2. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| Haiti | Apricot, pomegranate | Species of *Anastrepha* (other than *Anastrepha ludens*). | CT T107–c. |
| | Mango | *Ceratitis capitata, Anastrepha* spp., *Anastrepha ludens.* | HWD T102–a. |
| | Bean (pod), pigeon pea (pod or shelled). | *Cydia fabivora, Epinotia aporema, Maruca testulalis*, and leafminers. | MB T101–k–2. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| Hungary | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| India | Litchi (fruit) | *Bactrocera cucurbitae, B. dorsalis Eutetranychus orientalis.* | CT T107–f. |
| Israel (includes Gaza) | Apple, apricot, nectarine, peach, pear, plum. | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Avocado | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata.* | MB T101–c–1. |
| | *Brassica oleracea* | External feeders and leafminers | MB T101–n–2. |
| | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grapefruit, litchi, loquat, orange, persimmon, pomegranate, pummelo, tangerine. | *Ceratitis capitata* | CT T107–a. |
| | Horseradish root (to Hawaii) | *Baris lepidii* | MB T101–1–2. |
| | Lettuce (leaf), field grown | External feeders and leafminers | MB T101–n–2. |
| | Pea (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis*, and leafminers. | MB T101–k–2. |
| | Tuna (fruit) | *Ceratitis capitata* | MB T101–d–3. |
| Italy | Ethrog (North Atlantic ports only) | *Ceratitis capitata* | CT T107–a. |
| | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grapefruit, orange, persimmon, tangerine. | *Ceratitis capitata* | CT T107–a. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| | Kiwi (fruit) | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Pea (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Tuna (fruit) | *Ceratitis capitata* | MB T101–d–3. |
| Jamaica | Bean (pod), pigeon pea (pod) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Ivy gourd (fruit) | *Cydia, fabivora, Epinotia aporema, Maruca testullis,* and leafminers. | MB T101–k–2. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| | Thyme | External feeders and leafminers | MB T101–n–2. |
| Japan (includes Bonian Island, Ryukyu, Island Ryukyu Island, Tokara Island, Volcano Islands). | Apple (Fuji only) | *Carposina niponensis, Conogethes punctiferalis, Tetranychus viennensis, T. kanzawai.* | CT&MB T109–a–1 or T109–a–2. |
| | Cabbage (to Hawaii) | External feeders and leafminers | MB T101–n–2. |
| | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–1–2. |
| Jordan | Apple, persimmon | *Ceratitis capitata* | CT T107–a. |
| | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata,* | CT T107–a or MB T1011–h–2–l. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| Kazakhstan | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | Baris lepidii | MB T101–1–2. |
| Korea, Republic of (South) | Apple (Fuji only) | *Carposina niponensis, Conogethes punctiferalis, Tetranychus viennensis, T. kanzawai.* | CT&MB T109–a–1 or T109–a–2. |
| Kyrgyzstan | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Latvia | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tyroni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Lebanon | Apple | *Ceratitis capitata* | CT T107–a. |
| Libya | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| Lithuania | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Luxembourg | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| Macedonia | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Martinique, Dept. of (FR) | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Mexico | Apple, cherry, peach, plum, tangerine. | *Anastrepha ludens* | CT T107–b. |
| | *Brassica* spp., *Chenopodium* spp., cilantro. | External feeders such as *Noctuidae* spp., *Thrips* spp. (except *Scirtothrips dorsalis* from Thailand), *Copitarsia* spp.. | MB T101–b–1. |
| | Carambola | Species of *Anastrepha* (other than *Anastrepha ludens*). | CT T107–c. |
| | Grapefruit | *Anastrepha ludens* | CT T107–b. |
| | | *Anastrepha* spp. | MB T101–j–2–1 or FHA T103–a–1 or VH T106–a–2. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| | Mango | *Anastrepha ludens* | VH T106–a–3. |
| | | *Ceratitis capitata, Anastrepha* spp., *Anastrepha ludens.* | HWD T102–a. |
| | | *Anastrepha ludens, Anastrepha obliqua, Anastrepha serpentina.* | FHA T103–c–1. |
| | Okra | *Pectinophora gossypiella* | MB T101–p–2. |
| | Orange | *Anastrepha ludens* | CT T107–b. |
| | | *Anastrepha* spp. | MB T101–j–2–1 or FHA T103–a–1. |
| | | *Anastrepha* spp. (includes *Anastrepha ludens).* | VH T106–a–4. |
| | Pigeon pea (pod or shelled), bean (pod or shelled). | *Cydia fabivora, Epinotia aporema, Maruca testulalis.* | MB T101–k–2. |
| | Tangerine | *Anastrepha* spp. | MB T101–j–2–1 or FHA T103–a–1 or VH T106–a–1 or VH T106–a–1–1. |
| Moldova | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Montserrat | Bean (pod), pigeon pea (pod) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Okra | *Pectinophora gossypiella* | MB T101–p–2. |
| Morocco | Apricot, peach, pear, plum | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Cipollino (bulb/wild onion) | *Exosoma lusitanica* | MB T101–w–1. |
| | Ethrog | *Ceratitis capitata* | CT T107–a. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grapefruit, orange, tangerine | *Ceratitis capitata* | CT T107–a. |
| Netherlands, Kingdom of | Bean, garden | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–1–2. |
| Netherlands Antilles (includes Bonaire, Curacao, Saba, St. Eustatius). | Bean (pod or shelled), pigeon pea (pod or shelled). | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| New Zealand | Apple | Tortricidae | MB T101–a–1. |
| | Asparagus | *Halotydeus destructor* | MB T101–b–1–1. |
| | Pear | Tortricidae | MB T101–a–1. |
| Nicaragua | Faba bean (pod), green bean (pod), mung bean (pod), pea (pod). | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2 or MB T101–k–2–1. |
| | Mango | *Ceratitis capitata, Anastrepha* spp., *A. ludens.* | HWD T102–a. |
| | Yard-long-bean (pod) | *Cydia fabivora, Epinotia aporema,* and *Maruca testulalis.* | MB T101–k–2 or MB T101–k–2–1. |
| Norway | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–1–2. |
| Panama and canal zone | Bean (garden) and lima (pod) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2 or MB T101–k–2–1. |
| | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grapefruit, orange, tangerine | *Anastrepha ludens* | CT T107–b. |
| | Pigeon pea (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| Peru | Asparagus | External feeders | MB T101–b–1. |
| | Bean (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Blueberry | *Ceratitis capitata* | MB T101–i–1–1. |
| | Grape | Species of *Anastrepha* (other than *Anastrepha ludens*), *Ceratitis capitata.* | CT T107–a–1. |
| | Mango | *Ceratitis capitata, Anastrepha* spp., *Anastrepha ludens.* | HWD T102–a. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| Philippines | Avocado | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata.* | MB T101–c–1. |
| | Mango | *Bactrocera occipitalis* and *B. philippinensis.* | VH T106–d–1. |
| Poland | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Portugal (includes Azores) | Bean, faba (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–1–2. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| Romania | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Ceratitis capitata, Eutetranychus orientalis.* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Russian Federation | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Saint Kitts and Nevis | Bean (pod), pigeon pea (pod) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| Saint Lucia | Bean (pod), pigeon pea (pod) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| St. Martin (France and Netherlands). | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| Saint Vincent and the Grenadines | Bean (pod), pigeon pea (pod) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| Senegal | Bean, garden (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2 or MB T101–k–2–1. |
| Slovakia | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Slovenia | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–l–2. |
| South Africa | Apple, grape, pear | *Ceratitis capitata* | CT T107–a. |
| | Nectarine, peach, plum | *Cryptophlebia leucotreta* and *Pterandrus rosa.* | CT T107–e. |
| | Citrus (fruit, Western Cape Province only). | *Cryptophlebia leucotreta* and *Pterandrus rosa.* | CT T107–e. |
| Spain | Apple | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grapefruit, loquat, orange, tangerine. | *Ceratitis capitata* | CT T107–a. |
| | Horseradish | *Baris lepidii* | MB T101–l–2. |
| | Kiwi | *Ceratitis capitata* | CT T107–a. |
| | Lettuce (above ground parts) | External feeders and leafminers | MB T101–n–2. |
| | Ortanique (fruit) | *Ceratitis capitata* | CT T107–a. |
| | Persimmon (fruit) | *Ceratitis capitata* | CT T107–a. |
| Suriname | Bean (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| Sweden | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–l–2. |
| Switzerland | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata*, *Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae*, *B. dorsalis*, *B. tryoni*, *Brevipalpus chilensis*, *Ceratitis capitata*, *Lobesia botrana*. | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–l–2. |
| Syrian Arab Republic | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae*, *B. dorsalis*, *B. tryoni*, *Brevipalpus chilensis*, *Ceratitis capitata*, *Lobesia botrana*. | MB&T T108–a–1 or T108–a–2 or T108–a–3. |
| | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae*, *B. dorsalis*, *B. tryoni*, *Brevipalpus chilensis*, *Ceratitis capitata*, *Lobesia botrana*. | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| Taiwan | Carambola | *Bactrocera cucurbitae, B. dorsalis, Eutetranychus orientalis*. | CT T107–f. |
| | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–l–2. |
| | Litchi (including clusters of fruit attached to a stem). | *Bactrocera dorsalis*, *B. cucurbitae*, *Conopomorpha sinensis*. | CT T107–h. |
| | Mango | *Bactrocera dorsalis* | VH T106–d. |
| Tajikistan | Horseradish | *Baris lepidii* | MB T101–l–2. |
| | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata*, *Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae*, *B. dorsalis*, *B. tryoni*, *Brevipalpus chilensis*, *Ceratitis capitata*, *Lobesia botrana*. | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| Thailand | Asparagus (shoot) | *Scirtothrips dorsalis* | MB T101–b–1–1. |
| Trinidad and Tobago | Bean (shelled), pigeon pea (shelled). | *Cydia fabivora*, *Epinotia aporema*, *Maruca testulalis*, and leafminers. | MB T101–k–2. |
| | Grapefruit, orange, tangerine | Species of *Anastrepha* (other than *Anastrepha ludens*). | CT T107–c. |
| | Okra, roselle | *Pectinophora gossypiella* | MB T101–p–2. |
| Tunisia | Ethrog | *Ceratitis capitata* | CT T107–a |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana*. | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana*. | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grapefruit, orange, tangerine | *Ceratitis capitata* | CT T107–a. |
| | Peach, pear, plum | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana*. | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| Turkey | Ethrog | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana*. | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana*. | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Orange | *Ceratitis capitata* | CT T107–a. |
| Turkmenistan | Grape | *Lobesia botrana* | MB T101–h–2. |

| Location | Commodity | Pest | Treatment schedule [1] |
|---|---|---|---|
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Ukraine | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| United Kingdom (includes Channel Islands, Shetland Island). | Horseradish (to Hawaii) | *Baris lepidii* | MB T101–1–2. |
| Uruguay | Apple, nectarine, peach pear, plum. | Species of *Anastrepha* (other than *Anastrepha ludens), Ceratitis capitata.* | CT T107–a–1. |
| | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| Uzbekistan | Grape | *Lobesia botrana* | MB T101–h–2. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–h–2–1. |
| | | *Ceratitis capitata, Lobesia botrana* | MB T101–h–2–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Brevipalpus chilensis, Ceratitis capitata, Lobesia botrana.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Horseradish | *Baris lepidii* | MB T101–1–2. |
| Venezuela | Bean (pod or shelled), pigeon pea (pod or shelled). | *Cydia fabivora, Epinotia aporema, Maruca testulalis.* | MB T101–k–2 or MB T101–k–2–1. |
| | Grape, grapefruit, orange, tangerine. | Species of *Anastrepha* (other than *Anastrepha ludens*), *Ceratitis capitata.* | CT T107–a–1. |
| | Mango | *Ceratitis capitata, Anastrepha* spp., *Anastrepha ludens.* | HWD T102–a. |
| | Okra | *Pectinophora gossypiella* | MB T101–p–2. |
| Zimbabwe | Apple, kiwi, pear | *Ceratitis capitata* | CT T107–a. |
| | Apricot, nectarine, peach, plum | *Cryptophlebia leucotreta* and *Pterandrus rosa.* | CT T107–e. |

[1] Treatment by irradiation in accordance with § 305.31 may be substituted for other approved treatments for the mango seed weevil *Sternochetus mangiferae* (Fabricus) or for one or more of the following 11 species of fruit flies: *Anastrepha fraterculus, A. ludens, A. obliqua, A. serpentina, A. suspensa, Bactrocera cucurbitae, B. dorsalis, B. tryoni, B. jarvisi, B. latifrons,* and *Ceratitis capitata.*

(ii) *Treatment for shipments from U.S. quarantine localities.*

| Location | Commodity | Pest | Treatment schedule |
|---|---|---|---|
| Areas in the United States under Federal quarantine for the listed pest. | Fruit of the genera Citrus and Fortunella and of the species *Clausena lansium* and *Poncirus trifoliata.* | *Xanthomonas axonopodis* pv. *citri* | CMisc. CC1 or CMisc. CC2. |
| | Any fruit listed in § 301.64–2(a) of this chapter. | *Anastrepha ludens* | IR. |
| | Any article listed in § 301.78–2(a) of this chapter. | *Ceratitis capitata* | IR. |
| | Apple | *Anastrepha ludens* | CT T107–b. |
| | | *Anastrepha* spp. (other than *A. ludens*). | CT T107–a–1 or CT T107–c. |
| | | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | | *Ceratitis capitata* | CT T107–a or MB&CT T108–b. |
| | Apricot | *Anastrepha ludens* | CT T107–b. |
| | | *Bactrocera dorsalis, Ceratitis capitata.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | | *Ceratitis capitata* | CT T107–a. |
| | Avocado | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |

| Location | Commodity | Pest | Treatment schedule |
|---|---|---|---|
| | Bell pepper | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata.* | VH T106–b–1. |
| | Cherry | *Bactrocera dorsalis, Ceratitis capitata.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | | *Ceratitis capitata* | CT T107–a. |
| | Citrons | *Anastrepha ludens* | CT T107–b. |
| | | *Ceratitis capitata* | CT T107–a. |
| | Citrus | *Anastrepha ludens* | FHA T103–a–1. |
| | | *Anastrepha* spp. (other than *A. ludens*). | CT T107–a–1, CT T107–c. |
| | | *Bactrocera dorsalis* | MB&CTOFF or CT&MBOFF. |
| | | *Ceratitis capitata* | CT T107–a or MB T101–w–1–2. |
| | Citrus fruit regulated under § 301.78–2(a) of this chapter. | *Ceratitis capitata* | MB&CTMedfly or CTMedfly. |
| | Citrus fruit regulated under § 301.99–2(b) of this chapter. | *Anastrepha serpentina* | MBSFF. |
| | Eggplant | *Bactrocera cucurbitae, Ceratitis capitata.* | VH T106–b–2. |
| | Grape | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata.* | CT T107–f or MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | | *Bactrocera dorsalis* | MB&CTOFF or CT&MBOFF. |
| | | *Ceratitis capitata* | MB T101–h–2–1 or CT T107–a or MB&CT T108–b. |
| | Grapefruit | *Anastrepha ludens* | CT T107–b or MB T101–j–2–1 or FHA T103–a–1. |
| | | *Ceratitis capitata* | CT T107–a. |
| | Kiwi | *Ceratitis capitata* | CT T107–a or MB T101–m–2–1 or MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Litchi | *Anastrepha ludens* | CT T107–b. |
| | Longan | *Anastrepha ludens* | CT T107–b. |
| | | *Bactrocera dorsalis* | CT T107–h. |
| | Loquat | *Ceratitis capitata* | CT T107–a. |
| | Nectarine | *Bactrocera dorsalis* | MB&CT T108–a–1or T108–a–2 or T108–a–3. |
| | | *Ceratitis capitata* | CT T107–a or CT T107–c or MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Okra | *Pectinophora gossypiella* | MB T101–p–2. |
| | Orange | *Anastrepha ludens* | CT T107–b MB T101–j–2–1 orFHA T103–a–1. |
| | | *Ceratitis capitata* | CT T107–a or CT T107–c. |
| | Optunia cactus (*Optunia* spp.) | *Ceratitis capitata* | MB T101–d–3. |
| | Papaya | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata.* | VH T106–c VH T106–b–4 or. |
| | Peach | *Anastrepha ludens* | CT T107–b. |
| | | *Anastrepha* spp. (other than *A. ludens*). | CT T107–a–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | | *Ceratitis capitata* | CT T107–a or T107–c. |
| | Pear | *Anastrepha ludens* | CT T107–b. |
| | | *Anastrepha* spp. (other than *A. ludens*). | CT T107–a–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata.* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | | *Ceratitis capitata* | CT T107–a or CT T107–c or MB&CT T108–b. |
| | Pepper, bell | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata.* | VH T106–b–1. |
| | Persimmons | *Anastrepha ludens* | CT T107–b. |
| | Pineapple (other than smooth Cayenne). | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata.* | VH T106–b–5. |
| | Plum | *Anastrepha ludens* | CT T107–b. |
| | | *Bactrocera dorsalis* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | | *Ceratitis capitata* | CT T107–a or CT T107–c or MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Pomegranate | *Anastrepha ludens* | CT T107–b. |
| | | *Ceratitis capitata* | CT T107–a or CT T107–c. |
| | Pummelo | *Ceratitis capitata* | CT T107–a. |
| | Quince | *Anastrepha ludens* | CT T107–b. |

| Location | Commodity | Pest | Treatment schedule |
|---|---|---|---|
| | | *Anastrepha* spp. (other than *A. ludens*. | CT T107–a–1. |
| | | *Bactrocera dorsalis* | MB&CT T108–a–1 or T108–a–2 or T108–a–3. |
| | | *Ceratitis capitata* | CT T107–a. |
| | Squash | *Bactrocera cucurbitae, B. dorsalis* | VH T106–b–6. |
| | Tomato | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | VH T106–b–7. |
| | | *Bactrocera dorsalis* | MBOFF. |
| | | *Ceratitis capitata* | MB T101–c–3. |
| | White sapote | *Anastrepha ludens* | CT T107–b. |
| Hawaii | Abiu | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | IR. |
| | Atemoya | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | IR. |
| | Avocado | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | MB T101–c–1. |
| | | *Ceratitis capitata* | CT T107–a. |
| | | *Bactrocera cucurbitae, B. dorsalis, B. tryoni, Ceratitis capitata, Brevipalpus chiliensis*, and *Lobesia botrana*. | CT T108–a–1 or T108–a–2 or T108–a–3. |
| | Bell pepper | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | IR or VH T106–b–1. |
| | Carambola | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | IR. |
| | Citrus | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | FHA T103–b–1. |
| | Eggplant | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | IR or VH T106–b–2. |
| | Litchi | *Bactrocera or dorsalis, Ceratitis capitata*. | HWI T102–d or VH T106–f. |
| | | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | IR. |
| | Longan | *Bactrocera dorsalis, Ceratitis capitata*. | HWI T102–d–1. |
| | | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | IR. |
| | Mango | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | IR. |
| | Papaya | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | VH T106–b–4 or VH T106–c or FHA T103–d–2 or IR. |
| | Pineapple (other than smooth Cayenne). | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | IR or VH T106–b–5. |
| | Rambutan | *Bactrocera dorsalis, Ceratitis capitata*. | FHA T103–e or VH T106–g. |
| | | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | IR. |
| | Sapodilla | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | IR. |
| | Squash, Italian | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | IR or VH T106–b–6. |
| | Sweet potato | *Euscepes postfasciatus, Omphisa anastomosalis, Elytrotreinus subtruncatus*. | MB T101–b–3–1 or IR. |
| | Tomato | *Ceratitis capitata* | VH T106–b–5 or MB T101–c–3. |
| | | *Bactrocera cucurbitae, B. dorsalis, Ceratitis capitata*. | IR or VH T106–b–7. |
| Puerto Rico | Beans (string, lima, faba) and pigeon peas (fresh shelled or in the pod). | *Cydia fabivora, Epinotia aporema, Maruca testulalis, Melanagromyza obtusa,* and leafminers. | MB T101–k–2 or MB T101–k–2–1. |
| | Citrus fruits (orange, grapefruit, lemon, citron, and lime). | *Anastrepha obliqua* | CT T107–c. |
| | Mango | *Anastrepha* spp., *Ceratitis capitata*. | HWD T102–a. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| | Sweet potato | External and internal feeders | MB T101–b–3–1. |
| | Pigeon pea (pod or shelled) | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2. |
| Virgin Islands | Beans (string, lima, faba) and pigeon peas, in the pod. | *Cydia fabivora, Epinotia aporema, Maruca testulalis,* and leafminers. | MB T101–k–2 or MB T101–k–2–1. |

| Location | Commodity | Pest | Treatment schedule |
|---|---|---|---|
| | Citrus fruits (orange, grapefruit, lemon, citron, and lime). | *Anastrepha obliqua* | CT T107–c. |
| | Mango | *Anastrepha* spp., *Ceratitis capitata*. | HWD T102–a. |
| | Okra (pod) | *Pectinophora gossypiella* | MB T101–p–2. |
| | Sweet potato | External and internal feeders | MB T101–b–3–1. |

(i) *Garbage.* For treatment of garbage, see § 305.33.

(j) *Grains and seeds not intended for propagation.* The treatment schedules for which administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation, § 305.23 for steam sterilization (SS), and § 305.25 for dry heat (DH).

| Plant material | Pest | Treatment schedule |
|---|---|---|
| Acorns | *Cydia splendana* and *Curculio* spp | MB T302–g–1 or MB T302–g–2. |
| Corn seed (commercial lots) | Various corn-related diseases | SS T510–1. |
| Ear corn | Borers | MB T302–a–1–1 or DH T302–a–1–2. |
| Grains and seeds (guar ''gum'') | *Trogoderma granarium* | MB T302–c–1 or MB T302–c–3. |
| Grains and seeds | *Trogoderma granarium* | MB T302–c–2. |
| Grains and seeds contaminated with cotton seed. | *Pectinophora* spp | MB T301–a–1–1 or MB T301–a–1–2. |
| Grains and seeds | Insects other than *Trogoderma granarium* | MB T302–e–1 or MB T302–e–2. |
| Grains and seeds excluding *Rosmarinus* seed | Snails | T302–f: Remove snails through separation by screening or hand removal. If not feasible, an inspector will deny entry or treat with appropriate schedule (See miscellaneous cargo in paragraph (m) of this section.). |
| Shelled corn contaminated with cottonseed. (Do not use shelled corn treated with T301 for food or feed.). | *Pectinophora* spp | MB T302–b–1–2 (See MB T301–a–1–1 or MB T301–a–1–2.). |

(k) *Hay, baled.* For treatment of baled hay for *Mayetiola destructor,* see the phosphine treatment schedule T311 in § 305.7.

(l) *Khapra beetle.*

(1) For the heat treatment of feeds and milled products that are heated as a part of the processing procedure, or for other commodities that can be subjected to heat, and that are infested with khapra beetle, see treatment schedule T307–a in § 305.26.

(2) See treatment schedule T306–c–1 in § 305.6 for finely ground oily meals and flour.

(3) See also specific articles where the pest is *Trogoderma granarium* (khapra beetle).

(4) See treatment schedule T302–g–1 in § 305.6 for sorptive materials.

(m) *Miscellaneous (nonfood, nonfeed commodities or articles).* The treatment schedules for which administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation, § 305.8 for sulfuryl fluoride, § 305.16 for cold treatment (CT), and § 305.23 for steam sterilization (SS).

| Material | Pest | Treatment schedule |
|---|---|---|
| Brassware from Bombay (Mumbai), India | *Trogoderma granarium* | MB T413–a or MB T413–b. |
| Inanimate, nonfood articles | Gypsy moth egg masses | MB T414. |
| Miscellaneous cargo (nonfood, nonfeed commodities). | Quarantine significant snails of the family Achatinidae, including *Achatina, Archachatina, Lignus, Limicolaria*. | MB T402–a–1 or CT T403–a–6–3. |
| | Quarantine significant snails of the family Hygromiidae, including the following genera: *Canidula, Cernuella, Cochlicella, Helicella, Helicopsis, Monacha, Platytheba, Pseudotrichia, Trochoidea, Xerolenta, Xeropicta, Xerosecta, Xerotricha*. | MB T403–a–2–1 or MB T403–a–2–2 or CT T403–a–2–3. |
| | Quarantine significant slugs of the families Agriolimacidae, Arionidae, Limacidae, Milacidae, Philomycidae, Veronicellidae, including the following genera: *Agriolimax, Arion, Colosius, Deroceras, Diplosolenodes, Leidyula, Limax, Meghimatium, Milax, Pallifera, Pseudoveronicella, Sarasinula, Semperula, Vaginulus, Veronicella*. | MB T403–a–3. |
| | Quarantine significant snails of the family Helicidae, including the following genera: *Caracollina, Cepaea, Cryptomphalus, Helix, Otala, Theba*. | MB T403–a–4–1 or MB T403–a–4–2 or CT T403–a–4–3. |

| Material | Pest | Treatment schedule |
|---|---|---|
| | Quarantine significant snails of the families Bradybaenidae and Succineidae, including the following genera: *Bradybaena, Cathaica, Helicostyla, Omaloynyx, Succinea, Trishoplita*. | MB T403–a–5–1 or MB T403–a–5–2, or CT T403–a–5–3. |
| | Quarantine significant snails sensitive to cold treatment. Members of the families Bradybaenidae, Helicidae, Helicellidae, Hygromiidae, and Succineidae, including the following genera: *Bradybaena, Candidula, Cepaea, Cathaica, Cernuella, Cochlicella, Helicella, Helicostyla, Theba, Trishoplita, Trochoidea, Xerolenta, Xeropicta, Xerosecta, Xerotricha*. | CT T403–a–6–1. |
| | Quarantine significant snails sensitive to cold treatment, certain members of the family Helicidae, including the genera *Helix* and *Otala*. | CT T403–a–6–2. |
| | Quarantine significant snails sensitive to cold treatment of the family Achatinidae, including the genera *Achatina, Archachatina, Lignus, Limicolaria*. | CT T403–a–6–3. |
| | *Globodera rostochiensis* | MB T403–c. |
| | *Trogoderma granarium* | MB T401–b or MB T402–b–2. |
| | Wood borers or termites | See treatments for wood products in paragraph (y) of this section. |
| | *Pieris* spp. (all life stages of cabbageworms) and all other Lepidoptera, hitchhiking insects, including other than Lepidoptera. | MB T403–f. |
| Miscellaneous cargo (nonfood, nonfeed commodities) that is sorptive or difficult to penetrate. | Quarantine significant insects not specifically provided for elsewhere in nonfood or nonfeed commodities. | MB T403–e–1–1 or MB T403–e–1–2. |
| Miscellaneous cargo (nonfood, nonfeed commodity) that is not sorptive or difficult to penetrate. | Quarantine significant pests other than insects (including snails of the families Helicarionidae, Streptacidae, Subulinidae, and Zonitidae, as well as other noninsect pests). | MB T403–e–2. |
| Nonfood materials | Ticks | MB T310–a or MB T310–b or sulfuryl fluoride T310–d. |
| Nonplant articles | Potato cyst nematode | MB T506–2–1 or SS T506–2–3. |
| Nonplant products | Ants | MB T411. |

(n) *Plants, bulbs, corms, tubers, rhizomes, and roots.* The treatment schedules for which administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation, § 305.10 for combination (COM), and § 305.42(c) for miscellaneous (Misc.).

| Plant material | Pest | Treatment schedule |
|---|---|---|
| *Anchusa, Astilbe, Clematis, Dicentra, Gardenia, Helleborus, Hibiscus, Kniphofia, Primula*. | Lesion nematodes (*Pratylenchus* spp.) | T553–2: Hot water dip at 118 °F for 30 minutes. |
| *Acalypha* | *Pratylenchus* spp | T570–1: Hot water dip at 110 °F for 50 minutes. |
| *Aconitum* | *Aphelenchoides fragariae* spp | T570–2: Hot water dip at 110 °F for 50 minutes. |
| *Allium, Amaryllis,* and bulbs | Bulb nematodes: *Ditylenchus dipsaci, D. destructor*. | T552–1: Presoak bulbs in water at 75 °F for 2 hours, then at 110–111 °F for 4 hours. |
| *Amaryllis* | *Ditylenchus destructor* | T565–1: Hot water dip at 110 °F for 4 hours immediately after digging. |
| Aquatic plants | Snails of the families: Ampullariidae, Bulinidae, Lymnaeidae, Planorbidae, Viviparidae. | T201–q: Hot water treatment at 112 °F for 10 minutes. (*Elodea, Danes,* and *Cabomba caroliniana* plants not tolerant to this treatment.) |
| *Armoracea* (horseradish roots), bulbs (not specifically provided for). | *Globodera rostochiensis* and *G. pallida* | T553–3: Hot water dip at 118 °F for 30 minutes. |
| *Astilbe, Bletilla hyacinthina,* Cimicifuga, *Epimedium pinnatum, Hosta, Paeonia*. | *Aphelenchoides besseyi* | T564–1: Presoak in water at 68 °F for 1 hour followed by hot water soak at 110 °F for 1 hour. Then dip in cold water and let dry. |
| *Astilbe* roots | *Brachyrhinus* larvae | MB T202–b. |
| *Azalea* | *Chrysomyxa* spp | T501–1: Remove infested parts and treat all plants of same species in shipment with 4–4–50 Bordeaux dip or spray. |

| Plant material | Pest | Treatment schedule |
|---|---|---|
| *Azalea* hybrid | *Chrysomyxa* spp | T501–2: Remove infested parts and treat all plants of same species in shipment with 4–4–50 Bordeaux dip or spray; or T505–1–1: Treat with mancozeb or other approved fungicide of equal effectiveness according to the label. |
| Banana roots | External feeders | T202–c: Pretreatment at 110 °F for 30 minutes. Then, hot water dip at 120 °F for 60 minutes. |
| *Begonia* | *Aphelenchoides fragariae* | T559–1: Dip in hot water at 118 °F for 5 minutes. |
| *Bletilla hyacinthina* | *Aphelenchoides fragariae* | T553–4: Dip in hot water at 118 °F for 30 minutes. |
| Bromeliads | External feeders | MB T201–e–1. |
| | Internal feeders such as borers and miners | MB T201–e–2. |
| | *Phyllosticta bromeliae Uredo* spp | T507–1: Remove infested leaves and treat all plants of same species in shipment with Captan following label directions. |
| Cacti and other succulents | External feeders (other than soft scales) infesting collected dormant and nondormant plant material. | MB T201–f–1. |
| | Borers and soft scales | MB T201–f–2. |
| *Calla* (rhizomes) | *Meloidogyne* spp | T556–1: Dip in hot water at 122 °F for 30 minutes. |
| *Camellia* (light infestation) | *Cylindrosporium camelliae* | *Light infestation:* T509–1–1: Remove infested leaves and dip or spray plant with 4–4–50 Bordeaux. Dry quickly and thoroughly. *Heavy infestation:* An inspector will refuse entry. |
| Christmas tree | *Phoma chrysanthemi* | T501–5: Remove infested parts and treat all plants of same species in shipment with 4–4–50 Bordeaux dip or spray. |
| *Chrysanthemum* | *Phoma chrysanthemi* | T501–4: Remove infested parts and treat all plants of same species in shipment with 4–4–50 Bordeaux dip or spray. |
| *Chrysanthemum* rooted and unrooted cuttings | Aphids | MB T201–g–1. |
| | External feeders | COM T201–g–2. |
| | Leafminers, aphids, mites, etc. (*Chrysanthemum* spp. from Dominican Republic and Colombia when infested with Agromyzid leafminers requires no treatment unless destined to Florida.). | T201–g–3: Dip in hot water at 110–111 °F for 20 minutes. |
| *Chrysanthemum* (not including Pyrethrum) | *Meloidogyne* spp. and *Pratylenchus* spp | T557–1: Dip in hot water at 118 °F for 25 minutes. |
| Commodities infested with | Slugs of the families Agriolimacidae, Arionidae, Limacidae, Milacidae, Philomycidae, Veronicellidae, including the following genera: *Agriolimax, Arion, Colosius, Deroceras, Diplosolenodese, Leidyula, Limax, Meghimatium, Milax, Pallifera, Pseudoveronicella, Sarasinula, Semperula, Vaginulus, Veronicella.* | MB T201–l. |
| *Convallaria* | *Globodera rostochiensis* and *G. pallida* | T551–1: Keep the pips frozen until time for treatment. Then thaw enough to separate bundles just before treatment begins. Without preliminary warmup, immerse in hot water at 118 °F for 30 minutes. |
| *Crocus* | *Aphelenchoides subtenuis, Ditylenchus destructor.* | T565–2: Hot water at 110 °F for 4 hours immediately after digging. |
| Cycads (except *Dioon edule*) | External feeders | MB T201–h–1. |
| Deciduous woody plants (dormant) | External feeders | MB T201–a–1. |
| | Gypsy moth egg masses | MB T313–a or MB T313–b. |
| | Mealybugs | MB T305–c. |
| Deciduous woody plants (dormant), root cuttings, scion wood cuttings, and nonfoliated citrus whitefly host: *Acer, Berberis, Fraxinus, Philadelphus, Rosa, Spiraea, Syringa.* | Borers, Citrus whitefly hosts | MB T201–a–2 or MB T201–k–1. |
| *Dioon edule* | External feeders | MB T201–h–2. |
| *Dieffenbachia, Dracaena, Philodendron* (plants and cuttings). | External feeders | MB T201–i–1. |
| | Internal feeders | MB T201–i–2. |
| Evergreens (*Azalea, Berberis, Camellia, Cedrus, Cupressus, Ilex, Juniperus, Photinia, Podocarpus, Thuja,* and *Taxus*). | External feeders | MB T201–b–1. |

| Plant material | Pest | Treatment schedule |
|---|---|---|
| *Exceptions:* | | |
| *Araucaria* | External feeders | MB T201–c–1. |
| *Azalea indica* | External feeders | MB T201–c–2. |
| Cycads | External feeders | MB T201–l. |
| Hosts | *Dialeurodes citri* | MB T201–k–1. |
| *Daphne* | External feeders | MB T201–c–1. |
| *Lavandula* | External feeders | Misc. T201–p–1. |
| *Osmanthus americanus* | External feeders | COM T201–p–2. |
| *Pinus* (Canada to certain States) | | MB T201–j. |
| Peanuts | Gypsy moth egg masses | MB T313–a. |
| Foliated host plants of *Dialeurodes citri*, excluding *Osmanthus americanus*. | *Dialeurodes citri* | MB T201–k–1. |
| *Fragaria* (strawberry) | *Aphelenchoides fragariae* | T569–1: Hot water at 121 °F for 7 minutes. |
| | *Pratylenchus* spp. | T558–1: Dip in hot water at 127 °F for 2 minutes. |
| Garlic (see § 319.37–6(c)) | *Brachycerus* spp. and *Dyspessa ulula* | MB T202–j. |
| *Gentiana* | *Septoria gentianae* | T507–2: Remove infested leaves and treat all plants of same species in shipment with Captan following label directions. |
| *Gladiolus* | *Taeniothrips simplex* | MB T202–e–1 or MB 202–e–2. |
| | *Ditylenchus destructor* | T565–3: Hot water at 110 °F for 4 hours immediately after digging. |
| Greenhouse-grown plants, herbaceous plants and cuttings, greenwood cuttings of woody plants. | External feeders, leafminers, thrips | MB T201–c–1. |
| | Borers and soft scales | MB T201–c–2. |
| *Exceptions*: | | |
| Bromeliads | External feeders | MB T201–e–3–1. |
| Cacti and other succulents | External feeders | MB T201–j. |
| *Chrysanthemum* | External feeders | MB T201–g–1. |
| Cycads | External feeders | MB T201–1. |
| *Cyclamen* | Mites | MB T201–a–2. |
| *Dieffenbachia*, *Dracaena*, and *Philodendron*. | External feeders | MB T201–i–1. |
| *Kalanchoe synsepala* | Quarantine pests, excluding scale insects | Misc. T201–p–1. |
| *Lavandula* | Quarantine pests | COM T201–p–2. |
| Orchids | *Dialeurodes citri* | MB T201–k–2. |
| *Osmanthus americanus* | Quarantine pests | Misc. T201–p–1. |
| *Pelargonium* | Quarantine pests | Misc. T201–p–1. |
| *Sedum adolphi* | Quarantine pests | Misc. T201–p–1. |
| Plants infested with | *Succinea horticola* | T201–o–1: Use a high-pressure water spray on the foliage to flush snails from the plants. The run-off drain must be screened to catch snails before drainage into the sewer system. |
| Plants infested with | *Veronicella* or other slugs | MB T201–1. |
| Horseradish roots from the countries of Armenia, Azerbaijan, Belarus, Bosnia, Herzegovina, Croatia, Czech Republic, Estonia, Georgia, Germany, Hungary, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Macedonia, Moldova, Poland, Russia, Serbia and Montenegro, Slovakia, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. | External feeders | MB T202–f. |
| Host plants of *Aleurocanthus woglumi* | *Aleurocanthus woglumi* | MB T201–n. |
| Host plants of *Omalonyx unguis* and *Succinea* | *Omalonyx unguis* and *Succinea* spp. (snails) | T201–o–1: Use a high-pressure water spray on the foliage to flush snails from the plants. The run-off drain must be screened to catch snails before drainage into the sewer system; or T201–o–2: Dip plants with solution prepared by adding 3 level tablespoons of 25 percent Malathion wettable powder and 6 level teaspoons of 50 percent carbaryl wettable powder per gallon of water with a sticker-spreader formulation. |
| *Humulus* | *Heterodera humuli* | T553–5: Hot water at 118 °F for 30 minutes. |
| *Hyacinthus* (bulbs), *Iris* (bulbs and rhizomes), *Tigridia*. | *Ditylenchus dipsaci* and *D. destructor* | T554–1–1: Presoak in water at 70–80 °F for 2.5 hours followed by hot water immersion at 110–111 °F for 1 hour; or T554–1–2: Hot water immersion at 110–111 °F for 3 hours with no presoaking. |
| *Lilium* (bulbs) | *Aphelenchoides fragariae* | T566–3: Completely submerge in hot water at 102 °F. |

| Plant material | Pest | Treatment schedule |
|---|---|---|
| Lily bulbs packed in subsoil | Internal feeders | MB T202–g. |
| *Lycoris* | *Taeniothrips eucharii* | MB T202–h. |
| *Muscari, Ornithogalum, Polianthes* (tuberose) | *Ditylenchus dipsaci* | T567–1: Dip in hot water at 113 °F for 4 hours. |
| *Narcissus* | *Steneotarsonemus laticeps* | MB T202–i–1; or MB T202–i–2; or T202–i–3: Hot water at 110–111 °F for 1 hour after bulbs reach 110 °F pulp temperature. Apply hot water within 1 month after normal harvest as injury to flower bud may occur. |
| | *Ditylenchus dipsaci* | T555–1: Presoak in water at 70–80 °F for 2 hours; then at 110–111 °F until all bulbs reach that temperature and hold for 4 hours. |
| Nonfoliated host plants of *Dialeurodes citri,* excluding *Osmanthus americanus*. | *Dialeurodes citri* | MB T201–k–2. |
| Orchids | *Ascochyta* spp | T513–1: Defoliate if leaf-borne only; inspector will refuse entry if pseudo-bulbs infested. |
| | *Cercospora* spp | T501–3: Remove infested parts and treat all plants of same species in shipment with 4–4–50 Bordeaux dip or spray. |
| | *Hemileia* spp., *Leptosphaeria* spp., *Mycosphaerella* spp., *Ophiodothella orchidearum, Phomopsis orchidophilia, Phyllachora* spp., *Phyllosticta* spp., *Sphenospora* spp., *Sphaerodothis* spp., *Uredo* spp. (except *U. scabies*). | *Light infestation:* T509–2–1: Remove infested leaves and treat plant with 4–4–50 Bordeaux dip or spray. Dry quickly and thoroughly. *Heavy infestation:* An inspector will refuse entry. |
| Orchids, plants and cuttings (see MB T305–c for mealybugs). | External feeders (other than soft scales) | MB T201–d–1. |
| Orchids, plants and cuttings | External feeders (other than soft scales) infesting greenhouse grown plant material. | MB T201-d-2. |
| | Borers, cattleya fly, *Mordellistena* spp., soft scales, *Vinsonia* spp. | MB T201–d–3. |
| | *Cecidomyid galls* | T201–d–4:Excise all galls. |
| | Leaf miner, *Eurytoma* spp. infesting Rhynchostylis. | T201–d–5: Hot water dip at 118 °F for ½ hour followed by a cool water bath. |
| Orchids to Florida | Rusts | T508–1: An inspector will refuse entry of all infested plants and all other plants of the same species or variety in the shipment. Other orchid species in the shipment that may have become contaminated must be treated with Captan. Repackage treated orchids in clean shipping containers. |
| *Oryza* (paddy rice) | *Aphelenchoides fragariae* | T559–2: Dip in hot water at 132.8 °F for 15 minutes. |
| Pineapple slips | Various | MB T201–e–3–1 or MB T201–e–3–2. |
| Pines (*Pinus* spp.) from Canada and destined to California, Idaho, Oregon, or Utah. Precautionary treatment for pine trees and twigs and branches of all *Pinus* spp., except that Christmas trees and other pine decorative materials are exempt from treatment from November 1–December 31. | *Rhyacionia buoliana* | MB T201–j. |
| Plant cuttings: | | |
| Scion wood | External feeders | MB T201–m–1. |
| Greenwood cuttings of woody plants and herbaceous plant cuttings. | External feeders | MB T201–m–2. |
| Root cuttings | External feeders | MB T201–m– or MB T201–m–4. |
| Exceptions to plant cuttings: | | |
| Avocado | External feeders | COM T201–p–1. |
| *Chrysanthemum* | External feeders | MB T201–g–1. |
| *Dieffenbachia* | External feeders | MB T201–i–1. |
| *Dracaena* | External feeders | MB T201–i–2. |
| *Lavandula* | External feeders | COM T201–p–1. |
| Orchids | External feeders | MB T201–k–2. |
| *Philodendron* | External feeders | MB T201–i–1. |
| Plant material not tolerant to fumigation | Actionable pests | COM T201–p–1. |
| *Rhododendron* | *Chrysomyxa* spp. | T501–6: Remove infested parts and treat all plants of same species in shipment with 4–4–50 Bordeaux dip or spray; or T505–2–1: Treat with mancozeb or other approved fungicide of equal effectiveness according to the label instructions. |
| *Rosa* (except multiflora) | *Meloidogyne* spp. | T560–1: Dip in hot water at 123 °F for 10 minutes. |

| Plant material | Pest | Treatment schedule |
|---|---|---|
| *Selaginella* | External feeders | MB T202–a–1 or MB T202–a–2. |
| | Internal feeders | MB T202–a–3. |
| *Senecio* (Lingularis) | *Aphelenchoides fragariae* | T568–1: Treat with hot water at 110 °F for 1 hour. |
| *Scilla* | *Ditylenchus dipsaci* | T565–4: Hot water at 110 °F for 4 hours immediately after digging. |
| *Solanum* (potato tubers) | *Globodera rostochiensis, G. pallida* | T565–5: Hot water at 110 °F for 4 hours immediately after digging. |
| Various plant commodities | *Meloidogyne* spp. | T553–1: Hot water at 118 °F for 30 minutes. |
| Yams and sweet potatoes | | MB T202–d. |

(o) *Railroad cars (empty).* The treatment schedules for which administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation.

| Pest | Treatment schedule |
|---|---|
| *Globodera rostochiensis* | T406–c, steam cleaning: Steam at high pressure until all soil is removed. Treated surfaces must be thoroughly wet and heated. |
| *Pectinophora gossypiella* | MB T401–a. |
| *Trogoderma granarium* | MB T401–b. |
| Nematode cysts | T401–c, high pressure steam cleaning; or formaldehyde wetting spray (one part 40 percent commercial formalin to 9 parts water). |

(p) *Rice straw and hulls.* The treatment schedules for which administration instructions are not provided are in § 305.25 for dry heat (DH), § 305.6 for methyl bromide (MB) fumigation, and § 305.23 for steam sterilization (SS).

| Plant material | Pest | Treatment schedule |
|---|---|---|
| Articles made with rice straw | Fungal diseases of rice or internal feeders | DH T303–d–1 or SS T303–b–1 or SS T303–d–2. |
| Articles made with rice straw for indoor use only. | Internal feeders | MB T303–d–2–2 or MB T303–d–2–3. |
| Brooms made of rice straw | Various rice-related diseases | DH T518–1. |
| Closely packed rice straw and hulls | Various rice-related diseases | SS T519–1. |
| Loose rice straw and hulls | Various rice-related diseases | SS T519–2. |
| Novelties made of rice straw | Various rice-related-diseases | DH T518–2–1 or SS T518–2–2. |
| Rice straw and hulls imported for purposes other than approved processing. | Fungal diseases of rice | SS T303–b–1 or SS T303–b–2. |
| Rice straw and hulls imported in small lots of 25 pounds or less. | Fungal diseases of rice | DH T303–c–1. |

(q) *Seeds.* The treatment schedules for which numbers are specified and administration instructions are not provided are in § 305.10 for combination (COM) treatments, § 305.25 for dry heat (DH), § 305.6 for methyl bromide (MB) fumigation, § 305.7 for phosphine (PH), and § 305.24 for vapor heat (VH).

(1) Seeds other than noxious weed seeds.

| Type of seeds | Pest | Treatment schedule |
|---|---|---|
| Alfalfa (*Medicago sativa*) from Europe | *Verticillium albo-atrum* | T520–1–1: Dust with 75 percent Thiram at the rate of 166 grams per 50 kilograms of seed (3.3g/kg); or T520–1–2: Treat with a slurry of Thiram 75 WP at a rate of 166 grams per 360 milliliters of water per 50 kilograms of seed (3.3 g pesticide/7.2 ml water/kg seed). |
| Avocado (no pulp) | *Conotrachelus* spp., *Heilipus lauri, Caulophilus latinasus, Copturus aguacatae, Stenoma catenifer.* | MB T203–m. |
| *Casuarina* | *Bootanomyia* spp. | MB T203–o–l. |
| Chestnut and acorn | Internal feeders | MB T203–e. |
| Citrus (Rutaceae family) | Citrus canker | COM T203–p; or for seed from regions where citrus canker occurs, COM T511–1. |
| Conifer (species with small seeds, such as *Picea* spp., *Pinus sylvestris,* and *Pinus mugo*). | External feeders | MB T203–i–1. |

| Type of seeds | Pest | Treatment schedule |
|---|---|---|
| Conifer (species with small seeds, such as *Picea* spp., *Pinus sylvestris,* and *Pinus mugo* and nutlike seeds or tightly packed seeds so as to make fumigant penetration questionable). | Internal feeders | MB T203–i–2. |
| Corn (small lots for propagation but not for food, feed, or oil purposes). | Various corn-related diseases | T510–2: Treat seeds with a dry application of Mancozeb in combination with Captan. Disinfect small bags containing corn (bags weighing 60 pounds or less) only with: (1) Dry heat at 212 °F for 1 hour; or (2) steam at 10 pounds pressure at a minimum of 240 °F for 20 minutes. Note: Bags with plastic liners must be opened prior to treatment. |
| Cottonseed (bagged, packaged, or bulk) | External feeders | MB T203–f–1 or MB T203–f–2 or MB T203–f–3 or PH T203–f–4. |
| *Hevea brasiliensis* | Seed boring insects | MB T203–j. |
| Pods and seeds of kenaf, hibiscus, and okra | Internal feeders | MB T203–g–1 or MB T203–g–2 or PH T203–g–3. |
| Leguminosae=Fabaceae | *Bruchophagus* spp. and *Eurytoma* spp. | MB T203–o–3. |
| | *Caryedon* spp. | MB T203–c or MB T203–a–2. |
| | *Caryedon* spp. (in or with, etc.) | MB T203–o–4–1 or MB T203–o–4–2. |
| *Lonicera* and other seeds | *Rhagoletis cerasi* pupae (Diptera: Tephritidae) | MB T203–o–5. |
| Macadamia nut | *Cryptophlebia illepida* | MB T203–k. |
| *Rosmarinus* | Juvenile *Helicella* spp. (snails) or internal feeders. | MB T203–h. |
| *Umbelliferae* | *Systole* spp. | MB T203–o–2. |
| *Vicia* spp., excluding seeds of *Vicia faba* | Bruchidae | MB T203–d–1. |
| *Vicia* spp., including seeds of *Vicia faba* | Bruchidae | MB T203–d–2. |
| Seeds | *Trogoderma granarium* | MB T203–l. |
| Seeds (excluding seeds of *Vicia* spp.) | Bruchidae excluding *Caryedon* spp. at NAP | MB T203–b. |
| Seeds not specifically listed | External feeders | MB T203–a–1. |
| | Internal feeders | MB T203–a–2. |
| Seeds with infested pulp | Fruit flies and other pulp infesting insects | T203–n: Place seed in wire basket. Immerse in 118–125 °F water for 25 minutes. Remove pulp from seed under running tap water. |

(2) Noxious weed seeds (devitalization treatment).

| Weed seeds | Treatment schedule |
|---|---|
| *Asphodelus fistulosus, Digitaria* spp., *Oryza* spp., *Paspalum scrobiculatum, Prosopis* spp., *Solanum viarum, Striga* spp., *Urochloa panicoides.* | DH T412–a. |
| *Cuscuta* spp. | DH T412–b–1 or VH T412–b–2. |

(r) *Ships, containers, and surrounding area.* The treatment schedules for which administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation.

| Product | Pest | Treatment schedule |
|---|---|---|
| Asphalt surfaces and asphalt-base painted surfaces. | *Trogoderma granarium* | T402–b–3–2: Prepare 3 percent spray by adding 1 pound of 25 percent malathion wettable powder to each gallon of water. Spray at 2 gal/1000 $ft^2$ or to the point of runoff. |
| Piers and barges | *Globodera rostochiensis* | T406–c, steam cleaning: Steam at high pressure until all soil is removed. Treated surfaces must be thoroughly wet and heated. |
| Metal and wood surfaces such as decks, bulkheads, piers, and other areas not subject to fumigations. | *Trogoderma granarium* | T402–b–3–1: Prepare 3 percent spray by mixing ½ pint emulsifiable concentrate (57 percent premium grade malathion) per gallon of water. Spray at 2 gal/1000 $ft^2$ or to the point of runoff. |
| Ship holds and any nonplant cargo material within holds. | Quarantine significant snails of the family Achatinidea, including the following genera: *Achatina, Archachatina, Lignus, Limicolaria.* | MB T402–a–1. |

| Product | Pest | Treatment schedule |
|---|---|---|
| Ship holds and any nonplant cargo material within holds. | Quarantine significant snails of the family Hygromiidae, including the following genera: *Canidula, Cernuella, Cochlicella, Helicella, Helicopsis, Monacha, Platytheba, Pseudotrichia, Trochoidea, Xerolenta, Xeropicta, Xerosecta, Xerotricha.* | MB T402–a–2. |
| Ship holds and any nonplant cargo material within holds. | Quarantine significant snails of the families Helicidae and Succineidae, including the following genera: *Caracollina, Cepaea, Cryptomphalus, Helix, Omalonyx, Otala, Succinea, Theba.* | MB T402–a–3. |
| Ship holds and storerooms with loosely packed material. | *Trogoderma granarium* | MB T402–b–1. |
| Ship holds and storerooms with tightly packed material. | *Trogoderma granarium* | MB T402–b–2. |

(s) *Skins (goatskins, lambskins, and sheepskins).* The treatment schedules for which administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation.

| Pest | Treatment schedule |
|---|---|
| *Trogoderma granarium* | MB T416–a–1 or MB T416–a–2 or MB T416–a–3. |

(t) *Soil.* The treatment schedules for which numbers are specified and administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation, § 305.23 for steam sterilization (SS), and § 305.25 for dry heat (DH).

| Product | Pest | Treatment |
|---|---|---|
| Herbarium specimens of mosses and liverworts in soil and originating in golden nematode free countries. | Precautionary | MB T408–e–1. |
| Herbarium specimens of mosses and liverworts in soil and originating in golden nematode free countries. | *Globodera rostochiensis* | MB T408–e–2. |
| Soil | Potato cyst nematode | MB T502–3. |
| Soil | Various pests and pathogens found in soil (including *Striga*). | DH T408–a. |
| | Various pests and pathogens found in soil | SS T408–b. |
| Soil (friable and moist, but not wet and not more than 12 inches in depth). | *Globodera rostochiensis* | MB T408–c–2. |
| Soil | Insects | T408–d–1: Screening through 16 mesh screens will remove most larvae and pupae, except smaller types; or T408–d–2: Freezing—0 °F for 5 days. |
| Soil (friable and moist, but not wet and not more than 12 inches in depth) in containers with dimensions that do not exceed 24 inches. | *Globodera rostochiensis* | MB T408–c–1. |
| Soil on equipment | Various pests and pathogens found in soil | T408–b–1 (steam cleaning): Steam at high pressure until all soil is removed. Treated surfaces must be thoroughly wet and heated. |
| Soil contaminated equipment (precautionary treatment). | Soil fungi, nematodes, and certain soil insects | T408–f, steam cleaning: Steam at high pressure until all soil is removed. Treated surfaces must be thoroughly wet and heated. |
| Soil contaminated non-food or non-feed commodities (soil must be friable and or moist, but not wet, and must not exceed 12 inches in dimension). | *Striga* | MB T408–g–1 or MB T408–g–2. |

(u) *Sugarcane.*

| Product | Pest | Treatment schedule |
|---|---|---|
| *Saccharum* (seed pieces) | *Xanthomonas albilineans and X. vasculorum* | T514–1: Presoak in water at room temperature for 24 hours. Then immerse in water at 122 °F for 3 hours. |
| *Saccharum* (true seed fuzz) | | T514–2: Immerse in 0.525 percent sodium hypochlorite solution for 30 minutes followed by at least 8 hours air drying before packaging (Dilute 1 part Clorox or similar solution containing 5.25 percent sodium hypochlorite; if using ultra strength chlorine bleach, use only ¾ as much bleach). |
| *Saccharum* (bagasse) | | T514–3: Dry heat treatment for 2 hours at 158 °F. |
| Sugarcane (baled) | Various sugarcane-related diseases | T515–1: Introduce live steam into 25″ vacuum until pressure reaches 15 to 20 pounds. Hold until center of bale is 220–230 °F and maintain for 30 minutes. |
| Sugarcane (loose) | | T515–2–1: Introduce steam into 25″ vacuum (or if with initial vacuum, "bleed" air until steam vapor fills chamber).<br>T515–2–3: Dry heat at 212 °F for 1 hour.<br>T515–2–4: Remove the pulp in water at 190–205 °F, followed by drying at 212 °F for 1 hour.<br>T515–2–5: Flash heated to 1,000 °F (Arnold dryer). |

(v) *Wood articles including containers, oak logs and lumber, Christmas trees.* The treatment schedules for which administration instructions are not provided are in § 305.6 for methyl bromide (MB) fumigation, § 305.8 for sulfuryl fluoride (SF), and § 305.28 for kiln sterilization (KS).

| Material | Pest | Treatment schedule |
|---|---|---|
| Cut conifer Christmas trees | *Lymantria dispar* egg masses | MB T313–a. |
| Cut pine Christmas trees and pine logs | *Tomicus piniperda* | MB T313–b. |
| Wood surfaces (can be combined with other surfaces such as metal or concrete). | | SF T404–c–2. |
| Wood surfaces (can be combined with other surfaces such as metal or concrete). | Borers (wood wasps, cerambycids, and *Dinoderus*). | T404–b–5–1: (1) The spray must be applied by or under the supervision of pest control operators or other trained personnel responsible for insect control programs; (2) prepare the spray by thoroughly mixing 79 ml (2⅔ fluid ounces) of Dursban 4E with water for a total of 1 gallon of mixture (equivalent to 2.1 gallons in 100 gallons of water); and (3) apply as a 1 percent chlorpyrifos spray with suitable hand- or power-operated ground spray equipment to the point of runoff. |
| Oak logs | Oak wilt disease | MB T312–a. |
| Oak lumber | Oak wilt disease | MB T312–b. |
| Wood products including containers | Borers (wood wasps, cerambycids, and *Dinoderus*). | MB T404–b–1–1 or MB T404–b–1–2 or SF T404–b–2 or KS T404–b–4. |
| | *Globodera rostochiensis* | MB T404–a. |
| | Termites | MB T404–c–1–1 or MB T404–c–1–2. |
| | Borers and *Trogoderma granarium* | MB T404–d. |

**§§ 305.3–305.4 [Reserved]**

## Subpart—Chemical Treatments

### § 305.5 Treatment requirements.

(a) *Certified facility*. The fumigation treatment facility must be certified by APHIS. Facilities are required to be inspected and recertified annually, or as often as APHIS directs, depending upon treatments performed, commodities handled, and operations conducted at the facility. In order to be certified, a fumigation facility must:

(1) Be capable of administering the required dosage range for the required duration and at the appropriate temperature.

(2) Be adequate to contain the fumigant and be constructed from material that is not reactive to the fumigant.

(3) For vacuum fumigation facilities, be constructed to withstand required negative pressure.

(b) *Monitoring*. Treatment must be monitored by an official authorized by APHIS to ensure proper administration of the treatment, including that the correct amount of gas reaches the target organism and that an adequate number and placement of blowers, fans, sampling tubes, or monitoring lines are used in the treatment enclosure. An

official authorized by APHIS approves, adjusts, or rejects the treatment.

(c) *Treatment procedures.* (1) To kill the pest, all chemical applications must be administered in accordance with an Environmental Protection Agency (EPA) approved pesticide label and the APHIS-approved treatment schedule prescribed in this part. If EPA cancels approval for the use of a pesticide on a commodity, then the treatment schedule prescribed in this part is no longer authorized for that commodity. If the commodity is not listed on the pesticide label and/or a Federal quarantine or crisis exemption in accordance with FIFRA section 18, then no chemical treatment is available.

(2) Temperature/concentration readings must be taken for items known to be sorptive or whose sorptive properties are unknown when treatment is administered in chambers at normal atmospheric pressure.

(3) The volume of the commodity stacked inside the treatment enclosure must not exceed ⅔ of the volume of the enclosure. Stacking must be approved by an official authorized by APHIS before treatment begins. All commodities undergoing treatment must be listed on the label.

(4) Recording and measuring equipment must be adequate to accurately monitor the gas concentration, to ensure the correct amount of gas reaches the pests, and to detect any leaks in the enclosure. At least three sampling tubes or monitoring lines must be used in the treatment enclosure.

(5) An adequate number of blowers or fans must be used inside of the treatment enclosure to uniformly distribute gas throughout the enclosure. The circulation system must be able to recirculate the entire volume of gas in the enclosure in 3 minutes or less.

(6) The exposure period begins after all gas has been introduced.

(7) For vacuum fumigation: The vacuum pump must be able to reduce pressure in the treatment enclosure to 1–2 inches of mercury in 15 minutes or less.

**§ 305.6 Methyl bromide fumigation treatment schedules.**

(a) *Standard schedules.*

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| MBOFF | NAP[1] | 70 or above | 2 | 3.5 |
| T101–a–1 | NAP | 80 or above | 1.5 | 2 |
| | | 70–79 | 2 | 2 |
| | | 60–69 | 2.5 | 2 |
| | | 50–59 | 3 | 2 |
| | | 40–49 | 4 | 2 |
| T101–a–2 | 15″ vacuum | 90 or above | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T101–a–3 | See T101–a–1. | | | |
| T101–b–1 | See T101–a–1. | | | |
| T101–b–1–1 | NAP | 80 or above | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 4 | 2 |
| T101–b–2 | NAP | 70 or above | 2 | 2 |
| | | 60–69 | 2.5 | 2 |
| | | 50–59 | 3 | 2 |
| | | 45–49 | 3.5 | 2 |
| | | 40–44 | 4 | 2 |
| T101–b–3–1 | NAP | 90 or above | 2.5 | 4 |
| | | 80–89 | 3 | 4 |
| | | 70–79 | 3.5 | 4 |
| | | 60–69 | 4 | 4 |
| T101–c–1 | NAP | 70 or above | 2 | 4 |
| T101–c–2 | 26″ vacuum | 70 or above | 3 | 3.5 |
| | | 60–69 | 3 | 4 |
| | | 50–59 | 3 | 4.5 |
| | | 40–49 | 3 | 5 |
| T101–c–3 | NAP | 70 or above | 2 | 3.5 |
| | | 65–69 | 2 | 4 |
| T101–c–3–1 | NAP | 70 or above | 3 | 2 |
| T101–d–1 | See T101–a–1. | | | |
| T101–d–2 | NAP | 70 or above | 3.5 | 11 |
| | | 60–69 | 3.5 | 12 |
| | | 50–59 | 3.5 | 13 |
| | | 40–49 | 3.5 | 14 |
| T101–d–3 | NAP | 70 or above | 2 | 3.5 |
| T101–e–1 | NAP | 70 or above | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T101–e–2 | 15″ vacuum | 90 or above | 2 | 1.5 |
| | | 80–89 | 2 | 2 |
| | | 70–79 | 2.5 | 2 |
| | | 60–69 | 3 | 2 |

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 4 |
| T101–e–3 | See T101–a–1. | | | |
| T101–f–2 | 15″ vacuum | 90 or above | 2 | 3 |
| | | 80–89 | 2.5 | 3 |
| | | 70–79 | 3 | 3 |
| | | 60–69 | 3 | 3.5 |
| T101–f–3 | See T101–b–3–1. | | | |
| T101–g–1 | See T101–a–2. | | | |
| T101–g–1–1 | NAP | 90 or above | 2 | 3 |
| | | 80–89 | 2.5 | 3 |
| | | 70–79 | 3 | 3 |
| | | 60–69 | 3 | 3.5 |
| | | 50–59 | 3 | 4 |
| T101–g–2 | NAP | 90 or above | 2 | 3 |
| | | 80–89 | 2.5 | 3 |
| | | 70–79 | 3 | 3 |
| | | 60–69 | 3 | 3.5 |
| T101–h–1 | See T101–a–1. | | | |
| T101–h–2 | See T101–a–1. | | | |
| T101–h–2–1 | NAP | 70 or above | 2 | 3.5 |
| | | 65–69 | 2 | 4 |
| T101–h–3 | NAP | 80 or above | 1.5 | 2 |
| | | 70–79 | 2 | 2 |
| | | 60–69 | 2.5 | 2 |
| T101–i–1 | NAP | 80 or above | 1.5 | 2 |
| | | 70–79 | 2 | 2 |
| T101–i–1–1 | NAP | 70 or above | 2 | 3.5 |
| T101–i–2 | See T101–a–1. | | | |
| T101–i–2–1 | See T101–a–1. | | | |
| T101–j–1 | See T101–b–2. | | | |
| T101–j–2 | NAP | 80 or above | 1.5 | 2 |
| | | 70–79 | 1.5 | 2 |
| | | 65–69 | 1.75 | 2 |
| T101–j–2–1 | NAP | 70–85 | 2.5 | 2 |
| T101–k–1 | See T101–a–1. | | | |
| T101–k–2 | 15″ vacuum | 90 or above | 0.5 | 1.5 |
| | | 80–89 | 1 | 1.5 |
| | | 70–79 | 1.5 | 1.5 |
| | | 60–69 | 2 | 1.5 |
| | | 50–59 | 2.5 | 1.5 |
| | | 40–49 | 3 | 1.5 |
| T101–k–2–1 | NAP | 80 or above | 1.5 | 2 |
| | | 70–79 | 2 | 2 |
| | | 60–69 | 2.5 | 2 |
| | | 50–59 | 3 | 2 |
| T101–l–1 | See 101–g–1–1. | | | |
| T101–l–2 | 15″ vacuum | 90 or above | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| T101–m–1 | See T101–a–2. | | | |
| T101–m–2 | See T101–a–1. | | | |
| T101–m–2–1 | NAP | 70 or above | 2 | 3.5 |
| | | 65–69 | 2 | 4 |
| T101–n–1 | See T101–g–2. | | | |
| T101–n–2 | See T101–b–2. | | | |
| T101–n–2–1 | See T101–k–2–1. | | | |
| T101–n–2–1–1 | NAP | 70 or above | 2 | 16 |
| | | 60–69 | 2 | 24 |
| | | 50–59 | 3 | 16 |
| | | 40–49 | 3 | 24 |
| T101–o–1 | See T101–a–1. | | | |
| T101–o–2 | See T101–a–1. | | | |
| T101–p–1 | See T101–a–1. | | | |
| T101–p–2 | NAP | 90 or above | 1 | 2 |
| | | 80–89 | 1.5 | 2 |
| | | 70–79 | 2 | 2 |
| | | 60–69 | 2.5 | 2 |
| | | 50–59 | 3 | 2 |
| | | 40–49 | 3.5 | 2 |

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| T101–q–2 | NAP | 90 or above | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T101–r–1 | See T101–a–1. | | | |
| T101–r–2 | NAP | 70 or above | 2 | 6 |
| T101–s–1 | NAP | 70 or above | 2 | 2 |
| | | 60–69 | 2.5 | 2 |
| | | 50–59 | 3 | 2 |
| | | 40–49 | 4 | 2 |
| T101–s–2 | See T101–a–1. | | | |
| T101–t–1 | NAP | 90 or above | 4 | 3 |
| | | 80–89 | 4 | 4 |
| | | 70–79 | 5 | 4 |
| | | 60–69 | 5 | 5 |
| | | 50–59 | 6 | 5 |
| | | 40–49 | 6 | 6 |
| T101–t–2 | See T101–a–1. | | | |
| T101–u–1 | 26″ vacuum | 80 or above | 3 | 2 |
| | | 70–79 | 4 | 2 |
| | | 60–69 | 4 | 3 |
| | | 50–59 | 4 | 4 |
| | | 40–49 | 4 | 5 |
| T101–u–2 | NAP | 80 or above | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| T101–v–1 | See T101–b–2. | | | |
| T101–v–2 | NAP | 70 or above | 2.75 | 2 |
| T101–w–1 | 15″ vacuum | 80 or above | 2 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 4 | 2 |
| | | 50–59 | 4 | 3 |
| | | 40–49 | 4 | 4 |
| T101–w–1–2 | NAP | 70 or above | 2 | 2 |
| T101–w–2 | See T101–h–3. | | | |
| T101–x–1 | See T101–h–3. | | | |
| T101–x–1–1 | NAP | 70 or above | 2.5 | 2.5 |
| T101–x–2 | See T101–a–1. | | | |
| T101–y–1 | See T101–k–2–1. | | | |
| T101–y–2 | See T101–a–1. | | | |
| T101–z–1 | NAP | 90 or above | 2 | 3 |
| | | 80–89 | 2.5 | 3 |
| | | 70–79 | 3 | 3 |
| | | 60–69 | 3 | 3.5 |
| | | 50–59 | 3 | 4 |
| | | 40–49 | 4 | 4 |
| T101–z–2 | See T101–k–2–1. | | | |
| T104–a–1 | See T101–a–1. | | | |
| T104–a–2 | See T101–b–1–1. | | | |
| T201–a–1/T201–a–2 (except *Brachyrhinus* larvae). | NAP/26″ vacuum | 90–96 | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T201–a–1/T201–a–2 (*Brachyrhinus* larvae) | NAP/26″ vacuum | 90–96 | 2 | 2.5 |
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T201–b–1 (except *Brachyrhinus* larvae) | NAP | 90–96 | 1.5 | 2 |
| | | 80–89 | 2 | 2 |
| | | 70–79 | 2.5 | 2 |
| | | 60–69 | 2.5 | 2.5 |
| | | 50–59 | 2.5 | 3 |
| | | 40–49 | 2.5 | 3.5 |
| T201–b–1 (*Brachyrhinus* larvae) | NAP | 90–96 | 2 | 2.5 |

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T201–c–1 [2] | NAP | 80–90 | 1.5 | 2 |
| | | 70–79 | 2 | 2 |
| | | 60–69 | 2.5 | 2 |
| | | 50–59 | 3 | 2 |
| | | 40–49 | 3.5 | 2 |
| T201–c–2 [3] | 15″ vacuum | 80–90 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T201–d–1 (except *Brachyrhinus* larvae) | NAP | 90–96 | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T201–d–1 (*Brachyrhinus* larvae) | NAP | 90–96 | 2 | 2.5 |
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T201–d–2 | NAP | 90–96 | 1 | 2 |
| | | 80–89 | 1.5 | 2 |
| | | 70–79 | 2 | 2 |
| | | 60–69 | 2.5 | 2 |
| | | 50–59 | 3 | 2 |
| | | 40–49 | 3.5 | 2 |
| T201–d–3 | 15″ vacuum | 90–96 | 3 | 1 |
| | | 80–89 | 3 | 1.5 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T201–e–1/T201–e–2 | NAP/15″ vacuum | 90–96 | 2 | 1.5 |
| | | 80–89 | 2 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| T201–e–3–1 | NAP | 90–96 | 1.5 | 2 |
| | | 80–89 | 2 | 2 |
| | | 70–79 | 2.5 | 2 |
| | | 60–69 | 3 | 2 |
| T201–e–3–2 | 26″ vacuum | 90–96 | 1.5 | 1.5 |
| | | 80–89 | 2 | 1.5 |
| | | 70–79 | 2.5 | 1.5 |
| | | 60–69 | 3 | 1.5 |
| T201–f–1/T201–f–2 (except *Brachyrhinus* larvae). | NAP/15″ vacuum | 90–96 | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T201–f–1/T201–f–2 (*Brachyrhinus* larvae) | NAP/15″ vacuum | 90–96 | 2 | 2.5 |
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T201–g–1 | NAP | 70 or above | 0.75 | 2 |
| T201–h–1/T201–h–2 | 15″ vacuum/26″ vacuum | 90–96 | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 60–79 | 3 | 2 |
| | | 40–59 | 3 | 2.5 |

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| T201–i–1/T201–i–2 | NAP/26″ vacuum | 90–96 | 2 | 1.5 |
| | | 80–89 | 2 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| T201–j | NAP | 75 | 4 | 2 |
| | | 74 | 4 | 2 hrs 1 min |
| | | 73 | 4 | 2 hrs 2 min |
| | | 72 | 4 | 2 hrs 4 min |
| | | 71 | 4 | 2 hrs 7 min |
| | | 70 | 4 | 2 hrs 9 min |
| | | 69 | 4 | 2 hrs 11min |
| | | 68 | 4 | 2 hrs 14min |
| | | 67 | 4 | 2 hrs 16 min |
| | | 66 | 4 | 2 hrs 19 min |
| | | 65 | 4 | 2 hrs 22 min |
| | | 64 | 4 | 2 hrs 25 min |
| | | 63 | 4 | 2 hrs 28 min |
| | | 62 | 4 | 2 hrs 31 min |
| | | 61 | 4 | 2 hrs 35 min |
| | | 60 | 4 | 2 hrs 38 min |
| | | 59 | 4 | 2 hrs 41 min |
| | | 58 | 4 | 2 hrs 43 min |
| | | 57 | 4 | 2 hrs 46 min |
| | | 56 | 4 | 2 hrs 49 min |
| | | 55 | 4 | 2 hrs 52 min |
| | | 54 | 4 | 2 hrs 55 min |
| | | 53 | 4 | 2 hrs 58 min |
| | | 52 | 4 | 3 hrs 1 min |
| | | 51 | 4 | 3 hrs 5 min |
| | | 50 | 4 | 3 hrs 8 min |
| | | 49 | 4 | 3 hrs 12 min |
| | | 48 | 4 | 3 hrs 15 min |
| | | 47 | 4 | 3 hrs 19 min |
| | | 46 | 4 | 3 hrs 24 min |
| | | 45 | 4 | 3 hrs 28 min |
| T201–k–1 (except *Brachyrhinus* larvae) | NAP | 85–96 | 1 | 4 |
| | | 80–84 | 2 | 2.5 |
| | | 70–79 | 2 | 3.5 |
| T201–k–1 (*Brachyrhinus* larvae) | NAP | 85–96 | 1.5 | 4 |
| | | 80–84 | 2.5 | 2.5 |
| | | 70–79 | 2 | 3.5 |
| T201–k–2 (except *Brachyrhinus* larvae) | NAP | 90–96 | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T201–k–2 (*Brachyrhinus* larvae) | NAP | 90–96 | 2 | 2.5 |
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T201–l | NAP | 90–96 | 1 | 2 |
| | | 80–89 | 1.25 | 2 |
| | | 70–79 | 1.5 | 2 |
| | | 60–69 | 1.75 | 2 |
| T201–m–1 (except *Brachyrhinus* larvae) | NAP | 90–96 | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T201–m–1 (*Brachyrhinus* larvae) | NAP | 90–96 | 2 | 2.5 |
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| T201–m–2 | NAP | 80–90 | 1.5 | 2 |
| | | 70–79 | 2 | 2 |
| | | 60–69 | 2.5 | 2 |
| | | 50–59 | 3 | 2 |
| | | 40–49 | 3.5 | 2 |
| T201–m–3 (except *Brachyrhinus* larvae) | NAP | 90–96 | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T201–m–3 (*Brachyrhinus* larvae) | NAP | 90–96 | 2 | 2.5 |
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T201–m–4 | NAP | 90–96 | 2 | 2.5 |
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T201–n | NAP | 85 or above | 1 | 2 |
| | | 80–85 | 1.25 | 2 |
| | | 70–79 | 1.5 | 2 |
| | | 65–69 | 1.75 | 2 |
| T202–a–1 (except *Brachyrhinus* larvae) | NAP | 90–96 | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T202–a–1 (*Brachyrhinus* larvae) | NAP | 90–96 | 2 | 2.5 |
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T202–a–2 | NAP | 90–96 | 2 | 2.5 |
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T202–a–3 (except *Brachyrhinus* larvae) | 26″ vacuum | 90–96 | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T202–a–3 (*Brachyrhinus larvae*) | 26″ vacuum | 90–96 | 2 | 2.5 |
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T202–b | 26″ vacuum | 70–96 | 4 | 2 |
| | | 60–69 | 4 | 2.5 |
| | | 50–59 | 4 | 3 |
| | | 40–49 | 4 | 4 |
| T202–d | NAP | 90–96 | 2.5 | 4 |
| | | 80–89 | 3 | 4 |
| | | 70–79 | 3.5 | 4 |
| | | 60–69 | 4 | 4 |
| T202–e–1 | NAP | 90–96 | 2 | 3 |
| | | 80–89 | 2.5 | 3 |
| | | 70–79 | 3 | 3 |
| | | 60–69 | 3 | 3.5 |
| | | 50–59 | 3 | 4 |

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| | | 40–49 | 3 | 4.5 |
| T202–e–2 | 26″ vacuum | 90–96 | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T202–f (except *Brachyrhinus* larvae) | 15″ vacuum | 90–96 | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T202–f (*Brachyrhinus* larvae) | 15″ vacuum | 90–96 | 2 | 2.5 |
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T202–g | NAP | 90–96 | 2 | 3 |
| | | 80–89 | 2.5 | 3 |
| | | 70–79 | 3 | 3 |
| | | 60–69 | 3 | 3.5 |
| | | 50–59 | 3 | 4 |
| | | 40–49 | 3 | 4.5 |
| T202–h (except *Brachyrhinus* larvae) | 26″ vacuum | 90–96 | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T202–h (*Brachyrhinus* larvae) | 26″ vacuum | 90–96 | 2 | 2.5 |
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T202–i–1 | NAP | 90–96 | 3 | 2 |
| | | 80–89 | 3.5 | 2 |
| | | 70–79 | 4 | 2 |
| | | 60–69 | 4 | 2.5 |
| | | 50–59 | 4 | 3 |
| | | 40–49 | 4 | 3.5 |
| T202–i–2 | NAP | 90–96 | 2 | 2 |
| | | 80–89 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T202–j | 15″ vacuum | 90–96 | 2 | 1.5 |
| | | 80–89 | 2 | 2 |
| | | 70–79 | 2.5 | 2 |
| | | 60–69 | 3 | 2 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 4 |
| T203–a–1 | NAP | 80–96 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T203–a–2 | 26″ vacuum | 80–96 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T203–b (except *Caryedon* spp.) | 26″ vacuum | 70–96 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| T203–b (*Caryedon* spp.) | 26″ vacuum | 40–96 | 5 | 2 |
| T203–c | NAP | 50 or above | 2 | 24 |
| T203–d–1 | NAP | 70 or above | 3.5 | 11 |
| | | 60–69 | 3.5 | 12 |
| | | 50–59 | 3.5 | 13 |
| | | 40–49 | 3.5 | 14 |
| T203–d–2 (except *Vicia faba*) | 26″ vacuum | 70–96 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T203–d–2 (*Vicia faba*) | 26'' vacuum | 70–96 | 3 | 3.5 |
| | | 60–69 | 3 | 4 |
| | | 50–59 | 3 | 4.5 |
| | | 40–49 | 3 | 5 |
| T203–e | 26″ vacuum | 80–96 | 3 | 2 |
| | | 70–79 | 4 | 2 |
| | | 60–69 | 4 | 3 |
| | | 50–59 | 4 | 4 |
| | | 40–49 | 4 | 5 |
| T203–f–1 | NAP | 60 or above | 6 | 12 |
| | | 60 or above | 3 | 24 |
| | | 40–59 | 7 | 12 |
| | | 40–59 | 4 | 24 |
| T203–f–2 | NAP | 60 or above | 7 | 12 |
| | | 60 or above | 5 | 24 |
| | | 40–59 | 8 | 12 |
| | | 40–59 | 6 | 24 |
| T203–f–3 | NAP | 40 or above | 4 | 2 |
| T203–g–1 | NAP | 60–96 | 2 | 12 |
| | | 60–96 | 1 | 24 |
| | | 40–59 | 3 | 12 |
| | | 40–59 | 2 | 24 |
| T203–g–2 | 26″ vacuum | 40 or above | 4 | 2 |
| | | 40 or above. | | |
| T203–h | 26″ vacuum | 70 or above | 4 | 4 |
| T203–i–1 | NAP | 80–96 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T203–i–2 | 26″ vacuum | 80–96 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T203–j | NAP | 80–96 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| T203–k | NAP | 70 or above | 2 | 2 |
| | | 60–69 | 2.5 | 2 |
| | | 50–59 | 3 | 2 |
| | | 40–49 | 3.5 | 2 |
| T203–l | NAP | 90 or above | 2.5 | 12 |
| | | 80–89 | 3.5 | 12 |
| T203–m 26″ vacuum | 90–96 | 2 | 2 | |
| | | 80–89 | 3 | 2 |
| | | 70–79 | 4 | 2 |
| | | 60–69 | 4 | 3 |
| | | 50–59 | 4 | 4 |
| | | 40–49 | 4 | 5 |
| T203–o–1 | 26″ vacuum | 70 or above | 3.5 | 6 |
| T203–o–2 | 26″ vacuum | 80–86 | 2.5 | 3.5 |
| | | 70–79 | 3 | 3.5 |
| | | 60–69 | 3 | 4 |
| | | 50–59 | 3 | 4.5 |
| | | 40–49 | 3 | 5 |
| T203–o–3 | 26″ vacuum | 70 or above | 4 | 4 |
| T203–o–4–1 | 26″ vacuum | 50 or above | 2 | 24 |
| T203–o–4–2 | 26″ vacuum | 70 or above | 3.5 | 3 |
| T203–o–5 | NAP | 70 or above | 4 | 8 |

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| T301–a–1–1 (bulk shipments) | NAP | 60 or above | 6 | 12 |
| | | 60 or above | 4 | 24 |
| | | 40–59 | 7 | 12 |
| | | 40–59 | 5 | 24 |
| T301–a–1–1 (other than bulk shipments) | NAP | 60 or above | 6 | 12 |
| | | 60 or above | 3 | 24 |
| | | 40–59 | 7 | 12 |
| | | 40–59 | 4 | 24 |
| T301–a–1–2 | 26″ vacuum | 60 or above | 8 | 3 |
| | | 40–59 | 9 | 3 |
| T301–a–2 | NAP | 40 or above | 7 | 12 |
| | | 40 or above | 5 | 24 |
| T301–a–3 | NAP | 40 or above | 7 | 12 |
| | | 40 or above | 4 | 24 |
| T301–a–4 | NAP | 40 or above | 7 | 12 |
| | | 40 or above | 5 | 24 |
| T301–a–5–1 | NAP | 40 or above | 3 | 24 |
| T301–a–5–2 | 26″ vacuum | 40 or above | 4 | 2 |
| T301–b–1–1 | NAP | 60 or above | 8 | 24 |
| | | 40–59 | 11 | 24 |
| T301–b–1–2 | 26″ vacuum | 60 or above | 8 | 3 |
| | | 40–59 | 9 | 3 |
| T301–b–2 | NAP | 90 or above | 2.5 | 12 |
| | | 80–89 | 3.5 | 12 |
| T301–b–3 | NAP | 90 or above | 4 | 24 |
| | | 80–89 | 6 | 24 |
| | | 70–79 | 8 | 24 |
| T301–c | NAP | 40 or above | 8 | 16 |
| | | 40 or above | 10.5 | 12 |
| T301–d–1–1 | NAP | 90 or above | 2.5 | 2 |
| | | 80–89 | 3 | 2 |
| | | 70–79 | 4 | 2 |
| | | 60–69 | 4 | 3 |
| | | 55–59 | 5 | 3 |
| | | 50–54 | 5.5 | 4 |
| | | 40–49 | 6 | 8 |
| T302–a–1–1 | NAP | 70 or above | 2 | 6 |
| T302–b–1–2 | See T301–a–1–1 or T301–a–1–2. | | | |
| T302–c–1 | NAP | 90 or above | 2.5 | 12 |
| | | 80–89 | 3.5 | 12 |
| | | 70–79 | 4.5 | 12 |
| | | 60–69 | 6 | 12 |
| | | 50–59 | 7.5 | 12 |
| | | 40–49 | 9 | 12 |
| T302–c–2 | 26″ vacuum | 60 or above | 8 | 3 |
| | | 40–59 | 9 | 3 |
| T302–c–3 | 26″ vacuum | 90–96 | 2.5 | 12 |
| | | 80–89 | 3.5 | 12 |
| | | 70–79 | 4.5 | 12 |
| | | 60–69 | 6 | 12 |
| | | 50–59 | 10 | 12 |
| | | 40–49 | 12 | 12 |
| T302–e–1 | NAP | 80–96 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T302–e–2 | 26″ vacuum | 80–96 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T302–g–1 | NAP | 90–95 | 4 | 3 |
| | | 80–89 | 4 | 4 |
| | | 70–79 | 5 | 4 |
| | | 60–69 | 5 | 5 |
| | | 50–59 | 6 | 5 |
| | | 40–49 | 6 | 6 |
| T302–g–2 | 26″ vacuum | 80–96 | 3 | 2 |
| | | 70–79 | 4 | 2 |

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| | | 60–69 | 4 | 3 |
| | | 50–59 | 4 | 4 |
| | | 40–49 | 4 | 5 |
| T303–d–2–2 | 26″ vacuum | 60 or above | 2.5 | 2.5 |
| | | 50–59 | 3.5 | 2.5 |
| | | 40–49 | 5 | 2.5 |
| T303–d–2–3 | NAP | 60 or above | 2.5 | 24 |
| | | 50–59 | 3 | 24 |
| | | 40–49 | 4 | 24 |
| T304–a | NAP | 60 or above | 2.5 | 32 |
| | | 50–59 | 3.5 | 32 |
| | | 40–49 | 4.5 | 32 |
| T304–b | 26″ vacuum | 60 or above | 2.5 | 2.5 |
| | | 50–59 | 3.5 | 2.5 |
| | | 40–49 | 5 | 2.5 |
| T305–a | NAP | 80–89 | 1.5 | 2 |
| | | 70–79 | 2 | 2 |
| | | 60–69 | 2.5 | 2 |
| | | 50–59 | 3 | 2 |
| | | 40–49 | 3.5 | 2 |
| T305–b | 15″ vacuum | 80–90 | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 3 |
| | | 40–49 | 3 | 3.5 |
| T305–c | NAP | 80 or above | 2.5 | 2 |
| | | 70–79 | 3 | 2 |
| | | 60–69 | 4 | 2 |
| T306–a | 26″ vacuum | 40 or above | 8 | 16 |
| | | 40 or above | 10.5 | 12 |
| | | 40 or above | 16 | 8 |
| T306–b (bulk shipments) | NAP | 60 or above | 6 | 12 |
| | | 60 or above | 4 | 24 |
| | | 40–59 | 7 | 12 |
| | | 40–59 | 5 | 24 |
| T306–b (other than bulk shipments) | NAP | 60 or above | 6 | 12 |
| | | 60 or above | 3 | 24 |
| | | 40–59 | 7 | 12 |
| | | 40–59 | 4 | 24 |
| T306–c–1 | NAP | 90 or above | 4 | 24 |
| | | 80–89 | 8 | 24 |
| | | 70–79 | 8 | 24 |
| | | 60–69 | 12 | 24 |
| | | 50–59 | 12 | 28 |
| | | 40–49 | 12 | 32 |
| T306–c–2 | 26″ vacuum | 60 or above | 8 | 3 |
| | | 40–59 | 9 | 3 |
| T306–d–1 | NAP | 90 or above | 4 | 24 |
| | | 80–89 | 6 | 24 |
| | | 70–79 | 8 | 24 |
| | | 60–69 | 12 | 24 |
| | | 50–59 | 12 | 28 |
| | | 40–49 | 12 | 32 |
| T306–d–2 | 26″ vacuum | 60 or above | 8 | 3 |
| | | 40–59 | 9 | 3 |
| T309–a (except sawflies) | 26″ vacuum | 60 or above | 2.5 | 2.5 |
| | | 50–59 | 3.5 | 2.5 |
| | | 40–49 | 5 | 2.5 |
| T309–a (sawflies) | 26″ vacuum | 60 or above | 2.5 | 5 |
| | | 50–59 | 3.5 | 5 |
| | | 40–49 | 5 | 5 |
| T309–b–1 | NAP | 60 or above | 2.5 | 16 |
| | | 50–59 | 3.5 | 16 |
| | | 40–49 | 4.5 | 16 |
| T309–b–2 | NAP | 60 or above | 3 | 24 |
| | | 50–59 | 5 | 24 |
| | | 40–49 | 7 | 24 |
| T310–a | NAP | 90 or above | 4 | 3 |
| | | 80–89 | 5 | 3 |
| | | 70–79 | 6 | 4 |

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| | | 60–69 | 7 | 5 |
| | | 50–59 | 8 | 7 |
| | | 40–49 | 8 | 16 |
| T310–b | 26″ vacuum | 80 or above | 3 | 2.5 |
| | | 70–79 | 3 | 3.5 |
| | | 60–69 | 4 | 4 |
| | | 50–59 | 5.5 | 5 |
| T312–a | NAP | 40 or above | 15 | 72 |
| T312–b | NAP | 40 or above | 15 | 48 |
| T313–a | NAP | 75 or above | 1.5 | 2.5 |
| | | 7–74 | 2 | 2.5 |
| | | 60–69 | 2.5 | 3 |
| | | 60–69 | 3 | 2.5 |
| | | 50–59 | 3 | 4 |
| | | 50–59 | 4 | 2.5 |
| | | 40–49 | 3.5 | 4.5 |
| | | 40–49 | 5 | 2.5 |
| T313–b | NAP | 60 or above | 3 | 4 |
| | | 60 or above | 4 | 3 |
| | | 50–59 | 3.5 | 4 |
| | | 50–59 | 4 | 3.5 |
| | | 40–49 | 4 | 4 |
| T401–a | NAP | 40 or above | 4 | 12 |
| | | 40 or above | 8 | 3 |
| T401–b | NAP | 90 or above | 2.5 | 12 |
| | | 80–89 | 3.5 | 12 |
| | | 70–79 | 4.5 | 12 |
| | | 60–69 | 6 | 12 |
| | | 50–59 | 7.5 | 12 |
| | | 40–49 | 9 | 12 |
| T402–a–1 | NAP | 55 or above | 8 | 24 |
| T402–a–2 | NAP | 55 or above | 8 | 72 |
| T402–a–3 | NAP | 80 or above | 6 | 10 |
| | | 55–79 | 6 | 16 |
| | | 40–54 | 8 | 24 |
| T402–b–1 | NAP | 90 or above | 2.5 | 12 |
| | | 80–89 | 3.5 | 12 |
| | | 70–79 | 4.5 | 12 |
| | | 60–69 | 6 | 12 |
| | | 50–59 | 7.5 | 12 |
| | | 40–49 | 9 | 12 |
| T402–b–2 | NAP | 90–96 | 4 | 24 |
| | | 80–89 | 6 | 24 |
| | | 70–79 | 8 | 24 |
| T403–a–2–1 | NAP | 55 or above | 8 | 72 |
| T403–a–2–2 | 26″ vacuum | 70 or above | 8 | 16 |
| T403–a–3 | NAP | 90–96 | 1 | 2 |
| | | 80–89 | 1.25 | 2 |
| | | 70–79 | 1.5 | 2 |
| | | 60–69 | 1.75 | 2 |
| T403–a–4–1 | NAP | 80 or above | 6 | 10 |
| | | 55–79 | 6 | 16 |
| | | 40–54 | 8 | 24 |
| T403–a–4–2 | 26″ vacuum | 7 or above | 6 | 6 |
| T403–a–5–1 | NAP | 80 or above | 6 | 10 |
| | | 40–79 | 6 | 16 |
| T403–a–5–2 | 26″ vacuum | 40 or above | 6 | 6 |
| T403–b | Use T401–b or 402–b–2. | | | |
| T403–c | 26″ vacuum | 40 or above | 8 | 16 |
| | | 40 or above | 10.5 | 12 |
| | | 40 or above | 16 | 8 |
| T403–e–1–1 | NAP | 90 or above | 2.5 | 12 |
| | | 80–89 | 3.5 | 12 |
| | | 70–79 | 4.5 | 12 |
| | | 60–69 | 6 | 12 |
| | | 50–59 | 7.5 | 12 |
| | | 40–49 | 9 | 12 |
| T403–e–1–2 | NAP | 90–96 | 4 | 24 |
| | | 80–89 | 6 | 24 |
| | | 70–79 | 8 | 24 |

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| | | 60–69 | 12 | 24 |
| | | 50–59 | 12 | 28 |
| | | 40–49 | 12 | 32 |
| T403–e–2 | NAP | 40 or above | 10 | 48 |
| T403–f | NAP | 70 or above | 3 | 3 |
| | | 60–69 | 3.5 | 3 |
| | | 50–59 | 4 | 3 |
| | | 45–49 | 4.5 | 3 |
| | | 40–44 | 5 | 3 |
| T404–a | 26″ vacuum | 40 or above | 8 | 16 |
| | | 40 or above | 10.5 | 12 |
| | | 40 or above | 16 | 8 |
| T404–b–1–1 | NAP | 70 or above | 3 | 16 |
| | | 40–69 | 5 | 16 |
| T404–b–1–2 | 26″ vacuum | 70 or above | 4 | 4 |
| | | 40–69 | 4 | 5 |
| T404–c–1–1 | NAP | 40 or above | 3 | 24 |
| T404–c–1–2 | 26″ vacuum | 70 or above | 4 | 3 |
| | | 40–69 | 4 | 4 |
| T404–d | NAP | 80 or above | 3.5 | 24 |
| | | 70–79 | 4.5 | 24 |
| | | 60–69 | 6 | 24 |
| | | 50–59 | 7.5 | 24 |
| | | 40–49 | 9 | 24 |
| T406–b | NAP | 60 or above | 15 | 24 |
| T407 | NAP | 40 or above | 4 | 12 |
| | | 40 or above | 8 | 3 |
| T408–c–1 | See T403–c for loose and friable material only. | | | |
| T408–c–2 | NAP | 60 or above | 15 | 24 |
| T408–e–1 | 26″ vacuum | 70 or above | 2 | 3.5 |
| T408–e–2 | 26″ vacuum | 40 or above | 8 | 16 |
| | | 40 or above | 10.5 | 12 |
| | | 40 or above | 16 | 8 |
| T408–g–1 | Chamber | 60 or above | 10 | 24 |
| | | 60 or above | 20 | 15.5 |
| T408–g–2 | Tarpaulin | 60 or above | 15 | 24 |
| T411 | NAP | 90–96 | 2 | 2.5 |
| | | 80–89 | 2.5 | 2.5 |
| | | 70–79 | 3 | 2.5 |
| | | 60–69 | 3 | 3 |
| | | 50–59 | 3 | 3.5 |
| | | 40–49 | 3 | 4 |
| T413–a | NAP | 90 or above | 2.5 | 12 |
| | | 80–89 | 3.5 | 12 |
| | | 70–79 | 4.5 | 12 |
| | | 60–69 | 6 | 12 |
| | | 50–59 | 7.5 | 12 |
| | | 40–49 | 9 | 12 |
| T413–b | 26″ vacuum | 60 or above | 8 | 3 |
| | | 40–59 | 9 | 3 |
| T414 | NAP | 50 or above | 3.5 | 4 |
| | | 50 or above | 2.5 | 8 |
| | | 50 or above | 2 | 16 |
| | | 40–49 | 4.5 | 4 |
| | | 40–59 | 3.25 | 8 |
| | | 40–49 | 2.25 | 16 |
| T416–a–1 | NAP | 90 or above | 2.5 | 12 |
| | | 80–89 | 3.5 | 12 |
| | | 70–79 | 4.5 | 12 |
| | | 60–69 | 6 | 12 |
| | | 50–59 | 7.5 | 12 |
| | | 40–49 | 9 | 12 |
| T416–a–2 | 26″ vacuum | 60 or above | 8 | 3 |
| | | 40–59 | 9 | 3 |
| T416–a–3 | 26″ vacuum | 90–96 | 2.5 | 12 |
| | | 80–89 | 3.5 | 12 |
| | | 70–79 | 4.5 | 12 |
| | | 60–69 | 6 | 12 |
| | | 50–59 | 10 | 12 |

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| | | 40–49 | 12 | 12 |
| T502–1, T502–2, T502–3 | 26″ vacuum | 40 or above | 8 | 16 |
| T506–1, T506–2–1 | 26″ vacuum | 40 or above | 8 | 16 |
| | | 40 or above | 10.5 | 12 |
| | | 40 or above | 16 | 8 |

[1] Normal atmospheric pressure.
[2] See T201–p–3 (§ 305.35(c)) for material not tolerant to fumigation.
[3] See footnote 2.

(b) *MBSFF, fumigation with methyl bromide for sapote fruit fly.* Regulated citrus fruits originating inside an area quarantined for sapote fruit fly that are to be moved outside the quarantined area may be treated with methyl bromide fumigation in APHIS-approved chambers. Exposure period for this treatment is 2 hours. To enhance equal concentrations of methyl bromide throughout the chamber, a fan should be placed near the point of gas introduction, and allowed to run for at least 15 minutes. Fruit pulp temperature must be between 21.1 °C and 29.4 °C (70 °F and 85 °F). This temperature requirement refers to fruit pulp only and not to air temperature within the chamber. Fruit taken from a cooling room may have to be prewarmed before fumigation is attempted. To determine fruit pulp temperature, stab several fruit to the center with a suitable thermometer that reads at least in whole degrees (F or C). The lowest temperature should be used, not the average. The methyl bromide dosage is set at a rate of 2.5 pounds of 100 percent pure, type ''Q'' (for quarantine use only) methyl bromide per 1,000 cubic feet of chamber space. Dosage is based upon chamber volume, not the volume of the fruit being treated. Fruit should be in cartons approved for fumigation. Cartons must be placed on pallets. There should be an air space of at least 1 foot between adjacent pallet loads; at least 1 foot between chamber walls and the nearest carton of fruit; and at least 2 feet between the height of the stack and the ceiling of the chamber. The compressed liquid methyl bromide inside the cylinder must be put through a volatilizer prior to injection into the chamber. Water temperature in the volatilizer must never fall below 65.6 °C (150 °F) at any time during gas injection. However, if, prior to treatment, representative sampling reveals a level of infestation greater than 0.5 percent for the lot, then the fruit is ineligible for treatment.

**§ 305.7 Phosphine treatment schedules.**

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate | Exposure period (hours) |
|---|---|---|---|---|
| T203–f–4 | NAP[1] | 50 or above | 2.1 grams/cubic meter | 120 |
| T203–g–3 | NAP | 50 or above | 2.1 grams/cubic meter | 120 |
| T301–a–6 | NAP | 50 or above | 60 grams/1000 $ft^3$ | 120 |
| T301–d–1–2 | NAP | 50 or above | 36 grams/1000 $ft^3$ | 72 |
| T311 | NAP | 50 or above | 60 grams/1000 $ft^3$ | 168 |

[1] Normal atmospheric pressure.

**§ 305.8 Sulfuryl fluoride treatment schedules.**

| Treatment schedule | Pressure | Temperature (°F) | Dosage rate (lb/1000 cubic feet) | Exposure period (hours) |
|---|---|---|---|---|
| T310–d | NAP[1] | 70 or above | 2 | 24 |
| | | 50–69 | 2.5 | 24 |
| | | 40–49 | 3 | 24 |
| DT404–b–2 | NAP | 70 or above | 4 | 16 |
| | | 60–69 | 4 | 24 |
| | | 50–59 | 5 | 24 |
| | | 40–49 | 6.5 | 24 |
| | | | 5 | 32 |
| T404–c–2 | NAP | 70 or above | 1 | 16 |
| | | 60–69 | 1.5 | 24 |
| | | 50–59 | 2.5 | 24 |

[1] Normal atmospheric pressure.

**§ 305.9 Aerosol spray for aircraft treatment schedules.**

(a) *Military aircraft.* Aerosol disinfection of U.S. military aircraft must conform to requirements in the latest edition of ''Quarantine Regulations of the Armed Forces'' (Army Reg. 40–12; SECNAVINST 6210.2A; AFR 161–4).

(b) *Aerosol schedules.*

| Treatment schedule | Aerosol | Rate |
|---|---|---|
| T409–b | d–phenothrin (10%) | 8g/1,000 ft$^3$. |
| T409–c–1 | Resmethrin (2%) | 10g/1,000 ft$^3$. |
| T409–c–3 | Resmethrin (1.2%) | 16.66/1,000 ft$^3$. |

**§ 305.10 Treatment schedules for combination treatments.**

(a) *Fumigation followed by cold treatment.* (1) Treatment requirements for chemical treatments in § 305.5 and for cold treatment in § 305.15 must be followed.

(2) Normal atmospheric pressure must be used for the methyl bromide portion of the treatment.

(3) In the following table, CT represents cold treatment, and MB represents methyl bromide fumigation:

| Treatment schedule | Type of treatment | Temperature (°F) | Dosage rate (lb/1000 ft$^3$) | Exposure period |
|---|---|---|---|---|
| T108–a–1 [1] | MB | 70 or above | 2 | 2 hours. |
| | CT | 33–37 | | 4 days. |
| | | 38–47 | | 11 days. |
| T108–a–2 [2] | MB | 70 or above | 2 | 2.5 hours. |
| | CT | 34–40 | | 4 days. |
| | | 41–47 | | 6 days. |
| | | 48–56 | | 10 days. |
| T108–a–3 [3] | MB | 70 or above | 2 | 3 hours. |
| | CT | 43–47 | | 3 days. |
| | | 48–56 | | 6 days. |
| T108–b | MB | 50 or above | 1.5 | 2 hours. |
| | | 40–49 | 2 | 2 hours. |
| | CT | 33 or below | | 21 days. |
| | | 48–56 | | 6 days. |
| MB&CTMedfly | MB | 70 or above | 2 | 2 hours. |
| | CT | 33–37 | | 4 days. |
| | | 38–47 | | 11 days. |
| | MB | 70 or above | 2 | 2.5 hours. |
| | CT | 34–40 | | 4 days. |
| | | 41–47 | | 6 days. |
| | | 48–56 | | 10 days. |
| | MB | 70 or above | 2 | 3 hours. |
| | CT | 43–47 | | 3 days. |
| | | 48–56 | | 6 days. |
| MB&CTOFF [4] | MB | 70 or above | 2 | 2 hours. |
| | CT | 33–37 | | 4 days. |
| | | 38–47 | | 11 days. |
| | MB | 70 or above | 2 | 2.5 hours. |
| | CT | 34–40 | | 4 days. |
| | | 41–47 | | 6 days. |
| | | 48–56 | | 10 days. |
| | MB | 70 or above | 2 | 3 hours. |
| | CT | 43–47 | | 3 days. |
| | | 48–56 | | 6 days. |

[1] For Hawaiian-grown avocados only, a single transient heat spike of no greater than 39.6 °F (4.2 °C) and no longer than 2 hours, during or after 6 days of cold treatment, does not affect the efficacy of the treatment.
[2] See footnote 1.
[3] See footnote 1.
[4] Following fumigation, the fruit must be aerated 2 hours before refrigeration (but refrigeration must begin no more than 24 hours after fumigation is completed).

(b) *Cold treatment followed by fumigation.* (1) Treatment requirements for chemical treatments in § 305.5 and for cold treatment in § 305.15 must be followed.

(2) Use normal atmospheric pressure for the methyl bromide portion of the treatment.

(3) In the following table, CT represents cold treatment, and MB represents methyl bromide fumigation:

| Treatment schedule | Type of treatment | Temperature (°F) | Dosage rate (lb/1000 ft$^3$) | Exposure period |
|---|---|---|---|---|
| T109–a–1 | CT | 34 or below | | 40 days. |
| | MB | 50 or above | 3 | 2 hours. |
| T109–a–2 | CT | 34 or below | | 40 days. |
| | MB | 59 or above | 2 pounds 6 ounces | 2 hours. |
| T109–d–1 | CT | 33 or below | | 21 days. |
| | MB | 70 or above | 2 | 2 hours. |
| | | 60–69 | 2.5. | |
| | | 40–59 | 3. | |
| CT&MBOFF | CT | 33 | | 21 days. |
| | MB | 40–59 | 3 | 2 hours. |
| | | 60–69 | 2.5 | 2 hours. |
| | | 70–79 | 2 | 2 hours. |

(c) *T203–p and T511–1, hot water and chemical dip for citrus (Rutacae) seeds for citrus canker.* (1) If any mucilaginous material, such as pulp, is adhering to the seed, the seed must be washed to remove it.

(2) The seed must be immersed in water heated to 125 °F or above for 10 minutes.

(3) Then the seed must be immersed for at least 2 minutes in a solution containing 200 parts per million sodium hypochlorite at a pH of 6.0 to 7.5.

(4) Seed from regions where citrus canker occurs must be drained, dried, and repacked near original moisture content.

(d) *T201–g–2 and T201–p–2, hand removal plus malathion-carbaryl chemical dip.* (1) Pests must be removed by hand from infested parts.

(2) The solutions must be prepared by adding 3 level tablespoons of 25 percent malathion wettable powder and 3 level tablespoons of 50 percent carbaryl wettable powder to each gallon of water. The addition of a sticker-spreader formulation may be required for hard to wet plants. Fresh chemicals must be used and the dip must be prepared for same day use. (For T201–p–2, when the actionable pests are scale insects or their immature crawlers and the label permits, the solution is prepared as indicated, except the 25 percent malathion wettable powder is increased to 4 level tablespoons.)

(3) The entire plant, including the roots, must be submerged in the chemical dip for 30 seconds.

**§ 305.11 Miscellaneous chemical treatments.**

(a) *CC1 for citrus canker.* The fruit must be thoroughly wetted for at least 2 minutes with a solution containing 200 parts per million sodium hypochlorite.

(b) *CC2 for citrus canker.* The fruit must be thoroughly wetted with a solution containing sodium o-phenyl phenate (SOPP) at a concentration of 1.86 to 2.0 percent of the total solution, for 45 seconds if the solution has sufficient soap or detergent to cause a visible foaming action or for 1 minute if the solution does not contain sufficient soap to cause a visible foaming action.

**§§ 305.12–305.14 [Reserved]**

## Subpart–Cold Treatments

**§ 305.15 Treatment requirements.**

(a) *Approved facilities and carriers.* Cold treatment facilities or carriers must be approved by APHIS. Reapproval is required annually, or as often as APHIS directs, depending on treatments performed, commodities handled, and operations conducted at the facility. In order to be approved, facilities and carriers must:

(1) Be capable of keeping treated and untreated fruits, vegetables, or other articles separate so as to prevent reinfestation of articles and spread of pests;

(2) Have equipment that is adequate to effectively perform cold treatment.

(b) *Cold treatment enclosures.* All enclosures in which cold treatment is performed, including refrigerated containers, must:

(1) Be capable of precooling, cooling, and holding fruit at temperatures less than or equal to 2.2 °C (36 °F).

(2) Maintain pulp temperatures according to treatment schedules with no more than a 0.3 °C (0.54 °F) variation in temperature.

(3) Be structurally sound and adequate to maintain required temperatures.

(c) *Monitoring.* Treatment must be monitored by an official authorized by APHIS to ensure proper administration of the treatment. An official authorized by APHIS must approve the recording devices and sensors used to monitor temperatures and conduct an operational check of the equipment before each use and ensure sensors are calibrated. An official authorized by APHIS approves, adjusts, or rejects the treatment.

(d) *Compliance agreements.* Facilities located in the United States must operate under a compliance agreement with APHIS. The compliance agreement must be signed by a representative of the cold treatment facility and APHIS. The compliance agreement must contain requirements for equipment, temperature, circulation, and other operational requirements for performing cold treatment to ensure that treatments are administered properly. Compliance agreements must allow officials of APHIS to inspect the facility to monitor compliance with the regulations.

(e) *Work plans.* Facilities located outside the United States must operate in accordance with a work plan. The work plan must be signed by a representative of the cold treatment facility, the national plant protection organization of the country of origin (NPPO), and APHIS. The work plan must contain requirements for equipment, temperature, circulation, and other operational requirements for performing cold treatment to ensure that cold treatments are administered properly. Work plans for facilities outside the United States may include trust fund agreement information regarding payment of the salaries and expenses of APHIS employees on site. Work plans must allow officials of the NPPO and APHIS to inspect the facility to monitor compliance with APHIS regulations.

(f) *Treatment procedures.* (1) All material, labor, and equipment for cold treatment performed on vessels must be provided by the vessel or vessel agent. An official authorized by APHIS monitors, manages, and advises in order to ensure that the treatment procedures are followed.

(2) Fruit that may be cold treated must be safeguarded to prevent cross-contamination or mixing with other infested fruit. Before loading in cold treatment containers, packages of fruit must be precooled to a treatment temperature or to a uniform temperature

not to exceed 4.5 °C (40 °F) or precooled at the terminal to 2.2 °F (36 °F).

(3) Breaks, damage, etc., in the treatment enclosure that preclude maintaining correct temperatures must be repaired before use. An official authorized by APHIS must approve loading of compartment, number and placement of sensors, and initial fruit temperature readings before beginning the treatment.

(4) At least three temperature sensors must be used in the treatment compartment during treatment.

(5) The time required to complete the treatment begins when the temperature reaches the required temperature.

(6) Only the same type of fruit in the same type of package may be treated together in a container; no mixture of fruits in containers will be treated.

(7) Fruit must be stacked to allow cold air to be distributed throughout the enclosure, with no pockets of warmer air, and to allow random sampling of pulp temperature in any location in load. Temperatures must be recorded at intervals no longer than 1 hour apart. Gaps of longer than 1 hour may invalidate the treatment or indicate treatment failure.

(8) Cold treatment is not completed until so designated by an official authorized by APHIS or the certifying official of the foreign country; shipments of treated commodities may not be discharged until full APHIS clearance has been completed, including review and approval of treatment record charts.

(9) Pretreatment conditioning (heat shock or 100.4 °F for 10 to 12 hours) of fruits is optional and is the responsibility of the shipper.

(10) Cold treatment of fruits in break-bulk vessels or containers must be initiated by an official authorized by APHIS if there is not a treatment technician who has been trained to initiate cold treatments for either break-bulk vessels or containers.

**§ 305.16 Cold treatment schedules.**

| Treatment schedule | Temperature (°F) | Exposure period |
|---|---|---|
| T107–a[1] | 34 or below | 14 days. |
| | 35 or below | 16 days. |
| | 36 or below | 18 days. |
| T107–a–1 | 34 or below | 15 days. |
| | 35 or below | 17 days. |
| T107–b | 33 or below | 18 days. |
| | 34 or below | 20 days. |
| | 35 or below | 22 days. |
| T107–c | 32 or below | 11 days. |
| | 33 or below | 13 days. |
| | 34 or below | 15 days. |
| | 35 or below | 17 days. |
| T107–d | 32 or below | 13 days. |
| | 33 or below | 14 days. |
| | 34 or below | 18 days. |
| | 35 or below | 20 days. |
| | 36 or below | 22 days. |
| T107–e | 31 or below[2] | 22 days. |
| T107–f | 32 or below | 10 days. |
| | 33 or below | 11 days. |
| | 34 or below | 12 days. |
| | 35 or below | 14 days. |
| T107–g | 0 or below | 7 days. |
| T107–h | 33.4 or below | 13 days. |
| | 33.8 or below | 15 days. |
| | 34.5 or below | 18 days. |
| T107–j | 33.8 or below | 13 days. |
| | 34.5 or below | 18 days. |
| CTMedfly | 34 or below | 14 days. |
| | 35 or below | 16 days. |
| | 36 or below | 18 days. |
| T403–a–2–3 (for temperatures below 55 °F) | 0 | 48 hours. |
| T403–a–4–3, T403–a–5–3, T403–a–6–1 | 0 | 48 hours. |
| T403–a–6–2 | 0 | 32 hours. |
| | 10 | 48 hours. |
| T403–a–6–3 | 0 | 8 hours. |
| | 10 | 16 hours. |
| | 20 | 24 hours. |

[1] For Hawaiian-grown avocados only, a single transient heat spike of no greater than 39.6 °F (4.2 °C) and no longer than 2 hours, during or after 6 days of cold treatment, does not affect the efficacy of the treatment.

[2] Commence when sensors are at 31 °F or below. If the temperature exceeds 31.5 °F, extend the treatment one-third of a day for each day, or part of a day, that the temperature is above 31.5 °F. If the exposure period is extended, the temperature during the extension period must be 34 °F or below. If the temperature exceeds 34 °F at any time, the treatment is nullified. Also, some freeze damage may occur if the pulp temperature drops below approximately 29.5 °F. This varies with the commodity.

## Subpart—Quick Freeze Treatments

### § 305.17 Authorized treatments; exceptions.

(a) Quick freeze is an authorized treatment for all fruits and vegetables imported into the United States or moved interstate from Hawaii or Puerto Rico, except for those fruits and vegetables listed in paragraph (b) of this section. Quick freeze for fruits and vegetables imported into the United States or moved interstate from Hawaii or Puerto Rico must be conducted in accordance with §§ 318.13–4a, 318.58–4a, and 319.56–2c, respectively.

(b) Quick freeze is not an authorized treatment for:

(1) Avocados with seeds from South America, Central America, or Mexico.

(2) Citrus with peel from Afghanistan, Andaman Islands, Argentina, Bangladesh, Brazil, Cambodia, China (People's Republic of), Comoros, Cote d'Ivoire, Fiji Islands, Home Island in Cocos (Keeling) Islands, Hong Kong, India, Indonesia, Japan and adjacent islands, Korea, Laos, Madagascar, Malaysia, Maldives, Mauritius, Mozambique, Myanmar, Nepal, Oman, Pakistan, Palau, Papua New Guinea, Paraguay, Philippines, Reunion Islands, Rodrigues Islands, Ryukyu Islands, Saudi Arabia, Seychelles, Sri Lanka, Taiwan, Thailand, Thursday Island, United Arab Emirates, Uruguay, Vietnam, Yemen, and Zaire.

(3) Mangoes with seeds from Barbados, Dominica, French Guiana, Guadeloupe, Martinique, St. Lucia, and all countries outside of North, Central, and South America and their adjacent islands (which include the Caribbean Islands and Bermuda).

(4) Corn-on-the-cob from Albania, Algeria, Bosnia and Hercegovina, Croatia, Cyprus, Egypt, France, Greece, Israel, Italy, Lebanon, Libya, Malta, Macedonia, Morocco, Sardinia, Serbia and Montenegro, Slovenia, Spain, Syria, Tunisia, and Turkey.

(5) Black currants unless authorized in an import permit to specified areas.

(c) Quick freeze may damage commodities and is recommended for thick-skinned fruits and vegetables, such as durian and coconut, that will be processed into another form (*e.g.*, for puree, juice, or mashed vegetables).

### § 305.18 Quick freeze treatment schedule.

(a) *T110.*

(1) Initially, lower the commodity's temperature to 0 °F or below.

(2) Hold the temperature of the commodity at 20 °F or below for at least 48 hours.

(3) The commodity may be transported during the 48-hour treatment period, but the temperature must be maintained at 20 °F or below prior to release.

(4) The fruits and vegetables may not be removed from the vessel or vehicle transporting them until an inspector has determined that they are in a satisfactory frozen state upon arrival. If the temperature of the fruits or vegetables in any part of a shipment is found to be above 20 °F at the time of inspection upon arrival, the entire shipment must remain on board the vessel or vehicle under such safeguards as may be prescribed by the inspector until the temperature of the shipment is below 20 °F, or the shipment is transported outside the United States or its territorial waters, or is otherwise disposed of to the satisfaction of the inspector.

(b) [Reserved]

### § 305.19 [Reserved]

## Subpart—Heat Treatments

### § 305.20 Treatment requirements.

(a) *Certified facility.* The treatment facility must be certified by APHIS. Recertification is required annually, or as often as APHIS directs, depending upon treatments performed, commodities handled, and operations conducted at the facility. In order to be certified, a heat treatment facility must:

(1) Have equipment that is capable of adequately circulating air or water (as relevant to the treatment), changing the temperature, and maintaining the changed temperature sufficient to meet the treatment schedule parameters.

(2) Have equipment used to record, monitor, or sense temperature, maintained in proper working order.

(3) Keep treated and untreated fruits, vegetables, or articles separate so as to prevent reinfestation and spread of pests.

(b) *Monitoring.* Treatment must be monitored by an official authorized by APHIS to ensure proper administration of the treatment. An official authorized by APHIS approves, adjusts, or rejects the treatment.

(c) *Compliance agreements.* Facilities located in the United States must operate under a compliance agreement with APHIS. The compliance agreement must be signed by a representative of the heat treatment facilities located in the United States and APHIS. The compliance agreement must contain requirements for equipment, temperature, water quality, circulation, and other measures for performing heat treatments to ensure that treatments are administered properly. Compliance agreements must allow officials of APHIS to inspect the facility to monitor compliance with the regulations.

(d) *Work plans.* Facilities located outside the United States must operate in accordance with a work plan. The work plan must be signed by a representative of the heat treatment facilities located outside the United States the national plant protection organization of the country of origin (NPPO), and APHIS. The work plan must contain requirements for equipment, temperature, water quality, circulation, and other measures to ensure that heat treatments are administered properly. Work plans for facilities outside the United States must include trust fund agreement information regarding payment of the salaries and expenses of APHIS employees on site. Work plans must allow officials of the NPPO and APHIS to inspect the facility to monitor compliance with APHIS regulations.

(e) *Treatment procedures.* (1) Before each treatment can begin, an official authorized by APHIS must approve the loading of the commodity in the treatment container.

(2) Sensor equipment must be adequate to monitor the treatment, its type and placement must be approved by an official authorized by APHIS, and the equipment must be tested by an official authorized by APHIS prior to beginning the treatment. Sensor equipment must be locked before each treatment to prevent tampering.

(3) Fruits, vegetables, or articles of substantially different sizes must be treated separately; oversized fruit may be rejected by an official authorized by APHIS.

(4) The treatment period begins when the temperature specified by the treatment schedule has been reached. An official authorized by APHIS may abort the treatment if the facility requires an unreasonably long time to achieve the required temperature.

### § 305.21 Hot water dip treatment schedule for mangoes.

*Mangoes may be treated using schedule T102–a:*

(a) Fruit must be presorted by weight class. Treatment of mixed loads is not allowed.

(b) The mangoes must be treated in the country of origin at a certified facility under the monitoring of an official authorized by APHIS. Prior to each use, an official authorized by APHIS must test and determine that the treatment tank, temperature recording device, and other monitoring equipment of the tank are adequate to conduct the treatment.

(c) Water in the treatment tank must be treated or changed regularly to prevent microbial contamination. Chlorinated water must be used.

(d) Pulp temperature must be 70 °F or above before starting the treatment.

(e) Fruit must be submerged at least 4 inches below the water's surface.

(f) Water must circulate constantly and be kept at 115 °F or above throughout the treatment with the following tolerances:

(1) During the first 5 minutes of a treatment, temperatures below 113.7 °F are allowed if the temperature is at least 115 °F at the end of the 5-minute period.

(2) For treatments lasting 65–75 minutes, temperatures may fall no lower than 113.7 °F for no more than 10 minutes under emergency conditions.

(3) For treatments lasting 90–110 minutes, temperatures may fall no lower than 113.7 °F for no more than 15 minutes under emergency conditions.

(g) Dip time is as follows:

(1)

| Origin | Shape of mango [1] | Weight (grams) | Dip time [2] (minutes) |
|---|---|---|---|
| Puerto Rico, U.S. Virgin Islands, or West Indies (excluding Aruba, Bonaire, Curacao, Margarita, Tortuga, or Trinidad and Tobago). | Flat, elongated varieties | Up to 400 | 65 |
| | | 400–570 | 75 |
| | Rounded varieties | Up to 500 | 75 |
| | | 500–700 | 90 |
| | | 701–900 | 110 |
| Central America (north of and including Costa Rica) or Mexico | Flat, elongated varieties | Up to 375 | 65 |
| | | 375–570 | 75 |
| | Rounded varieties | Up to 500 | 75 |
| | | 500–700 | 90 |
| | | 701–900 | 110 |
| Panama, South America, or West Indies islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, or Trinidad and Tobago. | Flat, elongated varieties | Up to 375 | 65 |
| | | 375–570 | 75 |
| | Rounded varieties | Up to 425 | 75 |
| | | 425–650 | 90 |

[1] Flat, elongated varieties include Frances, Carrot, Zill, Ataulfo, Carabao, Irwin, and Manila, and rounded varieties include Tommy Atkins, Kent, Hayden, and Keitt.

[2] See paragraph (g)(2) of this section for required dip times if the fruit is hydrocooled within 30 minutes of removal from the hot water immersion tank.

(2) Dip times in paragraph (g)(1) of this section are valid if the fruit is not hydrocooled within 30 minutes of removal from the hot water immersion tank. If hydrocooling starts immediately after the hot water immersion treatment, then the original dip time must be extended for an additional 10 minutes. Hydrocooling is optional but may be done only at temperatures of 70 °F or above.

**§ 305.22 Hot water immersion treatment schedules.**

(a) *T102–d.* (1) Fruit must be grown and treated in Hawaii.

(2) Fruit must be submerged at least 4 inches below the water's surface in a hot water immersion treatment tank certified by APHIS.

(3) The fruit must be submerged for 20 minutes after the water temperature reaches at least 120.2 °F in all locations of the tank. The water must circulate continually and be kept at 120.2 °F or above for the duration of the treatment. Temperatures exceeding 121.1 °F can cause phytotoxic damage.

(4) Hydrocooling for 20 minutes at 75.2 °F is recommended to prevent injury to the fruit from the hot water immersion treatment.

(b) T102–d–1. (1) Fruit must be at ambient temperature before treatment begins.

(2) Fruit must be submerged at least 4 inches below the water's surface in a hot water immersion treatment tank certified by APHIS.

(3) The fruit must be submerged for 20 minutes after the water temperature reaches at least 120.2 °F in all locations of the tank. The water must circulate continually and be kept at 120.2 °F or above for the duration of the treatment. Temperatures exceeding 121.1 °F can cause phytotoxic damage.

(4) Hydrocooling for 20 minutes at 75.2 °F is recommended to prevent injury to the fruit from the hot water immersion treatment.

(c) *T102–e.* (1) Fruit must be submerged at least 4 inches below the water's surface in a hot water immersion treatment tank certified by APHIS.

(2) Water must circulate continually and be kept at 120.2 °F or above for 20 minutes. Treatment time begins when the water temperature reaches at least 120.2 °F in all locations of the tank. Temperatures exceeding 125.6 °F or treatment times significantly exceeding 20 minutes can cause phytotoxic damage.

(3) Cooling and waxing the fruit are both optional and are the sole responsibility of the processor.

**§ 305.23 Steam sterilization treatment schedules.**

| Treatment schedule | Temperature (°F) | Pressure | Exposure period (minutes) | Directions |
|---|---|---|---|---|
| T303–b–1 | | 10 lbs | 20 | Use 28″ vacuum. Steam sterilization is not practical for treatment of bales with a density of greater than 30 pounds per cubic foot. |
| T303–b–2 | | 10 lbs | 20 | Use 28″ vacuum. If without initial vacuum, bleed air until steam vapor escapes. Steam sterilization is not practical for treatment of bales with a density of greater than 30 pounds per cubic foot. |
| T303–d–2 | 260 | 20 lbs | 15 | |
| | 250 | 15 lbs | 20 | |
| T309–c | 240 | 10 psi | 20 | Use 25&Prime vacuum. |

| Treatment schedule | Temperature (°F) | Pressure | Exposure period (minutes) | Directions |
|---|---|---|---|---|
| T406–d | 140 | NAP [1] | 60 | Steam at NAP, tarpaulin or tent. For treatment enclosures of 4,000 $ft^3$ or less, the minimum air temperature must be 40 °F. For treatment enclosures greater than 4,000 $ft^3$ and less than or equal to 6,000 $ft^3$, the minimum air temperature must be 60 °F. Treatment is not recommended for treatment enclosures greater than 6,000 $ft^3$. |
| T408–b | 250 | 15 psi | 30 | Preheat laboratory autoclaves. Restrict soil depth to 2 inches when treating quantities of soil in trays. Restrict each package weight to 5 pounds or less when treating individual packages. Load with adequate spacing. Large commercial steam facilities that operate at pressures up to 60 pounds psi will permit treatment of greater soil depth. |
| T503–1–3 or T503–2–3 (nonbaled) | 240 | NAP | 10 | |
| T503–1–3 or T503–2–3 (baled) | 240 | 10 lbs | 20 | |
| T504–1–2, T504–2–2 | 242 | 10 lbs | 20 | |
| T506–2–3 Loose masses of material. | | 20 lbs | 10 | Introduce live steam into a closed chamber containing the material to be treated until the required temperature and pressure are indicated. The temperature/pressure relationship must be maintained at or above this point for the required exposure period. No initial vacuum is needed, but air must be released until steam escapes. |
| | | 15 lbs | 15 | |
| | | 10 lbs | 20 | |
| T506–2–3 Closely packed material (such as soil). | | | | Exhaust the air in the chamber to a high vacuum, and then introduce live steam until the required positive pressure is reached. |
| T510–1 | 212 | | | Live steam from jet of nozzle into loose masses of material until all parts reach 212 °F. |
| T518–2–2 | 260 | 20 lbs | 15 | |
| | 250 | 15 lbs | 20 | |
| T519–1 | | 10 lbs | 20 | Introduce steam into 28″ vacuum. |
| T519–2 | 259 | 20 lbs | 10 | Introduce steam into 28″ vacuum (or if without initial vacuum, ''bleed'' air until steam vapor escapes). |
| | 240 | 10 lbs | 20 | |

[1] Normal atmospheric pressure.

**§ 305.24 Vapor heat treatment schedules.**

(a) *T106–a–1, T106–a–2, T106–a–3, T106–a–4.* (1) The temperature of the fruit pulp must be increased gradually to 110 °F until the center of the fruit reaches that temperature in 8 hours.

(2) The fruit temperature must be held at 110 °F for 6 hours.

(b) *T106–a–1–1.* (1) The temperature of the fruit pulp must be increased to 110 °F until the center of fruit reaches that temperature in 6 hours. During the first 2 hours, the temperature must be increased rapidly. The increase over the next 4 hours must be gradual.

(2) The fruit temperature must be held at 110 °F for 4 hours.

(c) *T106–b–1, T106–b–2, T106–b–3, T106–b–4, T106–b–5, T106–b–6, T106–b–7, T106–b–8.* The temperature of the article must be increased using saturated water vapor at 112 °F until the approximate center of the fruit reaches 112 °F. The fruit temperature must be held at 112 °F for 8.75 hours; then immediately cooled.

(d) *T106–c (Quick run-up).* (1) The temperature of the article must be increased until the approximate center of fruit reaches 117 °F in a time period of at least 4 hours.

(2) During the last hour of treatment, the relative humidity in the chamber must be maintained at 90 percent or greater.

(e) *T106–d.* (1) The fruit must be sized before treatment. Temperature probes must be placed in the center of the largest fruits. The temperature of the fruit must be increased using saturated water vapor at 117.5 °F until the pulp temperature near the seed reaches 115.7 °F. The pulp temperature must be held at 115.7 °F or above for 30 minutes; then immediately cooled.

(f) *T106–d–1.* (1) The fruit must be sized before the treatment. Temperature probes must be placed in the center of the largest fruits.

(2) The temperature of the fruit must be increased using saturated water vapor at 117.5 °F until the center of the fruit reaches 114.8 °F in a minimum of 4 hours.

(3) The fruit temperature must be maintained at 114.8 °F for 10 minutes.

(g) *T106–e.* (1) Raise temperature of the fruit using saturated water vapor at 116.6 °F until the approximate center of the fruit reaches 114.8 °F within a minimum time period of 4 hours.

(2) Hold fruit temperature at 114.8 °F or above for 20 minutes. If post-treatment cooling is conducted, wait 30 minutes after the treatment to start the forced cooling process.

(h) *T106–f.* (1) The temperature probes must be placed in the approximate center of the largest fruits at the seed's surface.

(2) The temperature of the fruit must be increased to 117 °F. The total runup time for all sensors must take at least 60 minutes.

(3) The fruit temperature must be held at 117 °F or above for 20 minutes. During the treatment, the relative humidity must be maintained at 90 percent or greater.

(4) The fruit must be hydrocooled under a cool water spray until the fruit sensors reach ambient temperature.

(5) Inspectors will examine the fruit for live quarantine pests. If pests are found, the inspector will reject the treatment.

(i) *T106–g.* (1) The internal temperature of the fruit must be increased using saturated water vapor until the approximate center of fruit reaches 117 °F in a minimum time of 1 hour or longer.

(2) The fruit temperature must be held at 117 °F or above for 20 minutes. During the treatment, the relative humidity must be maintained at 90 percent or greater.

(j) *T412–b–2.* The commodity must be heated to 212 °F for 15 minutes.

**§ 305.25 Dry heat treatment schedules.**

| Treatment schedule | Temperature (°F) | Time | Directions |
|---|---|---|---|
| T302–a–1–2 | 168 minimum | At least 2 hours | Spread the ears of corn in single layers on slats or wire shelves. |
| T303–c–1 | 212 | 1 hour. | |
| T303–d–1 | 180–200 | 2 hours. | |
| T408–a | 230–249 | 16 hours | Spread soil in layers 0.5 inches in depth to ensure uniform heat penetration. |
| | 250–309 | 2 hours. | |
| | 310–397 | 30 minutes. | |
| | 380–429 | 4 minutes. | |
| | 430–450 | 2 minutes. | |
| T412–a | 248 | 15 minutes | Start timing when the entire mass reaches 248 °F.[1] |
| T412–b–1 | 212 | 15 minutes. | |
| T503–1–4, T503–2–4, T504–1–1, T504–2–1. | 212 | 1 hour | Treat small bales only. |
| T518–1 | 170 | 4.5 hours | May take 2 hours to reach temperature. |
| T518–2–1 | 180–200 | 2 hours. | |

[1] A minimum of two temperature probes must be placed in the heat treating equipment in order to determine that all niger seed being treated reaches the target temperature. The treatment temperature must be recorded accurately, precisely, and regularly during treatment. The monitoring equipment must be locked before each treatment begins to prevent tampering. Seed processing equipment must have the capability to divert for retreatment any nontreated seeds or treated seeds that do not meet treatment standards.

**§ 305.26 Khapra beetle treatment schedule for feeds and milled products.**

Feeds and milled products may be treated for khapra beetle using schedule T307–a. The temperature must be 180 °F in any part of the products, or the temperature must be at 150 °F for a total of 7 minutes. All parts of the commodity being moved through or manipulated in the heated area must meet the time and temperature requirements. This treatment must be specifically authorized in each case by the Director of Plant Health Programs, PPQ, APHIS.

**§ 305.27 Forced hot air treatment schedules.**

(a) *T103–a–1.* (1) The temperature probes must be placed into the center of the largest fruit in the load. The number and placement of temperature probes must be approved by APHIS' Center for Plant Health Science and Technology (CPHST) before APHIS can authorize treatment. CPHST grants approval of treatment equipment and facilities through a chamber certification procedure.

(2) APHIS may reject the treatment if the size of an individual fruit exceeds the maximum size authorized by APHIS.

(3) Fruit can be sized before or after the heat treatment. The largest fruit in a load can be identified by either sizing all fruit prior to heating and selecting the largest size class in the load or acquiring fruit of the largest permitted maximum commercial size class.

(4) The fruit containing the temperature probes must be placed inside the hot air chamber at chamber locations specified by APHIS during the chamber certification.

(5) Fruit temperature must be increased within specifications:

(i) The fruit center temperature must be increased to 111.2 °F within 90 minutes or more (minimum approach time is 90 minutes) for all temperature probes.

(ii) The fruit center temperature must be kept at 111.2 °F or hotter for 100 minutes.

(iii) The temperature of the fruit center must be recorded every 2 minutes for the duration of the treatment.

(iv) The total treatment time will vary with the time required to reach 111.2 °F.

(v) Fruit must be cooled after the treatment is completed.

(b) *T103–b–1, T103–d–1, and T103–d–2.* Temperature sensors must be inserted into the centers of the largest fruits. The number of sensors must be approved in advance by APHIS. Sensors must be physically placed in various parts of the load so that high, middle, and low areas are all represented.

(2) Fruit (placed in open trays, bulk bins, or ventilated boxes) must be loaded into the treatment chamber, and sensors must be attached to the recorder monitor.

(3) The monitor must be set to record temperatures from all sensors at least once every 5 minutes.

(4) The fruit in the chamber must be heated using forced hot air, until the fruit center temperature (all sensors) reaches at least 117 °F. Treatment time may vary, but in every case, it must be at least 4 hours in duration, which includes the lead-up time. The total time required for the fruit to reach 117 °F is counted as part of the 4-hour minimum treatment time.

(5) The temperature of the forced air used to heat the fruit in the chamber may be constant or increased in a series of two or more steps or ramped over the treatment duration.

(6) The fruit may be cooled by forced air or hydrocooling. Cooling can be initiated immediately after all sensors reach at least 117 °F.

(c) *T103–c–1.* (1) Size and weight of fruit: Standard fruit size 8–14; must not exceed 1½ pounds.

(2) At least three of the largest mangoes must be probed at the seed's surface. Sensors must be inserted into the thickest portion of the fruit's pulp.

(3) The temperature must be recorded at least once every 2 minutes until the treatment is concluded.

(4) Air heated to 122 °F must be introduced in the chamber.

(5) The treatment must be concluded once the temperature at the seed's surface reaches 118 °F.

(d) *T103–e.* (1) The temperature of the fruit must be raised using forced hot air until the fruit center temperature (all sensors) reaches at least 117 °F in a minimum time of 1 hour. Heat the fruit in the chamber.

(2) The fruit temperature must be held at 117 °F or above for 20 minutes. During the treatment, the relative humidity must be maintained at 90 percent or greater.

**§ 305.28 Kiln sterilization treatment schedule.**

**T404–b–4**

| Dry bulb temperature (°F) | Wet bulb depression (°F) | Percent relative humidity | Percent moisture content | Thickness of lumber (inches) | Exposure (hours) |
|---|---|---|---|---|---|
| 140 | 7 | 82 | 13.8 | 1 | 3 |
| | | | | 2 | 5 |
| | | | | 3 | 7 |
| 130 | 16 | 60 | 9.4 | 1 | 10 |
| | | | | 2 | 12 |
| | | | | 3 | 14 |
| 125 | 15 | 61 | 9.7 | 1 | 46 |
| | | | | 2 | 48 |
| | | | | 3 | 50 |

**§§ 305.29–305.30 [Reserved]**

## Subpart—Irradiation Treatments

### § 305.31 Irradiation treatment of imported fruits and vegetables for certain fruit flies and mango seed weevils.

(a) *Approved doses.* Irradiation at the following doses for the specified fruit flies and seed weevils, carried out in accordance with the provisions of this section, is approved as a treatment for all fruits and vegetables:

IRRADIATION FOR FRUIT FLIES AND SEED WEEVILS IN IMPORTED FRUITS AND VEGETABLES

| Scientific name | Common name | Dose (Gray) |
|---|---|---|
| (1) *Bactrocera dorsalis.* | Oriental fruit fly | 250 |
| (2) *Ceratitis capitata.* | Mediterranean fruit fly. | 225 |
| (3) *Bactrocera cucurbitae.* | Melon fly ..... | 210 |
| (4) *Anastrepha fraterculus.* | South American fruit fly. | 150 |
| (5) *Anastrepha suspensa.* | Caribbean fruit fly. | 150 |
| (6) *Anastrepha ludens.* | Mexican fruit fly | 150 |
| (7) *Anastrepha obliqua.* | West Indian fruit fly. | 150 |
| (8) *Anastrepha serpentina.* | Sapote fruit fly ... | 150 |
| (9) *Bactrocera tryoni.* | Queensland fruit fly. | 150 |
| (10) *Bactrocera jarvisi.* | (No common name). | 150 |
| (11) *Bactrocera latifrons.* | Malaysian fruit fly. | 150 |
| (12) *Sternochetus mangiferae* (Fabricus). | Mango seed weevil. | 300 |

(b) *Location of facilities.* Where certified irradiation facilities are available, an approved irradiation treatment may be conducted for any fruit or vegetable either prior to shipment to the United States or in the United States. Irradiation facilities certified under this section may be located in any State on the mainland United States except Alabama, Arizona, California, Florida, Georgia,[1] Kentucky, Louisiana, Mississippi,[1] Nevada, New Mexico, North Carolina,[1] South Carolina, Tennessee, Texas, and Virginia. Prior to treatment, the fruits and vegetables to be irradiated may not move into or through any of the States listed in this paragraph, except that movement is allowed through Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into an authorized State by the shortest route.

(c) *Compliance agreement with importers and facility operators for irradiation in the United States.* If irradiation is conducted in the United States, both the importer and the operator of the irradiation facility must sign compliance agreements with the Administrator. In the facility compliance agreement, the facility operator must agree to comply with any additional requirements found necessary by the Administrator to prevent the escape, prior to irradiation, of any fruit flies that may be associated with the articles to be irradiated. In the importer compliance agreement, the importer must agree to comply with any additional requirements found necessary by the Administrator to ensure the shipment is not diverted to a destination other than an approved treatment facility and to prevent escape of plant pests from the articles to be irradiated during their transit from the port of first arrival to the irradiation facility in the United States.

(d) *Compliance agreement with irradiation facilities outside the United States.* If irradiation is conducted outside the United States, the operator of the irradiation facility must sign a compliance agreement with the Administrator and the plant protection service of the country in which the facility is located. In this agreement, the facility operator must agree to comply with the requirements of this section, and the plant protection service of the country in which the facility is located must agree to monitor that compliance and to inform the Administrator of any noncompliance.

(e) *Certified facility.* The irradiation treatment facility must be certified by the Administrator. Recertification is required in the event of an increase or decrease in the amount of radioisotope, a major modification to equipment that affects the delivered dose, or a change in the owner or managing entity of the facility. Recertification also may be required in cases where a significant variance in dose delivery has been measured by the dosimetry system. In order to be certified, a facility must:

(1) Be capable of administering the minimum absorbed ionizing radiation doses specified in paragraph (a) of this section to the fruits and vegetables;[2]

(2) Be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, except that fruits and vegetables traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons, or some other means approved during certification to prevent reinfestation of articles and spread of pests;

[1] Irradiation facilities may be located at the maritime ports of Gulfport, MS, or Wilmington, NC, or the airport of Atlanta, GA, if the following special conditions are met: The articles to be irradiated must be imported packaged in accordance with paragraph (g)(2)(i)(A) of this section; the irradiation facility and APHIS must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrive and the irradiation facility; untreated articles may not be removed from their packaging prior to treatment under any circumstances; blacklight or sticky paper must be used within the irradiation facility, and other trapping methods, including Jackson/methyl eugenol and McPhail traps, must be used within the 4 square miles surrounding the facility; and the facility must have contingency plans, approved by APHIS, for safely destroying or disposing of fruit.

[2] The maximum absorbed ionizing radiation dose and the irradiation of food is regulated by the Food and Drug Administration under 21 CFR part 179.

(3) If the facility is located in the United States, the facility will only be certified if the Administrator determines that regulated articles will be safely transported to the facility from the port of arrival without significant risk that plant pests will escape in transit or while the regulated articles are at the facility.

(f) *Monitoring and interagency agreements.* Treatment must be monitored by an inspector. This monitoring will include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. Facilities that carry out irradiation operations must notify the Director of Preclearance, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, of scheduled operations at least 30 days before operations commence, except where otherwise provided in the facility preclearance work plan. To ensure the appropriate level of monitoring, before articles may be imported in accordance with this section, the following agreements must be signed:

(1) *Irradiation treatment framework equivalency work plan.* The plant protection service of a country from which articles are to be imported into the United States in accordance with this section must sign a framework equivalency work plan with APHIS. In this plan, both the foreign plant protection service and APHIS will specify the following items for their respective countries:

(i) Citations for any requirements that apply to the importation of irradiated fruits and vegetables;

(ii) The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and

(iii) Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

(2) *Facility preclearance work plan.* Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the plant protection service of the country from which articles are to be imported must jointly develop a preclearance work-plan that details the activities that APHIS and the foreign plant protection service will carry out in connection with each irradiation facility to verify the facility's compliance with the requirements of this section. Typical activities to be described in this work plan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the requirements for separation of articles, packaging, labeling, and other requirements of this section. This facility preclearance work plan will be reviewed and renewed by APHIS and the foreign plant protection service on an annual basis.

(3) *Trust fund agreement.* Irradiated articles may be imported into the United States in accordance with this section only if the plant protection service of the country in which the irradiation facility is located has entered into a trust fund agreement with APHIS. That agreement requires the plant protection service to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services at the irradiation facility during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement will describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and will generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation. The agreement requires the plant protection service to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the plant protection service to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more articles irradiated in that country may be imported into the United States. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the plant protection service or held on account until needed, at the option of the plant protection service.

(g) *Packaging.* Fruits and vegetables that are irradiated in accordance with this section must be packaged in cartons in the following manner:

(1) All fruits and vegetables treated with irradiation must be shipped in the same cartons in which they are treated. Irradiated fruits and vegetables may not be packaged for shipment in a carton with nonirradiated fruits and vegetables.

(2) For all fruits and vegetables irradiated prior to arrival in the United States:

(i) The fruits and vegetables to be irradiated must be packaged either:

(A) In insect-proof cartons that have no openings that will allow the entry of fruit flies. The cartons must be sealed with seals that will visually indicate if the cartons have been opened. The cartons may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the articles in the carton [3]; or

(B) In noninsect-proof cartons that are stored immediately after irradiation in a room completely enclosed by walls or screening that completely precludes access by fruit flies. If stored in noninsect-proof cartons in a room that precludes access by fruit flies, prior to leaving the room each pallet of cartons must be completely enclosed in polyethylene, shrink-wrap, or another solid or netting covering that completely precludes access to the cartons by fruit flies.

(ii) To preserve the identity of treated lots, each pallet-load of cartons containing the fruits and vegetables must be wrapped before leaving the irradiation facility in one of the following ways:

(A) With polyethylene shrink wrap;

(B) With net wrapping; or

(C) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(iii) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment. Pallets that remain intact as one unit until entry into the United States may have one such label per pallet. Pallets that are broken apart into smaller units prior to or during entry into the United States must have the required label information on each individual carton.

(h) *Containers or vans.* Containers or vans that will transport treated commodities must be free of pests prior to loading the treated commodities.

(i) *Phytosanitary certificate.* For each shipment treated in an irradiation facility outside the United States, a phytosanitary certificate, with the treatment section completed and issued by the national plant protection

[3] If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Inspection and Technology, 1017 Main Campus Drive, suite 2500, Raleigh, NC 27606.

organization, must accompany the shipment.

(j) *Dosimetry systems at the irradiation facility.* (1) Dosimetry mapping must indicate the doses needed to ensure that all the commodity will receive the minimum dose prescribed.

(2) Absorbed dose must be measured using an accurate dosimetry system that ensures that the absorbed dose meets or exceeds the absorbed dose required by paragraph (a) of this section (150, 210, 225, 250, or 300 gray, depending on the target species of fruit fly or seed weevil).

(3) When designing the facility's dosimetry system and procedures for its operation, the facility operator must address guidance and principles from American Society for Testing and Materials (ASTM) standards [4] or an equivalent standard recognized by the Administrator.

(k) *Records.* An irradiation processor must maintain records of each treated lot for 1 year following the treatment date and must make these records available for inspection by an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(l) *Request for certification and inspection of facility.* Persons requesting certification of an irradiation treatment facility must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Inspection and Technology, 1017 Main Campus Drive, suite 2500, Raleigh, NC 27606. The initial request must identify the owner, location, and radiation source of the facility, and the applicant must supply additional information about the facility construction, treatment protocols, and operations upon request by APHIS if APHIS requires additional information to evaluate the request. Before the Administrator determines whether an irradiation facility is eligible for certification, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of this section.

(m) *Denial and withdrawal of certification.* (1) The Administrator will withdraw the certification of any irradiation treatment facility upon written request from the irradiation processor.

(2) The Administrator will deny or withdraw certification of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying certification, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend certification pending final determination in the proceeding if he or she determines that suspension is necessary to prevent the spread of any dangerous insect. The suspension will be effective upon oral or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(n) *Department not responsible for damage.* This treatment is approved to assure quarantine security against the listed fruit flies. From the literature available, the fruits and vegetables authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or monitored. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

(Approved by the Office of Management and Budget under control number 0579–0155)

**§ 305.32 Irradiation treatment of regulated fruit to be moved interstate from areas quarantined for Mexican fruit fly.**

Irradiation, carried out in accordance with the provisions of this paragraph, is approved as a treatment for any fruit listed as a regulated article in § 301.64–2(a) of this chapter.

(a) *Approved facility.* The irradiation treatment facility and treatment protocol must be approved by the Animal and Plant Health Inspection Service. In order to be approved, a facility must:

(1) Be capable of administering a minimum absorbed ionizing radiation dose of 150 Gray (15 krad) to the fruit;[5]

(2) Be constructed so as to provide physically separate locations for treated and untreated fruit, except that fruit traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons;

(3) Complete a compliance agreement with the Animal and Plant Health Inspection Service as provided in § 301.64–6 of this chapter; and

(4) Be certified by Plant Protection and Quarantine for initial use and annually for subsequent use. Recertification is required in the event that an increase or decrease in radioisotope or a major modification to equipment that affects the delivered dose. Recertification may be required in cases where a significant variance in dose delivery is indicated.

(b) *Treatment monitoring.* Treatment must be carried out under the monitoring of an inspector. This monitoring must include inspection of treatment records and unannounced inspection visits to the facility by an inspector. Facilities that carry out continual irradiation operations must notify an inspector at least 24 hours before the date of operations. Facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations.[6]

(c) *Packaging.* Fruits and vegetables that are treated within a quarantined area must be packaged in the following manner:

(1) The cartons must have no openings that will allow the entry of fruit flies and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the fruit in the carton.[7]

(2) The pallet-load of cartons must be wrapped before it leaves the irradiation facility in one of the following ways:

(i) With polyethylene sheet wrap;

(ii) With net wrapping; or

[4] Designation ISO/ASTM 51261–2002(E) , ''Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing,'' American Society for Testing and Materials, *Annual Book of ASTM Standards.*

[5] See footnote 2 of this subpart.

[6] Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories.

[7] See footnote 3 of this subpart.

(iii) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(3) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

(d) *Dosage.* The fruits and vegetables must receive a minimum absorbed ionizing radiation dose of 150 Gray (15 krad).[8]

(e) *Dosimetry systems.* (1) Dosimetry mapping must indicate the dose needed to ensure the fruit will receive the minimum dose prescribed.

(2) Absorbed dose must be measured using an accurate dosimetry system that ensures that the absorbed dose meets or exceeds 150 Gray (15 krad).

(3) When designing the facility's dosimetry system and procedures for its operation, the facility operator must address guidance and principles from American Society for Testing and Materials (ASTM) standards.[9]

(f) *Records.* Records or invoices for each treated lot must be made available for inspection by an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). An irradiation processor must maintain records as specified in this section for a period of time that exceeds the shelf life of the irradiated food product by 1 year, and must make these records available for inspection by an inspector. These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(g) *Request for approval and inspection of facility.* Persons requesting approval of an irradiation treatment facility and treatment protocol must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27565. Before the Administrator determines whether an irradiation facility is eligible for approval, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of paragraph (a) of this section.

(h) *Denial and withdrawal of approval.* (1) The Administrator will withdraw the approval of any irradiation treatment facility when the irradiation processor requests in writing the withdrawal of approval.

(2) The Administrator will deny or withdraw approval of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying approval, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend approval pending final determination in the proceeding, if he or she determines that suspension is necessary to prevent the spread of any dangerous insect infestation. The suspension will be effective upon oral or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(i) *Department not responsible for damage.* This treatment is approved to assure quarantine security against Mexican fruit fly. From the literature available, the fruits authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or supervised. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

(Approved by the Office of Management and Budget under control number 0579–0215)

**§ 305.33 Irradiation treatment of regulated articles to be moved interstate from areas quarantined for Mediterranean fruit fly.**

Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for any berry, fruit, nut, or vegetable listed as a regulated article in § 301.78–2(a) of this chapter.

(a) *Approved facility.* The irradiation treatment facility and treatment protocol must be approved by the Animal and Plant Health Inspection Service. In order to be approved, a facility must:

(1) Be capable of administering a minimum absorbed ionizing radiation dose of 225 Gray (22.5 krad) to the fruits and vegetables;[10]

(2) Be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, except that fruits and vegetables traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons;

(3) Complete a compliance agreement with the Animal and Plant Health Inspection Service as provided in § 301.78–6 of this chapter; and

(4) Be certified by Plant Protection and Quarantine for initial use and annually for subsequent use. Recertification is required in the event that an increase or decrease in radioisotope or a major modification to equipment that affects the delivered dose. Recertification may be required in cases where a significant variance in dose delivery is indicated.

(b) *Treatment monitoring.* Treatment must be carried out under the monitoring of an inspector. This monitoring must include inspection of treatment records and unannounced inspection visits to the facility by an inspector. Facilities that carry out continual irradiation operations must notify an inspector at least 24 hours before the date of operations. Facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations.[11]

(c) *Packaging.* Fruits and vegetables that are treated within a quarantined area must be packaged in the following manner:

(1) The cartons must have no openings that will allow the entry of fruit flies and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the fruit in the carton.[12]

(2) The pallet-load of cartons must be wrapped before it leaves the irradiation facility in one of the following ways:

(i) With polyethylene sheet wrap;

(ii) With net wrapping; or

[8] See footnote 2 of this subpart.

[9] See footnote 4 of this subpart.

[10] See footnote 2 of this subpart.

[11] See footnote 6 of this subpart.

[12] See footnote 3 of this subpart.

(iii) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(3) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

(d) *Dosage.* The fruits and vegetables must receive a minimum absorbed ionizing radiation dose of 225 Gray (22.5 krad).[13]

(e) *Dosimetry systems.* (1) Dosimetry must demonstrate that the absorbed dose, including areas of minimum and maximum dose, is mapped, controlled, and recorded.

(2) Absorbed dose must be measured using a dosimetry system that can accurately measure an adsorbed dose of 225 Gray (22.5 krad).

(3) The utilization of the dosimetry system, including its calibration and the number and placement of dosimeters used, must be in accordance with the American Society for Testing and Materials (ASTM) standards.[14]

(f) *Records.* Records or invoices for each treated lot must be made available for inspection by an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). An irradiation processor must maintain records as specified in this section for a period of time that exceeds the shelf life of the irradiated food product by 1 year, and must make these records available for inspection by an inspector. These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(g) *Request for approval and inspection of facility.* Persons requesting approval of an irradiation treatment facility and treatment protocol must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27565. Before the Administrator determines whether an irradiation facility is eligible for approval, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of paragraph (a) of this section.

(h) *Denial and withdrawal of approval.* (1) The Administrator will withdraw the approval of any irradiation treatment facility when the irradiation processor requests in writing the withdrawal of approval.

(2) The Administrator will deny or withdraw approval of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying approval, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend approval pending final determination in the proceeding, if he or she determines that suspension is necessary to prevent the spread of any dangerous insect infestation. The suspension will be effective upon oral or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(i) *Department not responsible for damage.* This treatment is approved to assure quarantine security against Mediterranean fruit fly. From the literature available, the fruits and vegetables authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or supervised. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

(Approved by the Office of Management and Budget under control number 0579–0088)

**§ 305.34 Administrative instructions prescribing methods for irradiation treatment of certain fruits and vegetables from Hawaii.**

(a) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for the following fruits and vegetables at the specified dose levels:

IRRADIATION FOR PLANT PESTS IN HAWAIIAN FRUITS AND VEGETABLES

| Commodity | Dose (Gray) |
|---|---|
| Abiu | 250 |
| Atemoya | 250 |
| Bell pepper | 250 |
| Carambola | 250 |
| Eggplant | 250 |
| Litchi | 250 |
| Longan | 250 |
| Mango | 300 |
| Papaya | 250 |
| Pineapple (other than smooth Cayenne) | 250 |
| Rambutan | 250 |
| Sapodilla | 250 |
| Italian squash | 250 |
| Sweetpotato | 400 |
| Tomato | 250 |

(b) *Conditions of movement.* Fruits and vegetables from Hawaii may be authorized for movement in accordance with this section only if the following conditions are met:

(1) *Location.* The irradiation treatment must be carried out at an approved facility in Hawaii or on the mainland United States. Fruits and vegetables authorized under this section for treatment on the mainland may be treated in any State on the mainland United States except Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia. Prior to treatment, the fruits and vegetables may not move into or through Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia, except that movement is allowed through Dallas/Fort Worth, Texas, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from Dallas/Fort Worth into an authorized State by the shortest route.

(2) *Approved facility.* The irradiation treatment facility and treatment protocol must be approved by the Animal and Plant Health Inspection Service. In order to be approved, a facility must:

(i) Be capable of administering the minimum absorbed ionizing radiation doses specified in paragraph (a) of this section to the fruits and vegetables;[15]

(ii) Be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, except that fruits and vegetables traveling by conveyor directly into the

[13] See footnote 2 of this subpart.

[14] See footnote 4 of this subpart.

[15] See footnote 2 of this subpart.

irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence six or more feet high to prevent transfer of cartons. Untreated fruits and vegetables shipped to the mainland United States from Hawaii in accordance with this section may not be packaged for shipment in a carton with treated fruits and vegetables;

(iii) Complete a compliance agreement with the Animal and Plant Health Inspection Service as provided in § 318.13–4(d) of this chapter; and

(iv) Be certified by Plant Protection and Quarantine for initial use and annually for subsequent use. Recertification is required in the event that an increase or decrease in radioisotope or a major modification to equipment that affects the delivered dose. Recertification may be required in cases where a significant variance in dose delivery is indicated.

(3) *Treatment monitoring.* Treatment must be carried out under the monitoring of an inspector. This monitoring must include inspection of treatment records and unannounced inspectional visits to the facility by an inspector. Facilities that carry out continual irradiation operations must notify an inspector at least 24 hours before the date of operations. Facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations.[16]

(4) *Packaging.* (i) Fruits and vegetables that are treated in Hawaii must be packaged in the following manner:

(A) The cartons must have no openings that will allow the entry of fruit flies and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the fruit in the carton.[17]

(B) The pallet-load of cartons must be wrapped before it leaves the irradiation facility in one of the following ways:

(*1*) With polyethylene sheet wrap;

(*2*) With net wrapping; or

(*3*) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(C) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

(ii) Cartons of untreated fruits and vegetables that are moving to the mainland United States for treatment must be shipped in shipping containers sealed prior to interstate movement with seals that will visually indicate if the shipping containers have been opened.

(iii) Litchi and longan from Hawaii may not be moved interstate into Florida. All cartons in which litchi or longan are packed must be stamped ''Not for importation into or distribution in FL.''

(5) *Dosage.* The fruits and vegetables must receive the minimum absorbed ionizing radiation dose specified in paragraph (a) of this section.[18]

(6) *Dosimetry systems.* (i) Dosimetry must demonstrate that the absorbed dose, including areas of minimum and maximum dose, is mapped, controlled, and recorded.

(ii) Absorbed dose must be measured using a dosimeter that can accurately measure the absorbed doses specified in paragraph (a) of this section.

(iii) The number and placement of dosimeters used must be in accordance with American Society for Testing and Materials (ASTM) standards.[19]

(7)(i) *Certification on basis of treatment.* A certificate shall be issued by an inspector for the movement of fruits and vegetables from Hawaii that have been treated and handled in Hawaii in accordance with this section. To be certified for interstate movement under this section, litchi from Hawaii must be inspected in Hawaii and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector before undergoing irradiation treatment in Hawaii for fruit flies, and sweetpotato from Hawaii must be inspected in Hawaii and found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*) and the Kona coffee-root knot nematode (*Meloidogyne konaensis*) by an inspector before undergoing irradiation treatment in Hawaii.

(ii) *Limited permit.* A limited permit shall be issued by an inspector for the interstate movement of untreated fruits and vegetables from Hawaii for treatment on the mainland United States in accordance with this section. To be eligible for a limited permit under this section, untreated litchi from Hawaii must be inspected in Hawaii and found free of the litchi fruit moth (*Cryptophlebia* spp.) and other plant pests by an inspector, and untreated sweetpotato from Hawaii must be inspected in Hawaii and found to be free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*) and the Kona coffee-root knot nematode (*Meloidogyne konaensis*) by an inspector.

(8) *Records.* Records or invoices for each treated lot must be made available for inspection by an inspector during normal business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays). An irradiation processor must maintain records as specified in this section for a period of time that exceeds the shelf life of the irradiated food product by 1 year, and must make these records available for inspection by an inspector. These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(c) *Request for approval and inspection of facility.* Persons requesting approval of an irradiation treatment facility and treatment protocol must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Science and Technology, 1017 Main Campus Drive, suite 2500, Raleigh, NC 27606. Before the Administrator determines whether an irradiation facility is eligible for approval, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of paragraph (b)(2) of this section.

(d) *Denial and withdrawal of approval.* (1) The Administrator will withdraw the approval of any irradiation treatment facility when the irradiation processor requests in writing the withdrawal of approval.

(2) The Administrator will deny or withdraw approval of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying approval, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend approval pending final determination in the proceeding, if he or she determines that suspension is necessary to prevent the spread of any dangerous insect infestation. The suspension will be effective upon oral or written notification, whichever is earlier, to the irradiation processor. In

[16] See footnote 6 of this subpart.

[17] See footnote 3 of this subpart.

[18] See footnote 2 of this subpart.

[19] See footnote 4 of this subpart.

the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(e) *Department not responsible for damage.* This treatment is approved to assure quarantine security against the Trifly complex and other plant pests. From the literature available, the fruits and vegetables authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or supervised. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

(Approved by the Office of Management and Budget under control number 0579–0198)

**§§ 305.35–305.39 [Reserved]**

## Subpart—Treatments for Garbage

**§ 305.40 Garbage treatment schedules for insect pests and pathogens.**

(a) *T415–a, heat treatment.* Incinerate to ash. Caterers under compliance agreement using an incinerator for garbage must comply with the following conditions:

(1) Incinerator must be capable of reducing garbage to ash.

(2) Incinerator must be maintained adequately to ensure operation.

(b) *T415–b, dry heat or steam.* The garbage must be heated to an internal temperature of 212 °F for 30 minutes followed by burial in a landfill.

(1) The sterilizer used to perform the treatment must be capable of heating garbage to an internal temperature of 212 °F and maintaining it at that temperature for a minimum of 30 minutes.

(2) The sterilization cycle must be reevaluated and adjusted twice a year using thermocouple to recalibrate the temperature recording device. Adjusting the sterilization cycle semiannually will ensure that all garbage processed is heated to a minimum internal temperature of 212 °F for at least 30 minutes and that the temperature recording device accurately reflects the internal temperature of the sterilizer.

(3) The caterer administering the treatment under a compliance agreement must comply with the following conditions:

(i) The operator must date and initial time/temperature records for each batch of garbage sterilized. The supervisor must review and sign each time/temperature record. The facility must retain records for 6 months for review by APHIS.

(ii) The drain in the bottom of the sterilizer must be cleaned between each cycle to ensure proper heat circulation.

(4) All reevaluations and adjustments must be observed by APHIS.

(c) *T415–c, grinding and discharge into a sewage system.* The sewage system must be approved by the Administrator upon his/her determination that the system is designed and operated in such a way as to preclude the discharge of sewage effluents onto land surface or into lagoons or other stationary waters and otherwise is adequate to prevent the spread of plant pests and livestock or poultry diseases.

**§ 305.41 [Reserved]**

## Subpart—Miscellaneous Treatments

**§ 305.42 Miscellaneous treatment schedules.**

(a) *T102–b, T102–b–1, T102–b–2, soapy water and wax.* (1) The fruit must be immersed in a soapy water bath of one part soap solution (such as Deterfrut) to 3,000 parts water for 20 seconds.

(2) The soapy bath must be followed with a pressure shower rinse to remove all excess soap.

(3) The fruit must be immersed for 20 seconds in an undiluted wax coating (such as Johnson's Wax Primafresh 31 Kosher fruit coating). The wax coating must cover the entire surface of the fruit.

(b) *T102–c, warm, soapy water and brushing for durian and other large fruits such as breadfruit.* (1) Detergent (such as Deterfrut) must be added to warm water (110–120 °F) at the rate of one part detergent or soap to 3,000 parts water.

(2) The fruit must be immersed for at least 1 minute in the warm detergent water.

(3) The fruit must be scrubbed with a brush with stiff bristles to remove any insects.

(4) The fruit must be rinsed with a pressure shower to rinse the fruit free of residue (detergent and dead insects).

(5) An inspector will inspect each brushed and cleaned fruit. If any insects remain, the fruit must be retreated or destroyed.

(c) *Three alternative treatments for plant material not tolerant to fumigation.* Treatments are based on the character of the plant material and the type of pests that may be found.

(1) T201–p–1: For plant pests, except scale insects, hand removal of pests or infested parts of plants followed by a detailed inspection to ensure plants are pest free may be employed;

(2) See hand removal plus malathion-carbaryl chemical dip T201–p–2 (§ 305.10(d)) for alternative treatment; or

(3) T201–p–3: Following the hand removal of the visible plant pests or infested plant parts, the plant material must be treated with hot water at 112 °F for 20 minutes. This treatment is not effective against mature scale insects.

## PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

■ 26. The authority citation for part 318 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

■ 27. Section 318.13–4a is amended as follows:

■ a. By removing paragraphs (a) and (e).

■ b. By redesignating paragraphs (b) through (d) as paragraphs (a) through (c), respectively.

■ c. By revising newly redesignated paragraph (a) to read as set forth below.

**§ 318.13–4a Administrative instructions authorizing the movement from Hawaii of frozen fruits and vegetables.**

(a) The Administrator of the Animal and Plant Health Inspection Service, pursuant to the authority contained in §§ 318.13–2(b) and 318.13–4(b), approves the process of quick freezing in accordance with part 305 of this chapter as a treatment for all fruits and vegetables described in § 318.13, except as otherwise provided in paragraph (c) of this section. Such frozen fruits and vegetables may be certified for movement from Hawaii into or through any other Territory, State, or District of the United States.[1]

* * * * *

**§ 318.13–4b [Amended]**

■ 28. Section 318.13–4b is amended as follows:

■ a. In paragraph (b), by removing the words ''the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place.

■ b. In paragraph (f), by removing the words ''the PPQ Treatment Manual'' and

[1] Applications for certificates to move frozen fruits and vegetables from Hawaii under this subpart may be made to Plant Protection and Quarantine Programs, P.O. Box 9067, Honolulu, HI 96820.

adding the words ''part 305 of this chapter'' in their place.

**§ 318.13–4f [Amended]**

■ 29. Section 318.13–4f, paragraph (c), is amended by removing the address ''Oxford Plant Protection Center, 901 Hillsboro St., Oxford, NC 27565'' and adding the address ''Center for Plant Health Science and Technology, 1017 Main Campus Drive, suite 2500, Raleigh, NC 27606'' in its place.

**§ 318.13–11 [Amended]**

■ 30. Section 318.13–11 is amended by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place; and by removing the last sentence.

**§ 318.58 [Amended]**

■ 31. In § 318.58, paragraph (b) is amended by removing the word ''Deputy'' and the words ''of the Plant Protection and Quarantine Programs''; and by removing the word ''he'' and adding the words ''the Administrator'' in its place, both times it occurs.

**§ 318.58–2 [Amended]**

■ 32. Section 318.58–2 is amended as follows:

■ a. In paragraph (b)(1), in the entry for mangoes, by removing the words ''the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place; and in footnote 1, by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

■ b. In paragraph (b)(2), by removing the word ''him'' and adding the words ''the inspector'' in its place; and by removing the word ''he'' and adding the words ''the inspector'' in its place.

■ c. In paragraph (b)(4), by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

**§ 318.58–4 [Amended]**

■ 33. Section § 318.58–4 is amended as follows:

■ a. In paragraph (a), by removing the word ''he'' and adding the words ''the inspector'' in its place.

■ b. In paragraph (b), first sentence, by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place; and by removing the second sentence.

■ 34. Section § 318.58–4a is amended as follows:

■ a. By removing paragraphs (a) and (e).

■ b. By redesignating paragraphs (b) through (d) as paragraphs (a) and (c), respectively.

■ c. In newly redesignated paragraph (c), by removing the words ''Deputy Administrator of the Plant Protection and Quarantine Programs'' and by adding the word ''Administrator'' in their place.

**§ 318.58–4a Administrative instructions authorizing the movement from Puerto Rico of frozen fruits and vegetables.**

(a) The Administrator of the Animal and Plant Health Inspection Service, pursuant to the authority contained in §§ 318.58–2 and 318.58–3, approves the process of quick freezing in accordance with part 305 of this chapter as a treatment for all fruits and vegetables described in § 318.58–2, except as otherwise provided in paragraph (c) of this section. Such frozen fruits and vegetables may be certified for movement from Puerto Rico into or through any other Territory, State, or District of the United States in accordance with § 318.58–3.[2]

* * * * *

**§ 318.58–11 [Amended]**

■ 35. Section 318.58–11 is amended by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place, and by removing the last sentence.

**§ 318.82 [Amended]**

■ 36. In § 318.82, paragraph (b) is amended by adding the words ''or she'' immediately after the word ''he'', both times it occurs.

## PART 319—FOREIGN QUARANTINE NOTICES

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

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

**§ 319.8 [Amended]**

■ 38. In § 319.8(a), the second sentence is amended by adding the words ''or she'' immediately after the word ''he'', both times it occurs.

**§ 319.8–3 [Amended]**

■ 39. In § 319.8–3, paragraphs (a) and (b) are amended by adding the words ''or she'' immediately after the word ''he''.

[2] Further information concerning the movement of frozen fruits and vegetables from Puerto Rico may be obtained from the Plant Protection and Quarantine Programs, Room 4, Post Office Bldg., P.O. Box 3386, San Juan, PR 00901.

**§ 319.8–6 [Amended]**

■ 40. In § 319.8–6, the third sentence is amended by removing the word ''him'' and adding the words ''the inspector'' in its place.

**§ 319.8–24 [Amended]**

■ 41. In § 319.8–24, paragraphs (a), (b), and (c) are amended by adding the words ''or her'' immediately after the word ''his''.

**§ 319.37–4 [Amended]**

■ 42. In § 319.37–4, paragraph (b) is amended by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and by adding the words ''part 305 of this chapter'' in their place, and by removing footnote 6.

**§ 319.37–5 [Amended]**

■ 43. In § 319.37–5, paragraph (e) is amended by redesignating footnote 7 as footnote 6.

■ 44. Section 319.37–6 is amended as follows:

■ a. In paragraph (a), by removing footnote 8.

■ b. In paragraphs (a), (b), (c), and (f), by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

■ c. In paragraph (d)(1), by removing the words ''the PPQ Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

■ d. In paragraph (d)(2), by redesignating footnote 9 as footnote 8, and by revising newly redesignated footnote 8 to read as follows:

**§ 319.37–6 Specific treatment and other requirements.**

* * * * *

(d) * * *

(2) * * *[3]

* * * * *

**§ 319.37–7 [Amended]**

■ 45. In § 319.37–7, paragraph (e), footnote 10 is redesignated as footnote 9.

**§ 319.37–8 [Amended]**

■ 46. In § 319.37–8, paragraph (e), footnote 11 is redesignated as footnote 10.

**§ 319.37–13 [Amended]**

■ 47. In § 319.37–13, paragraph (a), footnote 12 is redesignated as footnote 11.

**§ 319.40–1 [Amended]**

■ 48. Section 319.40–1 is amended by removing the definition of *Treatment Manual*.

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

**§ 319.40–5 [Amended]**

■ 49. Section 319.40–5 is amended as follows:

■ a. In paragraph (g)(1), by removing the words ''the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1'' and by adding the words ''part 305'' in their place.

■ b. In paragraph (g)(2)(i) and paragraph (i), by removing the words ''the Plant Protection and Quarantine Treatment Manual,'' and adding the words ''part 305 of this chapter,'' in their place.

■ 50. Section 319.40–7 is amended as follows:

■ a. In paragraphs (f)(1)(i) and (f)(3)(i), by removing the words ''the Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

■ b. By revising paragraphs (f)(1)(ii), (f)(2), and (f)(3)(ii) to read as set forth below.

**§ 319.40–7 Treatments and safeguards.**

* * * * *

(f) * * *

(1) * * *

(ii) *T–404 schedule.* The entire log and the ambient air must be at a temperature of 5 °C or more above throughout fumigation. The fumigation must be conducted using schedule T–404 contained in part 305 of this chapter.

(2) *Lumber.* The lumber and the ambient air must be at a temperature of 5 °C or more above throughout fumigation. The fumigation must be conducted using schedule T–404 contained in part 305 of this chapter.

(3) * * *

(ii) If the ambient air and the regulated articles other than logs or lumber are at a temperature of 4.5–20.5 °C throughout fumigation, the fumigation must be conducted using schedule T–404 contained in part 305 of this chapter.

* * * * *

**§ 319.40–8 [Amended]**

■ 51. In § 319.40–8, paragraph (a) is amended by removing the words ''the Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

**§ 319.40–9 [Amended]**

■ 52. In § 319.40–9, paragraph (b)(2) is amended by removing the words ''the Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

**§ 319.56–2 [Amended]**

■ 53. In § 319.56–2, paragraph (k) is amended by removing the citation ''§ 305.2(a)'' and adding the citation ''§ 305.31(a)'' in its place; and by removing the words ''or the Plant Protection and Quarantine Treatment Manual''.

■ 54. Section 319.56–2c is revised to read as follows:

**§ 319.56–2c Administrative instructions authorizing the importation of frozen fruits and vegetables.**

(a) The Administrator, under authority contained in § 319.56–2, prescribes quick freezing in accordance with part 305 of this chapter as a satisfactory treatment for all fruits and vegetables enterable under permit under § 319.56. Such frozen fruits and vegetables may be imported from any country under permit and in compliance with §§ 319.56–1 through 319.56–7 (exclusive of non-related administrative instructions), at such ports as authorized in the permits.

(b) The importation from foreign countries of frozen fruits and vegetables is not authorized when such fruits and vegetables are subject to attack in the area of origin, by plant pests that may not, in the judgment of the Administrator, be destroyed by quick freezing.

**§ 319.56–2d [Amended]**

■ 55. In § 319.56–2d, paragraph (a) is amended by removing the words ''the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place; and by removing the words ''the PPQ Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

**§ 319.56–2e [Amended]**

■ 56. In § 319.56–2e, paragraph (b), is amended by removing the words ''assure himself of'' and adding the word ''ensure'' in their place.

**§ 319.56–2g [Amended]**

■ 57. In § 319.56–2g, paragraph (a), is amended by removing the words ''the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place.

**§ 319.56–2h [Amended]**

■ 58. Section 319.56–h is amended as follows:

■ a. In paragraph (a)(2), by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

■ b. In paragraph (b), by removing the words ''the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place.

■ c. In paragraph (d), by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305'' in their place.

**§ 319.56–2i [Amended]**

■ 59. Section 319.56–2i is amended as follows:

■ a. In paragraph (a), by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place, and by removing the last sentence.

■ b. In paragraph (b), by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

**§ 319.56–2j [Amended]**

■ 60. Section 319.56–2j is amended as follows:

■ a. In paragraph (a)(2), by removing the words ''the PPQ Treatment Manual, which is incorporated by reference in § 300.1 of this chapter'' and adding the words ''part 305 of this chapter'' in their place.

■ b. In paragraph (a)(4), by removing the words ''the PPQ Treatment Manual'' the first time they occur and adding the words ''part 305 of this chapter must'' in their place.

■ c. In paragraph (a)(6), by removing the words ''the PPQ Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

■ 61. In § 319.56–2k, paragraph (a), is revised to read as follows:

**§ 319.56–2k Administrative instructions prescribing method of fumigation of field-grown grapes from specified countries.**

* * * * *

(a) *Continental countries of southern and middle Europe, North Africa, and the Near East.* As used in this section, the term ''continental countries of southern and middle Europe, North Africa, and the Near East'' means Algeria, Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Cyprus, Egypt, Estonia, France, Georgia, Germany, Greece, Hungary, Israel, Italy, Kazakhstan, Kyrgyzstan, Latvia, Libya, Lithuania, Luxembourg, Portugal, Republic of Moldova, Russian Federation, Spain, Switzerland, Syria, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

* * * * *

**§ 319.56–2n [Amended]**

■ 62. In § 319.56–2n, the introductory text is amended by removing the citation

''319.56–2n'' and adding the citation ''319.56–2m'' in its place.

**§ 319.56–2p [Amended]**

■ 63. In § 319.56–2p, paragraph (f) is amended by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place, and by removing the second and third sentences.

**§ 319.56–2q [Amended]**

■ 64. In § 319.56–2q, paragraph (b) is amended by removing the words ''the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place.

**§ 319.56–2r [Amended]**

■ 65. Section 319.56–2r is amended as follows:

■ a. In paragraphs (c)(3)(iii) and (d)(1)(ii) by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place, each time they occur.

■ b. In paragraph (g)(2), by removing the words ''the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place.

**§ 319.56–2s [Amended]**

■ 66. Section 319.56–2s is amended as follows:

■ a. In paragraph (d)(1)(i), by removing the words ''the Plant Protection and Quarantine Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place each time they occur.

■ b. In paragraph (f)(2), by removing the words ''the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place.

**§ 319.56–2v [Amended]**

■ 67. In § 319.52–2v, paragraph (c) is amended by removing the citation ''§ 319.56–2d(f)'' and adding the citation ''§ 319.56–2(f)'' in its place; by removing the words ''the Plant Protection and Quarantine (PPQ) Treatment Manual'' and ''PPQ Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place; and by removing the words ''the PPQ Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place.

**§ 319.56–2x [Amended]**

■ 68. In § 319.56–2x, paragraph (a), introductory text, is amended by removing the words ''the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place; and by removing the last sentence.

**§§ 319.56–2cc, 319.2dd, 319.56–2ee, and 319.56–2jj [Amended]**

**§ 319.56–2cc [Amended]**

■ 69. In § 319.56–2cc, paragraph (a) is amended by removing the words ''the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place.

**§ 319.56–2dd [Amended]**

■ 70. In § 319.56–2dd , paragraph (d)(1) is amended by removing the words ''the PPQ Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place.

**§ 319.56–2ee [Amended]**

■ 71. In § 319.56–2ee, paragraph (b) is amended by removing the words ''the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place.

**§ 319.56–2jj [Amended]**

■ 72. In § 319.56–2jj, paragraph (g) is amended by removing the words ''the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place.

**§ 319.56–2mm [Amended]**

■ 73. Section 319.56–2mm is amended as follows:

■ a. In paragraph (b), by removing the words ''the Plant Protection and Quarantine (PPQ) Treatment Manual, which is incorporated by reference at § 300.1 of this chapter'' and adding the words ''part 305 of this chapter'' in their place.

■ b. In paragraph (d)(4)(ii)(B), by removing the words ''the PPQ Treatment Manual'' and adding the words ''part 305 of this chapter'' in their place.

■ c. In paragraph (e), by removing the words ''PPQ Treatment Manual, which is incorporated by reference in § 300.1 of this chapter'' and adding the words ''part 305 of this chapter'' in their place.

**§ 319.56–5 [Amended]**

■ 74. In § 319.56–5, paragraphs (a) and (b) are amended by adding the words ''or her'' immediately after the word ''his'' both times it occurs.

**§ 319.69–4 [Amended]**

■ 75. Section 319.69–4 is amended by removing the word ''he'' and adding the words ''the inspector'' in its place each time it occurs.

**§ 319.75–4 [Amended]**

■ 76. Section 319.75–4 is amended as follows:

■ a. By removing footnote 6.

■ b. In the introductory paragraph, by removing the words ''under the supervision of an inspector''; and by removing the words ''as set forth below'' and adding the words ''in accordance with part 305 of this chapter'' in their place.

■ c. By removing paragraphs (a), (b), and (c).

**§ 319.77–4 [Amended]**

■ 77. In § 319.77–4, paragraphs (a)(2)(i) and (b)(2)(i)(A) are amended by removing the words ''the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1'' and adding the words ''part 305'' in their place.

Done in Washington, DC, this day 5th of May 2005.

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 05–9387 Filed 6–6–05; 8:45 am]

BILLING CODE 3410–34–P

Federal Register

Tuesday,
June 7, 2005

# Part III

# Department of Labor

## Office of the Secretary

## Delegation of Authority and Assignment of Responsibility to the Ombudsman for the Energy Employees Occupational Illness Compensation Program Act; Notice

## DEPARTMENT OF LABOR

### Office of the Secretary

**[Secretary's Order 1–2005]**

### Delegation of Authority and Assignment of Responsibility to the Ombudsman for the Energy Employees Occupational Illness Compensation Program Act

1. *Purpose and Scope.* The purpose of this Secretary's Order is to formally create the Office of the Ombudsman under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) and to delegate authorities and assign responsibilities to the EEOICPA Ombudsman, as required by Public Law 108–375, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

2. *Authorities and Reference.* This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 of 1950 (5 U.S.C. Appendix 1); EEOICPA (Title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, Pub. L. 106–398), as amended by Public Law 108–375, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (FY 2005 Defense Authorization Act). See also Executive Order 13179, Providing Compensation to America's Nuclear Weapons Workers (December 7, 2000).

3. *Background.* Section 3161 of the FY 2005 Defense Authorization Act amended EEOICPA to create a new Part E, Contractor Employee Compensation, which replaces Part D of EEOICPA with a program that provides covered employees with a federal payment and medical benefits for occupational illnesses that result from exposure to toxic substances at Department of Energy (DOE) and certain other facilities. Eligible survivors also may receive federal compensation, if the employee's death was caused by, or contributed to by, the covered occupational illness. In general, Part E is administered by the Department's Employment Standards Administration (see Secretary's Order 4–2001). Part E, however, also creates a new independent Office of the Ombudsman. See Section 3161 of the FY 2005 Defense Authorization Act, establishing Section 3686 of EEOICPA (42 U.S.C. 7385s–15). By statute, the Ombudsman is responsible for providing information about Part E benefits, requirements and procedures; making recommendations to the Secretary about the location of EEOICPA resource centers; and filing an annual report with the Congress, assessing complaints and requests for assistance received by the Ombudsman. Finally, the statute provides for the Office of the Ombudsman to expire on October 28, 2007.

4. *Office of the Ombudsman.* The Office of the Ombudsman and the position of Ombudsman are established by this Order. The Ombudsman's specific responsibilities are set forth in Paragraph 5 of this Order. The Ombudsman will report to the Office of the Deputy Secretary through an official (to be designated by the Deputy Secretary) whose responsibilities are consistent with the Office of the Ombudsman's independence as required by EEOICPA.

5. *Delegation of Authorities and Assignment of Responsibilities to the Ombudsman.* A. The Ombudsman is assigned responsibility for fulfilling the role of ombudsman under Section 3686 of EEOICPA, including the following duties:

(1) Providing information about EEOICPA Part E benefits, requirements and procedures.

(2) Making recommendations to the Secretary about the location of EEOICPA resource centers for the acceptance and development of claims for benefits under EEOICPA Part E and about possible improvements to DOL practices in administering Part E of EEOICPA.

(3) Preparing and submitting to Congress the annual report required by Section 3686(e) of EEOICPA. As required by the statute, the report will include the number and types of complaints, grievances, and requests for assistance received by the Ombudsman, as well as the Ombudsman's assessment of the most common difficulties encountered by claimants and potential claimants.

B. The Ombudsman is delegated authority to undertake outreach to advise the public of the existence and duties of the Office of the Ombudsman.

C. The Ombudsman is delegated authority to invoke all appropriate governmental privileges, arising from the functions of the Ombudsman, following personal consideration of the matter and in accordance with the following guidelines:

(1) Generally Applicable Guidelines. The Ombudsman may not re-delegate the authority to invoke a privilege. The privilege may be asserted only with respect to specifically described information and only where the Ombudsman determines the privilege is applicable. In asserting a privilege, the Ombudsman will articulate in writing specific reasons for preserving the confidentiality of the information.

(2) Deliberative Process Privilege (to withhold information which may disclose pre-decisional intra-agency or inter-agency deliberations, in cases arising under Part E of EEOICPA including: the analysis and evaluation of facts; written summaries of factual evidence; and recommendations, opinions, or advice on legal or policy matters). To assert this privilege, the Ombudsman must first determine that: (i) The information is not purely factual and does not concern recommendations that the Department expressly adopted or incorporated by reference in its ultimate decision; (ii) the information was generated prior to and in contemplation of a decision by a part of the Department; and (iii) disclosure of the information would have an inhibiting effect on the Department's decision-making processes.

(3) Informant's Privilege (to protect from disclosure the identity of any person who has provided information to the Ombudsman in cases arising under Part E of EEOICPA). To assert this privilege, the Ombudsman must first determine that disclosure of the privileged matter may: (A) Interfere with the Ombudsman's responsibilities under the authority delegated or assigned in this Order; (B) adversely affect persons who have provided information to the Ombudsman; or (C) deter other persons from reporting violations of the statute or other authority.

(4) Prior to filing a formal claim of privilege, the Ombudsman will personally review the information sought to be withheld, including all the documents sought to be withheld (or, in cases where the volume of information is so large that all of it cannot be personally reviewed in a reasonable time, an adequate and representative sample of such information) and a description or summary of the matter in which the disclosure is sought.

(5) The Ombudsman may comply with any additional requirements imposed by local court rules or precedent in asserting a governmental privilege.

(6) In determining whether to assert a governmental privilege, the Ombudsman will consult with the Office of the Solicitor (SOL) and may ask SOL to prepare and file any necessary legal documents.

D. The Ombudsman will perform any additional duties which are assigned to the Ombudsman by applicable law or regulation.

6. *Responsibilities of the Solicitor of Labor.* The Solicitor of Labor is delegated authority and assigned

responsibility for providing legal advice and assistance to all officers of the Department relating to the administration and implementation of this Order. The bringing of legal proceedings, the representation of the Secretary and other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

7. *Responsibilities of the Assistant Secretary for Administration and Management.* The Assistant Secretary for Administration and Management is responsible for:

A. Providing appropriate administrative and management support, as required, for the efficient and effective operation of these programs.

B. Assuring that any transfer of resources required to implement this Order is fully consistent with the budget policies of the Department and that consultation and negotiation, as appropriate, with representatives of any employees affected by any exchange of responsibilities is conducted.

8. *Responsibilities of Agency Heads.* Consistent with their statutory responsibilities and other applicable Secretary's Orders and guidelines, all DOL agency heads are assigned responsibility for cooperating with the Ombudsman and complying with related regulations, guidance and policies.

9. *Directives Affected:*

A. This Order clarifies Secretary's Order 4–2001 to provide that the responsibilities of the Ombudsman under EEOICPA Part E reside in the Office of the Ombudsman, but does not otherwise affect the authority or responsibilities of the Assistant Secretary for Employment Standards under that Order.

B. This Order does not affect the authorities or responsibilities of the Assistant Secretary for Public Affairs under Secretary's Order 6–83.

C. This Order does not affect the authorities or responsibilities of the Office of Inspector General (OIG) under the Inspector General Act of 1978, as amended, or under Secretary's Order 2–90.

10. *Redelegations of Authority.* Unless provided otherwise in this or another Secretary's Order, the authority delegated in this Order may be redelegated, as permitted by law or regulation.

11. *Effective Date and Termination.* This Order is effective immediately. This Order will terminate upon the expiration of EEOICPA Section 3686.

Dated: June 1, 2005.

**Elaine L. Chao,**

*Secretary of Labor.*

[FR Doc. 05–11260 Filed 6–6–05; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Tuesday,
June 7, 2005

# Part IV

# The President

## Proclamation 7909—National Child's Day, 2005

Federal Register
Vol. 70, No. 108
Tuesday, June 7, 2005

# Presidential Documents

**Title 3—**

## The President

**Proclamation 7909 of June 3, 2005**

## National Child's Day, 2005

**By the President of the United States of America**

**A Proclamation**

Children are the future of our country and America's next generation of leaders. All of us—parents, families, teachers, mentors, and community members—have a responsibility to children to honor and pass along the values that sustain a free society. By spending time with a young person, adults can help our Nation's youth to make the right choices. On National Child's Day, we underscore our commitment to supporting children and to helping them realize a bright and hopeful future.

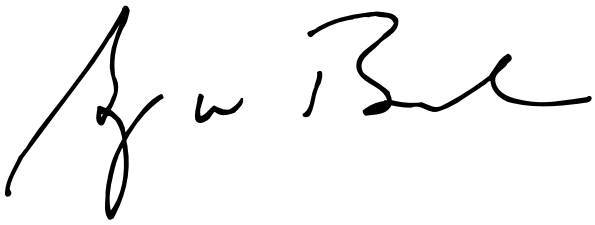
Family is the most important influence in a child's life. Parents are teachers, disciplinarians, advisors, and role models. By providing hope and stability, parents help children to understand the consequences of their actions and to recognize that the decisions they make today can affect the rest of their lives. Through initiatives that promote healthy marriages, responsible fatherhood, and adoption and foster care programs, my Administration is helping to ensure that more young people have a foundation of love and support.

Teachers also make a real difference in children's lives. America's educators help our students build character and acquire the skills and knowledge they need to succeed as adults. My Administration is insisting upon accountability in our public schools. We want every child to have an opportunity to realize the great promise of our country.

By mentoring children and helping them to achieve their dreams, Americans can fill their own lives with greater purpose and help make our country a better place. Our children benefit from a sense of community, and each of us has the power to make a difference in a child's life. I have introduced the Helping America's Youth initiative, led by First Lady Laura Bush, so that every child can grow up with a caring adult in his or her life—whether that adult is a parent, a teacher, a coach, or a mentor. I encourage all Americans to volunteer their time and talents to benefit our Nation's youth.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 5, 2005, as National Child's Day, and I call upon citizens to observe this day with appropriate ceremonies and activities. I also urge all Americans to dedicate their time and talents toward helping our Nation's young people so that all children may reach as far as their vision and character can take them.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of June, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 05–11457
Filed 6–6–05; 11:32 am]
Billing code 3195–01–P

# Reader Aids

**Federal Register**

Vol. 70, No. 108

Tuesday, June 7, 2005

## CUSTOMER SERVICE AND INFORMATION

| | |
|---|---|
| **Federal Register/Code of Federal Regulations** | |
| General Information, indexes and other finding aids | **202–741–6000** |
| **Laws** | **741–6000** |
| **Presidential Documents** | |
| Executive orders and proclamations | **741–6000** |
| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
| Electronic and on-line services (voice) | **741–6020** |
| Privacy Act Compilation | **741–6064** |
| Public Laws Update Service (numbers, dates, etc.) | **741–6043** |
| TTY for the deaf-and-hard-of-hearing | **741–6086** |

## ELECTRONIC RESEARCH

### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

### E-mail

**FEDREGTOC-L** (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

**FEDREGTOC-L** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

## FEDERAL REGISTER PAGES AND DATE, JUNE

31321–32218 ..... 1
32219–32480 ..... 2
32481–32708 ..... 3
32709–32976 ..... 6
32977–33334 ..... 7

## CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
7907 ..... 32971
7908 ..... 32973
7909 ..... 33333

**Executive Orders:**
13000 (See Memorandum of June 2, 2005) ..... 32975

**Administrative Orders:**
Memorandums:
Memorandum of June 2, 2005 ..... 32975

**5 CFR**

842 ..... 32709
1600 ..... 32206
1601 ..... 32206
1604 ..... 32206
1605 ..... 32206
1606 ..... 32206
1620 ..... 32206
1640 ..... 32206
1645 ..... 32206
1650 ..... 32206
1651 ..... 32206
1653 ..... 32206
1655 ..... 32206
1690 ..... 32206

**7 CFR**

6 ..... 32219
300 ..... 33264
301 ..... 33264
305 ..... 33264
318 ..... 33264
319 ..... 33264
958 ..... 32481
1030 ..... 31321
1738 ..... 32711

**Proposed Rules:**
301 ..... 32733
1405 ..... 33043

**10 CFR**

25 ..... 32224
72 ..... 32977
95 ..... 32224

**12 CFR**

568 ..... 32228
617 ..... 31322

**14 CFR**

23 ..... 32711
39 ..... 32483, 32982, 32984, 32986, 32988, 32990, 32992, 32996, 32998
71 ..... 32229, 32231, 32484

**Proposed Rules:**
39 ..... 31393, 31395, 32273, 32524, 32527, 32534, 32537, 32540, 32542, 32544, 32547, 32738, 33045
71 ..... 32275
414 ..... 32192

**15 CFR**

902 ..... 31323

**16 CFR**

305 ..... 32484

**17 CFR**

1 ..... 32866

**19 CFR**

**Proposed Rules:**
146 ..... 33046

**20 CFR**

**Proposed Rules:**
404 ..... 32550
416 ..... 32550

**21 CFR**

510 ..... 32487
520 ..... 32488
522 ..... 32488
558 ..... 32488

**26 CFR**

1 ..... 32489
301 ..... 32489

**Proposed Rules:**
1 ..... 32552

**27 CFR**

9 ..... 31342

**Proposed Rules:**
9 ..... 31396

**29 CFR**

**Proposed Rules:**
1926 ..... 32739

**30 CFR**

57 ..... 32867

**33 CFR**

110 ..... 32231
117 ..... 32233, 32235
165 ..... 32235, 32239, 32241

**Proposed Rules:**
117 ..... 32276, 32278
165 ..... 33047

**36 CFR**

7 ..... 31345
228 ..... 32713
401 ..... 32490
402 ..... 32490
403 ..... 32490

**39 CFR**

3001 ..... 32492

**40 CFR**

63 ..... 33000
70 ..... 32243
81 ..... 31353
93 ..... 31354
180 ..... 31355, 31359, 31365
228 ..... 32498
271 ..... 32247

**Proposed Rules:**

180 ..... 31401
271 ..... 32280

**42 CFR**

**Proposed Rules:**

50 ..... 33053

**44 CFR**

64 ..... 32520
65 ..... 33002

**46 CFR**

531 ..... 31370

**47 CFR**

1 ..... 31372
23 ..... 31372
25 ..... 31372, 32249
64 ..... 32258
73 ..... 31372
74 ..... 31372
78 ..... 31372
95 ..... 31372
97 ..... 31372

**Proposed Rules:**

52 ..... 31405
64 ..... 31405, 31406
73 ..... 31409

**48 CFR**

552 ..... 32522
1601 ..... 31374
1602 ..... 31374
1604 ..... 31374
1615 ..... 31374
1631 ..... 31374, 31389
1632 ..... 31374
1644 ..... 31374
1646 ..... 31374
1652 ..... 31374
1699 ..... 31389

**Proposed Rules:**

19 ..... 32553
52 ..... 32553
53 ..... 32553
208 ..... 32280
216 ..... 32280

**50 CFR**

17 ..... 32732, 33015
622 ..... 32266, 33033
635 ..... 33033, 33039
648 ..... 31323, 33042

**Proposed Rules:**

20 ..... 32282
648 ..... 32282
679 ..... 32287

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT JUNE 7, 2005

**AGRICULTURE DEPARTMENT**
**Animal and Plant Health Inspection Service**
Plant protection and quarantine:
Phytosanitary treatments; published 6-7-05

**ENVIRONMENTAL PROTECTION AGENCY**
Air pollutants, hazardous; national emission standards:
Electric utility steam generating units and removal of coal- and oil-fired electric utility steam generating units from Section 112 (c) list; correction; published 6-7-05
Grants and other Federal assistance:
Clean Air Act Tribal authority—
Idaho, Oregon, and Washington; Indian reservations; Federal implementation plans; published 4-8-05

**INTERIOR DEPARTMENT**
**Fish and Wildlife Service**
Endangered and threatened species:
Critical habitat designations—
Lane Mountain milk-vetch; published 4-8-05

**NUCLEAR REGULATORY COMMISSION**
Spent nuclear fuel and high-level radioactive waste; independet storage; licensing requirements:
Approved spent fuel storage casks; list; published 6-7-05

**TRANSPORTATION DEPARTMENT**
**Federal Aviation Administration**
Class E airspace; published 3-3-05

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**
**Agricultural Marketing Service**
Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]
Irish potatoes grown in—
Washington; comments due by 6-15-05; published 5-16-05 [FR 05-09696]
Milk marketing orders:
Pacific Northwest and Arizona-Las Vegas; comments due by 6-13-05; published 4-13-05 [FR 05-07295]
Upper Midwest; comments due by 6-13-05; published 4-14-05 [FR 05-07462]

**AGRICULTURE DEPARTMENT**
**Animal and Plant Health Inspection Service**
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle and bison—
State and area classifications; comments due by 6-14-05; published 4-15-05 [FR 05-07553]

**AGRICULTURE DEPARTMENT**
**Natural Resources Conservation Service**
Reports and guidance documents; availability, etc.:
National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

**COMMERCE DEPARTMENT**
**National Oceanic and Atmospheric Administration**
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic sea scallop; comments due by 6-17-05; published 6-2-05 [FR 05-10988]

**COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA**
Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

**DEFENSE DEPARTMENT**
Acquisition Regulation:
Uniform contract line item numbering; comments due by 6-13-05; published 4-12-05 [FR 05-07082]
Acquisition regulations:
Administrative matters; comments due by 6-13-05; published 4-12-05 [FR 05-07083]
Contract administration; comments due by 6-13-05; published 4-12-05 [FR 05-07090]
Environment, occupational safety, and a drug-free workplace; comments due by 6-13-05; published 4-12-05 [FR 05-07093]
Governmentwide commercial purchase card; use for actions at or below the micro-purchase threshhold; comments due by 6-13-05; published 4-12-05 [FR 05-07094]
Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]
Simplified acquisition procedures; comments due by 6-13-05; published 4-12-05 [FR 05-07095]
Socioeconomic programs; comments due by 6-13-05; published 4-12-05 [FR 05-07092]
Subcontracting policies and procedures; comments due by 6-13-05; published 4-12-05 [FR 05-07091]

**EDUCATION DEPARTMENT**
Grants and cooperative agreements; availability, etc.:
Vocational and adult education—
Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

**ENERGY DEPARTMENT**
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

**ENERGY DEPARTMENT**
**Energy Efficiency and Renewable Energy Office**
Commercial and industrial equipment; energy efficiency program:
Test procedures and efficiency standards—
Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

**ENERGY DEPARTMENT**
**Federal Energy Regulatory Commission**
Electric rate and corporate regulation filings:
Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

**ENVIRONMENTAL PROTECTION AGENCY**
Air pollutants, hazardous; national emission standards:
Asphalt processing and roofing manufacturing; comments due by 6-16-05; published 5-17-05 [FR 05-09594]
Miscellaneous coating manufacturing; comments due by 6-13-05; published 5-13-05 [FR 05-09485]
Pharmaceuticals production; comments due by 6-13-05; published 5-13-05 [FR 05-09477]
Air pollution control:
Federal and State operating permits programs; potentially inadequate monitoring requirements and methods to improve monitoring; comments due by 6-17-05; published 4-15-05 [FR 05-07577]
Air quality implementation plans; approval and promulgation; various States:
Colorado; comments due by 6-16-05; published 5-17-05 [FR 05-09724]
Louisiana; comments due by 6-13-05; published 5-12-05 [FR 05-09481]
Maryland; comments due by 6-16-05; published 5-17-05 [FR 05-09783]
North Carolina; comments due by 6-17-05; published 5-18-05 [FR 05-09904]
Oklahoma; comments due by 6-13-05; published 5-12-05 [FR 05-09483]
Texas; comments due by 6-13-05; published 5-12-05 [FR 05-09480]
Virginia; comments due by 6-16-05; published 5-17-05 [FR 05-09781]
West Virginia; comments due by 6-16-05; published 5-17-05 [FR 05-09785]
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
Hazardous waste program authorizations:
Idaho; comments due by 6-15-05; published 5-16-05 [FR 05-09317]

Pesticide registration, cancellation, etc.:
Pesticide registration; registrant request to delete certain uses; comments due by 6-14-05; published 4-15-05 [FR 05-07410]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Acetamiprid; comments due by 6-13-05; published 4-13-05 [FR 05-07225]
Paecilomyces lilacinus strain 251; comments due by 6-13-05; published 4-13-05 [FR 05-07226]
Pinene polymers; comments due by 6-13-05; published 5-13-05 [FR 05-09476]
Water pollution control:
National Pollutant Discharge Elimination System—
Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

**FEDERAL COMMUNICATIONS COMMISSION**
Committees; establishment, renewal, termination, etc.:
Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]
Common carrier services:
Interconnection—
Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]
Price cap local exchange carriers; special access rates; comments due by 6-13-05; published 4-13-05 [FR 05-07350]
Digital television stations; table of assignments:
Satellite-delivered network signals; technical standards; comments due by 6-17-05; published 5-18-05 [FR 05-09823]

**FEDERAL TRADE COMMISSION**
Federal Deposit Insurance Corporation Improvement Act; implementation:
Depository institutions lacking Federal deposit insurance; disclosure requirements; comments due by 6-15-05; published 3-16-05 [FR 05-05218]

**GENERAL SERVICES ADMINISTRATION**
Acquisition regulations:
Federal Agency Retail Pharmacy Program; comments due by 6-13-05; published 4-12-05 [FR 05-07270]

**HEALTH AND HUMAN SERVICES DEPARTMENT**
**Food and Drug Administration**
Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

**HEALTH AND HUMAN SERVICES DEPARTMENT**
Health insurance reform:
Civil money penalties; investigations policies and procedures, penalties imposition, and hearings; comments due by 6-17-05; published 4-18-05 [FR 05-07512]

**HOMELAND SECURITY DEPARTMENT**
**Coast Guard**
Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]
Drawbridge operations:
Maryland; comments due by 6-13-05; published 4-27-05 [FR 05-08459]
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Beverly Harbor, Beverly, MA; comments due by 6-13-05; published 5-13-05 [FR 05-09532]
Marblehead Harbor, Marblehead, MA; comments due by 6-13-05; published 5-13-05 [FR 05-09533]
Nahant Bay, Lynn, MA; comments due by 6-13-05; published 5-13-05 [FR 05-09531]

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**
Public and Indian housing:
Public Housing Operating Fund Program; comments due by 6-13-05; published 4-14-05 [FR 05-07376]

**INTERIOR DEPARTMENT**
**Fish and Wildlife Service**
Endangered and threatened species permit applications
Recovery plans—
Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]
Endangered and threatened species:
Critical habitat designations—
Arkansas River shiner; comments due by 6-17-05; published 4-28-05 [FR 05-08489]

**INTERIOR DEPARTMENT**
**National Park Service**
National Register of Historic Places:
Pending nominations; comments due by 6-16-05; published 6-1-05 [FR 05-10788]

**JUSTICE DEPARTMENT**
**Drug Enforcement Administration**
Schedules of controlled substances:
Pregabalin; placement into Schedule V; comments due by 6-13-05; published 5-13-05 [FR 05-09634]

**JUSTICE DEPARTMENT**
**Parole Commission**
Federal prisoners; paroling and releasing, etc.:
United States and District of Columbia Codes; prisoners serving sentences—
Parole release hearings conducted by video conferences; pilot project; comments due by 6-13-05; published 4-13-05 [FR 05-07389]

**LIBRARY OF CONGRESS**
**Copyright Office, Library of Congress**
Copyright Arbitration Royalty Panel rules and procedures:
Satellite carrier compulsory license; rate adjustment; comments due by 6-16-05; published 5-17-05 [FR 05-09804]

**NUCLEAR REGULATORY COMMISSION**
Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

**PERSONNEL MANAGEMENT OFFICE**
Prevailing rate systems; comments due by 6-17-05; published 5-18-05 [FR 05-09894]

**SMALL BUSINESS ADMINISTRATION**
Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

**SOCIAL SECURITY ADMINISTRATION**
Social security benefits and supplemental security income:
Federal old age, survivors, and disability insurance, and aged, blind, and disabled—
Hearing impairments and disturbance of labyrinthine-vestibular function; medical criteria for evaluation; comments due by 6-13-05; published 4-13-05 [FR 05-07355]
Federal old age, survivors, and disability insurance, and aged, blind, and disabled—
Language and speech disorders; medical criteria for evaluation; comments due by 6-13-05; published 4-13-05 [FR 05-07356]
Neurological impairments; medical criteria for evaluation; comments due by 6-13-05; published 4-13-05 [FR 05-07357]
Parties representation; recognition, disqualification, and reinstatement of representative; comments due by 6-13-05; published 4-13-05 [FR 05-07353]

Respiratory system disorders; medical criteria for evaluation; comments due by 6-13-05; published 4-13-05 [FR 05-07358]

**OFFICE OF UNITED STATES TRADE REPRESENTATIVE**

**Trade Representative, Office of United States**

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Airbus; comments due by 6-13-05; published 5-12-05 [FR 05-09472]

Boeing; comments due by 6-13-05; published 4-27-05 [FR 05-08403]

Cessna; comments due by 6-13-05; published 4-14-05 [FR 05-07379]

General Electric Co.; comments due by 6-13-05; published 4-13-05 [FR 05-07387]

**TRANSPORTATION DEPARTMENT**

**Federal Motor Carrier Safety Administration**

Motor carrier safety standards:

Motor carrier, broker, freight forwarder, and hazardous materials proceedings; practice rules; comments due by 6-17-05; published 5-18-05 [FR 05-09898]

**TRANSPORTATION DEPARTMENT**

**Maritime Administration**

Coastwise trade laws; administrative waivers:

Fee increase; comments due by 6-13-05; published 5-12-05 [FR 05-09433]

**TREASURY DEPARTMENT**

Balanced Budget Act of 1997; implementation:

District of Columbia retirement plans; Federal benefit payments; comments due by 6-13-05; published 4-13-05 [FR 05-07291]

**TREASURY DEPARTMENT**

**Alcohol and Tobacco Tax and Trade Bureau**

Alcohol, tobacco, and other excise taxes:

Tobacco products and cigarette papers and tubes; removal without tax payment for use in law enforcement activities; comments due by 6-14-05; published 4-15-05 [FR 05-07582]

## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

**H.R. 2566/P.L. 109–14**

Surface Transportation Extension Act of 2005 (May 31, 2005; 119 Stat. 324)

**Last List May 17, 2005**

## Public Laws Electronic Notification Service (PENS)

**PENS** is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

**Note:** This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.