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RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 70, No. 109

Wednesday, June 8, 2005

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Agriculture Department
See Economic Research Service
See Forest Service
See Risk Management Agency
See Rural Business-Cooperative Service

Alcohol and Tobacco Tax and Trade Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33586–33587

Antitrust Modernization Commission
NOTICES
Meetings, 33447–33448

Army Department
See Engineers Corps
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
System and method for evaluating data sets over communications network, 33453

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33495–33499

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Family Violence Prevention and Services Program, 33499–33508
Fostering healthy marriages within underserved communities to improve child well-being; demonstration projects, 33508–33519

Coast Guard
RULES
Deepwater ports:
Voluntary guidelines, 33351–33352
Drawbridge operations:
Florida, 33349–33351
Texas, 33351
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Willamette River, Portland, OR, 33352–33354
PROPOSED RULES
Drawbridge operations:
Virginia, 33405–33408
Great Lakes pilotage regulations:
Rate adjustments, 33415–33416
NOTICES
Environmental statements; availability, etc.:
Vessel and facility response plans for oil; 2003 removal equipment requirements and alternative technology revisions; correction, 33588

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

Committee for the Implementation of Textile Agreements
NOTICES
Textile and apparel categories:
Commercial availability actions—
100 percent cotton, piece dyed, plain weave double warp beam seersucker fabrics, 33449–33450
100 percent cotton, yarn dyed, plain weave double warp beam seersucker fabrics, 33450–33451

Consumer Product Safety Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33451–33452

Corporation for National and Community Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33452–33453

Defense Department
See Army Department
See Engineers Corps
See Navy Department
RULES
Federal Acquisition Regulation (FAR):
Construction contracts; labor standards, 33662–33671
Deferred compensation and postretirement benefits other than pensions, 33671–33673
Gains and losses, maintenance and repair costs, and material costs, 33673–33676
Introduction, 33654–33655
Noncommercial modifications of commercial items; submission of cost or pricing data, 33659–33660
Payment of union dues or fees; notification of Employee rights, 33655–33656
Performance-based contracting use for services; incentives, 33657–33659
SDB and HUBZone price evaluation factor; applicability, 33661–33662
Small entity compliance guide, 33676–33677
Telecommuting for Federal contractors, 33656–33657

Economic Research Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33441–33442

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33457–33459
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Child Care Access Means Parents in School Program, 33460–33463

Employment and Training Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33524–33525
Grant and cooperative agreement awards:
Workforce Investment Act—
Native American employment and training allotments, 33525–33529

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
NRG Power Marketing, Inc., 33463–33464
Meetings:
National Petroleum Council, 33464

Engineers Corps
NOTICES
Grants and cooperative agreements; availability, etc.:
Estuary Habitat Restoration Program, 33453–33457

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
West Virginia, 33364–33368
Air quality implementation plans; approval and promulgation; various States:
New Mexico, 33363–33364
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Generic pesticide chemical tolerance regulations; update, 33354–33363
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 33368–33373
PROPOSED RULES
Air programs:
Ambient air quality standards, national—
8-hour ozone standard; early action compact areas; deferred effective date extended, 33409–33414
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
West Virginia, 33408
Pesticide programs:
Conventional chemicals; registration data requirements, 33414–33415
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 33415
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33472–33474
Pesticide, food, and feed additive petitions:
Woodstream Corp., 33474–33478

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
Agusta S.p.A., 33339–33340
Dassault, 33340–33344
Pilatus Aircraft Ltd., 33344–33346
Airworthiness standards:
Special conditions—
Boeing Model 747SP airplane, 33335–33337
Gulfstream Model LP 1125 Westwind Astra airplane, 33337–33338
Class E airspace, 33346–33348
Correction, 33347, 33349
PROPOSED RULES
Airworthiness standards:
Special conditions—
Robinson R44 Helicopter; autopilot installation, 33399–33401
Class E airspace, 33401–33404
NOTICES
Advisory circulars; availability, etc.:
Transport category airplanes—
Fuselage doors and hatches, 33576–33577
Environmental statements; record of decision:
Los Angeles International Airport, CA, 33577–33578
Exemption petitions; summary and disposition, 33578

Federal Communications Commission
RULES
Common carrier services:
Satellite communications—
Satellite licensing procedures, 33373–33377
Radio stations; table of assignments:
Michigan, 33378
Nebraska, 33377–33378
PROPOSED RULES
Common carrier services:
Satellite communications—
Satellite licensing procedures, 33426–33429
Practice and procedure:
Economic impact of Commission's rules on small entities; regulatory review; comments request, 33416–33426
Radio stations; table of assignments:
Georgia, 33429–33430
Oregon, 33429
Television broadcasting:
Cable Television Consumer Protection and Competition Act—
Cable television horizontal and vertical ownership limits, 33680–33687
NOTICES
Television broadcasting:
Low power television, television translator, and Class A stations; construction permits; auction procedures, 33478–33491

Federal Energy Regulatory Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33464–33465
Electric rate and corporate regulation combined filings, 33468–33470
Environmental statements; availability, etc.:
Starks Gas Storage L.L.C., 33470–33472
Hydroelectric applications, 33472
Applications, hearings, determinations, etc.:
Creole Trail LNG, L.P., 33465–33466
Equitrans, L.P., 33466
Gas Transmission Northwest Corp., 33466–33467
Gulf South Pipeline Co., LP, 33467
MidAmerican Energy Co., 33467
National Fuel Gas Supply Corp., 33467–33468

Questar Southern Trails Pipeline Co., 33468

Federal Maritime Commission
NOTICES
Agreements filed, etc., 33491–33493
Ocean transportation intermediary licenses:
All World Services, Inc., et al., 33493
Amerasa Rapid Transit USA Inc., 33493
Maramara, Inc., 33493
Pioneer Shipping Logistics Inc. et al., 33493–33494

Federal Motor Carrier Safety Administration
PROPOSED RULES
Motor carrier safety standards:
Parts and accessories necessary for safe operation—
Shifting and falling cargo protection, 33430–33440
NOTICES
Motor carrier safety standards:
Exemption applications—
Xora, Inc., 33578–33580

Federal Railroad Administration
RULES
Civil monetary penalties; inflation adjustment, 33380–33383
NOTICES
Exemption petitions, etc.:
Illinois Railway Museum, 33580
Union Pacific Railroad Co., 33580–33581

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 33494
Formations, acquisitions, and mergers, 33494
Meetings:
Consumer Advisory Council, 33494–33495

Federal Transit Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33581

Fish and Wildlife Service
NOTICES
Post-delisting Monitoring Plans:
Tinian monarch and brown treesnake, 33522–33523

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Salmonella; shell egg producers to implement prevention measures, 33404–33405

Forest Service
NOTICES
Environmental statements; notice of intent:
Chequamegon-Nicolet National Forest, WI, 33442–33444
Uinta National Forest, UT; livestock grazing allotments, 33444–33445
Meetings:
Resource Advisory Committees—
Deschutes and Ochoco National Forests, 33445

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Construction contracts; labor standards, 33662–33671
Deferred compensation and postretirement benefits other than pensions, 33671–33673
Gains and losses, maintenance and repair costs, and material costs, 33673–33676
Introduction, 33654–33655
Noncommercial modifications of commercial items; submission of cost or pricing data, 33659–33660
Payment of union dues or fees; notification of Employee rights, 33655–33656
Performance-based contracting use for services; incentives, 33657–33659
SDB and HUBZone price evaluation factor; applicability, 33661–33662
Small entity compliance guide, 33676–33677
Telecommuting for Federal contractors, 33656–33657
NOTICES
Acquisition regulations:
Agency information collection activities; proposals, submissions, and approvals, 33495

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration

Homeland Security Department
See Coast Guard
See Transportation Security Administration
NOTICES
Meetings:
Homeland Security Advisory Council, 33519

Housing and Urban Development Department
RULES
Government National Mortgage Association (Ginnie Mae):
Mortgage-backed securities guaranty; minimum face value of securities; regulation removed, 33650–33652
PROPOSED RULES
Community facilities:
Empowerment zones; grant funds utilization; performance standards, 33642–33648
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33519–33522

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service

International Trade Administration
NOTICES
Antidumping:
Corrosion-resistant carbon steel flat products from—
Japan, 33448

Joint Board for Enrollment of Actuaries
NOTICES
Meetings:
Actuarial Examinations Advisory Committee, 33441

Labor Department
See Employment and Training Administration
See Workers' Compensation Programs Office

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Committees—
Coos Bay District, 33523–33524
Resource Advisory Councils—
Southwest Colorado; correction, 33523

Maritime Administration
NOTICES
Merchant Marine Act:
Title XI Loan Guarantee Program; remedies, 33581–33585

Minerals Management Service
NOTICES
Meetings:
Outer Continental Shelf Policy Committee, 33524

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Construction contracts; labor standards, 33662–33671
Deferred compensation and postretirement benefits other than pensions, 33671–33673
Gains and losses, maintenance and repair costs, and material costs, 33673–33676
Introduction, 33654–33655
Noncommercial modifications of commercial items; submission of cost or pricing data, 33659–33660
Payment of union dues or fees; notification of Employee rights, 33655–33656
Performance-based contracting use for services; incentives, 33657–33659
SDB and HUBZone price evaluation factor; applicability, 33661–33662
Small entity compliance guide, 33676–33677
Telecommuting for Federal contractors, 33656–33657
NOTICES
Inventions, Government-owned; availability for licensing, 33530–33531
Patent licenses; non-exclusive, exclusive, or partially exclusive:
FARO Technologies, Inc., 33531

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts Advisory Panel, 33531–33532
Privacy Act:
Systems of records; correction, 33532

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands king and tanner crab; correction, 33390–33398
Caribbean, Gulf, and South Atlantic fisheries—
Vermilion snapper, 33385–33390
PROPOSED RULES
Endangered and threatened species:
Sea turtle conservation requirements—
Mid-Atlantic; sea scallop dredge vessels; public hearing, 33440
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33448–33449

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 33532–33533

Navy Department
NOTICES
Meetings:
Chief of Naval Operations Executive Panel; correction, 33457

Nuclear Regulatory Commission
NOTICES
Reports and guidance documents; availability, etc.:
Fuel cycle facilities; interim staff guidance, 33537–33538
Applications, hearings, determinations, etc.:
Entergy Operations, Inc., 33533
Nuclear Management Co., LLC, 33533–33536
Southern Nuclear Operating Co., Inc., 33536–33537
Wisconsin Power Service Corp., et al., 33537

Office of United States Trade Representative
See Trade Representative, Office of United States

Pipeline and Hazardous Materials Safety Administration
RULES
Hazardous materials:
Transportation—
Exemptions; incorporation into regulations; reporting and recordkeeping requirements, 33378–33380

Postal Service
NOTICES
Meetings; Sunshine Act, 33538

Risk Management Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33445–33447

Rural Business-Cooperative Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33447

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33538–33539
Public Utility Holding Company Act of 1935 filings, 33539–33562
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 33562–33564
Chicago Board Options Exchange, Inc., 33564–33567
Chicago Stock Exchange, Inc., 33567–33569
International Securities Exchange LLC, 33569–33570
National Securities Clearing Corp., 33570–33571
New York Stock Exchange, Inc., 33571–33575

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
BNSF Railway Co., 33586
Union Pacific Railroad Co., 33586

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 33587

Trade Representative, Office of United States
NOTICES
World Trade Organization:
Dispute settlement panel establishment requests—Japan; antidumping duty orders on certain products, 33575–33576

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Federal Transit Administration
See Maritime Administration
See Pipeline and Hazardous Materials Safety Administration
See Surface Transportation Board

Transportation Security Administration
RULES
Privacy Act; implementation, 33383–33385

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Thrift Supervision Office

Workers' Compensation Programs Office
RULES
Energy Employees Occupational Illness Compensation Program Act; implementation:
Lump-sum payments and medical benefits payments to covered DOE employees, their survivors, certain vendors, contractors and subcontractors, 33590–33639

Separate Parts In This Issue

Part II
Labor Department, Workers' Compensation Programs Office, 33590–33639

Part III
Housing and Urban Development Department, 33642–33648

Part IV
Housing and Urban Development Department, 33650–33652

Part V
Defense Department; General Services Administration; National Aeronautics and Space Administration, 33654–33677

Part VI
Federal Communications Commission, 33680–33687

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.

14 CFR
25 (2 documents) 33335, 33337
39 (3 documents) 33339, 33340, 33344
71 (4 documents) 33346, 33347, 33348

Proposed Rules:
27.....33399
71 (3 documents) 33401, 33402, 33403

20 CFR
1.....33590
30.....33590

21 CFR

Proposed Rules:
1.....33404

24 CFR
320.....33650

Proposed Rules:
598.....33642

33 CFR
117 (2 documents) 33349, 33351
148.....33351
149.....33351
150.....33351
165.....33352

Proposed Rules:
117.....33405

40 CFR
9.....33354
23.....33354
52 (2 documents) 33363, 33364
81.....33364
163.....33354
177.....33354
178.....33354
179.....33354
180.....33354
300.....33368

Proposed Rules:
52.....33408
81 (2 documents) 33408, 33409
152.....33414
158.....33414
300.....33415

46 CFR

Proposed Rules:
401.....33415

47 CFR
25.....33373
73 (2 documents) 33377, 33378

Proposed Rules:
Ch. I.....33416
25.....33426
73 (2 documents) 33429
76.....33680

48 CFR
Ch. 1 (2 documents) 33654, 33676
2 (2 documents) 33655, 33657
4.....33657
7.....33656
11.....33656
12.....33657
13.....33656
15 (2 documents) 33656, 33659
19.....33661
22 (2 documents) 33655, 33662
31 (2 documents) 33671, 33673
37.....33657
52 (5 documents) 33655, 33657, 33661, 33662, 33671
53.....33662

49 CFR
171.....33378
209.....33380
213.....33380
214.....33380
215.....33380
216.....33380
217.....33380
218.....33380
219.....33380
220.....33380
221.....33380
222.....33380
223.....33380
225.....33380
228.....33380
229.....33380
230.....33380
231.....33380
232.....33380
233.....33380
234.....33380
235.....33380
236.....33380
238.....33380
239.....33380
240.....33380
241.....33380
244.....33380
1507.....33383

Proposed Rules:
393.....33430

50 CFR
622.....33385
679.....33390
680.....33390

Proposed Rules:
223.....33440

Rules and Regulations

Federal Register
Vol. 70, No. 109
Wednesday, June 8, 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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NN301; Special Conditions No. 25–290–SC]

Special Conditions: Boeing Model 747SP; NASA Stratospheric Observatory for Infrared Astronomy (SOFIA); Cryogenic Systems Using Liquid Nitrogen and Liquid Helium

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 747SP airplane. This airplane, as modified by L–3 Communications/Integrated Systems, of Waco, Texas, will have novel and unusual design features associated with cryogenic systems using liquid nitrogen and liquid helium. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective July 8, 2005.

FOR FURTHER INFORMATION CONTACT: Kathi Ishimaru, FAA, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2674; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1997, L–3 Communications/Integrated Systems, 7500 Maehr Road, Waco, Texas 76705, applied for a Supplemental Type Certificate (STC) to modify a Boeing Model 747SP airplane for use as a flying observatory. This airplane will fly in the stratosphere to altitudes of 45,000 feet and use infrared technology to observe objects in space. The airplane is a stratospheric observatory for infrared astronomy or SOFIA. The modification consists of the installation of a 2.5-meter telescope, scientist workstations, and containment vessels for liquid helium and nitrogen (liquid converters, valves, evaporating coils, liquid lines, regulators, indicators, fittings, etc). Various science instruments (each having their own airworthiness approval), each weighing approximately 800 pounds, located in the workstation area, can be attached to the telescope for a specific mission (one per mission only).

The mission of the SOFIA airplane is to collect infrared signals. The observatory collects very weak infrared signals that were emitted by distant objects in space thousands of years ago. These signals are focused through the telescope onto sensors in the science instrument which is located on the cabin side of the telescope. To detect the weak infrared signals, the detectors in these sensors are cooled to temperatures near absolute zero by the use of cryogenic fluids. These fluids are contained in vessels similar to vacuum bottles. Their design and installation are covered by these special conditions. These extremely cold environments can only be produced by cryogenic liquids. The SOFIA observatory depends on liquid helium and nitrogen to chill the internal passageways of the detector systems. The amount of cryogens used here is small.

Cryogens, in a much greater quantity, are used in the area where the telescope mirror is installed. Liquid nitrogen is converted to a gas and circulated around the mirror to pre-cool it to prevent it from fogging up as it goes from a warm moist atmosphere on the ground to the cold dry atmosphere at high altitudes.

The modified Boeing Model 747SP airplane, with the L–3 Communications/Integrated Systems design will fly to 45,000 feet and in a gradual arc pattern for extended periods of time. Additionally, various science instruments will be installed under this STC or similar STCs, which will be referenced back to this STC.

Type Certification Basis

Under the provisions of 14 CFR 21.101, L–3 Communications/Integrated Systems must show that the modified Boeing Model 747SP airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A20WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 747SP airplane modified by L–3 Communications/Integrated Systems because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747SP must comply with (1) either the ''No Acoustical Change'' provisions of § 21.93(b) or 14 CFR part 36, as amended by Amendments 36–1 through 36–23 and any later amendments that are effective 5 years prior to the STC approval date, and (2) either the ''No Emissions Change'' provisions of § 21.93(c) or 14 CFR part 34, as amended by Amendments 34–1 through 34–3.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should L–3 Communications/Integrated Systems apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The modified Boeing Model 747 SP will incorporate the following novel or unusual design features:

1. Cryogenic fluids (nitrogen and helium) contained in the science instrument in the cabin compartment. The cryogenic gases could cause an asphyxiation hazard to the crew and passengers.

2. The cryogens (liquid nitrogen), stored for chilling the mirror during ascent, might come in contact with the airplane's structure, which could cause damage to the surrounding structural areas.

The cryogenic systems must be designed and installed to ensure that no failure of the systems, including a leak in any part of the systems, would prevent continued safe flight and landing of the airplane.

There are no specific regulations that address the design and installation of liquid nitrogen systems and liquid helium systems. Existing requirements such as 14 CFR 25.1309 and 25.1438(b) are applicable to this installation. However, these regulations do not address the effect of cryogenic gases of passengers or crew and aircraft structure. The FAA needs to specify additional design standards, which specifically address these novel or unusual design features for systems utilizing cryogen liquids to ensure that a minimum level of safety is maintained, establishing a level of safety equivalent to the current regulations.

Discussion of Comments

Notice of proposed special conditions No. 25–05–01–SC for the Boeing Model 747 SP; NASA Stratospheric Observatory For Infrared Astronomy (SOFIA) airplanes was published in the **Federal Register** on February 8, 2005 (70 FR 6598). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing 747SP airplane. Should L–3 Communications/Integrated Systems apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A20WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 747SP airplane. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 747SP airplane as modified by L–3 Communications/Integrated Systems, of Waco, Texas:

1. Occupied compartments that contain cryogenic fluids must be provided with a means of ventilation to prevent the accumulation of cryogenic gases to a level that may cause an asphyxiation hazard to the crew or passengers.

2. Cryogen dewars must be limited to a maximum capacity of 70 liters of liquid nitrogen and 80 liters of liquid helium. These limits placed on the instrument are adequate to allow the instrument to perform the mission.

3. Pressure relief valves must provide release of gases to prevent overpressure of dewars and plumbing lines. The pressure relief valves must be vented overboard through a drain in the bottom of the airplane unless it is substantiated that the valves can be safely vented inside the airplane. The cryogenic system must be designed to prohibit the pressure relief valves from freezing due to air condensing and freezing.

4. Cryogenic equipment and plumbing installations must be designed such that a spill, rupture, or any other failure to contain the liquid cryogen will not result in direct contact of the liquid cryogen with load bearing structure or critical airplane equipment that is essential for the continued safe flight and landing of the airplane. Because of the extremely low temperature of the liquid cryogen, direct contact may adversely affect the material properties and integrity of load bearing structure. Direct contact of liquid cryogen with critical airplane equipment may cause failure of the equipment to perform its intended function.

5. An analysis must be accomplished to substantiate that the airplane will not be overpressurized in the event of a catastrophic failure of all the dewars containing cryogenic fluid.

6. The location of the cryogenic equipment and plumbing installations must minimize the risk of damage due to an uncontained rotor or fan blade failure. All equipment containing high-energy rotors must be considered, such as turbine engines, auxiliary power units, ram air turbines, electric/pneumatic engine starters, air cycle machines, and certain cooling fans. In addition to properly locating the cryogenic system, operational procedures and shields may be used to minimize the risk of damage. New equipment containing high-energy rotors whose uncontained failure could damage the cryogenic system must comply with § 25.1461, Amendment 25–41.

7. The cryogenic system must be designed to minimize condensation of the atmospheric air, which could result in a liquid enriched with oxygen due to nitrogen having a lower boiling point than oxygen. Any condensation from system components or lines must be collected by drip pans, shields, or other suitable collection means and drained overboard through a drain fitting separate from the pressure relief vent fittings, if equipped for compliance with Special Condition No. 3. The condensation must be isolated from combustible materials including grease, oil, and ignition sources.

8. Instructions for continued airworthiness (ICA) must require periodic inspection of cryogenic components. The ICA must also include periodic inspection of plumbing insulation to ensure integrity.

9. Shutoff valves must be installed where multiple cryogenic pressurized storage vessels are connected together by manifolds so that a leak in one pressurized storage vessel can be isolated and will not allow leakage of the cryogenic fluids from any other pressurized storage vessel.

10. Cryogenic components must be burst pressure tested to 3.0 times, and proof pressure tested to 1.5 times the maximum normal operating pressure. Tests must account for the worst-case combination of temperature and material strength properties that the components are exposed to in service.

11. The plumbing installation must be designed to account for thermal expansion and thermally induced stresses.

12. The cryogenic system must be protected from unsafe temperatures and located where the probability of hazards of rupture in a crash landing are minimized.

13. The proof of strength of airframe load bearing structure in the vicinity of cryogenic equipment and plumbing must account for temperature extremes, and the effect on the strength of materials, resulting from carriage of cryogenic fluids.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11324 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM308, Special Conditions No. 25–289–SC]

Special Conditions: Gulfstream Model LP 1125 Westwind Astra Airplane; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Model LP 1125 Westwind Astra airplane modified by Duncan Aviation, Inc. This airplane will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 19, 2005.

Comments must be received on or before July 8, 2005.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM308, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM308.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2011; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of and delivery of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance. However, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m., and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On February 16, 2005, Duncan Aviation, Inc., Lincoln, Nebraska, applied to the Wichita Aircraft Certification Office, for a supplemental type certificate (STC) to modify certain Gulfstream Model LP 1125 Westwind Astra airplanes to include the installation of integrated display systems (electronic displays and electronic engine controls). These integrated display systems installed in this airplane have the potential to be vulnerable to HIRF external to the airplane. The subject Gulfstream Model LP 1125 Westwind Astra airplane is a small business jet powered by two Honeywell (formerly Allied Signal and Garrett) TFE 731–3A–200G or TFE 731–3C–200G engines. This airplane operates with a 2-person crew and holds nine passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Duncan Aviation, Inc. must show that the Gulfstream Model LP 1125 Westwind Astra airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The certification basis for the modified Gulfstream Model LP Westwind Astra airplane includes 14 CFR part 25 effective February 1, 1965, as amended by Amendments 25–1 through 25–54. In addition, the certification basis includes certain special conditions, exemptions, and equivalent levels of safety that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream Model LP 1125 Westwind Astra airplane, modified by Duncan Aviation, Inc., because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16. In addition to the applicable airworthiness regulations and special conditions, the Gulfstream Model LP 1125 Westwind Astra airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the airplane's type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Duncan Aviation, Inc. apply at a later date for an STC to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The modified Gulfstream LP 1125 Westwind Astra airplane will incorporate integrated display systems

(electronic displays and electronic engine controls) that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Gulfstream Model LP 1125 Westwind Astra airplane. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Gulfstream Model LP 1125 Westwind Astra airplane. Should Duncan Aviation, Inc., apply at a later date for an STC to modify any other model included on Type Certificate No. A16NM to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well as under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Gulfstream Model LP 1125 Westwind Astra airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Gulfstream Model LP 1125 Westwind Astra airplane modified by Duncan Aviation, Inc.:

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 19, 2005.

Mike Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11409 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20511; Directorate Identifier 2004–SW–32–AD; Amendment 39–14117; AD 2005–12–01]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109E helicopters that requires, within 5 hours time-in-service (TIS), locating relay K7212 and its associated cable in the overhead panel assembly and visually inspecting the electrical cable in the splice area for arcing or burns. If arcing or burns are found, this AD requires, before further flight, replacing an unairworthy cable with an airworthy cable kit. This AD is prompted by an overhead panel inspection report of incorrect crimping of the pins on the cable that connects to the relay. An electrical cable fault during assembly could result in arcing or burning of the cable junction at a relay in the overhead electrical panel. The actions specified by this AD are intended to detect arcing or burns of the cable or relay and to prevent burning of the cable junction at a relay, a fire in the cockpit, and subsequent loss of control of the helicopter.

DATES: Effective July 13, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 2005.

ADDRESSES: You may get the service information identified in this AD from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595.

Examining the Docket

You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://dms.dot.gov*, or at the Docket Management System (DMS), U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on March 8, 2005 (70 FR 11165). That action proposed to require, within 5 hours TIS, locating relay K7212 and its associated cable in the overhead panel assembly and visually inspecting the electrical cable in the splice area for arcing or burns. If arcing or burns are found, this proposal would require, before further flight, replacing an unairworthy cable with an airworthy cable kit.

Ente Nazionale per l'Aviazione Civile (ENAC), the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta Model A109E helicopters. ENAC advises carrying out the controls and modification called for by Agusta Bollettino Tecnico No. 109EP–22, dated November 12, 2001 (BT 109EP–22).

Agusta has issued BT 109EP–22, which specifies visually inspecting the cable for the possible presence of arcing or burns. If the presence of arcing or burns are found, the BT specifies modifying the direct current electrical system bus bar connections with a kit, P/N 109–0823–01–101. ENAC classified this service bulletin as mandatory and issued AD No. 2001–481, dated November 13, 2001, to ensure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Italy has kept us informed of the situation described above. We have examined the findings of ENAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with a change of names in the **FOR FURTHER INFORMATION CONTACT** section of this AD. This change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that this AD will affect 12 helicopters of U.S. registry. The required actions will take about ½ work hour to visually inspect and 2.5 work hours to replace the cable per helicopter at an average labor rate of $65 per work hour. Required parts will cost approximately $707 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $10,824 assuming the cable is replaced on the entire fleet.

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 the regulation:

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to 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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2005–12–01 Agusta S.p.A.: Amendment 39–14117. Docket No. FAA–2005–20511; Directorate Identifier 2004–SW–32–AD.

Applicability: Model A109E helicopters, serial numbers (S/N) 11084 through 11113 except S/N 11096, 11103, 11105, 11106, 11107, 11110, and 11111, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect arcing or burns of the cable or relay and to prevent burning of the cable junction at a relay, a fire in the cockpit, and subsequent loss of control of the helicopter, do the following:

(a) Within 5 hours time-in-service, visually inspect the cable, part number (P/N) 109–0753–10, for arcing and burns in the splice area where it connects to relay K7212. Refer to Figures 1 and 3 of the Agusta Bollettino Tecnico No. 109EP–22, dated November 12, 2001 (ABT) for the location of the cable and the relay in the cockpit overhead panel.

(b) If arcing or burns are found, before further flight, replace the cable, P/N 109–0753–10, with an airworthy cable kit, P/N 109–0823–01–101 and test the electrical system by following the Compliance Instructions, Part II, of the ABT.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(d) Inspecting and replacing the cable and testing the electrical system must be done by following Agusta Bollettino Tecnico No. 109EP–22, dated November 12, 2001. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(e) This amendment becomes effective on July 13, 2005.

Note: The subject of this AD is addressed in Ente Nazionale per l'Aviazione Civile (Italy) AD 2001–481, dated November 13, 2001.

Issued in Fort Worth, Texas, on May 27, 2005.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–11256 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–244–AD; Amendment 39–14116; AD 2005–11–14]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 and 900 Series Airplanes, and Model Falcon 2000 and 900EX Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 50 and 900 series airplanes, and Model Falcon 2000 and 900EX series airplanes. This proposal requires temporary changes to the Airplane Flight Manual to prohibit the use of certain functions depending on whether or not the operator chooses to deactivate the global positioning system (GPS). For airplanes on which the GPS is deactivated, this proposal requires installing a deactivation locking collar on certain circuit breakers. For certain airplanes, this proposal also requires modifying the wiring of the global positioning/inertial reference system. This action is necessary to prevent the erroneous cockpit display of ground speed, wind velocity and direction, flight path angle, and true track angle when using certain autopilot and/or flight management system functions. Erroneous cockpit displays could cause the pilot to lose situational awareness, and possibly lose control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 13, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 2005.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 50 and 900 series airplanes, and Model Falcon 2000 and 900EX series airplanes, was published in the **Federal Register** on April 27, 2004 (69 FR 22745). That action proposed to require temporary changes to the Airplane Flight Manual (AFM) to prohibit the use of certain functions depending on whether or not the operator chooses to deactivate the global positioning system (GPS). For airplanes on which the GPS is deactivated, that action proposed to require installing a deactivation locking collar on certain circuit breakers. For certain airplanes, that action proposed to require modifying the wiring of the global positioning/inertial reference system (GP/IRS).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Change Applicability

One commenter, an airplane operator, requests that the proposed applicability be changed to exclude airplanes that are equipped with Universal Navigation (UNS–1C) flight management systems with self-contained GPS. The commenter points out that airplanes with UNS–1C do not display the unsafe condition identified in the proposal. The commenter states that it is not clear in the proposal whether or not the applicability includes airplanes with UNS–1C.

We do not agree with the commenter. The airplane manufacturer advises that airplanes may have been delivered with the UNS–1C system installed, but states that there is no assurance that these airplanes have not since been modified into a condition that will exhibit the unsafe condition. The manufacturer has addressed this issue in the service bulletins listed in the proposal. In addition, the applicability statement already specifies that the proposal applies only to airplanes that are

equipped with the subject Gp/IRS, and specifies the GP/IRS by part number. We have not changed the final rule for this issue.

Request To Revise the Proposal To Account for Airplanes Equipped With Different Avionics

Another commenter, an avionics manufacturer, requests that the proposal be revised to account for airplanes that are not equipped with the subject GP/IRS, but are instead equipped with different avionics. The commenter points out that airplanes equipped with the different avionics have a different GPS. The commenter wishes to avoid loss of function by operators of Falcon airplanes that are equipped with the different avionics.

We disagree with the request to revise the proposal. The applicability statement already specifies that the proposal applies only to airplanes that are equipped with the subject GP/IRS, and specifies the GP/IRS by part number. Therefore, the proposal does not apply to airplanes equipped with the different avionics that have a different GPS. In addition, the commenter provides various edits to the preamble of the proposal, but does not suggest any substantive changes to the body of the AD or provide data to support its position. The preamble contains information that is not usually carried over to the final rule. We have not changed the final rule in this regard.

Request To Remove ''Interim Action'' Paragraph

The same commenter requests that we remove the paragraph titled ''Interim Action'' in the proposal. The commenter states that there is an interim step in the proposal, which is the option to pull the GPS circuit breakers or to fly with a navigational restriction. The commenter further states, however, that the proposal also provides the terminating action of a wiring modification, which cancels both the option of pulling the GPS circuit breakers and the navigational restrictions. In the commenter's opinion, this wiring modification represents the final action in the proposal.

We agree with the commenter that the proposal is not interim action. The actions described in paragraphs (c) and (d) of the proposal are terminating action for the pulled GPS circuit breakers and the navigational restrictions. We have removed the ''Interim Action'' paragraph from the final rule.

Request To Clarify Statement of Unsafe Condition

One commenter, the airplane manufacturer, requests that we clarify the statement of the unsafe condition. This statement is located above paragraph (a) and in the ''Summary'' paragraph of the proposal. The commenter states that the unsafe condition, as worded in the proposed AD, does not have enough detailed information to be clear and accurate for readers.

We agree with the commenter. The revisions to the statement, provided by the commenter, clarify the unsafe condition. Therefore, we have revised the statement in the final rule to incorporate the commenter's suggestions.

Request To Revise Service Bulletin Dates

One commenter, the airplane manufacturer, notes that the dates on some of the referenced service bulletins are incorrect. The commenter states that all service bulletins should be dated October 29, 2003.

We agree that the proposal should have the correct dates for all service bulletins. We examined the copies of the service bulletins that we had when we wrote the proposal, and found that four are dated October 15, 2003. We discussed this discrepancy with the commenter and determined that the service bulletins dated October 15, 2003, are review copies that were sent to the FAA and to the Direction Générale de l'Aviation Civile (DGAC) for concurrence. We requested that the commenter provide us with copies of the four service bulletins, dated October 29, 2003, and found that the procedures in the four service bulletins dated October 29, 2003, are virtually identical to those dated October 15, 2003. As listed in the following table, the October 15 service bulletins and the October 29 service bulletins have the same revision level.

SERVICE BULLETIN DATES AND REVISION LEVELS

Dassault service bulletin	Review copy date	Final copy date	Revision level
F900–318	October 15, 2003	October 29, 2003	1.
F900–324	October 15, 2003	October 29, 2003	Original.
F900EX–190	October 15, 2003	October 29, 2003	Original.
F2000–285	October 15, 2003	October 29, 2003	Original.

The manufacturer assures us that no members of the public received review copies of the service bulletins, dated October 15, 2003. Therefore, we have changed the final rule to reference the October 29, 2003, final versions of the service bulletins as the acceptable source of service information for the applicable actions in the final rule.

Request To Revise Paragraph (d) To Include Terminating Action for Certain Airplanes

One commenter, the airplane manufacturer, does not agree with paragraph (c) of the proposal. The commenter, the airplane manufacturer, states that deactivating the GPS is not the specific terminating action for the F2000 airplane with head-up display (HUD), or for the Falcon 50 airplane. The commenter requests that we revise paragraph (d) to reflect the appropriate terminating action for these airplanes; this terminating action is either following the navigational restrictions or deactivating the GPS.

We partially agree with the commenter. We agree that the language of proposed paragraph (c) is misleading because it states that deactivating the GPS is the only terminating action for these airplanes. However, we do not agree with the recommendation to revise paragraph (d) to reflect the appropriate information. We have determined that paragraph (b) is the appropriate place to put the requested change. Paragraph (b) of the proposal requires that operators revise the limitations section of the AFM to allow either following the navigational restrictions or deactivating the GPS. Also, we realize that an MF50 service bulletin (Falcon 50 Service Bulletin F50–416, dated October 29, 2003) was referenced in the proposal as being required for the mandatory wiring modification. This was an error, as that action is not mandatory for the MF50, and also is not consistent with the

French airworthiness directive. Therefore, we have revised Table 2 in paragraph (a)(2) to remove the reference to Falcon 50 Service Bulletin F50–416, dated October 29, 2003; and paragraphs (b)(3) and (b)(4) of the final rule to reflect the appropriate terminating action and include the commenter's requested change.

Request To Clarify Compliance Time in Paragraph (c)

The same commenter notes that the ''prior to further flight'' statement in paragraph (c) of the proposal does not correspond with the seven-day compliance time for revising the AFM that is required by paragraph (b) of the proposal. The commenter further notes that the seven-day compliance time is referenced in the paragraph titled ''Differences Between French Airworthiness Directive and This Proposed AD.''

From this comment we infer that the compliance time for paragraph (c) is unclear. Paragraph (b) of the proposal requires that operators revise the AFM within seven days after the effective date of the AD, and, thereafter, to operate the airplane within the limitations specified by the AFM revision. For some airplanes, one of those limitations is to deactivate the GPS. The opening sentence of paragraph (c) of the proposal states, ''For airplanes on which the GPS is deactivated in accordance with the applicable temporary change (TC) specified in paragraph (b) of this AD: Prior to further flight, install a deactivation locking collar * * *.'' The purpose of paragraph (c) is to ensure that operators who deactivate the GPS in accordance with the AFM limitations referenced in paragraph (b) of the proposal will install a locking collar prior to further flight after deactivating the GPS. The AFM revision is required within seven days after the effective date of the proposal, therefore the limitations in the AFM (including deactivating the GPS) are not required until seven days after the effective date of the final rule. To ensure that this compliance time is clear, we have changed paragraph (c) of the final rule to state, ''Prior to further flight after deactivating the GPS.''

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 543 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the TCs to the AFM, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $35,295, or $65 per airplane.

For airplanes that require the wiring modification required by this AD, we estimate that it will take approximately 2 work hours per airplane to accomplish the modification. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $130 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to 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. Section 39.13 is amended by adding the following new airworthiness directive:

2005–11–140 Dassault Aviation: Amendment 39–14116. Docket 2002–NM–244–AD.

Applicability: Model Mystere-Falcon 50 and Model Falcon 2000 series airplanes equipped with Global Positioning/Inertial Reference System (GP/IRS) part number (P/N) HG2001–GC02, P/N HG2001–GC03, or P/N HG2001–GD03; Model Mystere-Falcon 900 and Model Falcon 900EX series airplanes equipped with GP/IRS P/N HG2001–GC03 or P/N HG2001–GD03; except those airplanes on which one of the following has been incorporated during production: Dassault Modification M2004, M3386, or M2873; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the erroneous cockpit display of ground speed, wind velocity and direction, flight path angle, and true track angle when using certain autopilot and/or flight management system functions; which could cause the pilot to lose situational awareness, and possibly lose control of the airplane, accomplish the following:

Service Bulletin Reference

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For the installation specified in paragraph (c) of this AD, the applicable service bulletin in Table 1 of this AD.

TABLE 1.—SERVICE BULLETINS FOR PARAGRAPH (C) INSTALLATION

Dassault service bulletin	Date	Model
F2000–285	October 29, 2003	Falcon 2000.
F900EX–190	October 29, 2003	Falcon 900EX.
F900–324	October 29, 2003	Mystere-Falcon 900.
F50–424	October 29, 2003	Mystere-Falcon 50

(2) For the modification specified in paragraph (d) of this AD, the applicable service bulletin in Table 2 of this AD.

Although the Accomplishment Instructions of some of these service bulletins describe procedures for submitting a reporting card to the manufacturer, this AD does not require those actions.

TABLE 2.—SERVICE BULLETINS FOR PARAGRAPH (D) MODIFICATION

Dassault service bulletin	Revision	Date	Model
F2000–273	1	October 29, 2003	Falcon 2000 equipped with head-up display (HUD).
F900EX–181	1	October 29, 2003	Falcon 900EX.
F900–318	1	October 29, 2003	Mystere-Falcon 900.

Airplane Flight Manual Revisions

(b) Within 7 days after the effective date of this AD: Revise the applicable Airplane Flight Manual (AFM) by accomplishing paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) of this AD, as applicable. Thereafter, operate the airplane per the limitations specified in these AFM revisions.

(1) Revise the Limitations Section to include the information in Dassault Temporary Change (TC) 15, dated September 23, 2003, to the Dassault Mystere-Falcon 900 AFM, Document FM900C.

(2) Revise the Limitations Section to include the information in Dassault TC 57, dated September 23, 2003, to the Dassault Falcon 900EX AFM, Document DTM561.

(3) Revise the Limitations Section to include the information in Dassault TC 61, dated September 23, 2003, to the Dassault Mystere-Falcon 50 AFM, Document FM813EX. Compliance with the provisions of TC 61 constitutes terminating action for the requirements of this AD for all Mystere-Falcon 50 series airplanes.

(4) Revise the Limitations Section to include the information in Dassault TC 122, dated September 23, 2003, to the Dassault Falcon 2000 AFM, Document DTM537. Compliance with the provisions of Dassault TC 122 constitutes terminating action for the requirements of this AD for all Model Falcon 2000 series airplanes not equipped with head-up display (HUD).

Note 1: When the information in Dassault TCs 15, 57, 61, and 122 has been included in general revisions of the AFM, the TCs may be removed from the AFM, provided the relevant information in the general revision is identical to that in Dassault TCs 15, 57, 61, and 122.

Installation of Deactivation Locking Collars

(c) For airplanes on which the GPS is deactivated in accordance with the applicable TC specified in paragraph (b) of this AD: Prior to further flight after deactivating the GPS, install a deactivation locking collar on each GPS 1 and GPS 2 circuit breaker in accordance with the applicable service bulletin. This installation constitutes terminating action for the requirements of this AD for Model Falcon 2000 series airplanes that are not equipped with HUD, and for Model Mystere-Falcon 50 series airplanes.

Wiring Modification

(d) For Model Falcon 2000 series airplanes equipped with HUD; for Model Falcon 900EX series airplanes; and for Model Mystere-Falcon 900 series airplanes: Within 25 months after the effective date of this AD, modify the GP/IRS wiring in accordance with the applicable service bulletin. After this modification has been completed, the applicable TC required by paragraph (b) of this AD may be removed from the AFM.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, ANM–116, International Branch, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions must be done in accordance with the applicable service bulletins listed in Table 3 of this AD, and the applicable temporary changes listed in Table 4 of this AD.

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE—SERVICE BULLETINS

Dassault service bulletin	Revision	Date
F2000–273	1	October 29, 2003.
F2000–285	Original	October 29, 2003.
F50–424	Original	October 29, 2003.
F900–318	1	October 29, 2003.
F900–324	Original	October 29, 2003.
F900EX–181	1	October 29, 2003.
F900EX–190	Original	October 29, 2003.

TABLE 4.—MATERIAL INCORPORATED BY REFERENCE—TEMPORARY CHANGES

Dassault temporary change	Date	Dassault airplane flight manual	Document
15	September 23, 2003	Mystere-Falcon 900	FM900C.
57	September 23, 2003	Falcon 900EX	DTM561.
61	September 23, 2003	Mystere-Falcon 50	FM813EX.

TABLE 4.—MATERIAL INCORPORATED BY REFERENCE—TEMPORARY CHANGES—Continued

Dassault temporary change	Date	Dassault airplane flight manual	Document
122	September 23, 2003	Falcon 2000	DTM537.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or 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.*

Note 2: The subject of this AD is addressed in French airworthiness directive 2003–409(B), dated October 29, 2003.

Effective Date

(g) This amendment becomes effective on July 13, 2005.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11052 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20720; Directorate Identifier 2005–CE–17–AD; Amendment 39–14108; AD 2005–11–06]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This AD requires you to insert a temporary revision into the Limitations Section of the Pilot Operating Handbook (POH). This AD also requires you to replace the pitch actuator with an improved design pitch actuator and make the necessary wiring and circuit breaker changes, as applicable. Installing the improved design pitch actuator terminates the need for the temporary revision in the POH. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. We are issuing this AD to prevent an out-of-trim condition from occurring when the flaps are at a 40-degree flight phase and the pilot disconnects the autopilot. This condition could lead to reduced ability to control the airplane.

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 Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilatus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

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–2005–20720; Directorate Identifier 2005–CE–17–AD.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that an abrupt nose down pitch condition occurred on a PC–12 airplane.

Investigation revealed that the pilot disconnected the autopilot when the flaps were at a 40-degree selection.

Pilatus has determined that the pitch actuator sense circuitry becomes over-active during a 40-degree flight phase. Therefore, Pilatus designed a new pitch actuator that modifies sense output signals and removes the flap in motion signal to the autopilot.

What is the potential impact if FAA took no action? This condition, if not corrected, could result in an out-of-trim condition when the flaps are at a 40-degree flight phase and the pilot disconnects the autopilot. This condition could lead to reduced ability to control the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Pilatus Models PC–12 and PC–12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 13, 2005 (70 FR 19342). The NPRM proposed to require you to insert the temporary revision into the Limitations Section of the Pilot Operating Handbook (POH). The NPRM also proposed to require you to replace the pitch actuator with an improved design pitch actuator and make the necessary wiring and circuit breaker changes, as applicable. Installing the improved design pitch actuator would terminate the need for the temporary revision in the POH.

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: Change the Compliance Time for Replacing the Pitch Actuator

What is the commenter's concern? Two commenters state the requirement to replace the pitch actuator within 6 months after the effective date of the AD may place an unnecessary burden on both the operators and service centers.

The Pilatus PC–12 fleet consists of over 500 airplanes worldwide. Because of material quantity constraints, the logistics associated with replacing the pitch actuator within six months would be nearly impossible for all operators.

Extensive flight-testing identified the unsafe condition associated with

operation of the autopilot with 40-degree flaps.

The AD requires inserting a temporary revision into the Pilot Operating Handbook (POH) prohibiting the use of the autopilot with the flaps at the 40-degree position, which removes the risk of a major out of trim condition.

The commenters request the compliance time for replacing the pitch actuator be changed from ''Within the next 6 months after the effective date of this AD, unless already done,'' to ''Before December 31, 2006.''

What is FAA's response to the concern? We partially agree with the commenters.

Since it has been identified through flight-testing that the unsafe condition can be avoided by inserting Temporary Revision No. 11 or No. 40 into the Limitation Section of the POH, we agree to extend the compliance time for replacing the pitch actuator.

Extending the compliance time will allow the owners/operators more time to get the pitch actuator replaced and allows the supplier to meet the demand for parts in a timely manner. However, we rarely use a specific calendar date to express compliance time and only then when engineering analysis establishes a direct relationship between the date and either the compliance ''threshold'' or the ''grace period.''

Basically, the commenters are requesting an additional 12 months to replace the pitch actuator.

Therefore, we will change the final rule AD action and increase the compliance time for replacing the pitch actuator to ''Within the next 18 months after the effective date of this AD, unless already done.''

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 330 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 incorporate the Pilot Operating Handbook (POH) Temporary Revision:

Labor cost	Parts cost	Total cost per Airplane	Total cost on U.S. operators
1 work hour × $65 per hour = $65.	Not applicable	$65	$21,450

Pilatus will provide warranty credit for replacing the pitch actuator to the extent stated in the service information.

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–2005–20720; Directorate Identifier 2005–CE–17–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:

2005–11–06 Pilatus Aircraft Ltd.: Amendment 39–14108; Docket No. FAA–2005–20720; Directorate Identifier 2005–CE–17–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 PC–12 and PC–12/45 airplanes, Manufacturers Serial Numbers (MSN) 101 through 620, 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 Switzerland. The actions specified in this AD are intended to prevent an out-of-trim condition from occurring when the flaps are at a 40-degree flight phase and the pilot disconnects the autopilot. This condition could lead to reduced ability to control the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Insert Temporary Revision No. 11 (Report No. 02211) or No. 40 (Report No. 01973–001) into the Limitations Section of the PC–12 Pilot's Operating Handbook (POH).	Within the next 90 days after July 18, 2005 (the effective date of this AD), unless already done.	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 modify the POH as specified in paragraph (e)(1) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) Replace the pitch actuator, part number (P/N) 985.92.03.161, with an improved design pitch actuator, P/N 985.92.03.164; and make the associated wiring and circuit breaker changes (as applicable).	Within the next 18 months after July 18, 2005 (the effective date of this AD), unless already done.	Follow Pilatus PC12 Service Bulletin No. 22–004, dated December 21, 2004.
(3) Remove the Temporary Revision to the POH specified in paragraph (e)(1) of this AD after the pitch actuator is replaced as required in paragraph (e)(2) of this AD.	Before further flight after the pitch actuator is replaced with an improved design pitch actuator.	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 modify the POH as specified in paragraph (e)(3) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(4) Do not install a P/N 985.92.03.161 pitch actuator.	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, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) Swiss AD Number HB–2005–128, effective date March 29, 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 Pilatus PC12 Service Bulletin No. 22–004, dated December 21, 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 Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilatus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. 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–2005–20720; Directorate Identifier 2005–CE–17–AD.

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

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–10949 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20673; Airspace Docket No. 05–AEA–06]

Amendment of Class E Airspace; Newburgh, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Newburgh, NY. The development of multiple area navigation (RNAV) Standard Instrument Approach Procedures (SIAP) for numerous airports within the Newburgh, NY geographical area with approved Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class E–5 airspace have made this action necessary. This action consolidates the Class E–5 airspace designations for ten airports and results in the rescission of four Class E–5 descriptions through separate rulemaking action. The area will be depicted on aeronautical charts for pilot reference.

DATES: Effective 0901 UTC September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace and Operations, ETSU, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATON:

History

On April 11, 2005, a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by consolidating existing Class E–5 airspace designations in the Newburgh, NY metropolitan area and incorporating those areas into the Newburgh, NY description was published in the **Federal Register** (70 FR 18337–18338). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from the surface are published in paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004 and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 ft above the surface for aircraft conducting IFR operations within the Newburgh, NY Class E–5 airspace description.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

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

* * * * *

AEA NY E5 Newburgh, NY [Revised]

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 41°23′15″ N., long. 74°43′13″ W., to lat. 41°47′24″ N., long. 75°03′06″ W., to lat. 41°53′35″ N., long. 74°51′10″ W., to lat. 41°54′08″ N., long. 73°30′07″ W., to lat. 41°38′33″ N., long. 73°26′39″ W., to lat. 41°21′22″ N., long. 73°44′39″ W., to lat. 41°26′08″ N., long. 73°52′54″ W., to the point of beginning, excluding that portion that coincides with the Danbury, CT Class E airspace area.

* * * * *

Issued in Jamaica, New York, on May 31, 2005.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–11331 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20056; Airspace Docket No. 05–AEA–01]

Amendment of Class E Airspace; Harrisburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a rule that was published in the **Federal Register** on April 11, 2005, (70 FR 18295–18296). It corrects an error in the legal description of Class E airspace for Harrisburg, PA.

DATES: Effective June 8, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace and Operations, ETSU, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Docket No. FAA–2005–20056; Airspace Docket No. 05–AEA–01, published in the **Federal Register** on April 11, 2005 (70 FR 18295–18296), amended the description of the Class E airspace at Harrisburg, PA. An error was discovered in the geographic coordinates describing the designated airspace area. This action corrects that error.

List of Subjects in CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Correction to Final Rule

§ 71.1 [Corrected]

■ On page 18296, column 2, beginning with line 10, change to read:

AEA PA E5 Harrisburg, PA (Revised)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 39°43′19″ N., long. 76°51′26″ W., to lat. 70°07′49″ N., long. 77°20′54″ W., to lat. 40°16′46″ N., long. 77°20′53″ W., to lat. 40°42′10″ N., long. 76°32′34″ W., to lat. 40°13′15″ N., long. 76°00′32″ W., to lat. 40°00′59″ N., long. 76°01′11″ W., to the point of beginning, excluding that portion that coincides with the Pottsville, PA, Class E airspace area and the Reading, PA, Class E airspace area.

Issued in Jamaica, New York, on May 31, 2005.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–11329 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No.FAA–2005–20674; Airspace Docket No. 05–AEA–07]

Amendment of Class E Airspace; Newburgh, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action removes the description of the Class E airspace designated for Joseph Y. Resnick Airport (N89), Ellenville, NY; Sullivan County International Airport (MSV), Monticello, NY; Monticello Airport (N37), NY; Stewart International Airport (SWF), Newburg, NY; Orange County Airport (MGJ), NY; Randall Airport (06N), NY; Dutchess County Airport (POU), Poughkeepsie, NY; Sky Acres Airport (44N), NY; Stormville Airport (N69), NY; Wurtsboro-Sullivan County Airport (N82), Wurtsboro, NY. The affected Class E–5 airspace for the airports included in these descriptions will be consolidated into the amended Newburgh, NY airspace description contained in Docket No. FAA–2005–20673, Airspace Docket No. 05–AEA–06, effective September 1, 2005.

DATES: *Effective date:* September 1, 2005.

Comment Date: Comments must be received on or before July 8, 2005.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–20674; Airspace Docket No. 05–AEA–07 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address. An informal docket may also be examined during normal business hours at the office of the Area Director, Eastern Terminal Operations, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4890.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace and Operations, ETSU, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION: Although this action is a final rule, which involves the amendment of Class E airspace within New York, by consolidating that airspace into one description, and was not preceded by notice and public procedures, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the description of Class E airspace in the Newburgh, NY area by removing the airspace designations for Joseph Y. Resnick Airport (N89), Ellenville, NY; Sullivan County International Airport (MSV), Monticello, NY; Monticello Airport (N37), NY; Stewart International Airport (SWF), Newburgh, NY; Orange County Airport (MGJ), NY; Randall Airport (06N), NY; Dutchess County Airport (POU), Poughkeepsie, NY; Sky Acres Airport (44N), NY; Stormville Airport (N69), NY; Wurtsboro-Sullivan County Airport (N82), Wurtsboro, NY. It consolidates those airspace areas into the amended Newburgh, NY description. The proliferation of airports with Instrument Flight Rule (IFR) operations within the Newburgh, NY geographic area has resulted in the overlap of numerous Class E airspace areas that complicate the chart depictions. This action clarifies the airspace and diminishes the scope and complexity of charting. The IFR airports within those areas will be incorporated into the Newburgh, NY Class E airspace area. Accordingly, since this action merely consolidates these airspace areas into one airspace designation and has inconsequential impact on aircraft operations in the area, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operational current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004 and effective September 16, 2004, is amended as follows:

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

* * * * *

AEA NY E5 Ellenville, NY [Removed]

AEA NY E5 Monticello, NY [Removed]

AEA NY E5 Poughkeepsie, NY [Removed]

AEA NY E5 Wurtsboro, NY [Removed]

* * * * *

Issued in Jamaica, New York, on May 31, 2005.

John G. McCartney,

Assistant Area Director, Eastern Terminal Operations.

[FR Doc. 05–11327 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20449; Airspace Docket No. 05–AAL–06]

Revision of Class E Airspace; Nome, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description contained in a Final Rule that was published in the **Federal Register** on Monday, May 2, 2005 (70 FR 22590). Airspace Docket No. 05–AAL–06.

DATES: Effective June 8, 2005.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 05–8723, Airspace Docket No. 05–AAL–06, published on Monday, May 2, 2005 (70 FR 22590), revised the Class E airspace at Nome, AK. An error was discovered in the airspace description that indicated the Class E airspace designated as surface area was effective during specific dates and times. This statement was inaccurate. The Class E airspace designated as surface area is effective continuously. This action corrects that error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the airspace description of the Class E airspace designated as surface area published in the **Federal Register**, Monday, May 2, 2005 (70 FR 22590), (FR Doc 05–8723; page 22590, column 3) is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK E2 NOME, AK [Corrected]

By removing, ''This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.''

Issued in Anchorage, AK, on May 27, 2005.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Area Office.

[FR Doc. 05–11325 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–05–044]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1012.6, North Palm Beach, Palm Beach County, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the operation of the PGA Boulevard bridge, Intracoastal Waterway mile 1012.6, North Palm Beach, Palm Beach County, Florida. This rule is needed to provide for workman and mariner safety during repairs to the bridge. The bridge will be on single and double-leaf operations during the repair period and several waterway closures will be needed to ensure personal safety.

DATES: This rule is effective from June 8, 2005 until May 15, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD07–05–044 and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Terrell, Sector Miami at (305) 535–4317 or Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6744.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NRPM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM is contrary to the public interest because the rule provides for workman and public safety during repairs to the bridge. The repairs are needed as sections of the bridge will be completely replaced due to safety concerns. It will be necessary to use dynamite in order to destroy those portions of the bridge and it is in the public interest to protect them from the associated safety risks.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons noted above.

Background and Purpose

The PGA Boulevard bridge, Intracoastal Waterway mile 1012.6, North Palm Beach, Palm Beach County, Florida is being repaired. The Florida Department of Transportation notified the Coast Guard that the bridge's current schedule of operation must be changed to effectuate the repairs. The changes will require single-leaf bridge openings on the hour and half-hour although double-leaf openings will continue to be available on most dates. Additionally, the waterway will be closed for short periods to allow for the safe repair of the bridge. More specific times and dates will be published in the Local Notice to Mariners and Broadcast Notice to Mariners. In cases of emergency, the bridge will be opened as soon as possible.

Discussion of Rule

The rule will require single-leaf bridge openings of the PGA Boulevard Bridge on the hour and half-hour. Double-leaf openings will continue to be available on most dates. Waterway closures shall be authorized by the Captain of the Port Miami and will be published in the Local Notice to Mariners and Broadcast Notice to Mariners. The draw shall open as soon as practicable for tugs with tows, public vessels of the United States and vessels in dangerous situations.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary because the rule will allow for bridge openings while bridge repairs are ongoing so long

as it is safe. Also, all closure times will be published in advance so that mariners may plan accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities because the regulations provide for bridge openings, short closure periods and for the reasonable needs of navigation.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process by providing contact information for those personnel that can address questions regarding this regulation. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation because this is a drawbridge operation regulation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.261, from June 8, 2005 through May 15, 2006, suspend paragraph (s) and add paragraph (tt) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(tt) PGA Boulevard bridge, mile 1012.6 at North Palm Beach. The draw need not open except to provide on signal a single-leaf opening on the hour and half-hour. Vessels may request double-leaf operations, which will be provided as repair work permits, and notice of the availability of double-leaf openings will be published in the Local Notice to Mariners and Broadcast Notice to Mariners.

* * * * *

Dated: May 20, 2005.

D.B. Peterman,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 05–11320 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–035]

Drawbridge Operating Regulations; Galveston Channel, Gulf Intracoastal Waterway, Galveston, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Pelican Island Causeway Bascule Span Bridge across Galveston Channel, mile 4.5, Gulf Intracoastal Waterway, mile 356.1, at Galveston, Texas.

DATES: This deviation is effective from 11 p.m. on Thursday, June 9, 2005, until 9 a.m. on Friday, June 10, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 500 Poydras Street, New Orleans, Louisiana, 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Galveston County Navigation District has requested a temporary deviation in order to replace the synchro motor position transmitter and associated electrical switches of the Pelican Island Bascule Span Bridge across the Galveston Channel, mile 4.5, Gulf Intracoastal Waterway, mile 356.1, west of Harvey Lock at Galveston, Galveston County, Texas. Replacement of the synchro motor position transmitter is necessary for the continued operation of the draw span. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 11 p.m. on Thursday, June 9, 2005, until 9 a.m. on Friday, June 10, 2005. There may be times, during the closure period, when the draw will not be able to open for emergencies.

The bridge provides 12 feet of vertical clearance in the closed-to-navigation position. Thus, most commercial vessels and some recreational vessels will not be able to transit through the bridge site when the bridge is closed. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft including sailboats and powerboats. Due to the existence of a practical alternate route of no greater distance, it has been determined that this closure will not have a significant effect on these vessels.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 2, 2005.

Marcus Redford,

Bridge Administrator.

[FR Doc. 05–11424 Filed 6–3–05; 3:33 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 148, 149, and 150

[USCG–1998–3884]

RIN 1625–AA20 (formerly RIN 2115–AF63)

Deepwater Ports; Voluntary Guidelines

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of a Navigation and Vessel Inspection Circular (NVIC), providing voluntary guidelines in connection with the regulation of deepwater oil and natural gas ports pursuant to the Deepwater Port Act of 1974, as amended. The NVIC guidelines relate to the design, plan review, fabrication, installation, inspection, maintenance, and oversight of these deepwater ports. Compliance with the NVIC is voluntary and no new legal requirements are imposed.

DATES: The Coast Guard issued NVIC 03–05 on May 16, 2005.

ADDRESSES: You may request a copy of NVIC 03–05 from U.S. Coast Guard Headquarters (G–MSO–5), Room 1508, 2100 2nd Street SW., Washington DC 20593. The NVIC is available on the Internet at: *http://www.uscg.mil/hq/g-m/nvic/*. It is also available in the public docket (USCG–1998–3884) and is available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–402, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this public docket on the Internet at *http://dms.dot.gov/*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LCDR Kevin Tone, Deepwater Port Standards Division, Coast Guard, telephone 202–267–0226, e-mail: *ktone@comdt.uscg.mil*. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone: 202–366–0271.

SUPPLEMENTARY INFORMATION: Under the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.*, a deepwater port is a fixed or floating manmade structure other than a vessel, or a group of structures, located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for

transportation to any State. The Coast Guard regulates the licensing of deepwater ports, in 33 CFR parts 148, 149, and 150, under a temporary interim rule issued in 2004 (69 FR 724, Jan. 6, 2004).

On May 16, 2005, the Coast Guard issued Navigation and Vessel Inspection Circular No. 03–05 (NVIC 03–05). NVIC 03–05 provides guidance to deepwater port license applicants and operators, to the Coast Guard, and to ''certifying entities'' that perform certification work on behalf of the Coast Guard. This guidance relates to the design, plan review, fabrication, installation, maintenance, and oversight of deepwater ports. NVIC 03–05 encourages voluntary compliance, but is not intended to and does not impose legally binding requirements on any person.

The **ADDRESSES** section of this notice tells how to view or obtain a copy of NVIC 03–05. The Coast Guard is issuing this notice of availability in accordance with the commitment we made in our temporary interim rule, at 69 FR 726, to keep the public informed of Coast Guard policies interpreting the deepwater port regulations. We will issue additional notices of availability, should we modify or supplement NVIC 03–05 in the future.

Dated: May 31, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

[FR Doc. 05–11318 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–05–007]

RIN 1625–AA87

Security Zone: Portland Rose Festival on Willamette River

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is permanently amending the Portland Rose Festival on Willamette River security zone. This regulation is enforced annually during the Portland, Oregon Rose Festival on the waters of the Willamette River between the Hawthorne and Steel Bridges. The current regulation does not accurately describe the enforcement period. The change clarifies the annual enforcement period for this regulation. This change will better inform the boating public and improve the level of safety at this event. Entry into the area established is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective June 8, 2005. In 2005, 33 CFR 165.1312 will be enforced on Wednesday, June 8, through Monday, June 13.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket (CGD13–05–007) and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, c/o Captain of the Port, 6767 North Basin Avenue Portland, OR 97217. Marine Safety Office Portland, Oregon between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST1 Charity Keuter, c/o Captain of the Port Portland, OR 6767 North Basin Avenue Portland, OR 97217 at (503) 240–9301.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 9, 2005, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone: Portland Rose Festival on Willamette River'' in the **Federal Register** (70 FR 24342). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Earlier notice was not provided to the Coast Guard that the regulation as written would not provide the required security for the vessels participating in the 2005 Portland Rose Festival. Any delay encountered in this regulation's effective date would be contrary to public interest because immediate action is necessary to ensure the safety and security of the participating vessels.

Background and Purpose

Each year in June, the annual Portland, Oregon Rose Festival is held on the waters of the Willamette River near Portland, Oregon. On May 29, 2003, the Coast Guard published a final rule (68 FR 31979) establishing a security zone, in 33 CFR 165.1312, for the security of naval vessels on a portion of the Willamette River during the fleet week of the Rose Festival. The security zone in 33 CFR 165.1312 is enforced each year during the event to provide for public safety by controlling the movement of vessel traffic in the regulated area. The current regulation does not accurately describe the enforcement period.

This rule permanently amends 33 CFR 165.1312 requiring compliance with the regulation each year from the first Wednesday in June falling on the 4th or later through the following Monday in June. Specific times of compliance will be published in the **Federal Register** each year as a notice of enforcement.

The regulated area and the security zone remain unchanged.

Discussion of Comments and Changes

The Coast Guard received no comments and thus has made no changes from the proposed rule.

Regulatory Evaluation

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

We expect the economic impact of this 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 fact that the regulated area of the Willamette River is a small area, enforced for a short period of time, and it is established for the benefit and safety of the recreational boating public.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities some of which may be small entities: The owners and operators of vessels intending to transit or anchor in the security zone during the times this zone is enforced. This security zone will

not have a significant economic impact on a substantial number of small entities for the following reasons: Vessels desiring to transit this area of the Willamette River may do so by scheduling their trips in the early morning or evening when the restrictions on general navigation imposed by this section will not be in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction from further environmental documentation. The Coast Guard has determined that because this security zone will not last longer than one week in duration that it should be ''Categorically Excluded''. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In §§ 165.1312 revise paragraph (d) to read as follows:

§ 165.1312 Security Zone; Portland Rose Festival on Willamette River.

* * * * *

(d) *Enforcement period.* This section is enforced annually in June from the first Wednesday in June falling on the 4th or later through the following Monday in June. The event will be 6 days in length and the specific dates of enforcement will be published each year in the **Federal Register**. In 2005, the zone will be enforced on Wednesday, June 8, through Monday, June 13.

Dated: June 1, 2005.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

[FR Doc. 05–11321 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 23, 163, 177, 178, 179, and 180

[OPP–2003–0176; FRL–7706–9]

Updating Generic Pesticide Chemical Tolerance Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is updating generic provisions of its procedural regulations pertaining to pesticide chemical tolerances and exemptions from the requirement of a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act. This update is necessary due to various changes made in the underlying statute by the Food Quality Protection Act of 1996. The amendments are primarily administrative in nature. EPA believes that these revisions will clarify the regulations and reduce confusion for users.

DATES: This final rule is effective August 8, 2005.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number OPP–2003–0176. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jonathan Fleuchaus, Office of General Counsel, Mail code 2333A, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5628; fax number: (202) 564–5644; e-mail address: *fleuchaus.jonathan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturer (NAICS 311)
- Pesticide manufacturer (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background

In the **Federal Register** of October 8, 2004 (69 FR 60320) (FRL–7308–2), EPA proposed to amend various sections of 40 CFR parts 9, 23, 163, and 177–180 pertaining to pesticide chemical tolerances to make them consistent with the changes to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, contained in the Food Quality Protection Act of 1996 (FQPA). These proposed changes were primarily procedural in nature.

Two substantive comments were received on the proposal. EPA's response to these two comments is contained in Unit IV. In brief, neither of these comments objected to the changes proposed by EPA; rather, the commenters argued that EPA should have made further changes to the tolerance regulations. As explained in Unit IV., EPA believes that certain additional changes in this regulation are merited based on the comments.

Further, as explained in Unit III., EPA has identified several additional minor changes to the tolerance regulations that help to conform the existing tolerance regulations to the changes made by the FQPA.

Accordingly, other than the modifications identified in Units III. and IV., EPA is adopting in the final rule its revisions to the FFDCA tolerance regulations as proposed.

III. Additional Changes To Tolerance Regulations Identified by EPA

EPA proposed to amend 40 CFR 178.37(c) by removing language that specified that the effective date for an order responding to objections ''must not be earlier than the 90th day after it is published unless the order contains findings as to the existence of emergency conditions that necessitate an earlier effective date.'' See 40 CFR 178.37(c). The 90–day limitation on effectiveness was drawn directly from FFDCA section 408 prior to its amendment by the FQPA. Specifically, prior section 408(d)(5) stated that ''[n]o order [following a hearing on a tolerance regulation] shall take effect prior to the ninetieth day after its publication, unless the Administrator finds that emergency conditions exist necessitating an earlier effective date, in which event the Administrator shall specify in the order of his findings as to such conditions.'' 21 U.S.C. 346a(d)(5) (1994). That language, however, was dropped from section 408 upon its amendment by the FQPA. See 21 U.S.C. 346a(g)(2)(C). Similar language requiring a 90–day delay in effectiveness also appears in 40 CFR 179.105(b)(ii). EPA inadvertently missed this obsolete requirement in 40 CFR part 179 in issuing its proposal. Because removal of this language is consistent with the revised statute and the proposal, EPA is deleting the 90–day limitation on effectiveness from 40 CFR 179.105(b)(ii) as well as from 40 CFR 178.37(c).

The second change identified by EPA is to amend the authority citation for parts 9, 23, 178, and 179 to delete the reference to FFDCA section 409. Following the FQPA's consolidation of the authority over pesticide chemicals in section 408, these parts no longer rely on, or pertain to, FFDCA section 409.

The third change identified by EPA is to amend 40 CFR 180.7(h) to include among the options that the Administrator has in ruling on a petition to establish, modify, or revoke a tolerance the option of denying the petition. This option was explicitly added by the FQPA in section 408(d)(4)(A)(iii).

Finally, EPA has added a definition for the abbreviation ''FFDCA'' in part 180, and revised the definitions for ''pesticide chemical'' and ''pesticide chemical residue'' to adopt the modifications to these definitions enacted by the Antimicrobial Regulation Technical Correction Act of 1998, Public Law 105–324, 112 Stat. 3035, and to cross-reference the existing regulatory exceptions to these definitions in 40 CFR 180.4.

IV. Response to Comments

A. Comment Concerning Filing Time for Judicial Review

Edward C. Gray questioned whether the proposed amendments to 40 CFR 23.10 would clarify when a party needs to file a judicial challenge to a final order on a tolerance regulation or petition denial so that party would come within the 10–day window prescribed in 28 U.S.C. 2112 to address the ''races to the courthouse'' problem. Pertinent background information helps to explain Mr. Gray's concern.

Section 2112 of Title 28 of the United States Code addresses various procedural requirements pertaining to judicial review of agency orders including what United States Circuit Court of Appeals will hear a case when a challenge to an agency order or rule is filed in multiple circuit courts. Prior to the 1988 amendments to 28 U.S.C. 2112, section 2112 specified that if review of an agency order or rule was sought in more than one circuit, the circuit where a petition for review was first filed would hear the challenge. To avoid the ''races to the courthouse'' that were produced under this procedure, section 2112 was amended in 1988 to establish a random selection scheme to deal with filings in multiple circuits. S.Rep. No. 100–263, pp. 2–4, 1987 U.S.C.C.A.N. 3198, 3198–3201 (1987). Under amended section 2112, if an agency receives two or more petitions for review involving at least two circuits within 10 days of ''issuance of an order,'' the agency is required to notify the judicial panel on multi-district litigation of the fact that there have been multiple filings and provide the panel with the petitions. 28 U.S.C 2112(a)(3). The judicial panel is then required to select by ''random'' one of the circuits in which a petition was filed to hear all of the petitions.

Prior to the 1988 amendment to 28 U.S.C. 2112, various agencies, including EPA, promulgated rules in an attempt to mitigate ''races to the courthouse'' to challenge agency orders and rules. In 40 CFR part 23, EPA generally specified that the time and date of the entry or promulgation of an order or rule for the purpose of judicial review is 1 p.m. eastern time on the date that is 2 weeks after the date on which the order or rule is published in the **Federal Register**. Although these regulations did not eliminate races to the courthouse, they at least provided all parties with fair notice of when the starting gun would be fired. A specific provision in 40 CFR part 23 addressed orders issued under the FFDCA. See 40 CFR 23.10.

Upon amendment of section 2112 in 1988, EPA promulgated a new section to 40 CFR part 23 specifying the manner in which service of petitions should be filed with the Agency so that the EPA could comply with section 2112's new requirement that an agency, whose order or rule is challenged in more than one circuit court, file the multiple petitions for review with the judicial panel on multi-district litigation. In promulgating this new section of 40 CFR part 23, EPA made clear that, out of consideration of fairness to all parties, it intended to leave in place the existing sections of 40 CFR part 23 establishing a 2–week delay between publication of an order or regulation and the time when the order or regulation could be challenged. As EPA explained: ''In other words, agency actions covered under these sections will continue to be deemed 'final' for purposes of judicial review (and the ten–day period for petitions for review to enter the random selection process will begin) at 1:00 p.m. fourteen days after the date of publication or date of signature.'' (53 FR 29320) (August 3, 1988).

40 CFR 23.10 currently specifies that ''the time and date of the entry of an order'' issued under the FFDCA is 2 weeks after publication. EPA's proposed amendment to 40 CFR 23.10 principally involved conforming the statutory references in 40 CFR 23.10 to the FQPA's structural change of moving the judicial review provision in FFDCA section 408 from subsection (i) to subsection (h). EPA did not propose to change the ''time and date of the entry of an order'' language.

Mr. Gray contends that, because EPA's regulations speak in terms of ''entry'' of an order and the United States Code uses the word ''issuance,'' there could be confusion about when a petition for review must be filed to come within the 10–day window provided by 28 U.S.C. 2112. Mr. Gray suggests deleting 40 CFR 23.10 and amending the relevant portions of 40 CFR parts 178, 179, and 180 to make clear that an order or regulation is consider ''issued'' at the time of publication. As Mr. Gray explains, a court may determine that ''issuance'' occurs prior to ''entry,'' thus penalizing those filers who delay action based on 40 CFR 23.10. Alternatively, a party who files within 10 days of publication may have the filing ruled to be premature, and thus not within 28 U.S.C. 2112's 10–day window, if a court treats ''issuance'' and ''entry'' as equivalent under 40 CFR 23.10.

In light of Mr. Gray's comments, EPA has reviewed again the statutory provisions in section 408 pertaining to the timing of judicial review; the requirements in 28 U.S.C. 2112; EPA's existing regulations on judicial review of FFDCA actions in 40 CFR parts 178, 179, and 180, and on ''races to the courthouse'' in part 23; and EPA's proposals with regard to these regulations.

This review has revealed an oversight in EPA's proposal with regard to the timing of the filing for petitions for judicial review. Prior to the passage of the FQPA, section 408 specified that petitions for judicial review must be filed ''within sixty days after *entry* of [an appropriate] order.'' 21 U.S.C. 346a(i) (1994) (emphasis added). FQPA amended this language to specify in section 408(h) that a petition must be filed ''within 60 days after *publication* of [an appropriate] order or regulation.'' 21 U.S.C. 346a(h)(1) (emphasis added). EPA's existing regulations in parts 23, 178, and 179 pertaining to judicial review for section 408 orders reflect the focus on ''entry,'' as opposed to ''publication,'' in the pre-FQPA statute. See 40 CFR 178.65 and 179.125. In proposing to amend its FFDCA regulations, EPA overlooked this change. Correcting 40 CFR parts 178 and 179 to reflect the change to ''publication'' as the starting point for the running of the 60–day clock is easy enough. EPA proposed that these provisions retain existing language stating that various EPA orders shall be final and reviewable ''as of the date of entry of the order, which shall be

determined in accordance with §§ 23.10 and 23.11 of this chapter,'' and that petitions for judicial review must be filed within 60 days of the ''entry of the order.'' In the final rule, EPA is amending 40 CFR 178.65 and 179.125 to state that the specified orders and regulations are final and reviewable ''upon publication'' and that petitions for review must be filed within 60 days from ''publication.'' The reference to 40 CFR part 23 is dropped because the statute now establishes publication as the date from which the 60–day clock for filing petitions for judicial review begins to run.

As to 40 CFR 23.10, the matter is only slightly more complicated. EPA believes two changes are appropriate here. First, to bring 40 CFR 23.10 into step with 28 U.S.C. 2112, the reference in 40 CFR 23.10 to ''entry'' of an order is being changed to ''issuance'' of an order. Second, 40 CFR 23.10 is amended to make clear that it is not defining the date of issuance of an order for the purposes of determining the time for filing a judicial review petition under FFDCA section 408(h) but rather for the purposes of determining the date upon which the 10–day clock established in 28 U.S.C. 2112 begins to run. Although there is some merit to Mr. Gray's suggestion to simply delete 40 CFR 23.10, EPA believes that it is clearer to retain 40 CFR 23.10 with the substitution of the term ''issuance'' for ''entry.'' Additionally, EPA is reluctant to reverse, in the context of action pertaining to a single statute, the prior Agency-wide decision to retain the additional 2–week period prior to the beginning of the 28 U.S.C. 2112 10–day clock. The revised 40 CFR 23.10 is amended to read:

> Unless the Administrator otherwise explicitly provides in a particular order, the time and date of the issuance of a regulation under section 21 U.S.C. 346a(e)(1)(C), or any order under 21 U.S.C. 346a(f)(1)(C) or 21 U.S.C. 346a(g)(2)(C), or any regulation that is the subject of such an order, shall, for purposes of 28 U.S.C. 2112, be at 1 p.m. eastern time (standard or daylight, as appropriate) on the date that is for a **Federal Register** document, 2 weeks after the date when the document is published in the **Federal Register**, or for any other document, 2 weeks after it is signed.

EPA believes that, under this language it will be clear, that the 10–day window created by 28 U.S.C. 2112 will not begin to run until 2 weeks after publication of the FFDCA rule or order in the **Federal Register**. At the same time, EPA regulations in 40 CFR parts 178 and 179 make clear that the 60–day period for seeking judicial review of an order or regulations under section 408(h)(1) begins upon publication of the order or regulation. No change is required in 40 CFR part 180 because the provision addressing judicial review in that part does not address the timing for the filing of a petition.

On a related matter, EPA would note that its interpretation of section 408(h)(5) as mandating the exclusivity of the judicial review provision in section 408(h) as to tolerance-related issues was confirmed by a federal district court in *New York v. EPA*, No. 03 Civ. 7155 (GEL) (S.D.N.Y. July 29, 2004). In that case, the court held that parties wishing to challenge tolerances or tolerance reassessment decisions finding a tolerance to be safe must first exhaust the petition procedures in section 408(d), and the objection procedures in subsection 408(g), before seeking judicial review.

B. Comment on Pesticide Residues in Processed Foods

The Pesticide Policy Coalition, representing various food, agriculture, and pesticide manufacturer organizations, filed a detailed comment regarding pesticide residues in processed food. The PPC raised two issues with regard to EPA's tolerance regulations. First, the PPC is concerned that EPA's traditional practice of evaluating the need for and establishing tolerances for only a select group of dried commodities means that many dried commodities may have violative pesticide residues. Second, the PPC is concerned that EPA's proposal did not respond to the FQPA's removal of the ''ready to eat'' requirement from a provision addressing the legality of pesticide residues in processed foods. The PPC suggests that EPA's lack of action will result in dehydrated or concentrated products, such as juice concentrates, being found to be adulterated even though when re-hydrated they would be fully in compliance with the applicable regulations.

1. *Background*. Traditionally, pesticide chemical tolerances on foods have been set primarily on raw agricultural commodities rather than processed foods. In the 1954 law establishing the modern system of pesticide tolerances, such tolerances were only authorized as to raw agricultural commodities. See 21 U.S.C. 346a(b) (1994). Although later amendments to the FFDCA pertaining to food additives did establish a similar system that included authority for tolerances for pesticide residues in processed food, these amendments were crafted in such a manner that tolerances for pesticides in processed foods were rarely necessary in comparison to the need for raw food tolerances. See 21 U.S.C. 321(s) and 348 (1994). Specifically, in seeking to coordinate action under the pesticides provision (section 408) and the food additives provision (section 409), Congress provided in section 402 that:

> . . . where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the food shall, notwithstanding the provisions of section 406 and 409, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity . . . .

21 U.S.C. 342(a)(2)(C) (1994). In sum, this provision applied the tolerance level for a pesticide residue in raw food to processed food derived from that raw food. The provision became known as the ''flow-through'' provision because it permitted, in most cases, legal residues in a raw food to flow-through to the processed commodity without adulterating that latter commodity. A similar version of the ''flow-through'' provision was contained in the FQPA.

Given the ''flow-through'' provision, the only processed foods that need tolerances are those processed foods in which pesticide residues concentrate during processing to levels higher than the tolerance in the raw food. An increase in the concentration of residues can occur during processing in a number of processing operations including dehydration or drying of a raw food and separation of a raw food into its component parts. These processing operations may lead to all or most of the pesticide residues in the overall raw food being primarily allocated to a single component of the food, as processed, with the effect that the concentration of residues in that component (on a weight to weight basis) exceeds the concentration in the original raw food. For example, when apples are processed into juice, two commodities are created: Apple juice and apple pomace, an animal feed. The concentration of pesticide residues in the juice or pomace may be higher on a weight to weight basis than in the whole apple if the pesticide residue is either highly soluble in water or the reverse because in those circumstances the residue tends to partition unequally between the juice and the pomace rather than being equally distributed between them.

EPA determines the need for processed food tolerances by requiring the submission of food processing studies in the registering of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, and when establishing corresponding section 408 tolerances under the FFDCA. See 40 CFR 158.340. Food processing studies for a pesticide document the residue level of the pesticide in a treated raw commodity and the residue level in various processed commodities that can be derived from the raw commodity. In the Office of Prevention, Pesticides and Toxic Substances (OPPTS) Test Guidelines, EPA has provided guidance on which processed commodities, if any, food processing data should be submitted so that EPA can determine whether a processed food tolerance is needed. EPA, *OPPTS Harmonized Test Guidelines, Series 860, Residue Chemistry*, OPPTS Harmonized Guideline 860.1000 Table 1 (August 1996) (listing raw commodities and processed foods for which processing data is recommended). The criteria EPA has used for designating processed food on which processing data should be submitted relate both to the likelihood of an increase in concentration during processing and the significance of the processed commodity in the American diet. OPPTS Harmonized Guideline 860.1000(m).

When in 1996 Congress amended the FFDCA to, among other things, consolidate pesticide tolerance authority in section 408, it moved the flow-through provision to section 408 with minor changes. One of these minor changes was the dropping of the requirement in the flow-through provision that specified that residues in processed foods be judged against the raw food tolerance only when the processed food is at the ''ready to eat'' stage.

Although the legislative history regarding this change is sparse, EPA believes the reason the change was made was due to concerns with the phrase raised by EPA following the difficulties it had in applying the ready-to-eat requirement in the context of several legal and administrative challenges to various processed food tolerances or to uses which allegedly needed such tolerances. One of the issues that arose in this dispute was EPA's interpretation of the ''ready to eat'' requirement in the flow-through provision. When EPA looked into the questions surrounding its implementation of the ready-to-eat requirement, it discovered that, due to the wide variety in consumers' diets, it was difficult to define what foods are ready to eat, and for foods that are not ready to eat, the stage when they become ready to eat. See 60 FR 31300, 31306 (June 14, 1995) (''EPA envisions that this definition [of ready-to-eat food] may be difficult to apply in many instances.''). Given the problems with the ready-to-eat concept it is not surprising that EPA sought and Congress agreed to dropping the phrase from the statute.

2. *Dried foods*. The PPC expressed concern that EPA only considers whether processed food tolerances are necessary in a few dried commodities (e.g., raisins) and does not examine whether pesticide residues may concentrate in other dried commodities. According to the PPC, ''[t]oday there are many more forms of dried or otherwise processed foods in commerce than was the case forty or fifty years ago when the tolerance establishment process was developed (e.g., banana chips, sun-dried tomatoes, freeze-dried berries).'' EPA has traditionally only focused its tolerance-setting resources on those processed foods that are consumed at a significant enough level that they could meaningfully affect a risk assessment. The PPC, however, notes that EPA's approach may leave food processors with a ''regulatory problem'' as to certain minor foods in that routine drying of those foods may result in a processed commodity that bears illegal residues even though the raw food prior to drying was well within the applicable pesticide tolerance. The PPC argues that ''[a]s a general matter, the drying or other routine processing of a compliant [raw agricultural commodity] should not be regarded as the adulteration of that [raw agricultural commodity] to yield unlawful processed food.''

The PPC proposed that EPA issue a tolerance regulation applying to all processed foods that directs the tolerance for any processed food not having a specific tolerance shall be the tolerance level of the applicable raw food tolerance adjusted to ''take account of the concentration of the product caused by the drying or other processing of the [raw agricultural commodity].'' The PPC argues that such a tolerance regulation is ''risk-neutral'' because the amount of pesticide consumed as a total amount would be the same whether a food is consumed in its raw or dried form. Additionally, the PPC notes that this approach has been adopted by the European Union.

Although EPA understands that the PPC is concerned about pesticide residues in processed foods, the dried food issue in the PPC's comments goes beyond the scope of the proposed rule. The proposed rule focused entirely on changes to EPA's regulations in response to the passage of the FQPA or other routine changes (e.g., updating addresses). It does amend the EPA regulation addressing the flow-through provision but only with regard to the changes that were accomplished by the FQPA. Similarly, EPA discussed how it is handling the interpretation of a few tolerance regulations that got caught between a change in EPA policy on ''ready-to-eat'' foods and the dropping of that requirement by the FQPA. The question of whether EPA has adequate tolerance regulations in place to deal with dried foods, however, is a question that exists independent of any changes in the law effectuated by the FQPA. Put another way, the potential regulatory problem identified by the PPC as to dried foods would be present even if the FQPA had never been passed. Accordingly, EPA will not be adopting the PPC's proposed regulation in this final rule. If the PPC continues to be concerned about the need for additional processed food tolerances for dried commodities, EPA is committed to working with them to explore options for resolution of their concerns.

EPA would note, however, that in response to the PPC's concern about how the deletion of the ''ready to eat'' language from the statute affects dried foods, EPA is making a change in the rule to address that issue, as discussed in the following section.

3. *Juice concentrates and similar products*. The PPC also is concerned that EPA has not addressed the legality of juice concentrates and similar products in light of the removal from the flow-through provision of the ''ready to eat'' requirement. The PPC argues that the removal of the ''ready to eat'' requirement may render these commodities adulterated even if they are produced from below-tolerance raw foods and will have below-tolerance residues when reconstituted and consumed.

As explained above, EPA believes that the ''ready to eat'' requirement was removed based on EPA's concerns that this vague language complicated both the tolerance establishment program and the enforcement of tolerances in the field. There is no indication that Congress removed the requirement because it thought it was important that concentrated juices be analyzed ''as is'' to determine whether or not they comply with tolerances applying to raw fruit and fruit juice in the form they are consumed. Obviously, examining whether concentrated apple juice meets a tolerance applicable to apple juice as consumed makes little sense from a risk

perspective. From an administrative standpoint, requiring tolerances for concentrated juices or other similar foods makes equally little sense because separate tolerances might need to be set on a food processor by food processor basis taking into account the degree of concentration used by individual processors in preparing their food products.

Traditionally, FDA has followed the commonsense approach of sampling concentrated apple juice for pesticide residues by either diluting the juice to its normal moisture content or compensating for the lack of normal moisture content in calculating the pesticide concentration in the juice. FDA's approach to sampling concentrated apple juice is spelled out in the section of the Pesticide Analytical Manual, Volume I, addressing the preparation of test samples of food for laboratory analysis of pesticide residues. See FDA, Pesticide Analytical Manual, Volume I, Table 102-b. The Pesticide Analytical Manual builds upon EPA regulations that provide general guidance on how some foods are to be sampled. See 40 CFR 180.1(j). Both EPA's regulations and the FDA guidance are directed at designing food sampling procedures to give a realistic measure of residues to which people are likely to be exposed (e.g., removing shells from nuts and stems from melons and re-hydrating juice concentrates before analyzing) and make sampling practicable for FDA personnel (e.g., analyzing not-ready-to-eat processed food used as an ingredient in other foods on an ''as is'' basis).

Accordingly, in response to the PPC's comment, EPA is adding an additional provision to its regulations in 40 CFR 180.1(j) regarding food sample preparation that tracks FDA's approach to concentrated products as set forth in the Pesticide Analytical Manual.

III. Regulatory Assessment Requirements

This rule makes several changes in the EPA regulations governing pesticide tolerances and exemptions from tolerance. The amendments are procedural in nature and, for the most part, correct the CFR so that it is consistent with FFDCA section 408, as amended by the FQPA, and EPA's ongoing implementation of FFDCA. Other than making EPA regulations more accurate, these amendments are not expected to have any impact on regulated parties or the public. Accordingly, these amendments are not subject to review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), as a significant regulatory action.

Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since, as detailed above, these amendments will have no detrimental impact on regulated parties or the public, EPA certifies under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) that the amendments will not have a significant impact on a substantial number of small entities.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This rule is directed at pesticide manufacturers and others who seek to establish, modify, or revoke pesticide tolerances and exemptions, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA.

For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, 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 the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 9, 23, 163, 177, 178, 179, 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 24, 2005.

Suzan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I is amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 is revised to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

■ 2. Section 9.1 is amended by removing the entries and center headings for parts 163 and 177 in the table.

PART 23—[AMENDED]

■ 3. The authority citation for part 23 is amended to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1361(a), 1369(b); Clean Air Act, 42 U.S.C. 7601(a)(1), 7607(b); Resource, Conservation and Recovery Act, 42 U.S.C. 6912(a), 6976; Toxic Substances Control Act, 15 U.S.C. 2618; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136n(b), 136w(a); Safe Drinking Water Act, 42 U.S.C. 300j–7(a)(2), 300j–9(a); Atomic Energy Act, 42 U.S.C. 2201, 2239; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 371(a), 346a, 28 U.S.C. 2112(a), 2343, 2344.

■ 4. Section 23.10 is revised to read as follows:

§ 23.10 Timing of Administrator's action under the Federal Food, Drug, and Cosmetic Act.

Unless the Administrator otherwise explicitly provides in a particular order, the time and date of the issuance of a regulation under section 21 U.S.C. 346a(e)(1)(C), or any order under 21 U.S.C. 346a(f)(1)(C) or 21 U.S.C. 346a(g)(2)(C), or any regulation that is the subject of such an order, shall, for purposes of 28 U.S.C. 2112, be at 1 p.m. eastern time (standard or daylight, as appropriate) on the date that is for a **Federal Register** document, 2 weeks after the date when the document is published in the **Federal Register**, or for any other document, 2 weeks after it is signed.

PART 163—[REMOVED]

■ 5. Part 163 is removed.

PART 177—[REMOVED]

■ 6. Part 177 is removed.

PART 178—[AMENDED]

■ 7. The authority citation for part 178 is revised to read as follows:

Authority: 21 U.S.C. 346a, 371(a); Reorg. Plan No. 3 of 1970.

■ 8. Section 178.20 is amended by revising paragraph (a) to read as follows:

§ 178.20 Right to submit objections and requests for a hearing.

(a) On or before the 60th day after the date of publication in the **Federal Register** of an order under part 180 of this chapter establishing, modifying, or revoking a regulation, or denying all or any portion of a petition, a person adversely affected by such order or petition denial may submit, in accordance with § 178.25, one or more written objections to the order (or to the action that is the subject of the order).

* * * * *

■ 9. Section 178.25 is amended by revising paragraphs (a)(7) and (b)(2) to read as follows:

§ 178.25 Form and manner of submission of objections.

(a) * * *

(7) Be received by the Hearing Clerk not later than the close of business of the 60th day following the date of the publication in the **Federal Register** of the order to which the objection is taken (or, if such 60th day is a Saturday, Sunday, or Federal holiday, not later than the close of business of the next government business day after such 60th day).

* * * * *

(b) * * *

(2) For personal delivery, the Office of the Hearing Clerk is located at: Room 104, Crystal Mall #2, 1801 S. Bell St., Arlington, VA.

■ 10. Section 178.35 is amended as follows:

a. By revising the section heading.

b. By revising paragraph (a).

c. By revising ''rule'' to read ''order'' in paragraph (b).

§ 178.35 Modification or revocation of regulation or prior order.

(a) If the Administrator determines upon review of an objection or request for hearing that the regulation or prior order in question should be modified or revoked, the Administrator will publish an order setting forth any revision to the regulation or prior order that the Administrator has found to be warranted.

* * * * *

■ 11. Section 178.37 is amended by revising the introductory text of paragraph (a) and paragraph (c) to read as follows:

§ 178.37 Order responding to objections on which a hearing was not requested or was denied.

(a) The Administrator will publish in the **Federal Register** an order under FFDCA section 408(g)(2)(B) or section 408(g)(2)(C) setting forth the Administrator's determination on each denial of a request for a hearing, and on each objection submitted under § 178.20 on which:

* * * * *

(c) Each order published under paragraph (a) of this section must state its effective date.

■ 12. Section 178.65 is revised to read as follows:

§ 178.65 Judicial review.

An order issued under § 178.37 is final agency action reviewable in the courts as provided by FFDCA section 408(h), as of the date of publication of the order in the **Federal Register**. The failure to file a petition for judicial review within the period ending on the 60th day after the date of the publication of the order constitutes a waiver under FFDCA section 408(h) of the right to judicial review of the order and of any regulation promulgated by the order.

§ 178.70 [Amended]

■ 13. Section 178.70 is amended by removing paragraphs (a)(2) and (a)(3) and redesignating existing paragraphs (a)(4) through (a)(8) as paragraphs (a)(2) through (a)(6), respectively.

PART 179—[AMENDED]

■ 14. The authority citation for part 179 is revised to read as follows:

Authority: 21 U.S.C. 346a, 371(a); Reorg. Plan No. 3 of 1970.

§ 179.20 [Amended]

■ 15. Section 179.20(a)(3) is amended by removing the phrase ''§ 177.81 or ''.

§ 179.24 [Amended]

■ 16. Section 179.24 is amended by removing ''177,'' and removing the comma after ''178'' in paragraph (a).

§ 179.83 [Amended]

■ 17. Section 179.83 is amended by revising ''parts 177, or 180'' to read ''part 180'' in paragraph (a)(1).

■ 18. Section 179.91 is amended by revising paragraph (b) to read as follows:

§ 179.91 Burden of going forward; burden of persuasion.

* * * * *

(b) The party or parties who contend that a regulation satisfies the criteria of section 408 of the FFDCA has the burden of persuasion in the hearing on that issue, whether the proceeding concerns the establishment, modification, or revocation of a tolerance or exemption from the requirement for a tolerance.

■ 19. Section 179.105 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 179.105 Initial decision.

* * * * *

(b) * * *

(i) * * *

(ii) A conclusion that changes in the order or regulation are warranted, the language of the order or regulation as changed, and an effective date for the order or regulation as changed.

* * * * *

■ 20. Section 179.125 is amended by revising paragraph (a) to read as follows:

§ 179.125 Judicial review.

(a) The Administrator's final decision is final agency action reviewable in the courts as provided by FFDCA section 408(h), as of the date of publication of the order in the **Federal Register**. The failure of a person to file a petition for judicial review within the period ending on the 60th day after the date of the publication of the order constitutes a waiver under FFDCA section 408(h) of the right to judicial review of the order and of any regulation promulgated by the order.

* * * * *

§ 179.130 [Amended]

■ 21. Section 179.130 is amended by removing paragraphs (a)(2) and (a)(3) and redesignating existing paragraphs (a)(4) through (a)(12) as paragraphs (a)(2) through (a)(10), respectively.

PART 180—[AMENDED]

■ 22. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 23. Section 180.1 is amended as follows:

■ a. By adding text to reserved paragraph (c).

■ b. By removing paragraph (d).

■ c. By redesignating existing paragraphs (e) through (p) as paragraphs (d) through (o), respectively.

■ d. By revising newly designated paragraphs (e), (j), and (n).

■ e. By revising the introductory text and adding a new paragraph (10) to newly designated paragraph (i).

§ 180.1 Definitions and interpretations.

* * * * *

(c) *FFDCA* means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 301–392.

* * * * *

(e) Where a raw agricultural commodity bearing a pesticide chemical residue that has been exempted from the requirement of a tolerance, or which is within a tolerance permitted under FFDCA section 408, is used in preparing a processed food, the processed food will not be considered unsafe within the meaning of FFDCA sections 402 and 408(a), despite the lack of a tolerance or exemption for the pesticide chemical residue in the processed food, if:

(1) The pesticide chemical has been used in or on the raw agricultural commodity in conformity with a tolerance under this section;

(2) The pesticide chemical residue has been removed to the extent possible in good manufacturing practice; and

(3) The concentration of the pesticide chemical residue in the processed food is not greater than the tolerance prescribed for the pesticide chemical residue on the raw agricultural commodity.

* * * * *

(i) Unless otherwise specified in this paragraph or in tolerance regulations prescribed in this part for specific pesticide chemicals, the raw agricultural commodity or processed food to be examined for pesticide residues, shall consist of the whole raw agricultural commodity or processed food.

* * * * *

(10) For processed foods consisting primarily of one ingredient and sold in a form requiring further preparation prior to consumption (e.g., fruit juice concentrates, dehydrated vegetables, and powdered potatoes), the processed food to be examined for residues shall be the whole processed commodity after compensating for or reconstituting to the commodity's normal moisture content, unless a tolerance for the concentrated or dehydrated food form is included in this part. If there exists a tolerance for a specific pesticide on the processed food in its concentrated or dehydrated food form, for the purpose of determining whether the food is in compliance with that tolerance, the processed food to be examined for residues shall be the whole processed commodity on an ''as is'' basis.

* * * * *

(j) The term *pesticide chemical* shall have the meaning specified in FFDCA section 201(q)(1), as amended, except as provided in § 180.4.

* * * * *

(n) The term *pesticide chemical residue* shall have the meaning specified in FFDCA section 201(q)(2), as amended, except as provided in § 180.4.

* * * * *

§ 180.2 [Removed]

■ 24. Section 180.2 is removed.

■ 25. The undesignated center heading that precedes § 180.7 and § 180.7 are revised to read as follows:

Procedure for Filing Petitions Seeking the Establishment, Modification, or Revocation of Tolerances or Exemptions

§ 180.7 Petitions proposing tolerances or exemptions for pesticide residues in or on raw agricultural commodities or processed foods.

(a) Petitions to be filed with the Agency under the provisions of FFDCA section 408(d) shall be submitted in duplicate. If any part of the material submitted is in a foreign language, it shall be accompanied by an accurate and complete English translation. The petition shall be accompanied by an advance deposit for fees described in § 180.33. The petition shall state the petitioner's mail address to which notice of objection under FFDCA section 408(g)(2) may be sent. The petition must be signed by the petitioner or by his attorney or agent, or (if a corporation) by an authorized official.

(b) Petitions shall include the following information:

(1) An informative summary of the petition and of the data, information, and arguments submitted or cited in support of the petition. Both a paper and electronic copy of the summary should be submitted. The electronic copy should be formatted according to the Office of Pesticide Programs' current standard for electronic data submission as specified at *http://www.epa.gov/oppfead1/eds/edsgoals.htm*.

(2) A statement that the petitioner agrees that such summary or any information it contains may be published as a part of the notice of filing of the petition to be published under FFDCA section 408(d)(3) and as a part of a proposed or final regulation issued under FFDCA section 408.

(3) The name, chemical identity, and composition of the pesticide chemical residue and of the pesticide chemical that produces the residue.

(4) Data showing the recommended amount, frequency, method, and time of application of the pesticide chemical.

(5) Full reports of tests and investigations made with respect to the safety of the pesticide chemical, including full information as to the methods and controls used in conducting those tests and investigations.

(6) Full reports of tests and investigations made with respect to the nature and amount of the pesticide chemical residue that is likely to remain in or on the food, including a description of the analytical methods used. (See § 180.34 for further information about residue tests.)

(7) Proposed tolerances for the pesticide chemical residue if tolerances are proposed.

(8) Practicable methods for removing any amount of the residue that would exceed any proposed tolerance.

(9) A practical method for detecting and measuring the levels of the pesticide chemical residue in or on the food, or for exemptions, a statement why such a method is not needed.

(10) If the petition relates to a tolerance for a processed food, reports of investigations conducted using the processing method(s) used to produce that food.

(11) Such information as the Administrator may require to make the determination under FFDCA section 408(b)(2)(C).

(12) Such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects.

(13) Information regarding exposure to the pesticide chemical residue due to any tolerance or exemption already granted for such residue.

(14) Information concerning any maximum residue level established by the Codex Alimentarius Commission for the pesticide chemical residue addressed in the petition. If a Codex maximum residue level has been established for the pesticide chemical residue and the petitioner does not propose that this level be adopted, a statement explaining the reasons for this departure from the Codex level.

(15) Such other data and information as the Administrator requires by regulation to support the petition.

(16) Reasonable grounds in support of the petition.

(c) The data specified under paragraphs (b)(1) through (b)(16) of this section should be on separate sheets or sets of sheets, suitably identified. If such data have already been submitted with an earlier application, the present petition may incorporate it by reference to the earlier one.

(d) Except as noted in paragraph (e) of this section, a petition shall not be accepted for filing if any of the data prescribed by FFDCA section 408(d) are lacking or are not set forth so as to be readily understood. The availability to the public of information provided to, or otherwise obtained by, the Agency under this part shall be governed by part 2 of this chapter. The Administrator shall make the full text of the summary referenced in paragraph (b)(1) of this section available to the public in the Environmental Protection Agency Electronic Docket at *http://www.epa.gov/edocket* no later than publication in the **Federal Register** of the notice of the petition filing.

(e) The Administrator shall notify the petitioner within 15 days after its receipt of acceptance or nonacceptance of a petition, and if not accepted the reasons therefor. If petitioner desires, the petitioner may supplement a deficient petition after notification as to deficiencies. If the petitioner does not wish to supplement or explain the petition and requests in writing that it be filed as submitted, the petition shall be filed and the petitioner so notified.

(f) A notice of the filing of a petition for a pesticide chemical residue tolerance that the Administrator determines has met the requirements of paragraph (b) of this section shall be published in the **Federal Register** by the Administrator within 30 days after such determination. The notice shall state the name of the pesticide chemical residue and the commodities for which a tolerance is sought and announce the availability of a description of the analytical methods available to the Administrator for the detection and measurement of the pesticide chemical residue with respect to which the petition is filed or shall set forth the petitioner's statement of why such a method is not needed. The notice shall explicitly reference the specific address in the Agency's Electronic Docket (*http://www.epa.gov/edocket*) where the full text of the summary required in paragraph (b) of this section and refer interested parties to this document for further information on the petition. The full text of the summary may be omitted from the notice.

(g) The Administrator may request a sample of the pesticide chemical at any time while a petition is under consideration. The Administrator shall specify in its request for a sample of the pesticide chemical, a quantity which it deems adequate to permit tests of analytical methods used to determine residues of the pesticide chemical and of methods proposed by the petitioner for removing any residues of the chemical that exceed the tolerance proposed.

(h) The Administrator shall determine, in accordance with the Act, whether to issue an order that establishes, modifies, or revokes a tolerance regulation (whether or not in accord with the action proposed by the petitioner), whether to publish a proposed tolerance regulation and request public comment thereon under § 180.29, or whether to deny the petition. The Administrator shall publish in the **Federal Register** such order or proposed regulation. After receiving comments on any proposed regulation, the Administrator may issue an order that establishes, modifies, or revokes a tolerance regulation. An order published under this section shall describe briefly how to submit objections and requests for a hearing under part 178 of this chapter. A regulation issued under this section shall be effective on the date of publication in the **Federal Register** unless otherwise provided in the regulation.

■ 26. Section 180.8 is revised to read as follows:

§ 180.8 Withdrawal of petitions without prejudice.

In some cases the Administrator will notify the petitioner that the petition, while technically complete, is inadequate to justify the establishment of a tolerance or the tolerance requested by petitioner. This may be due to the fact that the data are not sufficiently clear or complete. In such cases, the petitioner may withdraw the petition pending its clarification or the obtaining of additional data. This withdrawal may be without prejudice to a future filing. A deposit for fees as specified in § 180.33 shall accompany the resubmission of the petition.

■ 27. Section 180.9 is revised to read as follows:

§ 180.9 Substantive amendments to petitions.

After a petition has been filed, the petitioner may submit additional information or data in support thereof, but in such cases the petition will be given a new filing date.

§§ 180.10, 180.11 and 180.12 [Removed]

■ 28. Sections 180.10, 180.11 and 180.12 are removed.

■ 29. The undesignated center heading that precedes § 180.29, and § 180.29 are revised to read as follows:

Establishment, Modification, and Revocation of Tolerance on Initiative of Administrator; Judicial Review; Temporary Tolerances; Modification and Revocation of Tolerances; Fees

§ 180.29 Establishment, modification, and revocation of tolerance on initiative of Administrator.

(a) Upon the Administrator's own initiative, the Administrator may propose, under FFDCA section 408(e), the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting it from the necessity of a tolerance, or a regulation modifying or revoking an existing tolerance or exemption.

(b) The Administrator shall provide a period of not less than 60 days for persons to comment on the proposed regulation, except that a shorter period for comment may be provided if the Administrator for good cause finds that it would be in the public interest to do so and states the reasons for the finding in the notice of proposed rulemaking.

(c) After reviewing any timely comments received, the Administrator may by order establish, modify, or revoke a tolerance regulation, which order and regulation shall be published in the **Federal Register**. An order published under this section shall state that persons may submit objections and requests for a hearing in the manner described in part 178 of this chapter.

(d) Any final regulation issued under this section shall be effective on the date of publication in the **Federal Register** unless otherwise provided in the regulation.

■ 30. Section 180.30 is revised to read as follows:

§ 180.30 Judicial review.

(a) Under FFDCA section 408(h), judicial review is available in the United States Courts of Appeal as to the following actions:

(1) Regulations establishing general procedures and requirements under FFDCA section 408(e)(1)(C).

(2) Orders issued under FFDCA section 408(f)(1)(C) requiring the submission of data.

(3) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to establishment, modification, or revocation of a tolerance or exemption under FFDCA section 408(d)(4), or any regulation that is the subject of such an order. The underlying action here is Agency disposition of a petition seeking the establishment, modification, or revocation of a tolerance or exemption.

(4) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to the denial of a petition under FFDCA section 408(d)(4).

(5) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to the establishment, modification, suspension, or revocation of a tolerance or exemption under FFDCA section 408(e)(1)(A) or (e)(1)(B). The underlying action here is the establishment, modification, suspension, or revocation of a tolerance or exemption upon the initiative of EPA including EPA actions pursuant to FFDCA sections 408(b)(2)(B)(v), 408(b)(2)(E)(ii), 408(d)(4)(C)(ii), 408(l)(4), and 408(q)(1).

(6) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to the revocation or modification of a tolerance or exemption under FFDCA section 408(f)(2) for noncompliance with requirements for the submission of data.

(7) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to rules issued under FFDCA sections 408(n)(3) and 408(d) or (e) regarding determinations pertaining to State authority to establish regulatory limits on pesticide chemical residues.

(8) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to orders issued under FFDCA section 408(n)(5)(C) authorizing States to establish regulatory limits not identical to certain tolerances or exemptions.

(b) Any issue as to which review is or was obtainable under paragraph (a) of this section shall not be the subject of judicial review under any other provision of law. In part, this means that, for the Agency actions subject to the objection procedure in FFDCA section 408(g)(2), judicial review is not available unless an adversely affected party exhausts these objection procedures, and any petition procedures preliminary thereto.

■ 31. Section 180.31 is revised to read as follows:

§ 180.31 Temporary tolerances.

(a) A temporary tolerance (or exemption from a tolerance) established under the authority of FFDCA section 408(r) shall be deemed to be a tolerance (or exemption from the requirement of a tolerance) for the purposes of FFDCA section 408(a)(1) or (a)(2) and for the purposes of § 180.30.

(b) A request for a temporary tolerance or a temporary exemption from a tolerance by a person who has obtained or is seeking an experimental permit for a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act shall be accompanied by such data as are available on subjects outlined in § 180.7(b) and an advance deposit to cover fees as provided in § 180.33.

(c) To obtain a temporary tolerance, a requestor must comply with the petition procedures specified in FFDCA section 408(d) and § 180.7 except as provided in this section.

(d) A temporary tolerance or exemption from a tolerance may be issued for a period designed to allow the orderly marketing of the raw agricultural commodities produced while testing a pesticide chemical under an experimental permit issued under authority of the Federal Insecticide, Fungicide, and Rodenticide Act if the Administrator concludes that the safety standard in FFDCA section 408(b)(2) or (c), as applicable, is met. Subject to the requirements of FFDCA section 408(e), a temporary tolerance or exemption from a tolerance may be revoked if the experimental permit is revoked, or may be revoked at any time if it develops that the application for a temporary tolerance contains a misstatement of a material fact or that new scientific data or experience with the pesticide chemical indicates that it does not meet the safety standard in FFDCA section 408(b)(2) or (c), as applicable.

(e) Conditions under which a temporary tolerance is established shall include:

(1) A limitation on the amount of the chemical to be used on the designated crops permitted under the experimental permit.

(2) A limitation for the use of the chemical on the designated crops to bona fide experimental use by qualified persons as indicated in the experimental permit.

(3) A requirement that the person or firm which obtains the experimental permit for which the temporary tolerance is established will immediately inform the Environmental Protection Agency of any reports on findings from the experimental use that have a bearing on safety.

(4) A requirement that the person or firm which obtained the experimental permit for which the temporary tolerance is established will keep records of production, distribution, and performance for a period of 2 years and, on request, at any reasonable time, make these records available to any authorized officer or employee of the Environmental Protection Agency.

■ 32. Section 180.32 is revised to read as follows:

§ 180.32 Procedure for modifying and revoking tolerances or exemptions from tolerances.

(a) The Administrator on his/her own initiative may propose the issuance of a regulation modifying or revoking a tolerance for a pesticide chemical

residue on raw agricultural commodities or processed foods or modifying or revoking an exemption from tolerance for such residue.

(b) Any person may file with the Administrator a petition proposing the issuance of a regulation modifying or revoking a tolerance or exemption from a tolerance for a pesticide chemical residue. The petition shall furnish reasonable grounds for the action sought. Reasonable grounds shall include an explanation showing wherein the person has a substantial interest in such tolerance or exemption from tolerance and an assertion of facts (supported by data if available) showing that new uses for the pesticide chemical have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the application of the tolerance or exemption from tolerance may justify its modification or revocation. Evidence that a person has registered or has submitted an application for the registration of an pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act will be regarded as evidence that the person has a substantial interest in a tolerance or exemption from the requirement of a tolerance for a pesticide chemical that consists in whole or in part of the pesticide. New data should be furnished in the form specified in § 180.7(b) for submitting petitions, as applicable.

(c) The procedures for completing action on an Administrator initiated proposal or a petition shall be those specified in §§ 180.29 and 180.7, as applicable.

■ 33. Section 180.33 is amended as follows:

■ a. In paragraphs (a), (b), (c), and (h) remove the phrase ''or request''.

■ b. Remove paragraph (j) and redesignate existing paragraphs (k) through (p) as paragraphs (j) through (o), respectively.

■ c. In newly designated paragraph (j) revise ''408(d)(5) or (e)'' to read ''408(h)''.

■ d. In newly designated paragraph (l) remove the phrase ''Registration Division (7505C),''.

■ e. In newly designated paragraph (m) remove the phrase ''Registration Division, (7505C),''.

■ f. Revise paragraph (f) and the third sentence to newly designated paragraph (l) to read as follows:

§ 180.33 Fees.

* * * * *

(f) Each petition for revocation of a tolerance shall be accompanied by a fee of $10,125. Such fee is not required when, in connection with the change sought under this paragraph, a petition is filed for the establishment of new tolerances to take the place of those sought to be revoked and a fee is paid as required by paragraph (a) of this section.

* * * * *

(l) * * * A fee of $2,025 shall accompany every request for a waiver or refund, as specified in paragraph (m) of this section, except that the fee under this paragraph shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (j) of this section. * * *

* * * * *

■ 34. Section 180.40 is amended by revising the last sentence in paragraph (f) to read as follows:

§ 180.40 Tolerances for crop groups.

* * * * *

(f) * * * Processing data will be required prior to establishment of a group tolerance. Tolerances will not be granted on a group basis as to processed foods prepared from crops covered by the group tolerance.

* * * * *

■ 35. Section 180.1229 is added to subpart D to read as follows:

§ 180.1229 Benzaldehyde; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of benzaldehyde when used as a bee repellant in the harvesting of honey.

■ 36. Section 180.1230 is added to subpart D to read as follows:

§ 180.1230 Ferrous sulfate; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of ferrous sulfate.

■ 37. Section 180.1231 is added to subpart D to read as follows:

§ 180.1231 Lime; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of lime.

■ 38. Section 180.1232 is added to subpart D to read as follows:

§ 180.1232 Lime-sulfur; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of lime-sulfur.

■ 39. Section 180.1233 is added to subpart D to read as follows:

§ 180.1233 Potassium sorbate; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of potassium sorbate.

■ 40. Section 180.1234 is added to subpart D to read as follows:

§ 180.1234 Sodium carbonate; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of sodium carbonate.

■ 41. Section 180.1235 is added to subpart D to read as follows:

§ 180.1235 Sodium hypochlorite; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of sodium hypochlorite.

■ 42. Section 180.1236 is added to subpart D to read as follows:

§ 180.1236 Sulfur; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of sulfur.

■ 43. Section 180.1237 is added to subpart D to read as follows:

§ 180.1237 Sodium metasilicate; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of sodium metasilicate when used as plant desiccants, so long as the metasilicate does not exceed 4% by weight in aqueous solution.

■ 44. Section 180.1238 is added to subpart D to read as follows:

§ 180.1238 Oil of lemon; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of oil of lemon when used as a postharvest fungicide.

■ 45. Section 180.1239 is added to subpart D to read as follows:

§ 180.1239 Oil of orange; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of oil of orange when used as a postharvest fungicide.

[FR Doc. 05–11384 Filed 6–7–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–NM–0001; FRL–7921–8]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: On April 14, 2005 EPA published a direct final rule (71 FR 19702) approving revisions to the New Mexico State Implementation Plan (SIP) concerning the second ten-year carbon monoxide (CO) maintenance plan for the Albuquerque/Bernalillo County, New Mexico area. The revision was based on a request from the State submitted to EPA on September 7, 2004. In the proposed rules section of the April 14, 2005 **Federal Register** (71 FR 19723), we stated that written comment must be received by May 16, 2005. We received written adverse comments during the public comment period on our April 14, 2005 rulemaking action. The EPA is withdrawing this final rule due to the adverse comments received on this rulemaking action. In a subsequent final rule, we will summarize and respond to written comments received and take final rulemaking action on this requested New Mexico SIP revision.

DATES: The direct final rule published at 71 FR 19702 is withdrawn on June 8, 2005.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691, and *shar.alan@epa.gov*.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 31, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

Accordingly, under the authority of 42 U.S.C 7401–7671q, the direct final rule published on April 14, 2005 (71 FR 19702), with the effective date of June 13, 2005 is withdrawn.

[FR Doc. 05–11272 Filed 6–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R03–OAR–2004–WV–0003; FRL–7922–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the New Manchester-Grant Magisterial District SO_2 Nonattainment Area and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a request by the State of West Virginia to redesignate the New Manchester-Grant Magisterial District sulfur dioxide (SO_2) nonattainment area in Hancock County, West Virginia from nonattainment to attainment of the national ambient air quality standards (NAAQS) for SO_2. EPA is also approving the maintenance plan for this area submitted by the State of West Virginia as a revision to the West Virginia State Implementation Plan (SIP). This plan provides for the maintenance of the NAAQS for SO_2 for the next ten years. These actions are being taken in accordance with the Clean Air Act (CAA or the Act).

DATES: This rule is effective on August 8, 2005 without further notice, unless EPA receives adverse written comment by July 8, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–WV–0003 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: campbell.dave@epa.gov.

D. Mail: R03–OAR–2004–WV–0003, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–WV–0003. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identify or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304–2943.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The New Manchester-Grant Magisterial District of Hancock County was designated as an SO_2 nonattainment area on March 3, 1978 (43 FR 8962), as amended on September 12, 1978 (43 FR 40502). On July 24, 1979 (44 FR 43298), and August 14, 1980 (45 FR 54042), EPA proposed and finalized, respectively, a revision to the West Virginia SIP for SO_2. The revision contained a control strategy and attainment demonstration for the New Manchester-Grant area.

On February 5, 1990, EPA issued a SIP call to West Virginia which, among other things, required the submission of a SIP revision to attain and maintain the NAAQS for SO_2 in all of Hancock County, including the New Manchester-Grant nonattainment area. The SIP call was issued because monitored violations of the NAAQS indicated that the previously approved SIP for the area was inadequate. On November 15, 1990, amendments to the Act were promulgated which provided that any area designated with respect to the NAAQS, as in effect immediately before November 15, 1990, shall retain that designation by operation of law. Therefore, the New Manchester-Grant Magisterial District, in Hancock County, West Virginia remained designated as nonattainment for SO_2 by operation of law.

On February 17, 1995 and May 3, 1996, West Virginia submitted a formal SIP revision for the New Manchester-Grant Magisterial District nonattainment area. The SIP revision included individual consent orders, dated January 9, 1995, between the West Virginia Department of Environmental Protection (WVDEP) and the Quaker State Refinery, and the WVDEP and Weirton Steel Corporation. These consent orders established SO_2 emission limits for numerous emission points at both facilities. The SIP revision also included a demonstration of attainment in the New Manchester-Grant nonattainment area. EPA determined that the submittal was administratively and technically complete and, on November 27, 1996 (61 FR 60191), EPA approved this SIP revision for the New Manchester-Grant Magisterial District.

On December 29, 2003, West Virginia submitted an attainment demonstration SIP revision for the City of Weirton, including the Clay and Butler Magisterial Districts, in Hancock County, West Virginia. That revision included a revised consent order, dated August 4, 2003, between the WVDEP and the Weirton Steel Corporation, establishing enforceable emission limits for numerous emission points at the facility. On May 5, 2004, (69 FR 24986), EPA approved this revised consent order as part of the attainment demonstration SIP revision for the City of Weirton including the Clay and Butler Magisterial Districts area. It should be noted that this revised consent order did not allow for any increases in SO_2 emissions above those modeled for Weirton Steel Corporation in the attainment demonstration SIP revision for the New Manchester-Grant Magisterial District approved by EPA on November 27, 1996 (61 FR 60191).

II. Summary of the Redesignation Request and Maintenance Plan

On July 27, 2004, the State of West Virginia submitted a redesignation request for the New Manchester-Grant Magisterial District, Hancock County, West Virginia SO_2 nonattainment area. The State's July 27, 2004 submittal also included a maintenance plan for approval by EPA as a SIP revision. Under the Act, EPA may redesignate nonattainment areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3)(E). These criteria include full approval of a maintenance plan which meets the requirements of section 175A of the Act.

III. Redesignation Criteria

Section 107(d)(3)(E) of the CAA specifies five requirements that must be met to redesignate an area to attainment. They are as follows:

A. The area must meet the applicable NAAQS.

B. The area must have a fully approved SIP under section 110(k).

C. The area must show improvement in air quality due to permanent and enforceable reductions in emissions.

D. The area must meet all relevant requirements under section 110 and part D of the Act.

E. The area must have a fully approved maintenance plan pursuant to section 175A.

The EPA has reviewed the redesignation request submitted by the State of West Virginia for the New Manchester-Grant Magisterial District SO_2 nonattainment area, and finds that the request meets the five requirements of section 107(d)(3)(E).

A. The Data Shows Attainment of the NAAQS for SO_2

A review of the monitored ambient air quality data indicates that the NAAQS have been achieved in the New Manchester-Grant Magisterial District SO_2 nonattainment area. Quality assured/quality controlled data for the most recent three whole calendar years (2001–2003) is included in West Virginia's July 27, 2004 submittal. This data was collected and quality assured in accordance with 40 CFR part 58, and has been entered into EPA's Air Quality System (AQS) of the Aerometric Information Retrieval System (AIRS). This data indicates that the ambient air quality attains the annual and 24-hour health-based primary standards and the 3-hour secondary standard. The primary standards are an annual mean of 0.030 parts per million (ppm), not to be exceeded in a calendar year, and a 24-hour average of 0.14 ppm, not to be exceeded more than once per calendar year. The secondary standard is a 3-hour average of 0.5 ppm, not to be exceeded more than once per calendar year. West Virginia's quality-assured SO_2 ambient air monitoring data indicates that the New Manchester-Grant SO_2 area has attained the NAAQS for SO_2. No violations of the SO_2 standards have occurred for a period of time nearing ten years. A table summarizing the monitoring data that has been collected in the New Manchester-Grant area by West Virginia since 1992 can be found in the formal submittal and that submittal is available for review in the docket prepared in support of this rulemaking action. There are currently four monitors operating within the nonattainment area: Chester, Lawrenceville, New Manchester, and New Cumberland. All of the monitors meet the requirements of 40 CFR parts 53 and 58, and are representative of the highest ambient concentrations.

B. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

On November 27, 1996 (61 FR 60191), EPA fully approved a SIP revision for the New Manchester-Grant Magisterial District SO_2 nonattainment area consisting of an attainment demonstration and enforceable consent orders for two sources in Hancock County, West Virginia. This attainment demonstration consisted of a dispersion modeling analysis based upon the enforceable SO_2 emission limits imposed on the two contributing sources in enforceable consent orders, in addition to a representative background. This modeling analysis demonstrated that the maximum allowable SO_2 emission limitations imposed on the contributing sources provide for attainment and maintenance of the NAAQS for SO_2.

The Federal requirements for new source review (NSR) in nonattainment areas are contained in section 172(c)(5) of the CAA. EPA guidance indicates the requirements of the part D NSR program will be replaced by the Prevention of Significant Deterioration (PSD) program when an area has reached attainment and been redesignated, provided there are assurances that PSD will become fully effective upon redesignation. Regulations for the PSD of air quality were approved into the West Virginia SIP on April 11, 1986 (51 FR 12518), and will become fully effective in the New Manchester-Grant area immediately upon the effective date of redesignation.

C. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions

The improvement in air quality in the New Manchester-Grant Magisterial District SO_2 nonattainment area is due to permanent and enforceable emission reductions. The primary sources of SO_2 in the New Manchester area are the steel manufacturing and petroleum processing facilities. Enforceable SO_2 emission limitations and other control measures (including permanent shutdowns, fuel switching and emission caps) imposed by the State of West Virginia on contributing sources have substantially lowered ambient SO_2 levels and have brought the area into attainment. As previously stated, on November 27, 1996 (61 FR 60191), EPA approved a SIP revision for the New Manchester-Grant Magisterial District consisting of a modeled attainment demonstration and consent orders between West Virginia and Quaker State Refinery and Weirton Steel Corporation, dated January 9, 1995, limiting each facility's SO_2 emissions and providing attainment of the SO_2 NAAQS in the area.

If a new source applies to construct or an existing source applies for a modification after EPA redesignates the area to attainment, the permitting provisions of West Virginia's approved SIP, including those for Prevention of Significant Deterioration (PSD), require that emission limits and control measures be imposed to protect the NAAQS and all applicable PSD increments.

D. All Applicable Requirements of Section 110 and Subpart 1, Part D of the CAA Have Been Met

The New Manchester-Grant Magisterial District nonattainment area has met all the applicable and necessary requirements of section 110 and subpart 1, of part D of the CAA. As mentioned previously, the modeled attainment demonstration for the New Manchester-Grant area and emission limitations established by permits and consent orders were fully approved by EPA as a SIP revision for the area, and West Virginia's PSD and NSR programs were approved by EPA. EPA approval of a transportation conformity SIP revision for this area is not required for redesignation because the nature of the area's previous SO_2 nonattainment problem was not attributable to the mobile or transportation sector. The attainment demonstration SIP revision approved by EPA on November 27, 1996 (61 FR 60191) for the area contained a detailed emissions inventory of all sources of SO_2. That inventory was approved by EPA as part of the SIP revision. Sulfur dioxide emissions from area and mobile sources are not significant contributors to ambient SO_2 levels in the area, rather the overwhelming contributing emissions are from stationary sources.

E. The Area Must Have a Fully Approved Maintenance Plan Under Section 175A

Section 107(d)(3)(E) of the CAA requires that a maintenance plan be fully approved by EPA before an area can be redesignated to attainment. The maintenance plan is to be submitted and approved as a SIP revision under section 110 of the CAA. Section 175A of the CAA sets forth the necessary elements of a maintenance plan needed for areas seeking redesignation from nonattainment to attainment. A maintenance plan must contain the following elements:

1. An emissions inventory reflective of SO_2 emissions in the monitored attainment years;
2. A maintenance demonstration which is expected to provide adequate assurance of maintenance over the initial 10-year period;
3. A commitment to continue monitoring in the area;
4. A method for verifying continued attainment; and
5. A contingency plan with specific indicators or triggers for implementation of the plan.

The maintenance plan for the New Manchester-Grant Magisterial District area is being submitted to EPA for approval as a SIP revision concurrently with the request for redesignation. The maintenance plan shows that the NAAQS for SO_2 will be maintained for at least 10 years after redesignation. The maintenance plan must also include contingency measures to address any violation of the NAAQS. Eight years after the redesignation, West Virginia must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period.

1. Emissions Inventory

The maintenance plan submitted indicates that the attainment inventory is the emissions inventory used to perform the modeling demonstration of attainment and provides updates to that inventory for 2001 for sources in the New Manchester-Grant nonattainment area. Any future increases in emissions and/or significant changes to the stack configuration parameters from those modeled in the attainment demonstration due to new or modifying stationary sources would be subject to NSR requirements, including a demonstration that the NAAQS is protected.

2. Maintenance Demonstration

The modeling demonstration of attainment submitted by West Virginia, which was fully approved by EPA on November 27, 1996 (61 FR 60191), showed attainment of each of the SO_2 NAAQS. Modeling results submitted indicate future NAAQS maintenance for the area. No modifications or installations have been made that detrimentally affect the modeling results. The major source changes in the area consist of permanent shutdowns, which will reinforce the continued attainment in the area. A shift in employment from manufacturing to commercial business, and the declining steel industry and ancillary industries in the area indicate a continued decrease in SO_2 emissions from stationary sources. The requirement for PSD review and permitting for any future major source construction or modification and the permanent and enforceable control measures were provided in the maintenance plan. Subsequent to redesignation, any major source construction or modification will be subject to West Virginia's PSD requirements, including a modeling demonstration to ensure maintenance of the NAAQS. A projected decrease in population along with a decrease in occupied households for the years 1990–2025 indicates that no new growth is anticipated to impact emissions in the area. The State of West Virginia is confident that the area will maintain the NAAQS for SO_2 for the next ten years.

3. Continuation of the Monitoring Network

West Virginia has indicated in the submitted maintenance plan that it will continue to monitor SO_2 in the New Manchester-Grant area in accordance

with 40 CFR 53 and 58 to verify continued attainment with the NAAQS for SO_2.

4. Verification of Continued Attainment

West Virginia has committed in the maintenance plan to review the monitored data annually, and to review the local monitored meteorological data. The WVDEP will also assess compliance of local targeted facilities to verify continued attainment of the area. The State will review the annual emissions inventory for the New Manchester-Grant area at a minimum of once every three years.

5. Contingency Plan

West Virginia will rely on ambient air monitoring data in the New Manchester-Grant area to track compliance with the NAAQS for SO_2 and to determine the need to implement contingency measures. In the event that an exceedance of the NAAQS for SO_2 occurs, the State will expeditiously investigate and determine the source(s) that caused the exceedance and enforce any SIP or permit limit that is violated. In the event that all sources are found to be in compliance with applicable SIP and permit emission limits, the State shall perform the necessary analysis to determine the cause(s) of the exceedance, and determine what additional control measures are necessary to impose on the area's stationary sources to continue to maintain attainment of the NAAQS for SO_2. The State shall inform any affected stationary source(s) of SO_2 of the potential need for additional control measures. If there is a violation of the NAAQS for SO_2, the State will notify the stationary source(s) that the potential exists for a NAAQS violation. Within six months, the source(s) must submit a detailed plan of action specifying additional control measures to be implemented no later than 18 months after the notification. The additional control measures will be submitted to EPA for approval and incorporation into the SIP.

If an exceedance of an SO_2 NAAQS occurs, the State will notify the subject companies that the potential exists for a NAAQS violation. The subject companies must then prepare a detailed plan of action containing control measures for implementation in the event of a violation. This plan of action shall include an implementation time line and shall be submitted to the State within six months of notification that the potential exists for a violation. The final milestone of this action plan and time line will state that the contingency measures will be implemented no later than 18 months after the State informs the subject companies that a violation of the standards has occurred. Any additional control measures will be submitted to EPA for approval and incorporation into the SIP.

IV. Final Action

EPA is approving West Virginia's request to redesignate the New Manchester-Grant Magisterial District SO_2 nonattainment area to attainment because the State has complied with the requirements of section 107(d)(3)(E) of the CAA. In addition, EPA is approving West Virginia's maintenance plan for the New Manchester-Grant Magisterial District as a SIP revision because it meets the requirements of section 175A.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on August 8, 2005 without further notice unless EPA receives adverse comment by July 8, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 8, 2005. Filing a petition for reconsideration by the Administrator of this final rule to redesignate the New Manchester-Grant Magisterial District to attainment for SO_2 and approve the maintenance plan for the area, does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: May 31, 2005.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart XX—West Virginia

■ 2. In § 52.2520 the table in paragraph (e) is amended by adding an entry at the end of the table for the Sulfur Dioxide Maintenance Plan, New Manchester-Grant Magisterial District in West Virginia to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	*	*	*	*
Sulfur Dioxide Maintenance Plan	New Manchester-Grant Magisterial District in Hancock County.	7/27/04	6/08/05 [Insert page number where the document begins].	

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 2. Section 81.349, the table for ''West Virginia—SO_2'' is amended by revising the entry for ''New Manchester-Grant magisterial district in Hancock County'' to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * *	*		*	*
New Manchester-Grant magisterial district in Hancock County				X
* * * *	*		*	*

* * * * *

[FR Doc. 05–11381 Filed 6–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7921–6]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Delatte Metals Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the Delatte Metals Superfund Site (Site), located in Ponchatoula, Tangipahoa Parish, Louisiana, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final notice of deletion will be effective August 8, 2005 unless EPA receives adverse comments by July 8, 2005. If adverse comments are received, EPA will publish a timely

withdrawal of the direct final notice of deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Beverly Negri, Community Outreach Team Leader, U.S. EPA Region 6 (6SF-PO), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8157 or 1–800–533–3508 (*negri.beverly@epa.gov*).

Information Repositories: Comprehensive information about the Site is available for viewing and copying during central standard time at the Site information repositories located at: U.S. EPA Region 6 Library, 7th Floor, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, (214) 665–6424, Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; Ponchatoula Branch Library, 380 N. Fifth Street, Ponchatoula, Louisiana, 70454, (985) 386–6554, Monday through Friday 8:30 a.m. to 6:30 p.m.; Saturday 8:30 a.m. to 3:00 p.m.; Louisiana Department of Environmental Quality Public Records Center, Galvez Building Room 127, 602 N. Fifth Street, Baton Rouge, Louisiana, 70802, (225) 219–3168, Monday through Friday 8 a.m. to 4:30 p.m., Email: *publicrecords@la.gov,* web page: *http://www.deq.louisiana.gov/pubrecords.*

FOR FURTHER INFORMATION CONTACT: Katrina Higgins-Coltrain, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8143 or 1–800–533–3508 (*coltrain.katrina@epa.gov*).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

The EPA Region 6 office is publishing this direct final notice of deletion of the Delatte Metals Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective August 8, 2005 unless EPA receives adverse comments by July 8, 2005 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. The EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Delatte Metals Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or,

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) The EPA consulted with LDEQ on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) LDEQ concurred with deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL.

Site Location

The Delatte Metals Site includes the Delatte Metals, Inc., (DMI) facility, the abandoned North Ponchatoula Battery facility and parts of the offsite areas. The Site is located at 19113 Weinberger Road in Tangipahoa Parish about 2.5 miles southeast of Ponchatoula, Louisiana with an estimated 645 persons living within one-mile. The

combined area of the two facilities is approximately 18.9 acres. The approximate total area of the Site, encompassing both facilities and offsite areas, is 56.8 acres.

Site History

During the 1960s, under the name Delatte and Fuscia Battery Company, battery recycling and smelting operations were conducted in the DMI facility area of the Site. In the early 1980s, the facility name was changed to Delatte Metals, Inc. The operations performed at the facility included spent lead-acid battery demolition to remove associated lead plates and the subsequent lead smelting of the lead plates to produce lead ingots. The typical process at the facility involved sawing off the tops of the batteries and removing the lead plates in the battery saw building. After opening the battery cases, the battery acid was drained into a sump. Before the mid-1980s, the acid was pumped from the sump to an unlined pond located on the north side of the Site. After the closure of the acid pond, the acid was pumped through an underground pipe to the acid tank farm. The spent acid was then shipped offsite for recycling. Similar operations took place at the North Ponchatoula Battery (NPB) facility.

From the mid-1980s into the 1990s, the Louisiana Department of Environmental Quality (LDEQ) worked with both facilities in attempts to correct deficiencies in environmental practices. In September 1997, however, Louisiana Governor Mike Foster formally requested that the Site be addressed by EPA and listed on the Superfund National Priorities List (NPL). A Hazard Ranking System documentation package was subsequently prepared and the Site was proposed for addition to the NPL in July 1998. On January 19, 1999, EPA formally announced the addition of the Site to the NPL in the **Federal Register**.

Removal Action

On July 24, 1998, EPA signed an Action Memorandum for a time-critical removal action at the Site. The action addressed occupied residential properties as well as stabilization, removal, and offsite disposal of crushed battery casings, slag piles, settling basin solids, waste in tote bags and waste piles located inside the battery saw building. Onsite activities began on September 9, 1998, with the establishment of a command post and associated utilities, delivery of heavy equipment, construction of the loading truck staging area, and the identification of truck routes. Transportation and disposal of contaminated battery chips, battery mud and debris began on October 12, 1998. Removal activities were completed in less than six months and resulted in the removal of approximately 30,000 tons of crushed battery casings, smelter slag, smelter ash, and other source material; 68 tons of grossly contaminated smelter equipment; 28 drums of lead contaminated oil and oil debris; approximately 6,617 gallons of sulfuric acid; and, approximately 650 tons of scrap metal. In addition, contaminated sediment in a roadside ditch along Weinberger Road was excavated to facilitate the installation of a public water supply pipe, and contaminated soil found in two residential properties was excavated.

Remedial Investigation and Feasibility Study (RI/FS)

During 1999 and 2000, EPA conducted field sampling and investigation activities at the Site including collection and analyses of soil, sediment, surface water, ground water, and animal tissue samples. The Remedial Investigation (RI) and Feasibility Study (FS) reports identified the types, quantities, and locations of contaminants found in these samples and developed ways to address the contamination problems. A treatability study report was also completed to assess the applicability of different remedial technologies. In addition, a Human Health Risk Assessment and an Ecological Risk Assessment were performed to determine the current and future effects of contaminants on human health and the environment.

Lead was identified as the one contaminant of concern that posed the greatest potential risk to human health and ecological receptors as well as natural habitats. Lead was detected in all onsite surface and shallow subsurface soil sampling locations; in several surface and shallow subsurface offsite soil sampling locations; in sediment and surface water samples collected from various offsite ecological habitats and Selsers Creek; and, in ground water samples from the first water-bearing zone, which is a very acidic environment and tends to flow towards Selsers Creek.

Record of Decision

The Proposed Plan was presented to the community during a public meeting held on July 31, 2000. After review and response to comments received during the 30-day comment period, the Record of Decision was signed on September 26, 2000. The Remedial Action Objectives (RAOs) for the Site were to:

- Treat or remove the principal threat wastes at the Site;
- Reduce or eliminate the direct contact threats associated with contaminated soil; and,
- Minimize or eliminate contaminant migration to the ground water and surface waters to levels that ensure beneficial reuse of these resources.

In order to achieve these RAOs, certain numerical cleanup levels would have to be maintained or attained in the various environmental media. These were:

- *Soil:* Industrial: 1,700 milligrams per kilogram (mg/kg) lead; Residential: 500 mg/kg lead; and, Ecological: 80 mg/kg lead.
- *Sediment:* Industrial: Not Applicable (n/a); Residential: n/a; and, Ecological: 100 mg/kg lead.
- *Ground Water:* Industrial: n/a; Residential: 15 micrograms per liter (μg/l) lead; and, Ecological: n/a.
- *Surface Water:* Industrial: n/a; Residential: n/a; and, Ecological: 0.6 μg/l lead.
- *Air:* Industrial: n/a; Residential: n/a; and, Ecological: n/a.

Lead was the most abundant and widespread heavy metal at the Site and was co-located at the same locations where other heavy metals were detected. Since the source of the contamination was mainly in surface and subsurface soils, the selected remedy was designed primarily to address the soil contamination. (The reference to soil contamination includes sediment.) It was expected that when the soil cleanup levels for lead were achieved, the other forms of cleanup would also be achieved: Sediment to 80 mg/kg lead for ecological; ground water to 15 μg/l lead for residential; and, surface water 0.6 μg/l lead for ecological. Because the other metals were found at the same locations as lead, it was expected that they would be addressed also.

Therefore, the measurement of success at accomplishing the RAOs will be based on the media specific numerical cleanup levels that will be achieved in the various designated areas of soil contamination. These are:

- Industrial: 1,700 mg/kg lead in soil;
- Residential: 500 mg/kg lead in soil; and,
- Ecological: 80 mg/kg lead in soil.

This ROD addressed the contamination in the soil, sediment, surface water and ground water at the Site by:

- Immobilization to address the principal threat wastes in the soil (thus eliminating the source of contamination for sediment, surface water, ground water);

• Offsite disposal to transport immobilized wastes to a disposal facility;

• Permeable treatment walls to neutralize the acidity of the shallow ground water and limit the migration of dissolved metals;

• Institutional controls (ICs) in the form of deed notices to inform the public of Site conditions; and,

• Ground water monitoring to ensure the effectiveness of the selected remedy.

Response Actions

The EPA issued a Remedial Action (RA) work assignment to the contractor on September 26, 2002, with onsite RA construction beginning on November 19, 2002.

On January 8, 2003, EPA revised the cleanup criteria based on additional soil sample data collected during the RA. The purpose of this sampling was to better delineate areas designated for remediation. These data allowed areas to be more easily separated into future land use categories of ecological, residential, or industrial and then remediated based on the cleanup criteria for that particular use. Additional ecological areas not representative of drainage areas were reassessed using revised toxicity values resulting in a 200 mg/kg cleanup level for these areas. The following revisions were implemented.

1. For ecological excavation areas identified during the RI and RD, the soil remediation level was maintained at 80 mg/kg.

2. For additional ecological areas that were identified during the RA, soil was remediated to or below 200 mg/kg (around grids H–1, I–1, and O–1).

3. Sample point RA–16, near Grid O–1, with a concentration of 227 mg/kg was considered as effectively meeting the 200 mg/kg target. This determination was based on the isolation of the sample location, the existence of sample points with lower concentrations surrounding the area, and the conservative assumptions that were used to determine risk.

4. No excavation was to be performed within the dripline of the large magnolia tree in Grid I–1. The landowner had requested that the large magnolia tree not be removed. After reviewing additional sampling data from the area, removal of soil within the dripline of the magnolia was not necessary.

5. Onsite soils were to be excavated to 1,700 mg/kg both horizontally and vertically.

6. Offsite soils (except those identified in item 2) were to be excavated using the following criteria:

• 0 to 6 inches below ground surface (bgs)—80 mg/kg lead in soil (ecological standard);

• 6 to 24 inches bgs—500 mg/kg lead in soil (residential standard); and,

• > 24 inches bgs—1,700 mg/kg lead in soil (industrial standard).

On April 9, 2003, EPA revised the cleanup criteria for M-, P-, and Q-excavation grids since the areas were considered residential rather than ecological. These grids were located in established ecological environments. Because of intrusive remediation activities that eliminated these ecological environments and the possible reuse as residential, these areas were redefined as residential and thus required a residential cleanup value. Excavation within the tributary still used the ecological criteria. The revised criteria listed below were used.

• For soils 0 to 24 inches bgs, the cleanup level was 500 mg/kg lead in soil (residential standard).

• For soils greater than 24 inches bgs, the cleanup level was 1,700 mg/kg lead in soil.

On February 18, 2003, staff from the EPA, the U.S. Fish and Wildlife Service, the LDEQ, and Tetra Tech met to discuss the remediation of the cypress swamp. On May 15, 2003, EPA revised the cleanup criteria for Cypress Swamp. Weighing the detrimental effects of habitat destruction versus estimated risk in the Cypress Swamp area indicated that limiting remedial efforts to the removal of highly-contaminated sediments will serve to adequately protect current and future human health and the environment. Therefore, the sediments with concentrations greater than 500 mg/kg lead were removed to a depth of 6 inches (after removal of overlying detrital material) and back-filled with 6 inches of clean fill material. This removed a large portion of the contamination and provided a barrier to future ecological exposure to remaining contamination, while maintaining the hydrology and habitat value of the area.

Excavation of the soils and waste pits began in December 2002 and was completed in July 2003. Following soil excavation, surface restoration activities were conducted for onsite and offsite areas. Installation of the permeable reactive barrier began in February 2003 and was completed in June 2003.

The EPA and the State conducted the RA as planned and completed a pre-final inspection on July 30, 2003. During the inspection, several punch list items were identified for completion; however, RA construction activities had been completed according to design specifications. The preliminary close out report was signed on September 22, 2003, initiating the operational and functional period. The final inspection was conducted on July 21, 2004. All punch list items identified during the pre-final inspection were completed, and no other outstanding items existed. The final Remedial Action report was accepted on September 22, 2004, initiating the Operation and Maintenance phase under the lead of the Louisiana Department of Environmental Quality (LDEQ). The final close out report was signed on March 7, 2005, signifying that all response actions at the Site were successful and no further Superfund response is required to protect human health and the environment.

On September 22, 2004, LDEQ filed the ICs for the onsite properties. The ICs are conveyance notices which are filed with the Tangipahoa Parish Clerk of Court Office and notify the public that the properties have contaminant levels present that are acceptable for only industrial/commercial use of the property as described in LDEQ's Risk Evaluation/Corrective Action Program (RECAP), June 20, 2000, Section 2.9. In accordance with LAC 33:I., Chapter 13, if land use changes from industrial to non-industrial, the property owner(s) shall notify the LDEQ within 30 days so that the Site shall be reevaluated to determine if conditions are appropriate for the proposed land use. Should the property owner provide adequate proof that the property no longer contains waste restricting use and the secretary (State), or designee, grants approval, the notice may be removed from the mortgage and conveyance records of the parish in which the property is located. If the secretary, or designee, objects to the removal, or fails to make a final determination within ninety days, the property owner may petition the court in the parish where the property is located for removal of the notice and after a contradictory hearing between the landowner, the clerk of court, and the secretary or his designee, the court may grant such relief upon adequate proof by the petitioner that the property no longer contains the waste which may pose a potential threat to health or to the environment.

The remedial action set forth in the ROD was consistent with, and complied with, the Superfund Amendments and Reauthorization Act (SARA) of 1986, P.L. 99–499, which substantially amended CERCLA, 42 U.S.C. 9601 *et seq.*, and the NCP. SARA codified many of the existing requirements under the then existing NCP (1985), as well as adding, among other things, a new section 121 to CERCLA, which provided

direction for selection of remedial actions compliant with applicable or relevant and appropriate Federal, State, and Local laws regulations and requirements, 42 U.S.C. 9621.

Cleanup Standards

The EPA contract for the remedial action contained provisions for performing sampling during all remedial activities in order to verify that remedial objectives were met, to ensure quality control and assurance for all excavation and construction activity, and to ensure protection and safety of the public, the environment, and the onsite worker. Nonhazardous wastes were sent to the BFI Colonial Landfill in Sorrento, Louisiana, and hazardous wastes were transported by a hazardous waste transporter to the Clean Harbors Landfill in Waynoka, Oklahoma.

Air: Meteorological conditions were monitored on a continuous basis. Real-time and integrated air monitoring was conducted near excavations areas, soil stockpiles, the soil treatment work area, and various work zones onsite, as well as along the Site perimeter. Air monitoring ensured that there was no onsite exposure and no offsite migration of Site contaminants.

Excavation: The surveyor established the Site boundaries, clearing and grubbing limits, and onsite and offsite excavation limits. Field sampling and lab confirmation sampling were done for all excavation areas. Excavation bottoms with sample results that exceeded the cleanup criteria were then excavated an additional 1 foot in depth by 10 feet by 10 feet horizontally, and the area was resampled to ensure that the prescribed cleanup level had been met. This process was iterated until the cleanup criteria was met.

Backfill: All imported backfill material was sampled and analyzed to ensure that priority pollutant metals were within allowable limits before being accepted.

Solidification/Stabilization: Five-point composite samples from each treated stockpile were submitted to the laboratory and analyzed for Resource Conservation and Recovery Act Toxicity Characteristic Leachate Procedure (TCLP) metals to ensure that all disposal criteria were met. Stockpiles in which treatment confirmation samples exceeded disposal requirements were reprocessed and resampled for the failed parameter before disposal as nonhazardous waste.

Permeable Reactive Barrier Wall: Before full scale installation, compatibility tests were performed between the ground water and the bio-polymer, permeability testing was conducted to verify that the backfill material was more permeable than the water-bearing zone, and a test section was installed and monitored to ensure PRB effectiveness. The alignment of the PRB wall was surveyed prior to installation, and during installation, a geologist was onsite to examine the excavated material and to determine when the impermeable layer was reached.

Storm Water Discharge: Precipitation and ground water from excavations were collected and treated to meet the discharge parameters. Water was discharged to the creek only after sample analyses verified that the LDEQ discharge parameters had been met.

Ground Water Wells: The 15 ground water monitoring wells were plugged and abandoned in accordance with Louisiana State regulations.

Concrete Demolition: The concrete slabs were demolished, decontaminated, and analyzed for TCLP metals. Debris that passed TCLP metals limits was utilized as onsite backfill. Concrete demolition debris that failed to meet the TCLP metals limits were shipped to and disposed as hazardous waste.

Wastes addressed during remedial action include:

- Approximately 41,000 cubic yards (cy) of onsite and 1,400 cy of offsite soil were excavated, treated, and disposed of at an offsite landfill. The total weight of soil disposed of at the landfill was 85,444 tons. Approximately 10,000 cy of offsite soil meeting onsite cleanup levels were placed in the onsite excavations.
- An estimated 1.5 million gallons of water were treated and discharged.
- Approximately 450 tons of concrete were disposed of as hazardous waste.
- A total of 33 acres was cleared and grubbed and all trees, shrubs, and stumps were chipped and scattered onsite.
- Miscellaneous debris encountered during the remedial effort at the site were transported to the landfill and disposed of as nonhazardous waste. Examples of miscellaneous debris include telephone poles, old tires, drums, Polyvinyl Chloride pipe, wood pieces, household trash, and other solid waste.
- Approximately 300 drums containing investigation-derived waste were disposed.
- Approximately 0.5 cy of Asbestos Containing Material were removed from a storage building, double-bagged, and disposed as nonhazardous waste material.

Summary of the Explanation of Significant Differences (ESD)

The EPA issued an ESD for the Site to document the increase in cost; increase in waste volume treated and disposed; and, revisions to the cleanup values. No other significant differences exist between the final remedial action and the selected remedy presented in the 2000 ROD. All components of the 2000 ROD, including RAOs and remedial technologies, were instituted in order to achieve protection of human health and the environment. The total volume of waste treated and disposed was 85,444 tons; this represents an increase of 32,794 tons over the estimated 52,650 tons presented in the 2000 ROD. Battery wastes encountered at depths and locations not previously identified were defined as principal threat wastes; therefore, removal, treatment and disposal were necessary to eliminate the source of contamination for sediment, surface water, and ground water. No source materials discovered during remedial action were left in place above the risk-based cleanup levels. The final remedial action cost of $13.1 million is an increase of $3.2 million over the ROD estimate of $9.9 million. Cleanup values were established for additional onsite and offsite areas identified for cleanup during the remedial action (see Response Actions section). More detail can be found in the Final ESD dated December 14, 2004.

Operation and Maintenance (O&M)

Long-term O&M activities will be required at the site in order to ensure the effectiveness, protectiveness, and integrity of the remedy and are discussed in the site Final O&M manual dated February 18, 2004. O&M activities will be conducted under the State and will include a ground water monitoring program, routine maintenance, and site inspections. The total estimated cost for all O&M activities over a 30-year period at a discount rate of 7% is $557,000.

Ground water monitoring activities will include well sampling to determine that the ground water pH downgradient of the PRB is increasing, metals concentrations in the ground water downgradient of the PRB are decreasing, and the metals concentrations in the ground water of the third water-bearing zone are not increasing. Quarterly monitoring of the well network will be required to obtain at least eight time-independent data points that will be evaluated using statistical tools to quantitatively assess metals concentrations and pH. Intra-well trends and population trends (upgradient and

downgradient) in metals concentrations and pH will be used to evaluate the efficacy of the remedy and to recommend changes to the monitoring program, as necessary.

Routine maintenance and visual site inspections will be performed at the Delatte Site to ensure the integrity of the RA. Inspections will be made of the monitoring network, the institutional controls (ICs), and the PRB.

The monitoring wells will be maintained and repaired as necessary. If during O&M, the monitoring program changes to remove wells from the sampling schedule, then these wells will be plugged and abandoned.

The integrity of the PRB cap will be inspected and documented. If subsidence results in a low area developing over the PRB, additional soil may need to be imported to raise the soil higher than the surrounding areas to minimize infiltration. Additionally, the soil overlying the PRB will be inspected for erosion, cracks, or other pathways that could allow for surface water to enter the subsurface.

The deed files for the property will be inspected during the time of sampling to ensure that ICs remain in place. General Site inspection will also document any reuse of the Site to ensure that it is within the allowable parameter, industrial, as set by the IC. Reporting of any additional information or discussion related to future reuse, either city planning or developer purchasing, will also be included.

Five-Year Review

Consistent with section 121(c) of CERCLA and requirements of the OSWER Directive 9355.7–03B–P (''Comprehensive Five-Year Review Guidance'', June 2001), a five-year review is required at the Site. The Directive requires EPA to conduct statutory five-year reviews at sites where, upon attainment of ROD cleanup levels, hazardous substances remaining within restricted areas onsite do not allow unlimited use of the entire site.

Since hazardous substances remain onsite, this Site is subject to five-year reviews to ensure the continued protectiveness of the remedy. Based on the five-year results, EPA will determine whether human health and the environment continues to be adequately protected by the implemented remedy. The first five-year review will be completed no later than November 19, 2007.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the State of Louisiana, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective August 8, 2005 unless EPA receives adverse comments by July 8, 2005. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. The EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 23, 2005.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

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

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under Louisiana (''LA'') by removing the Site name ''Delatte Metals''.

[FR Doc. 05–11270 Filed 6–7–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 00–248; FCC 05–62]

Satellite Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts revisions to its antenna gain pattern rules, and adopts new rules for Very Small Aperture Terminal (VSAT) networks and other networks using certain multiple access techniques.

DATES: Effective July 8, 2005, except for the amendments to §§ 25.134 and 25.212, which will take effect on September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Satellite Division, International Bureau, telephone (202) 418–1539 or via the Internet at *steven.spaeth@fcc.gov.*

SUPPLEMENTARY INFORMATION: This summary of the Commission's *Sixth Report and Order,* IB Docket No. 00–248, FCC 05–62, adopted March 10, 2005, and released on March 15, 2005. The complete text of this *Sixth Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room), 445 12th Street, SW., Washington, DC 20554, and also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. It is also available on the Commission's Web site at *http://www.fcc.gov.*

Paperwork Reduction Act Analysis: The actions taken in the *Sixth Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, and have been found not to impose any new or modified reporting requirements or burdens on the public.

Regulatory Flexibility Analysis: As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making (Notice)* and the *Further Notice of Proposed Rulemaking (Further Notice)* in IB Docket No. 00–248.[2] The Commission sought written

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Title II, 110 Stat. 857 (1996).

[2] 2000 Biennial Regulatory Review—Streamlining and Other Revisions of part 25 of the Commission's

Continued

public comment on the proposals in the *Notice* and *Further Notice,* including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Report and Order

The Telecommunications Act of 1996 requires the Commission in every even-numbered year beginning in 1998 to review all regulations that apply to the operations or activities of any provider of telecommunications service and to determine whether any such regulation is no longer necessary in the public interest due to meaningful economic competition. Our objective is to repeal or modify any rules in part 25 that are no longer necessary in the public interest, as required by section 11 of the Communications Act of 1934, as amended.

Specifically, in this *Sixth Report and Order,* the Commission increases the starting point for the earth station antenna gain pattern envelope, from 1.0° to 1.5° off-axis in the C-band, and from 1.25° to 1.5° off-axis in the Ku-band. This will allow the Commission to increase the number of earth station applications eligible for routine treatment. The Commission also adopts new rules to clarify the requirements for very small aperture terminal (VSAT) networks using reservation protocols.

B. Summary of Significant Issues Raised by Public Comments In Response to the IRFA

No comments were submitted directly in response to the IRFAs in either the *Notice* or the *Further Notice.*

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[4] The RFA generally defines the term ''small entity ''as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [5] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[6] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[7]

1. Cable Services. The SBA has developed a small business size standard for Cable and Other Program Distribution, which consists of all such firms having $12.5 million or less in annual receipts.[8] According to Census Bureau data for 1997, in this category there was a total of 1,311 firms that operated for the entire year.[9] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional fifty-two firms had receipts of $10 million to $24,999,999.[10] Thus, under this size standard, the majority of firms can be considered small.

The Commission has developed its own small business size standard for a small cable operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[11] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995.[12] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small cable companies that may be affected by the proposed rules.

The Communications Act of 1934, as amended, also contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' [13] The Commission has determined that there are 67,700,000 subscribers in the United States.[14] Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[15] Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450.[16] We do not request or collect information on whether cable operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[17] and therefore are unable to estimate accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

2. *Satellite Telecommunications.* The rules proposed in this *Further Notice* would affect providers of satellite telecommunications services, if adopted. Satellite telecommunications service providers include satellite operators and earth station operators. The Commission has not developed a definition of small entities applicable to satellite operators. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Satellite Telecommunications.[18] This definition provides that a small entity is expressed as one with $12.5 million or less in

Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, *Notice of Proposed Rulemaking,* IB Docket No. 00–248, 15 FCC Rcd 25128 (2000) (*Notice*); 2000 Biennial Regulatory Review—Streamlining and Other Revisions of part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, *Notice of Proposed Rulemaking,* IB Docket No. 00–248, 17 FCC Rcd 18585 (2002) (*Further Notice*).

[3] *See* 5 U.S.C. 604.

[4] 5 U.S.C. 604(a)(3).

[5] 5 U.S.C. 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[7] Small Business Act, 15 U.S.C. 632 (1996).

[8] 13 CFR 121.201, NAICS code 517510.

[9] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513220 (issued October 2000).

[10] *Id.*

[11] 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable company is one with annual revenues of $100 million or less. *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation,* MM Docket Nos. 92–266 and 93–215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408–7409 ¶¶ 28–30 (1995).

[12] Paul Kagan Assocs., Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[13] 47 U.S.C. 543(m)(2).

[14] *See FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* Public Notice, 16 FCC Rcd 2225 (2001).

[15] 47 CFR 76.1403(b).

[16] *See FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* Public Notice, 16 FCC Rcd 2225 (2001).

[17] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.990(b).

[18] ''This industry comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Small Business Administration, NAICS code 517310.

annual receipts.[19] 1997 Census Bureau data indicate that, for 1997, 273 satellite communication firms had annual receipts of under $10 million. In addition, 24 firms had receipts for that year of $10 million to $24,999,990.[20]

3. Auxiliary, Special Broadcast and other program distribution services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio broadcasting stations,[21] and television broadcasting stations.[22] These definitions provide that a small entity is one with either $6.0 million or less in annual receipts for a radio broadcasting station or $12.0 million in annual receipts for a TV station.[23] There are currently 3,237 FM translators and boosters, 4913 TV translators.[24] The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either $6.0 million for a radio station or $12.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.

4. Microwave Services. Microwave services include common carrier,[25] private-operational fixed,[26] and broadcast auxiliary radio services.[27] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to cellular and other wireless communications companies—*i.e.*, an entity with no more than 1,500 persons.[28] We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

None of the rules adopted in this *Sixth Report and Order* will affect small businesses differently from other non-routine earth station applicants. The revisions to the earth station antenna gain pattern envelope will make it easier for all earth station operators, including small businesses, to comply with the rule. The revisions to the VSAT rules do not create any new reporting or recordkeeping requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[29]

This *Sixth Report and Order* adopts revisions to the earth station antenna gain pattern envelope that will increase the number of earth station applications that can be treated routinely, thereby enabling the Commission to act on those earth station applications more quickly. The Commission specifically considered and rejected an alternative proposal to such earth station operators to include in their applications a complex technical demonstration that their earth stations will comply with a new regulatory standard called the ''minimum acceptable pointing error.'' Requiring these technical demonstrations would have increased the burdens placed on these earth station operators, including those that are small entities. Thus, rejection of that proposal benefits these earth station applicants, including small entities.

F. Report to Congress

The Commission will send a copy of the *Sixth Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Sixth Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Sixth Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Summary of Report and Order: The Commission has decided to begin the antenna gain pattern envelope at 1.5° off-axis within the GSO orbital arc for C-band and Ku-band earth stations, and 3.0° off-axis outside the GSO orbital arc for Ku-band earth stations. It also decided that the provisions proposed in the *Further Notice* to help reduce pointing error are not needed, but instead requires VSAT network operators to design their networks to stop transmissions when synchronization fails. Finally, the Commission increased the Commission's backlobe requirements to 0 dBi for off-axis angles greater than 85°, for earth stations operating in the Ku-band or portions of the Ka-band that are not shared with other services.

Except for the new synchronization requirement, these requirements will not take effect until after resolution of the off-axis EIRP issues discussed in the *Third Further Notice* in this proceeding. In the event that the Commission adopts

[19] 13 CFR 120.121, NAICS code 517310.

[20] U.S. Census Bureau, 1997 Economic Census, Subject Service: Information, ''Establishment and Firm Size,'' Table 4, NAICS 513340 (Issued Oct. 2000).

[21] 13 CFR 121.201, NAICS code 515112.

[22] 13 CFR 121.201, NAICS code 515120.

[23] 13 CFR 121.201.

[24] FCC News Release, *Broadcast Station Totals as of September 30, 1999,* No. 71831 (Jan. 21, 1999).

[25] *See* 47 CFR part 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[26] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[27] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[28] *See* 13 CFR 121.201, NAICS code 517212.

[29] 5 U.S.C. 603(c)(1)–(c)(4).

off-axis EIRP envelopes for FSS earth stations, it will base those envelopes on the revised antenna gain pattern requirements adopted in this Order. In the event that the Commission decides not to adopt off-axis EIRP envelopes for FSS earth stations, parties are invited to propose new minimum routine antenna sizes based on these revised antenna gain pattern requirements. Such proposals should be supported by an adequate technical analyses. In particular, parties are requested to explain the method or methods they use to replicate or estimate the antenna gain patterns generated by earth station antennas of different sizes.

In this *Sixth Report and Order*, the Commission also adopts rules to govern Ku-band and C-band VSAT systems using time division multiple access (TDMA), frequency division multiple access (FDMA) and code division multiple access (CDMA). The new rules do not require any adjustment to the power levels of VSAT systems using TDMA or FDMA, but require a power decrease for VSAT systems using CDMA. The required power decrease is based on the number of simultaneously transmitting earth stations. These requirements will also apply to Single Channel per Carrier (SCPC) transmissions. VSAT networks licensed before the adoption date of this *Sixth Report and Order* will not be subject to the new rules.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), that this *Sixth Report and Order* in IB Docket No. 00–248 is hereby *adopted*.

It is further ordered that part 25 of the Commission's rules *is amended* as set forth in Appendix B. An announcement of the effective date of these rule revisions will be published in the **Federal Register**.

It is further ordered that the Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 25

Communications common carriers, Communications equipment, Equal employment opportunity, Radio, Reporting and recordkeeping requirements, Satellites, Securities, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

■ 2. Amend § 25.134 by revising paragraph (a)(1) and adding paragraphs (g) and (h), to read as follows:

§ 25.134 Licensing provisions of Very Small Aperture Terminal (VSAT) and C-band Small Aperture Terminal (CSAT) networks.

(a)(1) VSAT networks operating in the 12/14 GHz bands. All applications for digital VSAT networks granted on or before September 15, 2005, with a maximum outbound downlink EIRP density of +10.0 dBW/4 kHz per carrier and earth station antennas with maximum input power density of -14 dBW/4 kHz will be processed routinely. All applications for analog VSAT networks with maximum outbound downlink power densities of +17.0 dBW/4 kHz per carrier and maximum antenna input power densities of -8.0 dBW/4 kHz shall be processed routinely in accordance with Declaratory Order in the Matter of Routine Licensing of Earth Stations in the 6 GHz and 14 GHz Bands Using Antennas Less than 9 Meters and 5 Meters in Diameter, Respectively, for Both Full Transponder and Narrowband Transmissions, 2 FCC Rcd 2149 (1987) (Declaratory Order).

* * * * *

(g) Starting March 10, 2005, all applications for VSAT service in the 12/14 GHz band that meet the following requirements will be routinely processed: (1) The maximum transmitter power spectral density of a digital modulated carrier into any GSO FSS earth station antenna shall not exceed $-14.0 - 10\log(N)$ dB(W/4 kHz). For a VSAT network using frequency division multiple access (FDMA) or time division multiple access (TDMA) technique, N is equal to one. For a VSAT network using code division multiple access (CDMA) technique, N is the maximum number of co-frequency simultaneously transmitting earth stations in the same satellite receiving beam.

(2) The maximum GSO FSS satellite EIRP spectral density of the digital modulated emission shall not exceed 10 dB (W/4kHz) for all methods of modulation and accessing techniques.

(3) The maximum transmitter power spectral density of an analog carrier into any GSO FSS earth station antenna shall not exceed -8.0 dB(W/4kHz) and the maximum GSO FSS satellite EIRP spectral density shall not exceed +17.0 dB(W/4kHz).

(h) VSAT operators licensed pursuant to this section are prohibited from using remote earth stations in their networks that are not designed to stop transmissions from their remote earth stations when synchronization with the target satellite fails.

■ 3. In § 25.212, revise paragraph (d) to read as follows:

§ 25.212 Narrowband analog transmissions, digital transmissions, and video transmissions in the GSO Fixed-Satellite Service.

* * * * *

(d)(1) For earth stations licensed before March 10, 2005 in the 5925–6425 MHz band, an earth station with an equivalent diameter of 4.5 meters or greater may be routinely licensed for transmission of SCPC services if the maximum power densities into the antenna do not exceed +0.5 dBW/4 kHz for analog SCPC carriers with bandwidths up to 200 kHz, and do not exceed -2.7 dBW/4 kHz for narrow and/or wideband digital SCPC carriers.

(2) For earth stations licensed after March 10, 2005 in the 5925–6425 MHz band, an earth station with an equivalent diameter of 4.5 meters or greater may be routinely licensed for transmission of SCPC services if the maximum power densities into the antenna do not exceed +0.5 dBW/4 kHz for analog SCPC carriers with bandwidths up to 200 kHz, and do not exceed $-2.7 - 10\log(N)$ dBW/4 kHz for narrow and/or wideband digital SCPC carriers. For digital SCPC using frequency division multiple access (FDMA) or time division multiple access (TDMA) technique, N is equal to one. For digital SCPC using code division multiple access (CDMA) technique, N is the maximum number of co-frequency simultaneously transmitting earth stations in the same satellite receiving beam.

(3) Antennas with an equivalent diameter smaller than 4.5 meters in the 5925–6425 MHz band are subject to the provisions of § 25.220 of this chapter, which may include power reduction requirements.

* * * * *

■ 4. In § 25.221, revise paragraphs (a)(1), (a)(2), and (a)(4) to read as follows:

§ 25.221 Blanket Licensing provisions for Earth Stations on Vessels (ESV) receiving in the 3700–4200 MHz (space-to-Earth) frequency band and transmitting in the 5925–6425 MHz (Earth-to-space) frequency band, operating with Geostationary Satellites in the Fixed-Satellite Service.

(a) * * *

(1) The off-axis EIRP spectral density for co-polarized signals, emitted from the ESV, in the plane of the geostationary satellite orbit as it appears at the particular earth station location (*i.e.*, the plane determined by the focal point of the antenna and the line tangent to the arc of the geostationary satellite orbit at the position of the target satellite), shall not exceed the following values:

$26.3 - 25\log(\theta) - 10\log(N)$ dBW/4kHz for $1.0° \leq \theta \leq 7.0°$

$5.3 - 10\log(N)$dBW/4kHz for $7.0° < \theta \leq 9.2°$

$29.3 - 25\log(\theta) - 10\log(N)$ dBW/4kHz for $9.2° < \theta \leq 48°$

$-12.7 - 10\log(N)$ dBW/4kHz for $48° < \theta \leq 180°$

where θ is the angle in degrees from the axis of the main lobe. For an ESV network using frequency division multiple access (FDMA) or time division multiple access (TDMA) technique, N is equal to one. For an ESV network using code division multiple access (CDMA) technique, N is the maximum number of co-frequency simultaneously transmitting earth stations in the same satellite receiving beam.

(2) In all other directions, the off-axis EIRP spectral density for co-polarized signals emitted from the ESV shall not exceed the following values:

$29.3 - 25\log(\theta) - 10\log(N)$ dBW/4kHz for $1.0° \leq \theta \leq 48°$

$-12.7 - 10\log(N)$ dBW/4kHz for $48° < \theta \leq 180°$

where θ and N are defined as set forth in paragraph (a)(1) of this section.

* * * * *

(4) In all directions, the off-axis EIRP spectral density for cross-polarized signals emitted from the ESV shall not exceed the following values:

$16.3 - 25\log(\theta) - 10\log(N)$ dBW/4kHz for $1.8° \leq \theta \leq 7.0°$

$-4.7 - 10\log(N)$ dBW/4kHz for $7.0° < \theta \leq 9.2°$

where θ and N are defined as set forth in paragraph (a)(1) of this section.

* * * * *

■ 5. In § 25.222, revise paragraphs (a)(1), (a)(2), and (a)(4) to read as follows:

§ 25.222 Blanket Licensing provisions for Earth Stations on Vessels (ESVs) receiving in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), 11.7–12.2 GHz (space-to-Earth) frequency bands and transmitting in the 14.0–14.5 GHz (Earth-to-space) frequency band, operating with Geostationary Satellites in the Fixed-Satellite Service.

(a) * * *

(1) The off-axis EIRP spectral density for co-polarized signals, emitted from the ESV in the plane of the geostationary satellite orbit as it appears at the particular earth station location (*i.e.*, the plane determined by the focal point of the antenna and the line tangent to the arc of the geostationary satellite orbit at the position of the target satellite), shall not exceed the following values:

$15 - 25\log(\theta) - 10\log(N)$ dBW/4kHz for $1.25° \leq \theta \leq 7.0°$

$-6 - 10\log(N)$ dBW/4kHz for $7.0° < \theta \leq 9.2°$

$18 - 25\log(\theta) - 10\log(N)$ dBW/4kHz for $9.2° < \theta \leq 48°$

$-24 - 10\log(N)$ dBW/4kHz for $48° < \theta \leq 180°$

where θ is the angle in degrees from the axis of the main lobe. For an ESV network using frequency division multiple access (FDMA) or time division multiple access (TDMA) technique, N is equal to one. For an ESV network using code division multiple access (CDMA) technique, N is the maximum number of co-frequency simultaneously transmitting earth stations in the same satellite receiving beam.

(2) In all other directions, the off-axis EIRP spectral density for co-polarized signals emitted from the ESV shall not exceed the following values:

$18 - 25\log(\theta) - 10\log(N)$ dBW/4kHz for $1.25° \leq \theta \leq 48°$

$-24 - 10\log(N)$ dBW/4kHz for $48° < \theta \leq 180°$

where θ and N are defined as set forth in paragraph (a)(1) of this section.

* * * * *

(4) In all directions, the off-axis EIRP spectral density for cross-polarized signals emitted from the ESV shall not exceed the following values:

$5 - 25\log(\theta) - 10\log(N)$ dBW/4kHz for $1.8° \leq \theta \leq 7°$

$-16 - 10\log(N)$ dBW/4kHz for $7° \leq \theta \leq 9.2°$

where θ and N are defined as set forth in paragraph (a)(1) of this section.

* * * * *

[FR Doc. 05–11171 Filed 6–7–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1479; MB Docket No. 04–203, RM–10976]

Radio Broadcasting Services; McCook, Broken Bow, Maxwell, and McCook, Nebraska

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of McCook Radio Group, LLC, licensee of Station KRKU(FM), Channel 253C1, McCook, Nebraska, and Custer County Broadcasting, Inc., licensee of Station KBBN–FM, Broken Bow, Nebraska, deletes Channel 253C1 at McCook from the FM Table of Allotments, allots Channel 253C1 at Maxwell, Nebraska, as the community's first local FM service, and modifies the license of Station KRKU(FM) to specify operation on Channel 253C1 at Maxwell. Channel 253C1 can be allotted to Maxwell, Nebraska, in compliance with the Commission's minimum distance separation requirements at center city reference coordinates without site restriction. The coordinates for Channel 253C1 at Maxwell, Nebraska, are 41–04–44 North Latitude and 100–31–28 West Longitude. Also at the request of the joint petitioners, the Audio Division deletes Channel 252C3 at Broken Bow from the FM Table of Allotments, allots Channel 237C2 at Broken Bow, Nebraska, and modifies the license of Station KBBN–FM to specify operation on Channel 237C2 at Broken Bow. Channel 237C2 can be allotted to Broken Bow, Nebraska, in compliance with the Commission's minimum distance separation requirements at the existing reference coordinates for Station KBBN–FM, with a site restriction of 1.9 km (1.2 miles) east of Broken Bow. The coordinates for Channel 237C2 at Broken Bow, Nebraska, are 41–23–49 North Latitude and 99–37–02 West Longitude.

DATES: Effective July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 04–203, adopted May 25, 2005, and released May 27, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW.,

Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 252C3 and by adding Channel 237C2 at Broken Bow, by adding Maxwell, Channel 253C1 and by removing Channel 253C1 at McCook.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–11376 Filed 6–7–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1478; MB Docket No. 05–35; RM–11134]

Radio Broadcasting Services; Charlotte and Jackson, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 70 FR 8332 (February 18, 2005), this *Report and Order* reallots Channel 291B, Station WJXQ(FM) (''WJXQ''), Jackson, Michigan, to Charlotte, Michigan, and modifies Station WJXQ's license accordingly. The coordinates for Channel 291B at Charlotte, Michigan are 42–23–28 NL and 84–37–22 WL, with a site restriction of 30 kilometers (16.1 miles) southeast of Charlotte.

DATES: Effective July 11, 2005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–35, adopted May 25, 2005, and released May 27, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Channel 283A has been inadvertently listed in 47 CFR 73.202(b), FM Table of Allotments under Jackson, Michigan, since October 1, 1995. We have no record that such an allotment has actually been made. Accordingly, the *Report and Order* deletes Channel 283A from 47 CFR 73.202(b) under Jackson, Michigan.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 291B and Channel 283A at Jackson and by adding Channel 291B at Charlotte.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–11377 Filed 6–7–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 171

[Docket No. RSPA–03–16370 (HM–233)]

RIN 2137–AD84

Hazardous Materials: Incorporation of Exemptions Into Regulations; Notice of Information Collection Approval

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule notice announces Office of Management and Budget (OMB) approval of information collection request (ICR) OMB No. 2137–0620, ''Inspection and Testing of Meter Provers.'' This information collection has been approved by OMB until May 31, 2008. This notice also makes appropriate revisions to regulations concerning the Paperwork Reduction Act to incorporate this new information collection approval under OMB Control No. 2137–0620.

DATES: The effective date of this final rule is March 25, 2005. This ICR expires on May 31, 2008.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

ADDRESSES: Requests for a copy of an information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 2005, the Pipeline and Hazardous Materials Safety Administration (PHMSA, we) published a final rule to enhance the safety of hazardous materials transported in commerce (70 FR 3302). In this final rule, we incorporated into the regulations the provisions of certain widely-used exemptions that have an established safety history and that may be converted into regulations for general use. We also made minor revisions to the requirements for use of packagings authorized under exemptions. The

revisions provide wider access to the benefits of the provisions granted in these exemptions and eliminate the need for the current exemption holders to reapply for renewal of the exemption, thus reducing paperwork burdens and facilitating commerce while maintaining an acceptable level of safety. The effective date of this final rule is March 25, 2005.

On May 5, 2005, OMB approved an information collection for the inspection and testing of meter provers, OMB No. 2137–0620, ''Inspection and Testing of Meter Provers,'' until May 31, 2008. Because OMB approved the information collection after publication of the January 24, 2005 final rule, we are announcing the OMB approval and incorporating this new information collection approval into § 171.6, ''Control numbers under the Paperwork Reduction Act,'' under OMB Control No 2137–0620.

OMB regulations (5 CFR 1320) 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(s)) and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, PHMSA has received OMB approval of the following ICR and § 171.6(b)(2) is revised by incorporating the following information collection:

OMB Control Number: 2137–0620.

Title: Inspection and Testing of Meter Provers.

This information collection approval expires on May 31, 2008. This information collection request was approved by OMB on May 5, 2005.

II. Summary of Regulatory Changes

Section 171.6

We are revising the table in paragraph (b)(2) to incorporate a new information collection, OMB No. 2137–0620, ''Inspection and Testing of Meter Provers.''

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) and was not reviewed by the Office of Management and Budget (OMB). This final rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034]. The costs and benefits of this final rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or a regulatory evaluation. The provisions of this final rule provide a relaxation of the regulations and, as such, impose little or no additional costs to affected industry.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 (''Federalism''). This final rule does not propose any regulation that: (1) Has substantial direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. PHMSA is not aware of any State, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $120.7 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

F. Paperwork Reduction Act

There are no new information collection requirements in this final rule. This final rule announces the approval of information collection OMB No. 2137–0620 ''Inspection and Testing of Meter Provers,'' and incorporates this new OMB Control Number, Title, and Affected Sections into the Section 171.6 (b)(2) table in the HMR.

G. Regulation Identifier Number (RIN)

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

List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 2. In § 171.6, the table in paragraph (b)(2) is amended to add a new entry ''OMB No. 2137–0620'' in numeric order, to read as follows:

§ 171.6 Control numbers under the Paperwork Reduction Act.

* * * * *

(b) * * *

(2) * * *

Current OMB Control No.	Title	Title 49 CFR part or section where identified and described
* *	* * *	* *
2137–0620	Inspection and Testing of Meter Provers	Part 173, Subpart A, § 173.5a.

Issued in Washington, DC, on June 2, 2005.

Susan Gorsky,

Acting Director, Office of Hazardous Materials Standards.

[FR Doc. 05–11399 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, 241, and 244

[Docket No. FRA–2004–17529; Notice No. 3]

RIN 2130–AB66

Inflation Adjustment of Ordinary Maximum Civil Monetary Penalty for a Violation of a Federal Railroad Safety Law or Federal Railroad Administration Safety Regulation

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: To comply with the Federal Civil Penalties Inflation Adjustment Act of 1990, FRA is adjusting the ordinary maximum penalty that it will apply when assessing a civil penalty for a violation of railroad safety statutes and regulations under its authority. In particular, FRA is increasing the ordinary maximum civil penalty from $11,000 to $15,000.

DATES: Effective July 8, 2005.

FOR FURTHER INFORMATION CONTACT: Carolina Mirabal, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6043), *carolina.mirabal@fra.dot.gov.*

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Act) requires that an agency adjust by regulation each maximum civil monetary penalty (CMP), or range of minimum and maximum CMPs, within that agency's jurisdiction by October 23, 1996 and adjust those penalty amounts once every four years thereafter to reflect inflation. Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461, note, as amended by Section 31001(s)(1) of the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–373, April 26, 1996. Congress recognized the important role that CMPs play in deterring violations of Federal law and regulations and realized that inflation has diminished the impact of these penalties. In the Inflation Act, Congress found a way to counter the effect that inflation has had on the CMPs by having the agencies charged with enforcement responsibility administratively adjust the CMPs.

Calculation of the Adjustment

Under the Inflation Act, the inflation adjustment is to be calculated by increasing the maximum CMP, or the range of minimum and maximum CMPs, by the percentage that the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment (here, June 2004) exceeds the CPI for the month of June of the last calendar year in which the amount of such penalty was last set or adjusted (here, June 1998 for the ordinary maximum). The Inflation Act also specifies that the amount of the adjustment must be rounded to the nearest multiple of $100 for a penalty between $100 and $1,000, or to the nearest multiple of $5,000 for a penalty of more than $10,000 and less than or equal to $100,000. The first adjustment may not exceed an increase of ten percent. FRA utilized Bureau of Labor Statistics data to calculate adjusted CMP amounts.

FRA is authorized as the delegate of the Secretary of Transportation to enforce the Federal railroad safety statutes and regulations, including the civil penalty provisions at 49 U.S.C. ch. 213. 49 CFR 1.49; 49 U.S.C. ch. 201–213. FRA currently has 27 regulations that contain provisions that reference its authority to impose civil penalties if a person violates any requirement in the pertinent portion of a statute or the Code of Federal Regulations. In this final rule, FRA is amending each of those separate regulatory provisions and the corresponding footnotes in each Schedule of Civil Penalties to raise the ordinary maximum CMP to $15,000.

With the exception of the penalties relating to the hours of service laws (49 U.S.C. ch. 211), the ordinary maximum CMP for a violation of the rail safety laws and regulations was established by the Rail Safety Improvement Act of 1988, which set a $10,000 limit for a CMP imposed for any ordinary violation, and a $20,000 limit for a grossly negligent violation (''grossly negligent violation'') or a pattern of repeated violations that has created an imminent hazard of death or injury or caused death or injury. In 1998, after applying the adjustment calculation in the Inflation Act, FRA determined that the ordinary maximum CMP for any single violation needed to be increased to $11,000 and that the maximum CMP for grossly negligent violations needed to be increased to $22,000. FRA amended each of its regulations by final rule to reflect the increased CMPs. 63 FR 11618.

The Rail Safety Enforcement and Review Act (RSERA) in 1992 increased the range of the minimum and maximum civil penalty from $1,000 to $10,000 and $20,000, respectively, for a violation of the hours of service laws, making these minimum and maximum penalty amounts uniform with those of FRA's other regulatory provisions. By applying the same adjustment calculation using the 1992 CPI, the maximum penalties for violations of the hours of service laws were raised to equal those of the other rail safety laws and regulations: $11,000 and $22,000.

RSERA also increased the minimum CMP for all of the rail safety statutes and regulations from $250 to $500. In 1998, FRA had applied the adjustment calculation in the Inflation Act to the minimum CMP and had determined that it would not need to be increased. In 2004, FRA by applying the adjustment calculation using the June 2003 CPI determined that the minimum CMP should be increased from $500 to $550. As required, FRA recently reevaluated the minimum CMP and concluded that it should remain at $550, as the next calculations show. The June 2004 CPI of 568.2 divided by 568.2 (since the last update was in 2004) equals an inflation factor of 1; $550 times 1 equals $550, or an increase of zero. 69 FR 30591.

FRA also reevaluated the CMP for a grossly negligent violation and determined that it should remain at $27,000, as the following calculations show. The June 2004 CPI of 568.2 divided by 568.2 (since the last update

was in 2004) equals an inflation factor of 1; $27,000 times 1 equals $27,000, or an increase of zero. 69 FR 30591.

In 2004, FRA had applied the adjustment calculation in the Inflation Act to the ordinary maximum CMP and concluded that it would not need to be increased. 69 FR 30591. Now, applying the adjustment calculation using the June 2004 CPI, FRA has determined that the ordinary maximum CMP should be increased from $11,000 to $15,000, as the next calculations show.

The June 2004 CPI of 568.2 divided by the June 1998 CPI of 488.2 equals an inflation factor of 1.164; $11,000 times 1.164 equals $12,804, or an increase of $1,804, which is rounded up to the nearest multiple of $5,000, raising the ordinary maximum CMP to $15,000.

Because this is the second time that the ordinary maximum CMP has been adjusted under the Act, the ten-percent cap on the increase does not apply. This new FRA ordinary maximum penalty will apply to violations that occur on or after July 8, 2005.

Public Participation

FRA is proceeding to a final rule without providing a notice of proposed rulemaking or an opportunity for public comment. The adjustments required by the Act are ministerial acts over which FRA has no discretion, making public comment unnecessary. FRA is issuing these amendments as a final rule applicable to all future rail safety civil penalty cases under its authority.

Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures. It is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034) because it is limited to a ministerial act on which the agency has no discretion. The economic impact of the final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Regulatory Flexibility Determination

FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Although this rule will apply to railroads and others that are considered small entities, there is no economic impact on any person who complies with the Federal railroad safety laws and the regulations and orders issued under those laws.

C. Federalism

This final rule will not have a substantial effect on the States, on the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 13132, preparation of a Federalism assessment is not warranted.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

E. Compliance With the Unfunded Mandates Reform Act of 1995

The final rule issued today will not result in the expenditure, in the aggregate, of $120,700,000 or more in any one year by State, local, or Indian tribal governments, or the private sector, and thus preparation of a statement is not required.

F. Environmental Assessment

There are no significant environmental impacts associated with this final rule.

G. Energy Impact

According to definitions set forth in Executive Order 13211, there will be no significant energy action as a result of the issuance of this final rule.

List of Subjects in 49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, 241, and 244

Railroad Safety, Penalties.

The Final Rule

■ In consideration of the foregoing, parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 225, 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, 241, and 244, of subtitle B, chapter II of title 49 of the Code of Federal Regulations are amended as follows:

PART 209—[AMENDED]

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 209.409 [Amended]

■ 2. Section 209.409 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

APPENDIX A TO PART 209—[AMENDED]

■ 3. Appendix A to part 209 is amended by removing the numerical amount ''$11,000'' in the third paragraph below the heading ''Penalty Schedules; Assessment of Maximum Penalties,'' and replacing it with the numerical amount ''$15,000.''

PART 213—[AMENDED]

■ 4. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

§ 213.15 [Amended]

■ 5. Paragraph (a) of § 213.15 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 214—[AMENDED]

■ 6. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 214.5 [Amended]

■ 7. Section 214.5 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 215—[AMENDED]

■ 8. The authority citation for part 215 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 215.7 [Amended]

■ 9. Section 215.7 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 216—[AMENDED]

■ 10. The authority citation for part 216 continues to read as follows:

Authority: 49 U.S.C. 20102–20104, 20107, 20111, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 216.7 [Amended]

■ 11. Section 216.7 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 217—[AMENDED]

■ 12. The authority citation for part 217 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 217.5 [Amended]

■ 13. Section 217.5 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 218—[AMENDED]

■ 14. The authority citation for part 218 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 218.9 [Amended]

■ 15. Section 218.9 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 219—[AMENDED]

■ 16. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

§ 219.9 [Amended]

■ 17. Paragraph (a) of § 219.9 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 220—[AMENDED]

■ 18. The authority citation for part 220 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 21301–21302, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 220.7 [Amended]

■ 19. Section 220.7 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 221—[AMENDED]

■ 20. The authority citation for part 221 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 221.7 [Amended]

■ 21. Section 221.7 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 222—[AMENDED]

■ 22. The authority citation for part 222 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 222.11 [Amended]

23. Section 222.11 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 223—[AMENDED]

■ 24. The authority citation for part 223 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20133, 20701–20702, 21301–02, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 223.7 [Amended]

■ 25. Section 223.7 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 225—[AMENDED]

■ 26. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 103, 322(a), 20103, 20107, 20901–02, 21301, 21302, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 225.29 [Amended]

■ 27. Section 225.29 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 228—[AMENDED]

■ 28. The authority citation for part 228 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21101–21108; 28 U.S.C. 2461, note and 49 CFR 1.49.

§ 228.21 [Amended]

■ 29. Section 228.21 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

■ 30. In appendix A to part 228, the ninth paragraph below the heading ''General Provisions,'' which is entitled ''Penalty'' is amended by adding the following at the end of the paragraph:

Appendix A to Part 228—Requirements of the Hours of Service Act: Statement of Agency Policy and Interpretation

* * * * *

Penalty. * * * In 2005, the ordinary maximum penalty of $11,000 was raised to $15,000 as required under the law; however, the minimum penalty and the maximum penalty for a grossly negligent violation did not need to be adjusted.

* * * * *

PART 229—[AMENDED]

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

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20137–20138, 20143, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49 (c), (m).

§ 229.7 [Amended]

■ 32. Paragraph (b) of § 229.7 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 230—[AMENDED]

■ 33. The authority citation for part 230 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 230.4 [Amended]

■ 34. Paragraph (a) of § 230.4 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 231—[AMENDED]

■ 35. The authority citation for part 231 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20131, 20301–20303, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 231.0 [Amended]

■ 36. Paragraph (f) of § 231.0 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 232—[AMENDED]

■ 37. The authority citation for part 232 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 232.11 [Amended]

■ 38. Paragraph (a) of § 232.11 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

APPENDIX A TO PART 232—[AMENDED]

■ 39. Footnote 1 to Appendix A of Part 232 is amended by removing the numerical amount of ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 233—[AMENDED]

■ 40. The authority citation for part 233 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 233.11 [Amended]

■ 41. Section 233.11 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 234—[AMENDED]

■ 42. The authority citation for part 234 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 234.6 [Amended]

■ 43. Paragraph (a) of § 234.6 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 235—[AMENDED]

■ 44. The authority citation for part 235 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 235.9 [Amended]

■ 45. Section 235.9 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 236—[AMENDED]

■ 46. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note and 49 CFR 1.49.

§ 236.0 [Amended]

■ 47. Paragraph (f) of § 236.0 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 238—[AMENDED]

■ 48. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; 49 CFR 1.49.

§ 238.11 [Amended]

■ 49. Paragraph (a) of § 238.11 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 239—[AMENDED]

■ 50. The authority citation for part 239 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(c), (g), (m).

§ 239.11 [Amended]

■ 51. Section 239.11 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 240—[AMENDED]

■ 52. The authority citation for part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 240.11 [Amended]

■ 53. Paragraph (a) of § 240.11 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 241—[AMENDED]

■ 54. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

§ 241.15 [Amended]

■ 55. Paragraph (a) of § 241.15 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

PART 244—[AMENDED]

■ 56. The authority citation for part 244 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 244.5 [Amended]

■ 57. Paragraph (a) of § 244.5 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$15,000.''

Issued in Washington, DC on June 3, 2005.

Joseph H. Boardman,

Administrator, Federal Railroad Administration.

[FR Doc. 05–11396 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1507

[Docket No. TSA–2004–18984, Amendment 1507–1]

RIN 1652–AA36

Privacy Act of 1974: Implementation of Exemptions; Registered Traveler Operations Files

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Final rule.

SUMMARY: TSA is issuing a final rule that will exempt the Registered Traveler Operations Files (DHS/TSA 015) from several provisions of the Privacy Act of 1974 to prevent the unauthorized disclosure of classified and law enforcement information.

DATES: Effective July 8, 2005.

FOR FURTHER INFORMATION CONTACT: Lisa Dean, Privacy Officer, Office of Transportation Security Policy, TSA–9, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–3947.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Document

You may obtain an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*; or

(3) Visiting the TSA's Law and Policy Web page at *http://www.tsa.gov/public*.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html*.

Background

On June 1, 2004, TSA published a notice in the **Federal Register** establishing a new system of records titled ''Registered Traveler Operations Files (DHS/TSA 015),'' which governs records related to the Registered Traveler (RT) pilot program. See 69 FR 30948. TSA is currently conducting a pilot program at a limited number of airports to test and evaluate the merits of the RT program, in which travelers may volunteer to undergo a limited security threat assessment in order to expedite the pre-boarding process.

In conjunction with the establishment of Registered Traveler Operations Files (DHS/TSA 015), TSA published a notice of proposed rulemaking on September 8, 2004, to exempt this system of records from several provisions of the Privacy Act. See 69 FR 54256. Specifically, TSA proposed to exempt the system of records from 5 U.S.C. 552a(c)(3) (accounting of disclosures); (d) (access to records); (e)(1) (relevancy and necessity of information); (e)(4)(G), (H) and (I) (agency requirements); and (f) (agency rules) pursuant to exemptions (k)(1) and (k)(2) of the Act. TSA claimed these exemptions in accordance with the Privacy Act so that the security aspects of the system may properly function, and to prevent the unauthorized disclosure of classified and law enforcement information.

TSA did not receive any comments on the proposed rule but made two minor, non-substantive changes. TSA revised § 1507.3(i)(1) (Accounting for Disclosures) to reflect the fact that the ''investigative interest'' involved may be on the part of the Department of Homeland Security or other law enforcement or recipient agencies. In § 1507.3(i)(2) (Access to Records) TSA also revised the reference ''security sensitive information'' to read ''sensitive security information protected pursuant to 49 U.S.C. 114(s) and 49 CFR part 1520 * * *''. TSA therefore adopts the proposed rule as final with these minor modifications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501. *et seq.*) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. TSA has determined that there are no current or new information collection requirements associated with this rule.

Analysis of Regulatory Impacts

This rule is not a ''significant regulatory action'' within the meaning of Executive Order 12886. Because the economic impact should be minimal, further regulatory evaluation is not necessary. Moreover, I certify that this rule will not have a significant economic impact on a substantial number of small entities, because the reporting requirements themselves are not changed and because it applies only to information on individuals.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4, 109 Stat. 48), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year the UMRA analysis is required. This rule will not impose Federal mandates on any State, local, or tribal government or the private sector.

Executive Order 13132, Federalism

TSA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore will not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this document has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1507

Privacy, Transportation security.

The Amendment

■ In consideration of the foregoing, the Transportation Security Administration amends part 1507 of Chapter XII, Title 49 of the Code of Federal Regulations, as follows:

PART 1507—PRIVACY ACT-EXEMPTIONS

■ 1. The authority citation for part 1507 is revised to read as follows:

Authority: 49 U.S.C. 114(l)(1), 40113, 5 U.S.C. 552a(j) and (k).

■ 2. Add a new paragraph (i) to § 1507.3 to read as follows:

§ 1507.3 Exemptions.

* * * * *

(i) *Registered Traveler Operations Files (DHS/TSA 015).* The purpose of this system is to pre-screen and positively identify volunteer travelers using advanced identification technologies and conduct a security threat assessment to ensure that the volunteer does not pose a security threat. This system may expedite the pre-boarding process for the traveler and improve the allocation of TSA's security resources on individuals who may pose a security threat. Pursuant to exemptions (k)(1) and (k)(2) of the Privacy Act, DHS/TSA 015 is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of heightened security concerns relating to an actual or potential criminal, civil, or regulatory violation to the existence of an investigative interest on the part of the Department of Homeland Security or another Federal law enforcement or other recipient agency. Disclosure of the accounting would therefore present a serious impediment to transportation security law enforcement efforts and efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the program suitability determination, which undermines the entire system.

(2) From subsection (d) (Access to Records) because access to some of the records contained in this system of records could permit the individual who is the subject of a record to impede the program suitability determination. Amendment of the records would

interfere with ongoing security assessment investigations and program suitability determinations and impose an impossible administrative burden by requiring such investigations to be continuously reinvestigated. The information contained in the system may also include classified information, the release of which would pose a threat to national defense and/or foreign policy. In addition, permitting access and amendment to such information also could disclose sensitive security information protected pursuant to 49 U.S.C. 114(s) and 49 CFR part 1520, the disclosure of which could be detrimental to transportation security.

(3) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of screening applicants for program suitability, TSA must be able to review information from a variety of sources. What information is relevant and necessary may not always be apparent until after the evaluation is completed. In the interests of transportation security, it is appropriate to include a broad range of information that may aid in determining an applicant's suitability for the Registered Traveler program.

(4) From subsections (e)(4)(G), (H) and (I) (Agency Requirements), and (f) (Agency Rules), because this system is exempt from the access and amendment provisions of subsection (d).

Issued in Arlington, Virginia, on May 24, 2005.

David M. Stone,

Assistant Secretary.

[FR Doc. 05–10632 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 050228048–5144–02; I.D. 021705A]

RIN 0648–AS19

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Vermilion Snapper Rebuilding Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 23 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 23) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule increases the minimum size limit for vermilion snapper to 11 inches (28 cm), total length (TL), for the recreational and commercial sectors; establishes a 10–fish recreational bag limit for vermilion snapper within the existing 20–fish aggregate reef fish bag limit; and closes the commercial vermilion snapper fishery from April 22 through May 31 each year. In addition, consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), Amendment 23 establishes a stock rebuilding plan, biological reference points, and stock status determination criteria for vermilion snapper in the Gulf of Mexico. The intended effect of this final rule is to end overfishing and rebuild the vermilion snapper resource.

DATES: This final rule is effective July 8, 2005.

ADDRESSES: Copies of the Regulatory Impact Review (RIR), Final Regulatory Flexibility Analyses (FRFA), Final Supplemental Environmental Impact Statement (FSEIS), and Record of Decision (ROD) may be obtained from the Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727–551–5728, fax: 727–824–5308, e-mail: *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Act by regulations at 50 CFR part 622.

NMFS approved Amendment 23 on May 23, 2005. NMFS published a proposed rule to implement Amendment 23 and requested public comment on the proposed rule through April 25, 2005 (70 FR 11600, March 9, 2005). The rationale for the measures in Amendment 23 is provided in the preamble to the proposed rule and is not repeated here.

Comments and Responses

Following is a summary of comments received on Amendment 23 and the associated proposed rule along with NMFS' responses.

Comment 1: Increasing the minimum size from 10 inches (25.4 cm) to 11 inches (28.0 cm) total length and establishing a commercial closed season from April 21 to May 31 will result in high rates of discard mortality, minimizing the effectiveness of harvest reduction measures.

Response: All harvest reduction measures examined in Amendment 23 have some associated discard mortality. In evaluating the measures, the Council balanced harvest reduction, the degree of discard mortality, and the economic efficacy of each alternative.

Increasing the minimum size to 11 inches (28 cm) would temporarily increase the number of discards. However, it also protects vermilion snapper spawning by protecting immature fish from harvest and allows mature fish additional spawning seasons. As time proceeds, the number of discards should decrease somewhat as the population rebuilds and larger fish become more available.

The closed season for the commercial fishery was requested by industry representatives to avoid a 12–inch minimum size limit, avoid trip limits, and minimize the economic harm to markets of an extended season closure. To minimize the number of vermilion snapper discarded when the commercial red snapper season is open, the season closure was designed to only span one red snapper 10-day season (May 1 through May 10). The closed season will have some positive effect on vermilion snapper spawning because it covers the beginning of the reproductive season.

Comment 2: Three comments were received suggesting the recreational and commercial fisheries should be closed at the same time to halt illegal sale of vermilion snapper by anglers when the commercial season is closed.

Response: To sell reef fish, a valid Federal commercial reef fish permit is required. Reef fish can only be sold to a dealer who has a valid Federal permit for Gulf reef fish. Thus, the sale of recreationally caught reef fish such as vermilion snapper is illegal. While keeping concurrent closed seasons for the commercial and recreational fisheries would aid enforcement of illegal sales, the Council determined that it preferred a year-round recreational fishery. A recreational closed season would only increase bycatch mortality for this mainly non-target species. To achieve the needed harvest reductions, they chose to increase the minimum size and decrease the bag limit to provide protection to the stock year-round.

The Council selected the closed season for the commercial fishery based on industry input. Commercial fishermen opposed trip limits as a means to achieve the required reductions. They suggested one 40-day

closed period would not affect product value by reducing access to markets once the season re-opened, and they selected the closure to center on May because harvest was highest, the markets were glutted reducing wholesale dockside prices, and fish were aggregated for spawning and easy to catch.

Comment 3: Five commenters indicated Amendment 23 should include alternatives for monitoring and minimization of bycatch. They suggested coordinating vermilion and red snapper management practices could minimize bycatch.

Response: The Council recently approved, and NMFS is in the process of implementing, additional bycatch reporting methodologies in Amendment 22 to the FMP. These include the development of an observer program managed by NMFS for the reef fish fishery and enhancement of the Marine Recreational Fisheries Statistics Survey (MRFSS) by including headboats, using the same sampling methodology as used for charter vessels. Given these measures, NMFS does not see the need for additional reporting requirements at this time.

A bycatch practicability analysis was conducted for the vermilion snapper fishery in Amendment 23. The analysis concluded that it is not practical to further minimize bycatch in the directed vermilion snapper fishery. The economic and social costs and benefits associated with management measures intended to sustain the stock outweigh the benefits of trying to further minimize bycatch. Although all of the proposed harvest reduction measures would increase bycatch to varying degrees, increases in stock abundance would exceed losses resulting from bycatch, allowing the stock to rebuild to B_{MSY}. Additionally, because vermilion snapper constitute a small directed fishery, it is not expected that bycatch reduction measures would greatly affect other reef fish species caught as bycatch, such as red snapper.

Linking vermilion snapper management to red snapper management, for example, through establishment of concurrent fishing seasons, would be one way to minimize vermilion snapper bycatch. However, for both the recreational and commercial vermilion snapper fisheries, this would result in greater reductions in harvest than required by the rebuilding plan. For the commercial fishery, the reductions in harvest would be well over 50 percent, and for the recreational fishery, the reduction would be approximately 30 percent (based on landings data presented in Table 4.2.3.1.8 in Amendment 23). The reduction required by the vermilion snapper rebuilding plan is 26.3 percent for the commercial fishery and 21.5 percent for the recreational fishery.

An additional factor complicating co-management of these species is that vermilion snapper is a minor component of the reef fish fishery and so is generally not targeted. This means vermilion snapper are likely to be caught on reef fish trips targeting species other than red snapper, such as grouper and amberjack. If the seasons for red snapper and vermilion snapper are linked, then reef fish fishermen catching vermilion snapper during the closed season would have to discard those fish. This could actually lead to an increase in the bycatch mortality of vermilion snapper.

Finally, an individual fishing quota (IFQ) management system is being developed for the commercial red snapper fishery. IFQs, if implemented, would give individual fishermen shares in the fishery that they could fish anytime during the fishing year. This would result in the elimination of seasonal closures for the commercial red snapper fishery.

Comment 4: Five comments were received suggesting the rebuilding period for the stock should be shorter than the currently proposed maximum allowable time period.

Response: The Council evaluated rebuilding periods shorter than the allowed maximum of 10 years. In selecting a rebuilding plan, it is necessary to balance the conservation mandate provided by national standard 1 with the directive provided by national standard 8 to minimize to the extent practicable adverse economic impacts on fishing communities.

A 3-year rebuilding period that used a no-harvest strategy was not practicable because it required eliminating all discard mortality from directed and non-directed fisheries, would actually increase discard mortality dramatically because all unavoidable commercial and recreational catch would have to be released, and would cause major economic and social hardships on the directed fishery.

The Council also evaluated 7-year rebuilding plans. While they would end overfishing within one year after the rebuilding plans are implemented and would provide a quicker recovery of the stock, the initial reductions in harvest would be approximately 30 percent or greater. This initial reduction in harvest would create too much of a negative short-term impact on the economic and social environment of the fishery.

Comment 5: Three comments indicated that the reductions in harvest applied to the commercial and recreational fisheries are not fair and equitable.

Response: As stated in Amendment 23, the rebuilding plan requires across-the-board reductions in harvest of 25.5 percent for the proposed rebuilding plan. However, the Council noted that the vermilion snapper harvest increased dramatically during the late 1980s and early 1990s due primarily to increases in commercial harvest. This increase is believed to have created the overfishing and overfished conditions that are addressed by Amendment 23. Thus, the Council determined some shift of the socioeconomic costs of rebuilding to the commercial fishery was needed. The reduction assigned to the recreational fishery was 21.5 percent, which required an increased harvest reduction for the commercial fishery of 26.3 percent. In comparison to the across-the-board 25.5 percent reduction requirement in the rebuilding plan, the percent increase in the reduction for the commercial fishery (1.3 percent more than 25.5 percent) is lower than the percent decrease in the recreational fishery (3.5 percent less than 25.5 percent) because most landings are by the commercial sector.

Comment 6: The analysis of the alternatives is based on an uncertain assessment model and uses outdated information rather than relying on the best scientific data available.

Response: Amendment 23 is based on the best available scientific information and accordingly will establish a 10-year vermilion snapper rebuilding plan ending overfishing and rebuild the stock to B_{MSY}. The Council's Reef Fish Stock Assessment Panel (RFSAP) examined several models developed and analyzed as part of the assessment. The RFSAP determined the surplus production models, which tracked total fish biomass rather than separating them into age classes, were more appropriate because of difficulties in the age-length relationship for vermilion snapper. Moreover, the RFSAP chose what was termed the base model as the best model because of its relatively good fit to the observed data.

The rebuilding time frame and harvest reduction measures were developed from the base model for the stock assessment. However, running the assessment model to project future outcomes was complicated by new data collected since 1999 that suggest the stock is in better condition than predicted. These extended indices suggested vermilion snapper has either stabilized or increased since 1999.

Stock assessments are based on complex models that take in a variety of fishery information, integrating estimates of stock abundance with fishing effort to project how many fish may be caught for various time periods. It is difficult to evaluate the effects of new information without conducting a new assessment. Therefore, to estimate harvest reductions, fishing mortality rates from 2000–2003 were assumed to remain at the 1999 levels. New data were incorporated into the harvest levels by scaling up harvests from 2003 and into the future by the amount the 2000–2002 harvests exceeded those predicted by the 2001 assessment model. This approach was more conservative than if harvest and biomass levels had been scaled up to reflect recent harvests and catch-per-unit-effort values, but not so restrictive had recent harvest data been used in the model without any scaling.

A new stock assessment will occur later in 2005 using the Southeast Data Assessment and Review (SEDAR) process. The results of this assessment will be presented to the Council and NMFS in either late 2005 or early 2006. Based on the assessment outcome, the development of new management measures may be needed to maintain harvest levels consistent with the rebuilding plan. A description of how the Council and NMFS would review and adjust the rebuilding plan, either through a plan amendment, regulatory amendment, interim rule, or emergency action, is contained in the amendment.

Comment 7: One commenter indicated the SEIS fails to meet several basic standards required of all EISs according to Federal regulations, particularly not providing a full range of management options.

Response: NMFS, Council, and Environmental Protection Agency (EPA) staff have extensively reviewed the SEIS for consistency with NEPA. In its review of the draft and final SEIS, the EPA rated both versions of the document with a ''lack of objection.'' Additionally, the scoping and public hearing drafts of this document have been made available for public review and comment.

The Council initially examined a variety of rebuilding plans, but some of these were rejected for further analyses for a variety of reasons. A 3-year rebuilding plan, the time needed to rebuild the vermilion snapper stock to B_{MSY} in 3 years in the absence of any fishing, was considered. However, this plan was rejected because zero harvest would cause major economic and social hardship on the recreational for-hire and commercial fisheries. The Council also evaluated three 10-year rebuilding plans and three 7-year rebuilding plans that had to be modified after landing estimates were revised to account for new fishing effort information. Finally, the Council rejected two 7-year constant harvest rebuilding plans because they did not provide much additional benefit over the 10-year constant harvest rebuilding plan.

The Council also initially considered several harvest reduction measures. The Council chose a 10-year stepped rebuilding strategy that required approximately a 25.5–percent reduction in total harvest during the first 4 years. Alternatives that either did not meet or significantly exceeded the percent reduction necessary for the stepped rebuilding strategy were removed from further consideration. While all harvest reductions cause hardship during the first 5 years of implementation, those greater than 30 percent were believed too disruptive early in the rebuilding process because the biological gains at the end of the rebuilding time were all the same. All of the tools available for reducing harvest (bag, trip, size, season, and quota options) remain as considered alternatives but are within the range of 21.5 to 30.0 percent, depending on the option.

There are other tools that can reduce effective harvest, such as closing essential fish habitat for vermilion snapper (e.g., marine protected areas (MPAs)) or mandating gear changes (e.g., minimum hook size or number of hooks per line). These were considered by the Council, but deemed impractical because this species comprises less than 10 percent of the species harvested in the reef fish fishery. Any measures to implement MPAs or gear changes would affect other managed species in the reef fish management unit as well as those in other finfish fisheries.

Comment 8: One commenter suggested Amendment 23 should have include ecosystem-based management alternatives to reduce harvest.

Response: The Council did consider ecosystem-based forms of management such as MPAs and fishing gear restrictions. Vermilion snapper, like most other snappers, do not seem to have well-established, small geographic niches where spawning occurs. Broad areas of hard bottom would have to be closed to significantly benefit vermilion snapper spawning or essential fish habitat, and these areas would encompass habitat used for similar purposes by nearly all other reef fish species. The Council also considered changes to reef fish fishing gear such as increasing hook size or reducing the number of hooks per line. However, these methods, like MPAs, would affect the harvest of any other species in the fishing area and therefore were not considered in this amendment, which is specific to only one species in the reef fish management unit. These types of management tools are appropriate for broad use for protection of essential fish habitat and reduction of effort and bycatch in the reef fish fishery.

Comment 9: One commenter indicated there should be a 10- percent reduction in the vermilion snapper total allowable catch.

Response: To rebuild the vermilion snapper stock, current harvests need to be reduced overall by 25.5 percent. This reduction will allow the vermilion snapper stock to rebuild. Once the stock has been rebuilt, the stock will be managed for optimum yield. This harvest level will be maintained by fishing 75 percent of F_{MSY}. This should result in approximately 94 percent of MSY. While this reduction is not quite the 10 percent requested by the commenter, the stock biomass will be able to build to approximately 25 percent above B_{MSY}, and the chance the stock will become overfished will be less than 30 percent.

Comment 10: One commenter suggested the Council and NMFS do not need to adhere to the 1-year deadline to submit a plan for ending overfishing and rebuilding an overfished stock (16 U.S.C. 1854(e)(3)) if updated information on the stock will soon be available and the Council and NMFS have shown substantial progress in developing the plan.

Response: The Magnuson-Stevens Act states that if the Secretary determines at any time that a fishery is overfished, the appropriate Council will be notified, and the Secretary will request action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Council then has 1 year to prepare a fishery management plan, plan amendment, or proposed regulations for the fishery to end overfishing and rebuild affected stocks. The Magnuson-Stevens Act also states that, if the Council does not submit a fishery management plan, plan amendment, or proposed regulations to the Secretary within the 1-year period after a fishery is declared overfished, the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months.

Comment 11: One commenter suggested enforcement should be increased to ensure regulations are followed in the fishery.

Response: Regulations promulgated through this final rule include size limits, bag limits, and seasonal closures. Currently the vermilion snapper fishery is regulated using size and bag limits, so these two measures should not create an increased enforcement burden. Seasonal closures have been used successfully to manage other reef fish species such as red snapper, red grouper, gag, black grouper, and greater amberjack. Adding vermilion snapper to this list will require carefully monitoring of fishing activities for this species to determine compliance with regulations. However, new methods beyond current practices would not need to be developed.

NMFS' Office for Law Enforcement (OLE) is dedicated primarily to the enforcement of laws that protect and regulate our nation's living marine resources and their natural habitat. To better utilize resources, OLE has developed partnerships with the U.S. Coast Guard, other Federal enforcement agencies, and state marine enforcement agencies.

Classification

The Administrator, Southeast Region, NMFS, has determined Amendment 23 is necessary for the conservation and management of the vermilion snapper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council and NMFS prepared an FSEIS for Amendment 23. The FSEIS was filed with the Environmental Protection Agency on March 3, 2005. A notice of availability was published on March 11, 2005 (70 FR 12211). In approving Amendment 23, on May 23, 2005, NMFS issued a ROD identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**).

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

NMFS prepared a Final Regulatory Flexibility Analyses (FRFA). The FRFA incorporates the initial regulatory flexibility analysis and a summary of the analyses completed to support the action. Three commenters expressed concern regarding the economic impact of this rule (see Comment 5). They stated that applying a greater percentage reduction to commercial harvest than to recreational harvest is not fair and equitable. NMFS' response explains that a slightly higher percentage harvest reduction (about a 4–percent difference) was applied to the commercial sector because commercial landings increased significantly during the early 1990s and, thus, contributed more to the overfishing of vermilion snapper than did recreational harvest. For that reason, the slightly higher percent reduction was justified and appropriate. Therefore, no changes were made in the rule as a result of these comments. A summary of the FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this final rule. This final rule will set specific sustainable fishing parameters for vermilion snapper and establish a rebuilding plan for the overfished vermilion snapper stock.

The objectives of this final rule are to bring management of the vermilion snapper fishery into compliance with requirements of the Magnuson-Stevens Act by addressing the overfished and overfishing conditions of the vermilion snapper stock and establishing a rebuilding plan for the overfished vermilion snapper stock.

This final rule contains no changes in record-keeping or compliance requirements.

This final rule would impact both the commercial and recreational participants in the Gulf reef fish fishery. At present, both the commercial and for-hire reef fish permits are under a moratorium, and no new permits will be issued during the moratorium. Reef fish dealers in the Gulf are required to obtain permits to purchase reef fish caught in the Gulf. There are 1,158 active commercial reef fish permits (as of October 2003). Of these commercial permitees, 441 vessels reported in their logbook submissions to have landed vermilion snapper, with most using vertical line gear. There are 1,552 for-hire vessels with active permits (as of October 2003). Also, there are 431 dealers that purchase reef fish from various vessels in the Gulf. This final rule is expected to affect these commercial vessels, for-hire vessels, and fish dealers.

According to a survey of commercial fishing vessels in the Gulf, average gross receipts ranged from $24,095 for low-volume vertical line vessels to $116,989 for high-volume longline vessels. The average reef fish vessel generated annual gross revenues of $65,200, of which $7,400 was from sales of vermilion snapper. Also, according to a survey of reef fish processors in the Southeast, employment by reef fish processors totaled 700 individuals, both part and full time. Given this number and the likelihood that fish dealers are generally of smaller size than processors, employment by any of the affected dealers is very likely to be less than 500 individuals. Furthermore, according to two surveys of for-hire vessels in the Gulf, average gross receipts for charterboats range from $58,000 in the eastern Gulf to $81,000 in the western Gulf, or an overall average of $64,000. Gross receipts for headboats range from $281,000 in the eastern Gulf to $550,000 in the western Gulf, or an overall average of $400,000. A fishing business is considered a small entity if it is independently owned and operated and not dominant in its field of operation, and if it has annual receipts not in excess of $3.5 million in the case of commercial harvesting entities or $6.0 million in the case of for-hire entities, or if it has fewer than 500 employees in the case of fish processors, or fewer than 100 employees in the case of fish dealers. Given these data on earnings and employment, all of the business entities affected by this final rule are small business entities.

By themselves, measures for specifying sustainable fishing parameters have no economic impacts on small entities. These specifications simply establish the boundaries for management measures that may need to be implemented. Effects would be quantified and addressed, and appropriate analyses would be performed, when such management measures are considered.

Five rebuilding alternatives were considered. Alternative 1 is the no action alternative and is not considered a viable alternative because, pursuant to the Magnuson-Stevens Act, a rebuilding plan must be instituted for the overfished vermilion snapper stock. Alternative 2 is a 10-year rebuilding plan using a constant harvest strategy. Alternative 3, which is the measure specified in this final rule, is a 10-year rebuilding plan using a stepped strategy. Alternative 4 is a 10-year rebuilding plan using a constant fishing mortality strategy. Alternative 5 is a 7-year rebuilding plan using a stepped strategy. As all alternatives require harvest reductions, at least in the initial years of the rebuilding, all would result in negative short-term impacts, but, as the stock rebuilds, more positive benefits would be realized. Over the short-run, Alternative 2 results in the least negative impacts, followed by Alternative 3. Over time, Alternative 2 would provide the lowest overall economic impact on small entities. Alternatives 4 and 5 would provide higher positive economic impacts than Alternative 3 over a period of 10 years, but, in the early years of the rebuilding, these two alternatives would bring about more negative effects on small entities. Over the entire period considered, the various rebuilding alternatives may be ranked in descending order in terms of net economic impacts as follows:

Alternative 5, Alternative 4, Alternative 3, Alternative 2, and Alternative 1.

Measures to reduce harvest of the recreational and commercial sectors have direct and immediate impacts of the operations of small entities. Six recreational management measure alternatives were considered. Alternative 1 is the no action alternative, which does not effect any harvest reduction. Alternative 2 provides for a daily bag limit of 2 fish per person within the existing 20–reef fish aggregate bag limit. Alternative 3A, which is the measure specified in the rule, imposes a minimum size limit of 11 inches (28 cm) total length (TL) with a 10–fish daily bag limit per person within the existing 20–reef fish aggregate bag limit. Alternative 3B imposes a minimum size limit of 11 inches (28 cm) TL with a 7–fish daily bag limit per person within the existing 20–reef fish aggregate bag limit. Alternative 4 considers the implicit recreational allocation of total allowable catch as a quota and would subject the recreational fishery to possible quota closures. Alternative 5 requires a vermilion snapper seasonal closure from May 1 to June 21 annually. Alternative 4 provides the most net revenues to for-hire vessels in both the short term and the long term. A good deal of this effect, however, is due to the higher allocation given to the recreational sector. All other alternatives, including Alternative 3A, would generate short-term reductions but long-term increases in vessel net revenues. Alternative 3A results in the highest negative impacts in the short term and the lowest positive impacts in the long term. Alternative 3A would reduce for-hire vessel profits by $2.29 million ($1,476 per vessel) in the first 5 years of the rebuilding but would increase profits by $5.05 million ($3,254 per vessel) in the subsequent rebuilding period, resulting in an overall increase in profits by $2.76 million ($1,778 per vessel) for the entire 10-year rebuilding period.

Eight commercial management alternatives were considered. Alternative 1 is the no action alternative. Alternative 2 provides for a trip limit option of 1,625 lb (737 kg) of vermilion snapper. Alternative 3 imposes a minimum size limit of 12 inches (30.5 cm) TL. Alternative 4A imposes an 11–inch (28–cm) TL minimum size limit together with a trip limit of 2,300 lb (1,043 kg) of vermilion snapper. Alternative 4B imposes an 11–inch (28–cm) TL minimum size limit together with a trip limit of 2,250 lb (1,021 kg) of vermilion snapper. Alternative 5 imposes a quota equivalent to a 67–percent allocation of total allowable catch, thereby potentially subjecting the commercial fishery to quota closures. Alternative 6 provides for a vermilion snapper seasonal closure of August 1 through September 30 and December 1 through 31 annually. Alternative 7, which is the measure specified in the rule, imposes an 11–inch (28–cm) TL size limit and a 40-day closed season from April 22 through May 31. All alternatives would result in negative effects in the short term. Over the 10-year period, the seasonal closure (Alternative 6), the quota (Alternative 5), and the 11–inch TL minimum size along with the 40-day closure (Alternative 7) would result in the largest increase in net revenues. Size limit alternatives would result in the least increase in net revenues. In fact, the 12–inch (30.5–cm) TL minimum size limit would reduce net revenues over a 10-year period. Alternative 7 would reduce commercial vessel profits by $1.37 million ($3,107 per vessel) in the first 5 years of the rebuilding but would increase profits by $2.85 million ($6,463 per vessel) in the subsequent period, resulting in an overall increase in profits by $1.47 million ($3,333 per vessel) for the entire 10-year rebuilding period.

Copies of the FRFA are available from NMFS (see **ADDRESSES**).

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all permit holders for the Gulf reef fish fishery.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: June 2, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.34, paragraph (n) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(n) *Seasonal closure of the commercial fishery for vermilion snapper.* The commercial fishery for vermilion snapper in or from the Gulf EEZ is closed from April 22 through May 31, each year. During the closure, no person aboard a vessel for which a valid Federal commercial permit for Gulf reef fish has been issued may fish for or possess vermilion snapper in the Gulf, regardless of where harvested. However, a person aboard a vessel for which the permit indicates both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may continue to retain vermilion snapper under the bag and possession limits specified in § 622.39(b)(1)(v) and (b)(2), respectively, provided the vessel is operating as a charter vessel or headboat. During the closure, the sale or purchase of vermilion snapper is prohibited as specified in § 622.45(c)(5).

* * * * *

■ 3. In § 622.37, paragraph (d)(1)(ii) is revised to read as follows:

§ 622.37 Size limits.

* * * * *

(d) * * *

(1) * * *

(ii) Vermilion snapper--11 inches (27.9 cm), TL.

* * * * *

■ 4. In § 622.39, paragraph (b)(1)(v) is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (b)(1)(iv) and paragraphs (b)(1)(vi) through (b)(1)(vii) of this section and excluding dwarf sand perch and sand perch--20, but not to exceed 10 vermilion snapper.

* * * * *

■ 5. In § 622.45, paragraph (c)(5) is added to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(c) * * *

(5) From April 22 through May 31, each year, no person may sell or purchase vermilion snapper harvested from the Gulf by a vessel with a valid Federal commercial permit for Gulf reef fish. This prohibition on sale/purchase does not apply to vermilion snapper

that were harvested, landed ashore, and sold prior to April 22 and were held in cold storage by a dealer or processor.

* * * * *

[FR Doc. 05–11391 Filed 6–7–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 679 and 680

[Docket No. 040831251–5138–04; I.D. 082504A]

RIN 0648–AS47

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: NMFS issues this final rule, correcting amendment to the regulations governing the Bering Sea and Aleutian Islands crab fisheries. This action is necessary to clarify procedures and to correct discrepancies provided in a previous rulemaking. This final rule is intended to promote the goals and objectives of the Fishery Management Plan for Bering Sea/Aleutian Islands (BSAI) King and Tanner Crabs (FMP), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law.

DATES: Effective April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

In January 2004, the U.S. Congress amended section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Pub. L. 108–199, section 801). As amended, section 313(j)(1) requires the Secretary of Commerce to approve and implement by regulation the Crab Rationalization Program (Program), as it was approved by the North Pacific Fishery Management Council (Council) between June 2002 and April 2003, and all trailing amendments, including those reported to Congress on May 6, 2003. In June 2004, the Council consolidated its actions on the Program into the Council motion, which is contained in its entirety in Amendment 18. Additionally, in June 2004, the Council developed Amendment 19, which represents minor changes necessary to implement the Program. The Notice of Availability for these amendments was published in the **Federal Register** on September 1, 2004 (69 FR 53397). NMFS published a proposed rule to implement Amendments 18 and 19 on October 29, 2004 (69 FR 63200). NMFS approved Amendments 18 and 19 on November 19, 2004. NMFS published a final rule to implement Amendments 18 and 19 on March 2, 2005 (70 FR 10174). NMFS also published a final rule (March 18, 2005; 70 FR 13097) to correct OMB control numbers provided in the final rule dated March 2, 2005 (70 FR 10174).

Need for Corrections

NOAA seeks to ensure the final rule (March 2, 2005; 70 FR 10174) conforms to the statutory requirements and intent of the Program, to provide clarification regarding the Program's regulatory requirements, and to correct minor technical errors.

1. Statutory Conformance Corrections

These corrections are made to sections of the rule that do not currently conform to the statutory requirements of the Program. Some of the dates specified in the final rule for qualifying years and eligibility years were incorrect. This correction ensures that the final rule conforms to statutory requirements.

Table 7 to Part 680

For the Bristol Bay red king crab (BBR) Quota Share (QS) fishery, the participation seasons for Catcher Vessel Crew (CVC) and Catcher/processor Crew (CPC) QS are corrected by adding the year 1999 and removing the year 2002. On page 10293, row 1 (BBR), column D, paragraph (3) is removed. On page 10293, row 1 (BBR), column D, paragraph (2) is redesignated as paragraph (3), ''October 15, 2001 through October 18, 2001.'' On page 10293, row 1 (BBR), column D, paragraph (1) is redesignated as paragraph (2), ''October 16, 2000 through October 20, 2000.'' On page 10293, row 1 (BBR), column D, a new paragraph (1) is added, ''October 15, 1999 through October 20, 1999.''

For the Bering Sea snow crab (BSS) QS fishery, the 1998 qualifying year for QS and the 1998 eligibility year for CVC and CPC QS are corrected. On page 10293, row 2 (BSS), columns B and C, paragraphs (3) are amended by removing ''March 21, 1998'' and adding in its place ''March 20, 1998.''

For the Bering Sea Tanner crab (BST) QS fishery, the qualifying years for CVC and CPC QS are corrected. The 1991/1992 year was inadvertently omitted from the qualifying years and is added by this rule. The year November 1, 1993 through November 10, 1993 is combined with the year November 20, 1993 through January 1, 1994. On page 10293, row 3 (BST), column B, paragraphs (2) and (3) are combined as new paragraph (3), ''November 1, 1993 through November 10, 1993, and November 20, 1993 through January 1, 1994.'' On page 10293, row 3 (BST), column B, paragraph (1) is redesignated as paragraph (2), ''November 15, 1992 through March 31, 1993.'' On page 10293, row 3 (BST), column B, new paragraph (1) is added, ''November 15, 1991 through March 31, 1992.'' This date was inadvertently omitted in the final rule.

For the Eastern Aleutian Islands golden king crab QS fishery (EAG), the date for the 2000 eligibility year for CVC and CPC QS is corrected. On page 10294, row 4 (EAG), column C, paragraph (5) is amended by removing ''September 25, 2000'' and adding in its place ''September 24, 2000.''

For the Western Aleutian Islands golden king crab QS fishery (WAG), the date for the 1997/1998 qualifying year for QS, the date for the 2000/2001 qualifying year for QS, 2000/2001 eligibility year for CVC and CPC QS, and the 2000/2001 recent participation season for CVC and CPC QS are corrected. On page 10294, row 7 (WAG), column B, paragraph (2) is amended by removing ''August 21, 1998'' and adding in its place ''August 31, 1998.'' On page 10294, row 7 (WAG), columns B and C, paragraphs (5) and column D, paragraph (2), are amended by removing ''March 28, 2001'' and adding in its place ''May 28, 2001.''

For the Western Aleutian Islands red king crab QS fishery (WAI), the date for the 1993/1994 eligibility year for CVC and CPC QS is corrected and two typographical errors are corrected. On page 10295, row 8 (WAI), column C, paragraph (2) is amended by removing ''November 1, 1995'' and adding in its place ''November 1, 1993.'' On page 10295, row 8 (WAI), column C, the introductory paragraph is amended by removing a duplicate paragraph ''3 of the 4 seaons beginning on:'' On page 10295, row 8 (WAI), column D, the introductory paragraph is amended by removing ''fishiers'' and adding in its place ''fisheries.''

Table 9 to Part 680

For the Bering Sea Tanner crab QS fishery (BSS), the date of the 1998 initial

issuance of crab PQS is corrected. On page 10295, row 2 Bering Sea snow crab (BSS), column B, season (2) is amended by removing ''March 21, 1998'' and adding in its place ''March 20, 1998.''

2. Regulatory Intent Corrections and Clarifications

These corrections are clarifications that explain regulatory changes that are more substantive than typographical/editorial type corrections.

Preamble, Western Alaska Community Development Quota (CDQ) Program

Wording in the preamble of the proposed rule (69 FR 63200) regarding crab issues in the CDQ Program was correct. However, in two places, wording in the final rule regarding these same issues was inadvertently changed from ''IFQ'' to read ''quotas'' and ''quota.'' This rule corrects those two errors.

On page 10176, column 3, 21 lines after the heading, Community Development Quota Program and Community Allocations, replace ''when IFQ have been reached'' with ''when quotas have been reached.''

On page 10176, column 3, 22 lines after the heading, Community Development Quota Program and Community Allocations, remove ''associated with IFQ overages'' and replace it with ''associated with quota overages.''

Section 680.6 Crab Economic Data Report (EDR)

Section 680.6 is corrected by removing the phrase ''whether OUR CRAB or THEIR CRAB'' to remove potential double counting activities during custom processing. This phrase was removed from the EDRs, but inadvertently was not removed from the regulations. The phrase ''whether OUR CRAB or THEIR CRAB'' is removed at the following locations:

On page 10253, column 3, paragraph 680.6(c)(5)(xii);

On page 10255, column 1, paragraph 680.6(d)(4)(xii);

On page 10256, column 3, paragraph 680.6(e)(5)(ix);

On page 10257, column 3, paragraph 680.6(f)(4)(ix);

On page 10259, column 2, paragraph 680.6(g)(5)(ix); and

On page 10260, column 1, paragraph 680.6(h)(4)(ix).

On page 10260, column 1, paragraph 680.6(h)(4)(viii) is amended by removing ''over all vessel activities'' and adding in its place ''over all plant activities.''

Section 680.7 Prohibitions

On page 10261, column 1, paragraphs 680.7(e)(3) and (e)(4) are removed. Paragraph (e)(3) prohibits the receipt of Class B IFQ by transfer if a person holds PQS or IPQ. Paragraph (e)(4) prohibits the receipt of Class B IFQ by transfer if you are affiliated with a person who holds PQS or IPQ. At page 10186, column 1, 3rd full paragraph, halfway down, the clear intent of NMFS is to allow this same receipt of Class B IFQ by transfer. ''The Annual Application for IFQ or IPQ'' requires each applicant to annually submit their affidavit and provides a reasonable assurance that if affiliation were to change in mid-season, those changes will be reflected in the affidavit for the following year. NMFS established a time period from shortly after the annual application is due until IFQ and IPQ is issued in which no transfers of IFQ or IPQ will be approved (see paragraph 680.41(b)(4)). This will provide NMFS with time to review the affiliation information, determine the amount of Class A IFQ and Class B IFQ to be issued to each IFQ holder, and to issue that IFQ and IPQ. Once issued, transfers could occur that could result in Class B IFQ being transferred to IPQ holders or their affiliates. Because NMFS is modifying the way in which Class A IFQ and Class B IFQ is allocated to PQS or IPQ holders and their affiliates, this would be permitted.

Section 680.21 Crab Harvesting Cooperatives

In the proposed rule, paragraph 680.21(f)(1) stated that ''transfers of QS that occur after the June 30 deadline'' . . . ''will not be reflected in the type or amount of IFQ permit issued to the cooperative for the subsequent fishing season.'' A new crab fishing year begins each July 1; therefore this paragraph speaks to the next fishing season. This text was revised in the final rule, paragraph 680.21(d)(1) to state that ''transfers of QS that occur after the August 1 deadline'' . . . ''will not be reflected in the type or amount of IFQ permit issued to the crab harvesting cooperative for the subsequent fishing season.'' When the date changed from June 30 to August 1, the term ''subsequent'' inadvertently was not changed to read ''current,'' to reflect that a new fishing year had begun. On page 10269, column 1, paragraph 680.21(d)(1) is amended by removing ''subsequent fishing season'' and adding in its place ''current fishing season.''

Section 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance

NMFS is removing a 60 day notification deadline at Section 680.40(f)(3)(i). These regulations require that an application for PQS based on legal processing that occurred in an Eligible Crab Community (ECC), other than Adak, must include an affidavit signed by the applicant stating that notice has been provided to the ECC of the applicant's intent to apply for PQS 60 days prior to the end of the application period for receiving PQS or QS. The requirement that this notice be provided to the ECC 60 days prior to the end of the application period is being removed. The application period was specified in the **Federal Register** on March 8, 2004 (70 FR 11194). The application period ends on June 3, 2005. The date 60 days prior to the end of the application period is April 4, 2005.

NMFS is removing a similar 60 day notification deadline at Section 680.40(f)(3)(ii). These regulations require that an application for PQS based on legal processing that occurred in the Gulf of Alaska north of a line at 56°20′ N. lat. must include an affidavit signed by the applicant stating that notice has been provided to the City of Kodiak and Kodiak Island Borough of the applicant's intent to apply for PQS 60 days prior to the end of the application period for receiving PQS or QS. The requirement that this notification must have been provided to the ECC 60 days prior to the end of the application period is being removed.

The notification deadline was intended to ensure that potential PQS holders contacted ECCs in a timely fashion so that right of first refusal contracts specified under section 313(j) of the Magnuson-Stevens Act could be completed among the ECC entities selected by the ECCs and PQS holders prior to the end of the application period and the issuance of PQS. This deadline would unduly restrict potential PQS holders and contravenes the Magnuson-Stevens Act as amended by Congress in the Consolidated Appropriations Act of 2004 (Pub. L. No. 108–199). The 60- day deadline provided in the final rule is not specified in the Magnuson-Stevens Act amendment and nothing in that amendment would limit the ability of potential PQS holders to receive PQS if notice of the intent to apply for PQS is not provided. This notification deadline was not intended to serve as a mechanism to preclude the ability of potential PQS holders to receive PQS if

they did not meet the notification deadline. This correction must be made prior to the end of the application period (June 3, 2005).

Section 680.42 Limitations on Use of QS, PQS, IFQ, and IPQ

Under the final rule regulatory text, NMFS is concerned that the use caps could be interpreted in a way that could allow substantially more consolidation than the Council intended, and more specifically, it is not consistent with the preamble language where NMFS makes a specific reference to affiliation. This final rule corrects the wording to be more specific. On page 10288, column 2, paragraph 680.42(a)(4)(iii) is amended by removing ''A non-individual person that holds PQS would be limited to a QS and IFQ cap that would be calculated based on the sum of all QS or IFQ held by that PQS holder and all QS or IFQ held by any entity in which that PQS holder has a 10 percent or greater direct or indirect ownership interest.'' and adding in its place ''A non-individual person that holds PQS, and all affiliates of that person, is limited to a QS and IFQ use cap that is calculated based on the sum of all QS or IFQ held by that PQS holder and all QS or IFQ held by any affiliate of the PQS holder.''

On page 10288, column 3, paragraph 680.42(b)(3)(iii) is amended by removing ''A person that holds PQS would be limited to a PQS use cap that would be calculated based on the sum of all PQS held by that PQS holder and all PQS held by any entity in which that PQS holder has a 10 percent or greater direct or indirect ownership interest.'' and adding in its place ''A person that holds PQS is limited to a PQS use cap that is calculated based on the sum of all PQS held by that PQS holder and all PQS held by any affiliate of the PQS holder.''

On page 10288, column 3, paragraph 680.42(b)(3)(iv) is amended by removing ''A person that holds IPQ would be limited to an IPQ use cap that would be calculated based on the sum of all IPQ held by that IPQ holder and all IPQ held by any entity in which that IPQ holder has a 10 percent or greater direct or indirect ownership interest.'' and adding in its place ''A person that holds IPQ is limited to an IPQ use cap that is calculated based on the sum of all IPQ held by that IPQ holder and all IPQ held by any affiliate of the IPQ holder.''

3. Technical Corrections

The following typographical and editorial corrections are made in this rule.

Table 14a to Part 679

On page 10239, the ADF&G code for ''Other Alaska'' is amended by removing ''UNK'' and adding in its place ''OAK.''

Table 14b to Part 679

On page 10239, the NMFS code for ''Other California'' is amended by removing ''1599'' and adding in its place ''599.''

Table 7 to Part 680

On page 10294, column D, row 6, a ''period'' is added after the last word ''fisheries.''

Section 680.5 Recordkeeping and Reporting (R&R)

On page 10247, paragraph 680.5(a)(2)(i)(H) is amended by removing the reference to ''§ 680.5(d)'' and adding in its place ''§ 680.5(e).''

On page 10247, paragraph 680.5(a)(2)(i)(I) is amended by removing the reference to ''§ 680.5(e)'' and adding in its place ''§ 680.5(f).''

On page 10247, paragraph 680.5(a)(2)(i)(J) is amended by removing the reference to ''§ 680.5(f)'' and adding in its place ''§ 680.5(g).''

On page 10247, column 2, paragraph 680.5(b)(4) is amended by removing reference to ''paragraphs (c)(7), (c)(8), or (c)(9)'' and adding in its place ''paragraphs (d)(7), (d)(8), or (d)(9).''

On page 10248, column 2, paragraphs 680.5(d)(5) and (d)(6) are amended by removing reference to ''paragraph (b)(5)'' and adding in its place ''paragraph (b)(7).''

On page 10248, column 2, paragraph 680.5(d)(7) is amended by removing reference to ''paragraph (c)(11)'' and adding in its place ''paragraph (d)(9).''

On page 10248, column 2, paragraph 680.5(d)(8) is amended by removing reference to ''paragraph (c)(7)'' and adding in its place ''paragraph (d)(7).''

On page 10248, column 3, paragraph 680.5(d)(9) is amended by removing reference to ''paragraph (c)(7)'' and adding in its place ''paragraph (d)(7).''

Section 680.7 Prohibitions

On page 10260, column 3, paragraph 680.7(c)(1) is amended by removing ''BSAI crab'' and adding in its place ''CR crab.''

On page 10260, column 3, paragraph 680.7(c)(2) is amended by removing ''IFQ crab'' and adding in its place ''CR crab.''

Section 680.20 Arbitration System

On page 10267, column 1, paragraph 680.20(h)(4)(iv) is amended by removing ''would be'' and adding in its place ''will be.''

Section 680.23 Equipment and Operational Requirements

On page 10273, column 3, paragraph 680.23(g)(5)(iv) is amended by removing ''paragraph (e)(3)'' and adding in its place ''paragraph (f)(3).''

Section 680.40 Quota Share (QS), Processor QS (PQS), Individual Fishing Quota (IFQ), and Individual Processor Quota (IPQ) Issuance

On page 10281, column 1, paragraph 680.40(h)(4) is amended by removing ''would be'' and adding in its place ''will be.''

On page 10281, column 2, paragraph 680.40(h)(5) is amended by removing ''would be'' and adding in its place ''will be.''

Section 680.42 Limitations on Use of QS, PQS, IFQ, and IPQ

On page 10287, column 3, paragraph 680.42(a)(2) is amended by removing reference to ''(b)(1)(ii)'' and adding in its place ''(a)(1)(ii).''

On page 10287, column 3, paragraph 680.42(a)(2) is amended by removing reference to ''(b)(3)'' and adding in its place ''(a)(3).''

On page 10288, column 2, paragraph 680.42(a)(5) is amended by removing reference to ''paragraph (b)'' and adding in its place ''paragraph (a).''

4. Correction to Information About OMB Control Number 0648–0518

Incorrect burden estimates for 4 of the Economic Data Reports (EDRs) were provided in the final rule, although the correct burden estimates are given in the individual EDRs and in the PRA support statement. On page 10231, column 3, the EDR burden estimates are corrected as follows: remove 25 hours for Catcher processor annual EDR and replace it with 12.5 hours; remove 15 hours for Catcher vessel annual EDR and replace it with 7.5 hours; remove duplicate phrase ''15 hours for Catcher vessel annual EDR;'' remove 15 hours for the Stationary crab floating processor historical EDR and replace it with 20 hours; remove 15 hours for the Stationary crab floating processor annual EDR and replace it with 10 hours; remove 15 hours for Shoreside crab processor historical EDR and replace it with 20 hours. and remove 15 hours for Shoreside crab processor annual EDR and replace it with 10 hours.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final rule is necessary for the conservation and management of the BSAI crab fisheries.

The Regional Administrator also has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Pursuant to 5 U.S.C.553(b)(B), the Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable, unnecessary, and contrary to the public interest. Through this action, NOAA seeks to ensure that the final rule conforms to the statutory requirements and intent of the Program, provide clarification regarding the Program's regulatory requirements and correct minor technical errors. Prior notice and an opportunity for public comment on this action would be impracticable, unnecessary, and contrary to the public interest for the following reasons. First, corrections to ensure the rule's conformance with the Program's statutory requirements are non-discretionary. As such, prior notice and an opportunity for public comment are unnecessary as the agency has no choice but to ensure its regulations are consistent with the statute. Second, corrections and clarifications to ensure the rule's compliance with the intent of the Program must be made immediately in order to provide the regulated community with adequate and accurate information to, among other things, apply for participation in the Program prior to the closing of the application date (June 3, 2005). Prior notice and an opportunity for public comment on these measures are impracticable and contrary to the public interest because the time necessary to provide such procedures would lead to the realization of the very harm sought to be avoided by this rule. In contrast, waiving those procedures does not affect the eligibility of those otherwise eligible under the regulations as originally promulgated and ensures that all parties who might be eligible are aware of that fact prior to the close of the application period. Finally, the editorial changes made by this rule are non-substantive. As a result, prior notice and an opportunity for comment on these changes are unnecessary.

The non-substantive changes made by this rule are not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d). With respect to those substantive changes made by this rule, the AA also finds good cause to waive the 30-day delay in the effective date of under 5 U.S.C. 553(d)(3). The waiver of the 30-day delay in effective date requirement of 5 U.S.C. 553(d) is necessary to provide the regulated community with timely, adequate and accurate information to, among other things, apply for participation in the program prior to the closing of the application date (June 3, 2005). A 30-day delay in the effective date of this notice would lead to the realization of the very harm sought to avoided by this rule. Waiving the 30-day delay in effective date requirement does not effect the eligibility of those otherwise eligible under the regulations as originally promulgated and ensures all parties who might be eligible are aware of that fact prior to the close of the application period.

List of Subjects in 50 CFR Parts 679 and 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 27, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons discussed in the preamble, 50 CFR parts 679 and 680 are corrected by making the following correcting amendments:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

■ 2. In part 679, revise Table 14a to Part 679 to read as follows:

TABLE 14A TO PART 679—PORT OF LANDING CODES[1]: ALASKA

Port Name	NMFS Code	ADF&G Code
Adak	186	ADA
Akutan, Akutan Bay	101	AKU
Alitak	103	ALI
Anchorage	105	ANC
Angoon	106	ANG
Aniak	300	ANI
Anvik	301	ANV

TABLE 14A TO PART 679—PORT OF LANDING CODES[1]: ALASKA—Continued

Port Name	NMFS Code	ADF&G Code
Atka	107	ATK
Auke Bay	136	JNU
Beaver Inlet	119	DUT
Bethel	302	BET
Captains Bay	119	DUT
Chefornak	189	CHF
Chignik	113	CHG
Cordova	115	COR
Craig	116	CRG
Dillingham	117	DIL
Douglas	136	JNU
Dutch Harbor/Unalaska	119	DUT
Egegik	122	EGE
Ekuk	303	EKU
Elfin Cove	123	ELF
Emmonak	304	EMM
Excursion Inlet	124	XIP
False Pass	125	FSP
Fairbanks	305	FBK
Galena	306	GAL
Glacier Bay	307	GLB
Glennallen	308	GLN
Gustavus	127	GUS
Haines	128	HNS
Halibut Cove	130	HBC
Homer	132	HOM
Hoonah	133	HNH
Hydaburg	309	HYD
Hyder	134	HDR
Juneau	136	JNU
Kake	137	KAK
Kaltag	310	KAL
Kasilof	138	KAS
Kenai	139	KEN
Kenai River	139	KEN

TABLE 14A TO PART 679—PORT OF LANDING CODES[1]: ALASKA—Continued

Port Name	NMFS Code	ADF&G Code
Ketchikan	141	KTN
King Cove	142	KCO
King Salmon	143	KNG
Kipnuk	144	KIP
Klawock	145	KLA
Kodiak	146	KOD
Kotzebue	311	KOT
Mekoryuk	147	MEK
Metlakatla	148	MET
Moser Bay	312	MOS
Naknek	149	NAK
Nenana	313	NEN
Nikiski (or Nikishka)	150	NIK
Ninilchik	151	NIN
Nome	152	NOM
Nunivak Island	314	NUN
Old Harbor	153	OLD
Other Alaska[1]	499	OAK

TABLE 14A TO PART 679—PORT OF LANDING CODES[1]: ALASKA—Continued

Port Name	NMFS Code	ADF&G Code
Pelican	155	PEL
Petersburg	156	PBG
Port Alexander	158	PAL
Port Armstrong	315	PTA
Port Bailey	159	PTB
Port Graham	160	GRM
Port Lions	316	LIO
Port Moller	317	MOL
Port Protection	161	PRO
Quinhagak	187	QUK
Sand Point	164	SPT
Savoonga	165	SAV
Selawik	326	SWK
Seldovia	166	SEL
Seward	167	SEW
Sitka	168	SIT
Skagway	169	SKG
Soldotna	318	SOL

TABLE 14A TO PART 679—PORT OF LANDING CODES[1]: ALASKA—Continued

Port Name	NMFS Code	ADF&G Code
St. George	170	STG
St. Mary	319	STM
St. Paul	172	STP
Tee Harbor	136	JNU
Tenakee Springs	174	TEN
Togiak	176	TOG
Toksook Bay	177	TOB
Tununak	178	TUN
Ugashik	320	UGA
Unalakleet	321	UNA
Valdez	181	VAL
Wasilla	322	WAS
Whittier	183	WHT
Wrangell	184	WRN
Yakutat	185	YAK

[1]To report a landing at a location not currently assigned a location code number, use the code for "Other Alaska" code "499" or "OAK."

■ 3. In part 679, revise Table 14b to Part 679 to read as follows:

TABLE 14B TO PART 679—PORT OF LANDING CODES: NON-ALASKA (CALIFORNIA, CANADA, OREGON, WASHINGTON)

Port State or Country	Port Name	NMFS Code	ADF&G Code
CALIFORNIA	Eureka	500	EUR
	Other California[1]	599	OCA
CANADA	Other Canada[1]	899	OCN
	Port Edward	802	PRU
	Prince Rupert	802	PRU
OREGON	Astoria	600	AST
	Newport	603	NPT
	Other Oregon[1]	699	OOR
	Portland	323	POR
	Warrenton	604	WAR
WASHINGTON	Anacortes	700	ANA
	Bellingham	702	BEL
	Blaine	717	BLA
	Everett	704	EVT

TABLE 14B TO PART 679—PORT OF LANDING CODES: NON-ALASKA (CALIFORNIA, CANADA, OREGON, WASHINGTON)—Continued

Port State or Country	Port Name	NMFS Code	ADF&G Code
	La Conner	708	LAC
	Olympia	324	OLY
	Other Washington[1]	799	OWA
	Seattle	715	SEA
	Tacoma	325	TAC

[1]To report a landing at a location not currently assigned a location code number, use the code for ''Other California,'' ''Other Oregon,'' ''Other Washington,'' or Other Canada'' at which the landing occurs.

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 4. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862.

§ 680.5 [Corrected]

■ 5. Correct § 680.5 as follows:

a. Paragraph (a)(2)(i)(H), remove ''§ 680.5(d)'' and add in its place ''§ 680.5(e)'';

b. Paragraph (a)(2)(i)(I), remove ''§ 680.5(e)'' and add in its place ''§ 680.5(f)'';

c. Paragraph (a)(2)(i)(J), remove ''§ 680.5(f)'' and add in its place ''§ 680.5(g)'';

d. Paragraph (b)(4), remove ''paragraphs (c)(7), (c)(8), or (c)(9)'' and add in its place ''paragraphs (d)(7), (d)(8), or (d)(9)'';

e. Paragraphs (d)(5) and (d)(6), remove ''paragraph (b)(5)'' and add in its place ''paragraph (b)(7)'';

f. Paragraph (d)(7)(vii), remove ''paragraph (c)(11)'' and add in its place ''paragraph (d)(9)'';

g. Paragraph (d)(8), remove ''paragraph (c)(7)'' and add in its place ''paragraph (d)(7)''; and

h. Paragraph (d)(9), remove ''paragraph (c)(7)'' and add in its place ''paragraph (d)(7).''

§ 680.6 [Corrected]

■ 6. Correct § 680.6 as follows:

a. Remove the phrase ''whether OUR CRAB or THEIR CRAB,'' from wherever it appears in the section; and

b. Paragraph (h)(4)(viii), remove ''over all vessel activities'' and add in its place ''over all plant activities.''

§ 680.7 [Corrected]

■ 7. Correct § 680.7 as follows:

a. Paragraph (c)(1), remove ''BSAI crab'' and add in its place ''CR crab'';

b. Paragraph (c)(2), remove ''IFQ crab'' and add in its place ''CR crab''; and

c. Remove paragraphs (e)(3) and (e)(4).

§ 680.20 [Corrected]

■ 8. In § 680.20, paragraph (h)(4)(iv), remove ''would be'' and add in its place ''will be.''

§ 680.21 [Corrected]

■ 9. In § 680.21, paragraph (d)(1), remove ''subsequent fishing season'' and add in its place ''current fishing season.''

§ 680.40 [Corrected]

■ 10. Correct § 680.40 as follows:

a. Paragraphs (f)(3)(i) and (f)(3)(ii), remove ''60 days prior to the end of the application period''; and

b. Paragraphs (h)(4) and (h)(5), remove ''would be'' and add in its place ''will be.''

§ 680.42 [Corrected]

■ 11. Correct § 680.42 as follows:

a. Paragraph (a)(2), remove ''(b)(1)(ii)'' and add in its place ''(a)(1)(ii)'' and remove ''(b)(3)'' and add in its place ''(a)(3)''; and

b. Paragraph (a)(5), remove ''paragraph (b)'' and add in its place ''paragraph (a).''

■ 12. In § 680.42, revise paragraphs (a)(4)(iii), (b)(3)(iii), and (b)(3)(iv) to read as follows:

§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

(a) * * *

(4) * * *

(iii) A non-individual person that holds PQS, and all affiliates of that person, is limited to a QS and IFQ use cap that is calculated based on the sum of all QS or IFQ held by that PQS holder and all QS or IFQ held by any affiliate of the PQS holder.

* * * * *

(b) * * *

(3) * * *

(iii) A person that holds PQS is limited to a PQS use cap that is calculated based on the sum of all PQS held by that PQS holder and all QS or IFQ held by any affiliate of the PQS holder.

(iv) A person that holds IPQ is limited to an IPQ use cap that is calculated based on the sum of all IPQ held by that IPQ holder and all IPQ held by any affiliate of the IPQ holder.

* * * * *

■ 13. Revise Table 7 to Part 680 to read as follows:

TABLE 7 TO PART 680—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY

Column A: Crab QS Fisheries	*Column B:* Qualifying Years for QS	*Column C:* Eligibility Years for CVC and CPC QS	*Column D:* Recent Participation Seasons for CVC and CPC QS	*Column E:* Subset of Qualifying Years
For each crab QS fishery the Regional Administrator shall calculate (see § 680.40(c)(2)):	QS for any qualified person based on that person's total legal landings of crab in each of the crab QS fisheries for any:	In addition, each person receiving CVC and CPC QS must have made at least one landing per year, as recorded on a State of Alaska fish ticket, in any three years during the base period described below:	In addition, each person receiving CVC or CPC QS, must have made at least one landing, as recorded on a State of Alaska fish ticket, in at least 2 of the last 3 fishing seasons in each of the crab QS fisheries as those seasons are described below:	The maximum number of qualifying years that can be used to calculate QS for each QS fishery is:
1. Bristol Bay red king crab (BBR)	4 years of the 5-year QS base period beginning on: (1) November 1-5, 1996; (2) November 1-5, 1997; (3) November 1-6, 1998; (4) October 15-20, 1999; (5) October 16-20, 2000.	3 years of the 5-year QS base period beginning on: (1) November 1-5, 1996; (2) November 1-5, 1997; (3) November 1-6, 1998; (4) October 15-20, 1999; (5) October 16-20, 2000.	(1) October 15-20, 1999. (2) October 16-20, 2000. (3) October 15-18, 2001.	4 years
2. Bering Sea snow crab (BSS)	4 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 20, 1998; (4) January 15, 1999 through March 22, 1999; (5) April 1-8, 2000.	3 years of the 5-year period beginning on: (1) January 15, 1996 through February 29, 1996; (2) January 15, 1997 through March 21, 1997; (3) January 15, 1998 through March 20, 1998; (4) January 15, 1999 through March 22, 1999; (5) April 1-8, 2000.	(1) April 1-8, 2000. (2) January 15, 2001 through February 14, 2001. (3) January 15, 2002 through February 8, 2002.	4 years
3. Bering Sea Tanner crab (BST)	4 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1-10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1-21, 1994; (5) November 1-16, 1995; (6) November 1-5, 1996 and November 15-27, 1996.	3 of the 6 seasons beginning on: (1) November 15, 1991 through March 31, 1992; (2) November 15, 1992 through March 31, 1993; (3) November 1-10, 1993, and November 20, 1993 through January 1, 1994; (4) November 1-21, 1994; (5) November 1-16, 1995; (6) November 1-5, 1996 and November 15-27, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	4 years

TABLE 7 TO PART 680—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	*Column B:* Qualifying Years for QS	*Column C:* Eligibility Years for CVC and CPC QS	*Column D:* Recent Participation Seasons for CVC and CPC QS	*Column E:* Subset of Qualifying Years
4. Eastern Aleutian Islands golden king crab (EAG)	5 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 though November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; (5) August 15, 2000 through September 24, 2000.	3 years of the 5-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 though November 24, 1997; (3) September 1, 1998 through November 7, 1998; (4) September 1, 1999 through October 25, 1999; (5) August 15, 2000 through September 24, 2000.	(1) September 1 1999 through October 25, 1999. (2) August 15, 2000 through September 24, 2000. (3) August 15, 2001 through September 10, 2001.	5 years
5. Pribilof red king and blue king crab (PIK)	4 years of the 5-year period beginning on: (1) September 15- 21, 1994; (2) September 15-22, 1995; (3) September 15-26, 1996; (4) September 15-29, 1997; (5) September 15-28, 1998.	3 years of the 5-year period beginning on: (1) September 15-21, 1994; (2) September 15-22, 1995; (3) September 15-26, 1996; (4) September 15-29, 1997; (5) September 15-28, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries, except that persons applying for an allocation to receive QS based on legal landings made aboard a vessel less than 60 feet (18.3 m) LOA at the time of harvest are exempt from this requirement.	4 years
6. St. Matthew blue king crab (SMB)	4 years of the 5-year period beginning on: (1) September 15-22, 1994; (2) September 15-20, 1995; (3) September 15-23, 1996; (4) September 15-22, 1997; (5) September 15-26, 1998.	3 years of the 5-year period beginning on: (1) September 15-22, 1994; (2) September 15-20, 1995; (3) September 15-23, 1996; (4) September 15-22, 1997; (5) September 15-26, 1998.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	4 years
7. Western Aleutian Islands brown king crab (WAG)	5 of the 5 seasons beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 though August 31, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; (5) August 15, 2000 through May 28, 2001.	3 of the 5 seasons beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 though August 31, 1998; (3) September 1, 1998 through August 31, 1999; (4) September 1, 1999 through August 14, 2000; (5) August 15, 2000 through May 28, 2001.	(1) September 1 1999 through August 14, 2000. (2) August 15, 2000 through May 28, 2001. (3) August 15 2001 through March 30, 2002.	5 years

TABLE 7 TO PART 680—INITIAL ISSUANCE OF CRAB QS BY CRAB QS FISHERY—Continued

Column A: Crab QS Fisheries	*Column B:* Qualifying Years for QS	*Column C:* Eligibility Years for CVC and CPC QS	*Column D:* Recent Participation Seasons for CVC and CPC QS	*Column E:* Subset of Qualifying Years
8. Western Aleutian Islands red king crab (WAI)	3 of the 4 seasons beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1-28, 1994; (4) November 1, 1995 through February 13, 1996.	3 of the 4 seasons beginning on: (1) November 1, 1992 through January 15, 1993; (2) November 1, 1993 through February 15, 1994; (3) November 1-28, 1994; (4) November 1, 1995 through February 13, 1996.	In any 2 of the last 3 seasons prior to June 10, 2002 in the Eastern Aleutian Island golden (brown) king crab, Western Aleutian Island golden (brown) king crab, Bering Sea snow crab, or Bristol Bay red king crab fisheries.	3 years

■ 14. In part 680, revise Table 9 to Part 680 to read as follows:

TABLE 9 TO PART 680—INITIAL ISSUANCE OF CRAB PQS BY CRAB QS FISHERY

Column A: For each crab QS fishery	Column B: The Regional Administrator shall calculate PQS for any qualified person based on that person's total legal purchase of crab in each of the crab QS fisheries for any...
Bristol Bay red king crab (BBR)	3 years of the 3-year QS base period beginning on: (1) November 1-5, 1997; (2) November 1-6, 1998; and (3) October 15-20, 1999.
Bering Sea snow crab (BSS)	3 years of the 3-year period beginning on: (1) January 15, 1997 through March 21, 1997; (2) January 15, 1998 through March 20, 1998; and (3) January 15, 1999 through March 22, 1999.
Bering Sea Tanner crab (BST)	Equivalent to 50 percent of the total legally processed crab in the Bering Sea snow crab fishery during the qualifying years established for that fishery, and 50 percent of the totally legally processed crab in the Bristol Bay red king crab fishery during the qualifying years established for that fishery.
Eastern Aleutian Islands golden king crab (EAG)	4 years of the 4-year base period beginning on: (1) September 1, 1996 through December 25, 1996; (2) September 1, 1997 though November 24, 1997; (3) September 1, 1998 through November 7, 1998; and (4) September 1, 1999 through October 25, 1999.
Pribilof Islands red and blue king crab (PIK)	3 years of the 3-year period beginning on: (1) September 15-26, 1996; (2) September 15-29, 1997; and (3) September 15-28, 1998.
St. Matthew blue king crab (SMB)	3 years of the 3-year period beginning on: (1) September 15- 23, 1996; (2) September 15-22, 1997; and (3) September 15-26, 1998.
Western Aleutian Islands golden king crab (WAG)	4 years of the 4-year base period beginning on: (1) September 1, 1996 through August 31, 1997; (2) September 1, 1997 though August 31, 1998; (3) September 1, 1998 through August 31, 1999; and (4) September 1, 1999 through August 14, 2000.
Western Aleutian Islands red king crab (WAI)	Equivalent to the total legally processed crab in the Western Aleutian Islands golden (brown) king crab fishery during the qualifying years established for that fishery.

[FR Doc. 05–11392 Filed 6–7–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 109
Wednesday, June 8, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No. SW013; Special Condition No. 27–013–SC]

Special Condition: Robinson R44 Helicopters, Section 27.1309, Installation of an Autopilot (AP) Stabilization Augmentation System (SAS) That Has Potential Failure Modes With Criticality Categories Higher Than Those Envisioned by the Applicable Airworthiness Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special condition.

SUMMARY: This proposed special condition is issued for the modification of the Robinson Model R44 helicopter. This modification will have novel or unusual design features associated with installing a complex Autopilot/Stabilization Augmentation System (AP/SAS) that has potential failure modes with more severe adverse consequences than those envisioned by the existing applicable airworthiness regulations. This proposal contains the additional safety standards that the Administrator considers necessary to ensure that the failures and their effects are sufficiently analyzed and contained.

DATES: Comments must be received on or before July 8, 2005.

ADDRESSES: Send comments on this special condition in duplicate to: Federal Aviation Administration (FAA), Rotorcraft Standards Staff, Attention: Docket No. SW013, Fort Worth, Texas 76193–0110, or deliver them in duplicate to the Rotorcraft Standards Staff at 2601 Meacham Blvd., Fort Worth, Texas 76137. Comments must be marked: Docket No. SW013. You may inspect comments in the Docket that is maintained in Room 448 in the Rotorcraft Directorate offices at 2601 Meacham Blvd., Fort Worth, Texas, on weekdays, except Federal holidays, between 8:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76193–0110; telephone (817) 222–5121, FAX (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to submit written data, views, or arguments. Your communications should include the docket or special condition number and be sent in duplicate to the address stated above. We will consider all communications received on or before the closing date and may change the special condition in light of the comments received. Interested persons may examine the Docket. We will file a report in the docket summarizing each substantive public contact with FAA personnel concerning this special condition. If you wish us to acknowledge receipt of your comments, you must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. SW013.'' We will date stamp the postcard and mail it to you.

Background

On January 18, 2000, Hoh Aeronautics, Inc. submitted an application for Supplemental Type Certification (STC) for the installation of an Autopilot Stability/Augmentation System (AP/SAS) on a Robinson Model R44 helicopter through the FAA's Los Angeles Aircraft Certification Office (LA ACO). The Robinson Model R44 helicopter is a part 27 Normal category, single reciprocating engine, conventional helicopter designed for civil operation. The helicopter is capable of carrying three passengers with one pilot, and has a maximum gross weight of approximately 2,400 pounds. The major design features include a 2-blade, fully articulated main rotor, a 2-blade anti-torque tail rotor, a skid landing gear, and a visual flight rule (VFR) basic avionics configuration. Hoh Aeronautics, Inc. proposes to install a three-axis AP/SAS.

Type Certification Basis

Under the provisions of 14 CFR 21.115, Hoh Aeronautics, Inc. must show that the Robinson Model R44 helicopter, as modified by the installed AP/SAS, meets 14 CFR 21.101. The baseline of the certification basis for the unmodified R44 is listed in Type Certification Data Sheet Number H11NM, Revision 3. Additionally, compliance must be shown to any special conditions prescribed by the Administrator.

If the Administrator finds that the applicable airworthiness regulations, as they pertain to this STC, do not contain adequate or appropriate safety standards because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.101(d). Special conditions, as appropriate, are defined in § 11.19, and issued by following the procedures in § 11.38.

In addition to the applicable airworthiness regulations and special conditions, Hoh Aeronautics, Inc. must show compliance of the AP/SAS STC-altered Robinson Model R44 helicopter with the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant to 49 U.S.C. 44715 (formerly section 611 of the Federal Aviation Act of 1958 as amended by section 7 of Pub. L. 92–574, the ''Noise Control Act of 1972.'').

Novel or Unusual Design Features

The Hoh Aeronautics, Inc. AP/SAS system incorporates novel or unusual design features, for installation in a Robinson Model R44 helicopter, Type Certification Data Sheet Number H11NM. This AP/SAS system performs non-critical control functions, since this model helicopter has been certificated to meet the applicable requirements independent of this system. However, the possible failure modes for this system, and their effect on the helicopter's ability to continue safe flight and landing, are more severe than those envisioned by the present rules when they were first promulgated.

Discussion

Definitions: Definitions of Failure Condition Categories—Failure Conditions are classified, according to the severity of their effects on the

aircraft, into one of the following categories:

1. *No Effect*—Failure Conditions that would have no effect on safety; for example, Failure Conditions that would not affect the operational capability of the rotorcraft or increase crew workload; however, could result in an inconvenience to the occupants, excluding the flight crew.

2. *Minor*—Failure conditions which would not significantly reduce rotorcraft safety, and which would involve crew actions that are well within their capabilities. Minor failure conditions may include, for example, a slight reduction in safety margins or functional capabilities, a slight increase in crew workload, such as routine flight plan changes, or some physical discomfort to occupants.

3. *Major*—Failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions to the extent that there would be, for example, a significant reduction in safety margins or functional capabilities, a significant increase in crew workload or in conditions impairing crew efficiency, physical distress to occupants, possibly including injuries, or physical discomfort to the flight crew.

4. *Hazardous/Severe-Major*—Failure conditions which would reduce the capability of the rotorcraft or the ability of the crew to cope with adverse operating conditions to the extent that there would be:

- A large reduction in safety margins or functional capabilities;
- Physical distress or excessive workload that would impair the flight crew's ability to the extent that they could not be relied on to perform their tasks accurately or completely; or,
- Possible serious or fatal injury to a passenger or a cabin crewmember, excluding the flight crew.

Note: ''Hazardous/Severe-Major'' failure conditions can include events that are manageable by the crew by use of proper procedures, which, if not implemented correctly or in a timely manner, may result in a Catastrophic Event.

5. *Catastrophic*—Failure Conditions which would result in multiple fatalities to occupants, fatalities or incapacitation to the flight crew, or result in loss of the rotorcraft.

The present §§ 27.1309(b) and (c) regulations do not adequately address the safety requirements for systems whose failures could result in ''Catastrophic'' or ''Hazardous/Severe-Major'' failure conditions, or for complex systems whose failures could result in ''Major'' failure conditions. The current regulations are inadequate because when §§ 27.1309(b) and (c) were promulgated, it was not envisioned that this type of rotorcraft would use systems that are complex or whose failure could result in ''Catastrophic'' or ''Hazardous/Severe-Major'' effects on the rotorcraft. This is particularly true with the application of new technology, new application of standard technology, or other applications not envisioned by the rule that affect safety.

We propose to require that Hoh Aeronautics, Inc. provide the FAA with a Systems Safety Assessment (SSA) for the final AP/SAS installation configuration that will adequately address the safety objectives established by the Functional Hazard Assessment (FHA) and the Preliminary System Safety Assessment (PSSA), including the Fault Tree Analysis (FTA). This will ensure that all failure modes and their resulting effects are adequately addressed for the installed AP/SAS. The SSA process, FHA, PSSA, and FTA are all parts of the overall Safety Assessment (SA) process discussed in FAA Advisory Circular (AC) 27–1B (Certification of Normal Category Rotorcraft) and SAE document ARP 4761 (Guidelines and Methods for Conducting the Safety Assessment Process on civil airborne Systems and Equipment).

Requirements

We propose to require that the applicant comply with the existing requirements of § 27.1309 for all applicable design and operational aspects of the AP/SAS that are associated with the failure condition categories of ''No Effect,'' and ''Minor,'' and for non-complex systems whose failure condition category is classified as ''Major.'' We propose to require that the applicant comply with the requirements of this special condition for all applicable design and operational aspects of the AP/SAS that are associated with the failure condition categories of ''Catastrophic'' and ''Hazardous Severe/Major,'' and for complex systems whose failure condition category is classified as ''Major.''

Note: A complex system is a system whose operations, failure modes, or failure effects are difficult to comprehend without the aid of analytical methods (*e.g.*, Fault Tree Analysis, Failure Modes and Effect Analysis, Functional Hazard Assessment, etc.).

Design Integrity Requirements: Each of the failure condition categories defined in this special condition relate to corresponding aircraft systems integrity requirements. The systems design integrity requirements, for the Hoh Aeronautics, Inc. AP/SAS, as they relate to the allowed probability of occurrence for each failure condition category, along with the proposed software design assurance level, are as follows:

- ''Major''—Failures resulting in Major effects must be shown to be improbable, or on the order of 1×10^{-5} failures/hour, and associated software must be developed to the RTCA/DO–178B (Software Considerations in Airborne Systems And Equipment Certification) Level C software design assurance level.
- ''Hazardous/Severe-Major''—Failures resulting in Hazardous/Severe-Major effects must be shown to be extremely remote, or on the order of 1×10^{-7} failures/hour, and associated software must be developed to the RTCA/DO–178B (Software Considerations in Airborne Systems And Equipment Certification) Level B software assurance level.
- ''Catastrophic''—Failures resulting in Catastrophic effects must be shown to be extremely improbable, or on the order of 1×10^{-9} failures/hour, and associated software must be developed to the RTCA/DO–178B (Software Considerations in Airborne Systems And Equipment Certification) Level A design assurance level.

Design Environmental Requirements: We propose to require that the AP/SAS system equipment be qualified to the appropriate environmental level in the RTCA document DO–160D (Environmental Conditions and Test Procedures for Airborne Equipment), for all relevant aspects. This is to ensure that the AP/SAS system performs its intended function under any foreseeable operating condition, which includes the expected environment in which the AP/SAS is intended to operate. Some of the main considerations for environmental concerns are installation locations and the resulting exposure to environmental conditions for the AP/SAS system equipment, including considerations for other equipment that may be affected environmentally by the AP/SAS equipment installation. The level of environmental qualification must be related to the severity of the considered failure effects on the aircraft.

Test & Analysis Requirements: Compliance with the requirements contained in this special condition may be shown by a variety of methods, which typically consist of analysis, flight tests, ground tests, and simulation, as a minimum. Compliance methodology is partly related to the

associated failure condition category. If the AP/SAS is considered to be a complex system, compliance with the requirements contained in this document for aspects of the AP/SAS that can result in failure conditions classified as ''Major'' may be shown by analysis, in combination with appropriate testing to validate the analysis. Compliance with the requirements contained in this special condition for aspects of the AP/SAS that can result in failure conditions classified as ''Hazardous/Severe-Major'' may be shown by flight-testing in combination with analysis and simulation, and the appropriate testing to validate the analysis. Flight tests may be limited for this classification of failures due to safety considerations. Compliance with the requirements contained in this special condition for aspects of the AP/SAS that can result in failure conditions classified as ''Catastrophic'' may be shown by analysis, and appropriate testing in combination with simulation to validate the analysis. Very limited flight tests in combination with simulation are typically used as a part of a showing of compliance for failures in this classification. Flight tests are performed only in circumstances that use operational variations, or extrapolations from other flight performance aspects to address flight safety.

This proposed special condition would require that the AP/SAS system installed on a Robinson Model R44 helicopter, Type Certification Data Sheet Number H11NM, Revision 3, meet these requirements to adequately address the failure effects identified by the FHA, and subsequently verified by the SSA, within the defined design integrity requirements.

Applicability

This special condition would be applicable to the Hoh Aeronautics, Inc. AP/SAS installed as an STC approval, in a Robinson Model R44 helicopter, Type Certification Data Sheet Number H11NM, Revision 3.

Conclusion

This action would affect only certain novel or unusual design features for a Hoh Aeronautics, Inc. AP/SAS STC installed on one model series of helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the helicopter. The FAA is requesting comments to allow interested persons to submit views.

List of Subjects in 14 CFR Part 27

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows: 42 U.S.C. 7572, 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44704, 44709, 44711, 44713, 44715, 45303.

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is proposed as part of the Hoh Aeronautics, Inc. supplemental type certificate basis for an Autopilot/Stability Augmentation System to be installed on a Robinson Model R44 helicopter, Type Certification Data Sheet Number H11NM, Revision 3.

The Autopilot/Stability Augmentation System must be designed and installed so that the failure conditions identified in the Functional Hazard Assessment and verified by the System Safety Assessment, after design completion, are adequately addressed in accordance with the ''Definitions'' and ''Requirements'' sections (including the integrity, environmental, and test and analysis requirements) of this special condition.

Issued in Fort Worth, Texas, on May 26, 2005.

S. Frances Cox,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–11412 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2005–20417; Airspace Docket 05–ANM–06]

Proposed Revision of Class E Airspace; Wenatchee, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would revise the Class E airspace at Wenatchee, WA. This additional Class E airspace is necessary to accommodate the new Standard Instrument Landing System (ILS) Approach Procedure (SIAP) at Wenatchee/Pangborn Memorial Airport. This change is proposed to improve the safety of IFR aircraft executing the new Standard ILS SIAP at Wenatchee/Pangborn Memorial Airport, Wenatchee, WA.

DATES: Comments must be received by July 25, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA 2005–20417; Airspace Docket 05–ANM–06, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any find dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98055.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify Docket FAA 2005–20417; Airspace Docket 05–AMN–06, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket FAA 2005–20417; Airspace Docket 05–ANM–06.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov.* or the Superintendent of Documents' web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA, 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

This action would amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Wenatchee/Pangborn Airport, Wenatchee, WA. The establishment of a new Standard ILS SIAP requires additional Class E controlled airspace extending upward from 700 feet or more above the surface for the safety of IFR aircraft executing the new Standard ILS SIAP at Wenatchee/Pangborn Memorial Airport, Wenatchee, WA. Controlled airspace is necessary where there is a requirement for IFR services, which include arrival, departure, and transitioning to/from the terminal or en route environment.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

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

* * * * *

ANM WA E5 Wenatchee, WA [Revised]

Wenatchee/Pangborn Municipal Airport, WA
(Lat. 47°23′55″ N., long. 120°12′24″ W.)
Wenatchee VOR/DME
(Lat. 47°23′58″ N., long. 120°12′39″ W.)
That airspace extending upward from 700 feet above the surface within 4.3 miles south and 9.5 miles north of the 299° radial from the Wenatchee VOR/DME to 17 miles northwest of the VOR/DME, and within 4.3 miles southwest and 8 miles northeast of the 124° radial from the VOR/DME to 21 miles southeast of the VOR/DME, excluding that portion within the Moses Lake, Grant County, and Quincy Airport, WA, Class E airspace areas; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at: lat. 47°36′00″ N., long. 120°43′00″ W., to lat. 47°36′00″ N., long. 119°39′30″ W.; to lat. 47°07′00″ N., long. 119°39′30″ W.; to lat. 47°07′00″ N., long. 120°43′00″ W.; to the point of beginning. Excluding that portion within the Moses Lake, Grant County Airport, WA, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on May 24, 2005.

Danial Mawhorter,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. 05–11328 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21005; Airspace Docket No. 05–AWP–2]

Proposed Establishment of Class E Airspace; Marana Northwest Regional Airport, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Marana Positioning System (GPS) Instrument Approach Procedure (IAP) RNAV (GPS) to Runway 3, 21, 12, and 31 IAP and a Nondirectional Radio Beacon (NDB) IAP to RWY 12 and 30 at Marana Northwest Regional Airport, Tucson, AZ has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 3, 21, 21, and 30 and a NDB IAP RWY 12 and 30 at Marana Northwest Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Marana Northwest Regional Airport, Tucson, AZ.

DATES: Comments must be received on or before July 25, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21005/ Airspace Docket No. 05–AWP–2, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final dispositions in persons in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Western Terminal Operations, Federal Aviation Administration, at 15000 Aviation Boulevard, Lawndale, California 90261, telephone number (310) 725–6613.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21005/Airspace Docket No. 05–AWP–2.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents may also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additional, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Marana Northwest Regional Airport, AZ. The establishment of a RNAV (GPS) RWY 3, 21, 12, and 30 IAP and a NDB RWY 12/30 IAP at Marana Northwest Regional Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 3, 21, 12, and 30 IAP and NDB RWY 12 and 30 IAP at Marana Northwest Regional Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 3, 21, 12, and 30 IAP and a NDB IAP at Marana Northwest Regional Airport at Tucson, AZ. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and Effective September 16, 2004, is amended as follows:

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

* * * * *

AWP AZ E5, Marana Northwest Regional Airport, AZ [NEW]

Marana Northwest Regional Airport
(Lat. 32°24′34″ N. long. 111°13′06″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Marana Northwest Regional Airport, excluding that portion within the Tucson Class E airspace area.

* * * * *

Issued in Los Angeles, California, on May 23, 2005.

Stephen J. Lloyd,

Acting Area Director, Western Terminal Operations.

[FR Doc. 05–11326 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21226; Airspace Docket 05–ASO–8]

Proposed Establishment of Class E Airspace; Marion, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Marion, KY. Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) Runway (RWY) 7 and RWY 25 have been developed for Marion-Crittenden County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAPs and for Instrument Flight Rules (IFR) operations at Marion-Crittenden County Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAPs.

DATES: Comments must be received on or before July 8, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21226; Airspace Docket 05–ASO–8, at the beginning of your comments. You may also submit comments on the Internet at

http://dms.dot.gov. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and Operations Branch, Eastern En Route and Oceanic Service Area, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21226/ Airspace Docket No. 05–ASO–8.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Jamestown, KY. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–964 Comp,m p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

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

* * * * *

ASO KY E5 Marion, KY [NEW]

Marion-Crittenden County Airport, KY (Lat. 37°20′04″ N, long. 88°06′54″ W)

That airspace extending upward from 700 feet above the surface within a 6.7—radius of Marion-Crittenden County Airport; excluding that airspace within the Sturgis, KY, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on May 13, 2005.

Barry A. Knight,

Acting Area Director, Air Traffic Division, Southern Region.

[FR Doc. 05–11322 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 2000N–0504 (formerly Docket No. 00N–0504)]

Prevention of Salmonella Enteritidis in Shell Eggs During Production; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to July 25, 2005, the comment period for the document that appeared in the **Federal Register** of May 10, 2005 (70 FR

24490). In the document, FDA reopened the comment period until June 9, 2005, for the agency's proposed rule entitled ''Prevention of Salmonella Enteritidis in Shell Eggs During Production'' that published in the **Federal Register** of September 22, 2004 (69 FR 56824). FDA reopened the comment period to receive comment and other information regarding industry practices and programs that prevent *Salmonella* Enteritidis (SE)-monitored chicks from becoming infected by SE during the period of pullet rearing until placement into laying hen houses. The agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submit written or electronic comments by July 25, 2005.

ADDRESSES: You may submit comments, identified by Docket No. 2000N–0504, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2000N–0504 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number or regulatory information number for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the relevant docket number, 2000N–0504, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Lou Carson, Center for Food Safety and Applied Nutrition (HFS–032), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2130.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 10, 2005, FDA reopened the comment period until June 9, 2005, for the agency's proposed rule entitled ''Prevention of Salmonella Enteritidis in Shell Eggs During Production'' that published in the **Federal Register** of September 22, 2004. FDA reopened the comment period to receive comment and other information regarding industry practices and programs that prevent SE-monitored chicks from becoming infected by SE during the period of pullet rearing until placement into laying hen houses. Specifically, FDA requested additional comment and supportive data or other information on the following questions:

1. How many pullet growing facilities are there in the United States? What is the range in the number of houses on those facilities?

- What percentage of pullet growers are under programs or have practices aimed at preventing SE-monitored chicks from becoming infected by SE during the period of pullet rearing until placement into layer hen houses?
- Do State or regional Egg Quality Assurance Programs include provisions to prevent SE-monitored chicks from becoming infected by SE during the period of pullet rearing until placement into layer hen houses? How effective have the pullet programs (whatever the programs entail—cleaning, testing, etc.) been in reducing the prevalence of SE in layer flocks? How is effectiveness measured?

2. During pullet rearing, what programs or industry practices are currently taken to prevent SE-monitored chicks from becoming infected by SE during the period of pullet rearing until placement into layer hen houses?

- Are pullets, or their environment, tested for SE between the time they are procured as chicks and the time they enter layer houses? If so, when? When tested, approximately how often do pullets or pullet environments test positive? What happens after a positive test?
- Is vaccination used as a preventive measure, if so, when and how?
- What cleaning and disinfecting practices are common?
- Are measures taken to reduce the prevalence of rodents and pests in the pullet rearing houses?

Interested persons were given until June 9, 2005, to submit comments and supportive data or other information.

The agency has received requests for an extension of the reopened comment period. The requests conveyed concern that the current 30-day comment period does not allow sufficient time to develop meaningful responses for submission.

FDA has considered the requests for additional time to submit comments and is extending the reopened comment period for an additional 45 days, until July 25, 2005. The agency believes that a 45-day extension allows adequate time for interested persons to submit comments without significantly delaying the agency's progress in publishing a final rule. However, the agency does not anticipate granting any further extensions of the reopened comment period.

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. Identify comments 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.

Dated: June 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–11407 Filed 6–7–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–05–049]

RIN 1625–AA09

Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the Berkley Bridge across the Eastern Branch of the Elizabeth River, mile 0.4, in Norfolk, Virginia. The proposal would extend the morning and evening rush hour closure periods so that the morning rush hour period starts at 5 a.m. and ends at 9 a.m., and the evening rush hour starts at 3 p.m. and

ends at 7 p.m., Monday through Friday, except Federal holidays. The proposed change would relieve vehicular traffic congestion during the weekday rush hours while still providing for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before July 25, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The Fifth Coast Guard District 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, will become part of this docket and will be available for inspection or copying at Commander (obr), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

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 CGD05–05–049, 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 a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (obr), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On behalf of the City of Norfolk, the Virginia Department of Transportation (VDOT) who owns and operates this lift-type bridge, requested a change to the existing regulations for the Berkley Bridge. The current regulation allows the Berkley Bridge, at mile 0.4 in Norfolk, to remain closed one hour prior to the published start of a scheduled marine event regulated under §100.501, and remain closed until one hour following the completion of the event unless the Patrol Commander designated under §100.501 allows the bridge to open for commercial vessel traffic. In addition, the bridge shall open on signal any time except from 5:30 a.m. to 9 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays, and shall open at any time for vessels with a draft of 22 feet or more, provided that at least 12 hours advance notice has been given to the Berkley Bridge Traffic Control Room and shall open on signal at any time for a vessel in distress.

The purpose of this proposal is to help alleviate the current highway traffic congestion which has increased. The Berkley Bridge is a principle arterial route that serves as the major evacuation highway in the event of emergencies. Weekday vehicular traffic counts submitted by VDOT revealed that in 2002 and 2003, the Berkley Bridge has experienced a six percent (or 78,898 car) increase in traffic flow during the morning and evening rush hours.

Also, on September 18, 2003, the Hampton Roads area experienced severe damage as a result of Hurricane Isabel. Due to a heavy storm surge along the entire coastal area, the Portsmouth Midtown Tunnel was flooded. While the tunnel was undergoing an evaluation and repairs, a significant amount of vehicular traffic that used the tunnel on a daily basis was shifted onto the Berkley Bridge. In its attempt to manage this increase in road traffic and associated safety concerns, VDOT requested an immediate expansion of the current authorized rush hour closure periods of the Berkley Bridge. The Coast Guard responded by issuing a temporary final rule, until the repairs were completed that extended the morning and evening closure periods and suspended the provision allowing openings for deep-draft commercial vessels. The temporary final rulemaking implemented for the Berkley Bridge to stay open a little longer in the morning and evening was successful in easing the commute for thousands of motorists.

As a result of the temporary adjustments to the morning and evening rush hour closure periods caused by Hurricane Isabel, the current proposal was offered to help alleviate the growing vehicular traffic congestion and to increase public safety, while still balancing the needs of marine and vehicular traffic.

Discussion of Proposed Rule

The Coast Guard proposes to amend the regulations governing the Berkley Bridge, mile 0.4, at Norfolk, VA, at 33 CFR 117.1007, by revising paragraphs (c)(1) and (2) thereby, expanding the time periods in which the drawbridge may remain closed to vessels to be 5 a.m. to 9 a.m. and 3 p.m. to 7 p.m.

The proposal would change the telephone number to the Berkley Bridge Traffic Control Room from ''(804) 494–2424'' to ''(757) 494–2490''. The telephone number change would accurately reflect the new telephone number to this Bridge.

Also, the surplus language currently stated in 33 CFR 117.1007(c)(4) would be removed to be consistent with the general operating regulations at 33 CFR 117.31. The provision delineated at 33 CFR 117.31(b)(2) already requires that the draw shall open as soon as possible for vessels in distress and is no longer required to be published in each specific bridge regulation. Text modifications would be consistent with the proposed changes to be made in these paragraphs, as appropriate.

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 (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings, to minimize delays.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This proposed rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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 Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. 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 would call 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might 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 would 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, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117.1007 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Remove paragraphs §117.1007(c)(3) and (c)(4) and revise paragraphs (c)(1) and (c)(2) to read as follows:

§ 117.1007 Elizabeth River-Eastern Branch.

* * * * *

(c) * * *

(1) Shall open on signal at any time, except from 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m., Monday through Friday, except Federal holidays.

(2) From 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m., Monday through Friday, except Federal holidays, shall open at any time for commercial vessels with a draft of 22 feet or more, provided that at least 12 hours advance notice has been given to the Berkley Bridge Traffic Control room at (757) 494–2490.

Dated: May 31, 2005.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 05–11397 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R03–OAR–2004–WV–0003; FRL–7922–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the New Manchester-Grant Magisterial District SO_2 Nonattainment Area and Approval of the Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the State of West Virginia to redesignate the New Manchester-Grant Magisterial District in Hancock County from nonattainment to attainment of the national ambient air quality standards (NAAQS) for sulfur dioxide (SO_2). EPA is also proposing to approve a maintenance plan for the area as a SIP revision which would put in place a plan for maintaining the NAAQS for SO_2 for the next ten years. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by July 8, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in Edocket (RME) ID Number R03–OAR–2004–WV–0003 by one of the following methods:

A. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *Agency Web site: http://www.docket.epa.gov/rmepub*. RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. *E-mail: campbell.dave@epa.gov.*

D. *Mail:* R03–OAR–2004–WV–0003, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–WV–0003. EPA's policy is that all comments received will be included in the public docket without change, and may be available online at *http://www.docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, approving the redesignation request and maintenance plan for the New Manchester-Grant Magisterial District, Hancock County, West Virginia SO_2 nonattainment area, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: May 31, 2005.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 05–11382 Filed 6–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OAR–2003–0090; FRL–7921–9]

RIN 2060–AN04

Extension of the Deferred Effective Date for 8-hour Ozone National Ambient Air Quality Standards for Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to extend the deferral of the effective date of air quality designations for certain areas of the country that have entered into Early Action Compacts. Early Action Compact areas have agreed to reduce ground-level ozone pollution earlier than the Clean Air Act (CAA) requires. On April 30, 2004, EPA published a notice designating all areas of the country for the 8-hour ozone National Ambient Air Quality Standards (NAAQS). In the designation rule, EPA deferred the effective date of the nonattainment designation for 14 areas that had entered into Early Action Compacts. The current effective date is September 30, 2005. The EPA is now proposing to extend the deferral of the effective date for all 14 Early Action compact areas until December 31, 2006.

DATES: Comments must be received on or before July 8, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0090, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: Comments may be sent by electronic mail (e-mail) to *A-and-R-Docket@epa.gov,* Attention Docket ID No. OAR–2003–0090.
- Fax: Fax your comments to: 202–566–1741, Attention Docket ID No. OAR–2003–0090.
- Mail: Send your comments to: Air and Radiation Docket, U.S. Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR–2003–0090.
- Hand Delivery: Air and Radiation Docket, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B102, Washington, DC 20004, Attention Docket ID No. OAR–2003–0090. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0090. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Supplementary Information, Part I—General Information.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OAR Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OAR Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Driscoll, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C504–02, Research Triangle Park, NC 27711, phone number (919) 541–1051 or by e-mail at: *driscoll.barbara@epa.gov* or Mr. David Cole, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5565 or by e-mail at: *cole.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

In addition, please send a copy of your comments to: Barbara Driscoll, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards by one of the means listed:

- E-Mail: *driscoll.barbara@epa.gov.*
- Fax: (919) 541–0824, Attention: Barbara Driscoll.
- Mail: Barbara Driscoll, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code: C504–02, Research Triangle Park, NC 27711.
- Hand Delivery: Barbara Driscoll, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Outline

The following is an outline of the preamble.

I. General Information
II. What Is the Purpose of This Document?
III. What Action Has EPA Taken to Date for Early Action Compact Areas?
  A. What progress are compact areas making toward completing their milestones?
  B. What is today's proposed action for compact areas?
  C. What is EPA's schedule for taking further action to continue to defer the effective date of nonattainment designation for compact areas?
IV. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

II. What Is the Purpose of This Document?

The purpose of this document is to propose to extend the deferral of the effective date of the 8-hour ozone nonattainment designations for 14 participants in Early Action Compacts. Currently, the effective designation date is September 30, 2005, and this proposal would extend that date to December 31, 2006.

III. What Action Has EPA Taken to Date for Early Action Compact Areas?

This section discusses EPA's actions to date with respect to deferring the effective date of nonattainment designations for certain areas of the country that are participating in the Early Action Compact program. The EPA's April 30 designation rule (68 FR 70108) provides a description of the compact approach, the requirements for areas participating in the program and the impacts of the program on those areas.

On December 31, 2002, we entered into compacts with 33 communities. To receive the first deferral, these Early Action Compact areas agreed to reduce ground-level ozone pollution earlier than the CAA would require. On December 16, 2003 (68 FR 70108), we published a proposed rule to defer until September 30, 2005, the effective date of designation for Early Action Compact areas that did not meet the 8-hour ozone NAAQS. Fourteen of the 33 compact areas did not meet the 8-hour ozone NAAQS. Table 1 describes the milestones and submissions that compact areas are required to complete to continue eligibility for a deferred effective date of nonattainment designation for the 8-hour ozone standard.

TABLE 1.—EARLY ACTION COMPACT MILESTONES

Submittal date	Compact milestone
December 31, 2002	Submit Compact for EPA signature.
June 16, 2003	Submit preliminary list and description of potential local control measures under consideration.
March 31, 2004	Submit complete local plan to State (includes specific, quantified and permanent control measures to be adopted).
December 31, 2004	State submits adopted local measures to EPA as a SIP revision that, when approved, will be federally enforceable.
2005 Ozone Season (or no later than December 31, 2005)	Implement SIP control measures.
June 30, 2006	State reports on implementation of measures and assessment of air quality improvement and reductions in NO_X and VOC emissions to date.
December 31, 2007	Area attains 8-hour ozone NAAQS.

The final designation rule published April 30, 2004 (69 FR 23858), included the following actions for compact areas: deferred the effective date of nonattainment designation for 14 compact areas until September 30, 2005; detailed the progress compact areas had made toward completing their milestones; described the final action required for compact areas; detailed EPA's schedule for taking further action to extend the deferral of the effective date of nonattainment designations, if appropriate; and described the consequences for compact areas that do not meet a milestone. In the April 2004 action, we also discussed three compact areas which did not meet the March 31, 2004 milestone; Knoxville, Memphis, and Chattanooga, Tennessee. Knoxville and Memphis were designated nonattainment effective June 15, 2004. Chattanooga was later determined to have met the March 31, 2004 milestone, and we deferred the designation date until September 30, 2005 (69 FR 34080). This brought the number of participating compact areas to 31.

A. What Progress are Compact Areas Making Toward Completing Their Milestones?

In this section, we describe the status of the Early Action Compact areas' progress toward meeting their milestones. In general, the remaining 29 compact areas [1] have made satisfactory progress toward timely completion of their milestones. A compiled list of local measures is found on EPA's Web site for compact areas at: *http://www.epa.gov/ttn/naaqs/ozone/eac/*. By December 31, 2004, all States with compacts were required to submit to EPA State Implementation Plans (SIPs) revisions with locally adopted measures which if approved by EPA, are federally enforceable. Notices for each of the proposed SIP revisions will be published in the **Federal Register** by the respective EPA Regional Office as indicated in Table 2.

TABLE 2.—REGIONAL OFFICES ISSUING FEDERAL REGISTER NOTICES ON EARLY ACTION COMPACTS

Regional offices	States
Makeba Morris, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187, (215) 814–2187.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
Richard A. Schutt, Chief, Regulatory Development Section, EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, 12th Floor, Atlanta, GA 30303, (404) 562–9033.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

[1] Haywood and Putnam Counties decided to withdraw from the compact arrangement.

TABLE 2.—REGIONAL OFFICES ISSUING FEDERAL REGISTER NOTICES ON EARLY ACTION COMPACTS—Continued

Regional offices	States
Rebecca Weber, Associate Director, Air Programs, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–6656.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, 999 18th Street, Suite 300, Denver, CO 80202–2466, (303) 312–6005.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

B. What Is Today's Proposed Action for Compact Areas?

Today, we are proposing to extend the deferred effective date of the nonattainment designation for the 14 compact areas. These 14 areas have met all compact milestones through the December 31, 2004 submission. We are extending until December 31, 2006 the deferral of the effective date of the 8-hour ozone nonattainment designation for the compact area counties listed in Table 3 and are revising 40 CFR part 81 in the final rule to reflect this extension.

TABLE 3.—COMPACT AREAS WHICH QUALIFY FOR A DEFERRED EFFECTIVE DATE OF DECEMBER 31, 2006

[**Note:** Name of designated 8-hour ozone nonattanment area is in parentheses.]

State	Compact area (designated area)	Counties with designation deferred to December 31, 2006	Counties which are part of compacts and are designated unclassifiable/attainment
EPA Region 3			
VA	Northern Shenandoah Valley Region (Frederick County, VA), adjacent to Washington, DC-MD-VA.	Winchester City; Frederick County.	
VA	Roanoke Area (Roanoke, VA)	Roanoke County; Botetourt County; Roanoke City; Salem City.	
MD	Washington County (Washington County (Hagerstown, MD), adjacent to Washington, DC-MD-VA.	Washington County.	
WV	The Eastern Pan Handle Region (Berkeley & Jefferson Counties, WV), Martinsburg area.	Berkeley County; Jefferson County	
EPA Region 4			
NC	Unifour (Hickory-Morganton-Lenoir, NC)	Catawba County; Alexander County; Burke County (part); Caldwell County (part).	
NC	Triad (Greensboro-Winston-Salem-High Point, NC)	Randolph County; Forsyth County; Davie County; Alamance County; Caswell County; Davidson County; Guilford County; Rockingham County.	Surry County; Yadkin County; Stokes County.
NC	Cumberland County (Fayetteville, NC)	Cumberland County.	
SC	Appalachian—A (Greenville-Spartanburg-Anderson, SC)	Spartanburg County; Greenville County; Anderson County.	Cherokee County; Pickens County; Oconee County.
SC	Central Midlands—I Columbia area.	Richland County (part); Lexington County (part).	Newberry County; Fairfield County.
TN/GA	Chattanooga (Chattanooga, TN-GA)	Hamilton County, TN; Meigs County, TN; Catoosa County, GA.	Marion County, TN; Walker County, GA.
TN	Nashville (Nashville, TN)	Davidson County; Rutherford County; Williamson County; Wilson County; Sumner County.	Robertson County; Cheatham County; Dickson County.
TN	Johnson City-Kingsport-Bristol Area (TN portion only)	Sullivan Co, TN; Hawkins County, TN.	Washington Co, TN; Unicoi County, TN; Carter County, TN; Johnson County, TN.
EPA Region 6			
TX	San Antonio	Bexar County; Comal County; Guadalupe County.	Wilson County.
EPA Region 8			
CO	Denver (Denver-Boulder-Greeley-Ft. Collins-Love, CO)	Denver County; Boulder County (includes part of Rocky Mtn Nat. Park); Jefferson County; Douglas County; Broomfield; Adams County; Arapahoe County; Larimer County (part); Weld County (part).	

C. What Is EPA's Schedule for Taking Further Action to Continue to Defer the Effective Date of Nonattainment Designation for Compact Areas?

With this action, we are proposing to extend the deferred effective date of the nonattainment designation for compact areas which have met their obligations through December 31, 2006. Provided the extension is promulgated as proposed, we would propose and as appropriate, promulgate a further extension of the deferred effective date until December 31, 2007, for those areas that continue to meet all compact milestones through December 31, 2006. Before December 31, 2007, we intend to determine whether the compact areas that received the technical extension have attained the 8-hour ozone NAAQS and have met all compact milestones. By April 2008, we will issue our determination. If the area has not attained the standard, the nonattainment designation will take effect. If the compact area has attained the standard, EPA will issue an attainment designation for the area. Any compact area that has not attained the NAAQS and has an effective nonattainment designation will be subject to full planning requirements of title I, part D of the CAA, and the area will be required to submit a revised attainment demonstration SIP within 1 year of the effective date of designation.

IV. Statutory and Executive Order Reviews

This action proposes to extend the deferral of the effective date of the nonattainment designation for 14 compact areas until December 30, 2006.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This proposal does not require the collection of any information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Rather, this rule would extend the deferral of the effective date of the nonattainment designation for areas that implement control measures and achieve emissions reductions earlier than otherwise required by the CAA in order to attain the 8-hour ozone NAAQS. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling

officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. In this proposal, EPA is deferring the effective date of nonattainment designations for certain areas that have entered into compacts with us. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This proposed rule would not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have ''Tribal implications'' as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time or has participated in a compact.

The EPA specifically solicits additional comment on this proposed rule from Tribal officials.

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

Executive Order 13045: ''Protection of Children From Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposal is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355; May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

The EPA will encourage States that have compact areas to consider the use of such standards, where appropriate, in the development of their SIPs.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that this proposed rule should not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety.

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Authority: 42 U.S.C. 7408; 42 U.S.C. 7410; 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: June 2, 2005.

Stephen L. Johnson,

Administrator.

40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

2. Section 81.300 is amended by revising paragraphs (e)(3)(i) and (e)(3)(ii)(B) and (C) to read as follows:

§ 81.300 Scope.

* * * * *

(e) * * *

(3) * * *

(i) *General.* Notwithstanding clauses (i) through (iv) of section 107(d)(1)(B) of the Clean Air Act (42 U.S.C. 7407(d)(1)(B)), the Administrator shall defer until December 31, 2006 the effective date of a nonattainment designation of any area subject to a compact that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the 8-hour ozone national ambient air quality standard if the Administrator determines that the area subject to a compact has met the requirements in paragraphs (e)(2)(i) through (iii) of this section.

(ii) * * *

(B) Prior to expiration of the deferred effective date on December 31, 2006, if the Administrator determines that an area or the State subject to a compact has not met either requirement in paragraphs (e)(2)(iv) and (v) of this section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

(C) If the Administrator determines that an area subject to a compact and/or State has not met any requirement in paragraphs (e)(2)(iv) through (vi) of this section, the nonattainment designation shall become effective as of the deferred effective date, unless EPA takes affirmative rulemaking action to further extend the deadline.

* * * * *

[FR Doc. 05–11380 Filed 6–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152 and 158

[OPP–2004–0387; FRL–7716–4]

RIN 2070–AC12

Pesticides: Data Requirements for Conventional Chemicals; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA issued a proposed rule in the **Federal Register** on March 11, 2005, titled ''Pesticides; Data Requirements for Conventional Chemicals.'' This notice extends the closing date of the comment period announced in that notice by 90 days, from June 9, 2005, to September 7, 2005.

DATES: Comments, identified by the docket identification number OPP–2004–0387, must be received on or before September 7, 2005.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of March 11, 2005.

FOR FURTHER INFORMATION CONTACT: Vera Au, Field and External Affairs Division (FEAD), (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9069; fax number: (703) 305–5884; e–mail address: *au.vera@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the proposed rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR parts 152 and 158 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. What Action is EPA taking?

In the **Federal Register** of March 11, 2005 (40 FR 12275), EPA issued a proposed rule to update its pesticide data requirements for conventional pesticide chemicals. This document extends the public comment period for that proposed rule. EPA received requests to extend the comment period by 90 days from four industry organizations: CropLife America (CLA), the Biocides Panel of the American Chemistry Council (ACC), the Consumer Specialty Products Association (CPSA), and the Chemical Producers and Distributors Association (CPDA). All four groups requested that EPA extend the comment period because of the length of the proposed rule and the complex legal, scientific, and policy issues in the rule.

The requesters also cited a desire for more outreach by EPA on the contents of the proposal. EPA has already provided numerous opportunities for the public to inform itself about the provisions of the proposed rule. Of particular note, EPA conducted a two–day public workshop on the proposed rule on May 3 - 4, 2005. EPA also met individually with CLA members on two occasions and provided an overview of the proposed rule at a workshop sponsored by CPDA on May 4, 2005. Thus, EPA believes that the extensive outreach activities with stakeholders to date are sufficient for the purpose and scope of this particular rulemaking.

To allow stakeholders additional time to assess the impact of the proposed revisions on their particular situations and prepare their comments, EPA is extending the comment period by an additional 90 days. The comment period, which was set to end on June 9, 2005, will now end on September 7, 2005.

III. Do Any Statutory and Executive Order Reviews Apply to this Action?

No. This action is not a rulemaking, it merely extends the date by which public comments on a proposed rule must be submitted to EPA on a proposed rule that previously published in the **Federal Register** of March 11, 2005 (70 FR 12275).

List of Subjects in 40 CFR Parts 152 and 158

Administrative practice and procedure, Agricultural commodities, Environmental protection, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 1, 2005.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides, and Toxic Subtances.

[FR Doc. 05–11276 Filed 6–7–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7921–7]

National Oil and Hazardous Substance; Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Delatte Metals Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the Delatte Metals Superfund Site (Site), located in Ponchatoula, Tangipahoa Parish, Louisiana from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments concerning this Site must be received by July 8, 2005.

ADDRESSES: Written comments should be addressed to: Beverly Negri, Community Outreach Team Leader, U.S. EPA Region 6 (6SF–PO), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8157 or 1–800–533–3508 (*negri.beverly@epa.gov*).

FOR FURTHER INFORMATION CONTACT: Katrina Higgins-Coltrain, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8143 or 1–800–533–3508 (*coltrain.katrina@epa.gov*).

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Delatte Metals Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final notice of deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

Information Repositories: Comprehensive information about the Site is available for viewing and copying during central standard time at the Site information repositories located at: U.S. EPA Region 6 Library, 7th Floor, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, (214) 665–6424, Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; Ponchatoula Branch Library, 380 N. Fifth Street, Ponchatoula, Louisiana, 70454, (985) 386–6554, Monday through Friday 8:30 a.m. to 6:30 p.m.; Saturday 8:30 a.m. to 3 p.m.; Louisiana Department of Environmental Quality Public Records Center, Galvez Building Room 127, 602 N. Fifth Street, Baton Rouge, Louisiana, 70802, (225) 219–3168, Monday through Friday 8 a.m. to 4:30 p.m., E-mail: *publicrecords@la.gov*, Web page: *http://www.deq.louisiana.gov/pubrecords*.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: May 23, 2005.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

[FR Doc. 05–11271 Filed 6–7–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[USCG–2002–11288]

RIN 1625–AA38 (Formerly RIN 2115–AG30)

Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Notice of extension of comment period.

SUMMARY: The Coast Guard is extending the comment period on the interim rule on rates for pilotage on the Great Lakes published in the **Federal Register** on March 10, 2005, for 30 days. This will extend the comment period to July 8, 2005. We are extending the comment period to allow the public more time to comment on this subject.

DATES: Comments and related material must reach the Docket Management Facility on or before July 8, 2005.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2002–11288 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov*.

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Paul Wasserman, Director, Great Lakes Pilotage, Office of Waterways Management Plans and Policy (G–MWP), U.S. Coast Guard, telephone 202–267–2856 or e-mail him at *pwasserman@comdt.uscg.mil*. If you

have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2002–11288), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Background and Purpose

On March 10, 2005, the Coast Guard published an interim rule in the **Federal Register** (70 FR 12082) to update the rates for pilotage on the Great Lakes.

In comments to the docket, the Coast Guard has received three requests from the public to extend the comment period by 30 days.

We have decided to grant this request for an extension of the comment period from June 8, 2005 to July 8, 2005. This will allow the Coast Guard to collect and review all comments before issuing a final rule.

Dated: June 2, 2005.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

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BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[DA–05–1524]

Possible Revision or Elimination of Rules

AGENCY: Federal Communications Commission.

ACTION: Review of regulations under the Regulatory Flexibility Act of 1980; comments requested.

SUMMARY: This document invites members of the public to comment on the Federal Communication Commission's (FCC's or Commission's) rules to be reviewed pursuant to Section 610 of the Regulatory Flexibility Act of 1980, as amended (RFA). The purpose of the review is to determine whether Commission rules whose ten-year anniversary dates are in the years 2002 through 2005, as contained in the Appendix, should be continued without change, amended, or rescinded in order to minimize any significant impact the rules may have on a substantial number of small entities. Upon receipt of comments from the public, the Commission will evaluate those comments and consider whether action should be taken to rescind or amend the relevant rule(s).

DATES: Comments may be filed on or before September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Eric Malinen or Allan Manuel, Office of Communications Business Opportunities, Federal Communications Commission, (202) 418–0990. People with disabilities may contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554.

SUPPLEMENTARY INFORMATION: Each year the Commission will publish a list of ten-year old rules for review and comment by interested parties pursuant to the requirements of Section 610 of the RFA.

Public Notice—FCC Seeks Comment Regarding Possible Revision or Elimination of Rules Under the Regulatory Flexibility Act, 5 U.S.C. 610

Released: May 31, 2005

1. Pursuant to the RFA, *see* 5 U.S.C. 610, the FCC hereby publishes a plan for the review of rules adopted by the agency in calendar years 1993, 1994 and 1995 which have, or might have, a significant economic impact on a substantial number of small entities. The purpose of the review is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of Section 610 of the RFA, to minimize any significant economic impact of such rules upon a substantial number of small entities.

2. This document lists the FCC regulations to be reviewed during the next twelve months. In succeeding years, as here, the Commission will publish a list for the review of regulations promulgated ten years preceding the year of review.

3. In reviewing each rule under this plan to minimize the possible significant economic impact on a substantial number of small entities, consistent with the requirements of Section 610, the FCC will consider the following factors:

(a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with State and local governmental rules; and

(e) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

4. Appropriate information has been provided for each rule, including a brief

description of the rule and the need for and legal basis of the rule. The public is invited to comment on the rules chosen for review by the FCC according to the requirements of Section 610 of the RFA. All relevant and timely comments will be considered by the FCC before final action is taken in this proceeding. To file formally in this proceeding, participants should file an original and four copies of all comments with the Office of the Secretary, ATTN: OCBO. Comments will be available for public inspection during regular business hours in the FCC's Reference Information Center, Rm. CY–A257, 445 12th Street, S.W., Washington, DC 20554. For additional information on the requirements of the RFA visit *www.fcc.gov/ocbo.*

Federal Communications Commission.

Carolyn Fleming Williams,

Director, Office of Communications and Business Opportunities.

Appendix

List of rules for review pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 610, for 1993, 1994 and 1995. All listed rules are in Title 47 of the Code of Federal Regulations.

Part 1—Practice and Procedure

Subpart A—General Rules of Practice and Procedure

Brief Description: These rules provide that non-licensee tower owners may be subject to forfeiture for violations of the painting and/or lighting requirements for radio towers as prescribed by the Commission without a prior citation under certain conditions. These rules also extend the statute of limitations for issuing forfeitures to broadcast station licensees to encompass the entire current license term and clarify the meaning of ''current license term.''

Need: These rules restate the statutory language of 47 U.S.C. 503(b)(5)(6) and 47 U.S.C. 503(b)(6).

Legal Basis: Secs. 4, 202, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; 5 U.S.C. 552; 21 U.S.C. 853a.

Section Number and Title:

1.80(c)(1), 1.80(d) Forfeiture Proceedings.

Subpart E—Complaints, Applications, Tariffs, and Reports Involving Common Carriers

Brief Description: Part 1, subpart E implements section 208 of the Communications Act of 1934, as amended. Section 208 permits any person to lodge a complaint with the Commission against a common carrier alleging a violation of the Act. Section 208 places a duty on the Commission to forward the complaint to the common carrier(s) involved which, in turn, must either satisfy the complaint or answer it in writing within a time period specified by the Commission. Subpart E establishes the rules for the submission and treatment of two categories of complaints: (1) Formal complaints, governed by §§ 1.720–1.736; and (2) informal complaints, governed by §§ 1.716–1.719. The informal complaint rules emphasize ease of filing by consumers and voluntary cooperative efforts by consumers and affected companies to resolve their differences informally. The Consumer & Governmental Affairs Bureau's analysis of part 1, subpart E will be limited to informal complaints.

Need: The informal complaint rules are designed to facilitate the efficient and expeditious processing of informal consumer complaints in order to promote maximum compliance with the requirements of the Act and the Commission's rules and implementing orders. To ensure access and ease of use by individual consumers, the informal complaint rules do not contain the procedural, evidentiary, and fee requirements prescribed for formal complaints. A person not satisfied with the carrier's response to an informal complaint or with the Commission's disposition of the informal complaint may file a formal complaint on the same cause of action subject to certain limitations.

The Commission added a new section to the informal complaint rules in 2000 in response to the enactment of section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, broadening the Commission's authority to combat ''slamming,'' the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications service. The new section of the informal complaint rules cross-referenced the Commission's slamming liability rules at part 64, subpart K, and provided that a subscriber unsatisfied with the resolution of an informal slamming complaint had 45 days to file a formal complaint.

Legal Basis: 47 U.S.C. 208, 258.

Section Number and Title:

1.716 Form.
1.717 Procedure.
1.718 Unsatisfied informal complaints; formal complaints relating back to the filing dates of informal complaints.
1.719 Informal complaints filed pursuant to section 258.

Brief Description: These rules set forth many of the procedures that must be followed in order to prosecute and/or defend a formal complaint filed against a common carrier pursuant to section 208 of the Communications Act (47 U.S.C. 208) alleging a violation of the Communications Act.

Need: These rules result in the effective, efficient, and timely resolution of formal complaints.

Legal Basis: 47 U.S.C. 154(i), 154(u)(j), 208, 303(r).

Section Number and Title:

1.720 General pleading requirements.
1.724 Answers.
1.726 Replies.
1.727 Motions.
1.729 Interrogatories to parties.
1.731 Confidentiality of information produced through discovery.
1.732 Other required written submissions.
1.733 Status conference.
1.734 Specification as to pleadings, briefs, and other documents; subscription.
1.735 Copies; service; separate filings against multiple defendants.

Brief Description: Directions on how to file applications, including the place of filing, the amount of fees, who may sign the application, and the number of copies required.

Need: These rules provide general directions on where to file applications, the amount of fees, the number of copies and who may sign the application.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title:

1.742 Place of filing, fees, and number of copies.
1.743 Who may sign applications.

Brief Description: The rules in part 1, subpart E, prescribe the procedures, format, and content of complaints, applications, tariffs, and reports involving common carriers. Section 1.773 sets forth the procedures for filing petitions and replies to petitions seeking investigation, suspension, or rejection of new tariff filings.

Need: Sections 1.773(a)(2)(ii), 1.773(a)(4), and 1.773(b)(1)(ii) were adopted to adjust the pleading cycle for petitions seeking investigation, suspension, or rejection of tariff filings made on 14 days' notice. They are intended to provide the Commission with additional time to review pleadings filed in 14-day tariff proceedings and to ensure notice to the filing carrier.

Legal Basis: 47 U.S.C. 154, 201–205, 303.

Section Number and Title:

1.773(a)(2)(ii), 1.773(a)(4), and 1.773(b)(1)(ii) Petitions for suspension or rejection of new tariff filings.

Brief Description: Annual financial filing report by telephone carriers and affiliates as required by part 43.

Need: These rules provide a filing requirement to the Commission per part 43 of the Commission's rules.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title:

1.785 (a) Annual financial reports.

Subpart G—Schedule of Statutory Charges and Procedures for Payment

Brief Description: Schedule of charges for applications.

Need: Section 1.1102 through 1.1107 rules are tables that identify the application fees that are charged by the Commission for renewing, modifying, or when applying for a new license. These fees are adjusted periodically to incorporate cost-of-living increases, and or other increases in fees. Section 1.1108 through 1.1119 rules describe the type and form of payment, where it should be sent and how the payment should be processed, as well as rules governing exemptions, refunds, and penalties associated with the charges in §§ 1.1102 through 1.1107.

Legal Basis: 47 U.S.C. 158(b).

Section Number and Title:

1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services.
1.1103 Schedule of charges for equipment approval, experimental radio services, and international telecommunications settlement services.

1.1104 Schedule of charges for applications and other filings for media services.
1.1105 Schedule of charges for applications and other filings for the wireline competition service.
1.1106 Schedule of charges for applications and other filings for the enforcement service.
1.1107 Schedule of charges for applications and other filings for the international service.
1.1108 Attachment of charges.
1.1109 Payment of charges.
1.1110 Form of payment.
1.1111 Filing locations.
1.1112 Conditionality of Commission or staff authorizations.
1.1113 Return or refund of charges.
1.1114 General exemptions to charges.
1.1115 Adjustments to charges.
1.1116 Penalty for late or insufficient payments.
1.1117 Petitions and applications for review.
1.1118 Error claims.
1.1119 Billing procedures.

Brief Description: Schedule of annual regulatory fees and filing locations.

Need: These rules provide the authority for the Commission to impose and collect regulatory fees, as well as identify possible exemptions, adjustments, penalties, and waivers of these fees.

Legal Basis: 47 U.S.C. 159(a).

Section Number and Title:

1.1151 Authority to prescribe and collect regulatory fees.
1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.
1.1153 Schedule of annual regulatory fees and filing locations for mass media services.
1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.
1.1155 Schedule of annual regulatory fees and filing locations for cable television services.
1.1156 Schedule of annual regulatory fees and filing locations for international services.
1.1157 Payment of charges for regulatory fees.
1.1158 Form of payment for regulatory fees.
1.1159 Filing locations and receipts for regulatory fees.
1.1160 Refunds of regulatory fees.
1.1161 Conditional license grants and delegated authorizations.
1.1162 General exemptions from regulatory fees.
1.1163 Adjustments to regulatory fees.
1.1164 Penalties for late or insufficient regulatory fee payments.
1.1165 Payment by cashier's check for regulatory fees.
1.1166 Waivers, reductions and deferrals of regulatory fees.
1.1167 Error claims related to regulatory fees.

Subpart H—Ex Parte Communications

Brief Description: General instructions on exempt ex parte presentations and proceedings as they relate to new factual information that becomes available in presentations made to the U.S. Department of Justice and the Federal Trade Commission involving telecommunications competition matters.

Need: These rules provide guidance on what types of ex parte presentations are exempt.

Legal Basis: 47 U.S.C 154(i), 154(i)(j), and 303(r).

Section Number and Title:

1.1204 Exempt ex parte presentations and proceedings.

Subpart Q—Competitive Bidding Proceedings

Brief Description: These rules provide competitive bidding procedures to choose from among two or more mutually exclusive applications for an initial license.

Need: The subpart Q rules establish a uniform set of competitive bidding rules and procedures for use in licensing of all services that are subject to licensing by auction. The rules in this subpart: (1) Describe which services are subject to competitive bidding; (2) provide competitive bidding mechanisms and design options; (3) establish application, disclosure and certification procedures for short- and long-form applications; and (4) specify down payment, withdrawal and default mechanisms. In addition, subpart Q contains rules by which the Commission determines eligibility for ''designated entity'' status (*i.e.*, small business, minority- and women-owned business, and rural telephone companies), and includes a schedule of bidding credits for which designated entities may qualify in those auctions in which special provisions are made for designated entities. The purpose of the designated entity provisions is to implement section 309(j)(3)(B) of the Communications Act of 1934, as amended, which states that an objective of designing and implementing the competitive bidding system is to ''promot[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration in licenses and disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.''

Legal Basis: 47 U.S.C. 309(j).

Section Number and Title:

1.2101 Purpose.
1.2102 Eligibility of applications for competitive bidding.
1.2103 Competitive bidding design options.
1.2104 Competitive bidding mechanisms.
1.2105 Bidding application and certification procedures; prohibition of collusion.
1.2106 Submission of upfront payments.
1.2107 Submission of down payment and filing of long-form applications.
1.2108 Procedures for filing petitions to deny against long-form applications.
1.2109 License grant, denial, default, and disqualifications.
1.2110 Designated entities.
1.2111 Assignment or transfer of control: unjust enrichment.

Part 2—Frequency Allocations and Radio Treaty Matters; General Rules and Regulations

Subpart B—Allocation, Assignment, and Use of Radio Frequencies

Brief Description: Footnote US315 states that, in the frequency bands 1530–1544 MHz and 1626.5–1645.5 MHz, maritime mobile-satellite distress and safety communications, *e.g.*, the Global Maritime Distress and Safety System (GMDSS), have priority access with real-time preemptive capability in the mobile-satellite service; that communications of mobile-satellite system stations not participating in the GMDSS will operate on a secondary basis to distress and safety communications of stations operating in the GMDSS; and that account must be taken of the priority of safety-related communications in the mobile-satellite service.

Need: Footnote US315 provides maritime mobile-satellite distress and safety communications with priority access and real-time preemptive capability in the specified bands over routine, non-safety related public correspondence.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.106, footnote US315 Table of Frequency Allocations.

Brief Description: Footnote US237 states that the band 2310–2360 MHz is allocated to the broadcasting-satellite service (sound) and complementary terrestrial broadcasting service on a primary basis; and that use is limited to digital audio broadcasting and is subject to the provisions of Resolution 528 of the International Telecommunication Union's *Radio Regulations.*

Need: Footnote US327 expands the broadcasting-satellite service in the band 2310–2360 MHz to include the complementary terrestrial broadcasting service and limits these uses to digital audio broadcasting.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.106, footnote US327 Table of Frequency Allocations.

Brief Description: Footnote NG152 states that the band 219–220 MHz is also allocated to the amateur service on a secondary basis for stations participating, as forwarding stations, in point-to-point fixed digital message forwarding systems, including intercity packet backbone networks.

Need: Footnote NG152 helps alleviate congestion that amateurs experience in certain areas of the country in the band 222–225 MHz and facilitates establishment of regional and nationwide networks for amateur digital packet communications.

Legal Basis: 47 U.S.C. 154, 302a, 303, and 336.

Section Number and Title:

2.106, footnote NG152 Table of Frequency Allocations.

Part 11—Emergency Alert System (EAS)

Subpart A—General

Brief Description: These rules describe the required technical standards and operational

procedures of EAS for AM, FM, and TV broadcast stations, cable systems, and other participating entities.

Need: In employing consistent technical standards and operational procedures for all participating entities, these rules will result in orderly distribution of emergency messaging in the event an emergency is activated.

Legal Basis: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

Section Number and Title:

11.1 Purpose.
11.11 The Emergency Alert System (EAS).
11.12 Two-tone Attention Signal encoder and decoder.
11.13 Emergency Action Notification (EAN) and Emergency Action Termination (EAT).
11.14 Primary Entry Point (PEP) System.
11.15 EAS Operating Handbook.
11.16 National Control Point Procedures.
11.18 EAS Designations.
11.19 EAS Non-participating National Authorization Letter.
11.20 State Relay Network.
11.21 State and Local Area Plans and FCC Mapbook.

Subpart B—Equipment Requirements

Brief Description: These rules describe EAS protocol for emergency event codes and EAS equipment requirements.

Need: Establishing quality and compatibility standards for EAS equipment will ensure technological interoperability and result in delivery of responsive, robust, and redundant emergency messaging.

Legal Basis: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

Section Number and Title:

11.31 EAS Protocol.
11.32 EAS Encoder.
11.33 EAS Decoder.
11.34 Acceptability of the Equipment.
11.35 Equipment operational readiness.

Subpart C—Organization

Brief Description: These rules describe participation standards and acceptable uses of EAS for all participating entities. The rules also set message priorities from the Presidential level down to the state and local levels.

Need: By setting participation standards and acceptable uses, these rules ensure the integrity of EAS for the Presidential message priority in the event of a national emergency.

Legal Basis: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

Section Number and Title:

11.41 Participation in EAS.
11.42 Participation by communications common carriers.
11.43 National level participation.
11.44 EAS message priorities.
11.45 Prohibition of false or deceptive EAS transmissions.
11.46 EAS public service announcements.
11.47 Optional use of other communications methods and systems.

Subpart D—Emergency Operations

Brief Description: These rules describe procedures for monitoring key EAS sources. Once EAS has been activated, these rules set operation and transmission guidelines for national, state, and local level messaging.

Need: These rules describe how a national, state, or local emergency is activated, and upon activation, provide guidelines for all participating entities to follow during national, state, and local-level emergencies.

Legal Basis: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

Section Number and Title:

11.51 EAS code and Attention Signal Transmission requirements.
11.52 EAS code and Attention Signal Monitoring requirements.
11.53 Dissemination of Emergency Action Notification
11.54 EAS operation during a National Level emergency.
11.55 EAS operation during a State or Local Area emergency.

Subpart E—Tests

Brief Description: These rules describe EAS testing protocols for all participating entities.

Need: Regular testing of EAS equipment will ensure operational readiness in the event of an emergency.

Legal Basis: 47 U.S.C. 151, 154 (i) and (o), 303(r), 544(g) and 606.

Section Number and Title:

11.61 Tests of EAS procedures.

Part 13—Commercial Radio Operators

Brief Description: The part 13 rules prescribe the manner and conditions under which commercial radio operators are licensed by the Commission.

Need: These rules identify the different classes of commercial radio operator licenses and permits, set forth eligibility requirements, and establish a regulatory framework for the privatized commercial radio operator license examination process. They are necessary to ensure that certain tasks pertaining to the operation and maintenance of radio equipment used in the maritime, aviation, and international fixed public radio communication services are performed only by qualified persons, and to ensure the integrity of the examination process by which such qualifications are established.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title:

13.1 Basis and purpose.
13.3 Definitions.
13.5 Licensed commercial radio operator required.
13.7 Classification of operator licenses and endorsements.
13.8 Authority conveyed.
13.9 Eligibility and application for new license or endorsement.
13.10 Licensee address.
13.11 Holding more than one commercial radio operator license.
13.13 Application for a renewed or modified license.
13.15 License term.
13.17 Replacement license.
13.19 Operator's responsibility.
13.201 Qualifying for a commercial operator license or endorsement.
13.203 Examination elements.
13.207 Preparing an examination.
13.209 Examination procedures.
13.211 Commercial radio operator license examination.
13.213 COLEM qualifications.
13.215 Question pools.
13.217 Records.

Part 15—Radio Frequency Devices

Subpart B—Unintentional Radiators

Brief Description: This rule specifies the isolation standards for TV interface device antenna transfer switches.

Need: This rule prevents excessive leakage through the TV broadcast antenna of signals generated by TV interface devices, reducing the potential that harmful interference would be caused to television broadcast reception and other radio services.

Legal Basis: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544A.

Section Number and Title:

15.115(c)(1)(i) TV interface devices, including cable system terminal devices.

Brief Description: This rule specifies the isolation standards for switches that are used to alternate between cable service and a TV broadcast antenna.

Need: This rule prevents excessive leakage through the TV broadcast antenna of signals generated by a cable system terminal devices, reducing the potential that harmful interference would be caused to television broadcast reception and other radio services.

Legal Basis: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544A.

Section Number and Title:

15.115(h) TV interface devices, including cable system terminal devices.

Brief Description: This rule specifies the standards for closed caption reception that is required for all analog TV broadcast receivers with picture screens 13 inches or larger.

Need: Absent this regulation, analog TV broadcast receivers would not be required to display closed caption transmissions.

Legal Basis: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544A.

Section Number and Title:

15.119 Closed caption decoder requirements for analog television receivers.

Subpart C—Intentional Radiators

Brief Description: These rules specify the emission standards and frequencies of operation for cordless telephones that operate in the 46–50 MHz band.

Need: These rules permit cordless telephones to operate without individual licensing in the 46–50 MHz band.

Legal Basis: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544A.

Section Number and Title:

15.233 Operation within the bands 43.71–44.49 MHz, 46.60–46.98 MHz, 48.75–49.51 MHz and 49.66–50.0 MHz.

Part 18—Industrial, Scientific and Medical Equipment

Brief Description: This rule specifies the definition for non-consumer Magnetic Resonance Equipment (MRE), which is a category of Industrial, Scientific and Medical (ISM) equipment in which radio frequency (RF) energy is used to create images and data representing spatially resolved density of

transient atomic resources within an object. MRE devices are still used extensively in health care facilities today.

Need: In adopting the statutory definition for MRE devices, the rule clarifies the type of ISM devices that would be subject to specific requirements of part 18 of the Commission's rules, as enumerated in section 18.121, *infra.* Part 18 sets forth requirements designed to minimize the potential for interference to radio and TV services from ISM equipment. ISM equipment generates RF energy in order to perform a non-communications related function. Common examples of consumer ISM devices are microwave ovens and RF lighting devices. Common examples of non-consumer ISM devices include industrial heaters and ultrasonic equipment. Before ISM equipment can be marketed in the United States, it must comply with the technical standards and equipment authorization procedure specified in part 18 of the Commission's rules.

Legal Basis: 47 U.S.C. 4, 301, 302, 303, 304 and 307.

Section Number and Title:

18.107(j) Definitions, Magnetic Resonance Equipment.

Brief Description: This rule relates to the exemptions from the part 18 requirements for non-consumer ultrasonic equipment or non-consumer magnetic resonance equipment (MRE) used for medical diagnostic and monitoring applications. MRE is a category of Industrial, Scientific and Medical (ISM) equipment in which RF energy is used to create images and data representing spatially resolved density of transient atomic resources within an object. MRE devices are still used extensively in health care facilities today.

Need: This rule already existed for non-consumer ultrasonic equipment, which are only subject to certain sections of part 18 of the Commission's rules. The adopted change to the rule (as published in 59 FR 39472) applied the same exemptions for non-consumer ultrasonic equipment to the then-new category of non-consumer MRE devices (as defined in section 18.107(j), *supra.*) This rule in effect exempts non-consumer MRE devices from the part 18 technical standards and authorization requirements in order to remove regulations that unnecessarily increase the amount of time and cost required to bring these new non-consumer MRE devices to market. However, the rule retains certain critical part 18 standards applicable to MRE devices, such as general importation requirements and frequencies available for ISM use.

Legal Basis: 47 U.S.C. 4, 301, 302, 303, 304 and 307.

Section Number and Title:

18.12 Exemptions.

Note: In 1995, Section 18.121 was *editorially* revised to correct the omission of the word ''ONLY'' in the above adopted rule. As published in the CFR, the final regulations contained errors that might have proven to be misleading and were in need of correction (*see* 60 FR 47302)(September 12, 1995.) This rule revision is not substantive.

Part 25—Satellite Communications

Subpart B—Applications and Licenses

Brief Description: This subpart includes procedures for the filing of earth station applications. The information requirements in these rules allow for frequency coordination analysis to reduce interference and the verification of earth station antenna performance standards. Provisions in subpart B also provide for the timely construction and operation of earth stations.

Need: To establish proper procedures for submitting the correct information for filing earth station applications.

Legal Basis: 47 U.S.C. 154. Interprets or applies 47 U.S.C. 701–744.

Section Number and Title:

25.130 Filing requirements for transmitting earth stations.
25.132 Verification of earth station antenna performance standards.
25.133 Period of construction; certification of commencement of operation.
25.135 Licensing provisions for earth station networks in the non-voice, non-geostationary mobile-satellite service.

Brief Description: This subpart includes rules to facilitate coordination to avoid harmful interference to other satellite systems. These rules also outline conditions for qualification as an applicant, which enhances the likelihood that the proposed systems will be constructed, launched, and operated if licensed.

Need: To establish proper procedures for submitting the correct information for filing space station applications.

Legal Basis: 47 U.S.C. 154. Interprets or applies 47 U.S.C. 701–744.

Section Number and Title:

25.142 Licensing provisions for the non-voice, non-geostationary mobile-satellite service.
25.143 Licensing provisions for the 1.6/2.4 GHz mobile-satellite service and 2 GHz mobile-satellite service.

Brief Description: This subpart includes well-defined procedures for processing applications including the requirement for public notice.

Need: To establish proper procedures for submitting the correct information for filing space station applications and to allow for public notice of such applications.

Legal Basis: 47 U.S.C. 154, 301,302, 303, 307, 309, 332.

Section Number and Title:

25.151 Public notice period.

Subpart C—Technical Standards

Brief Description: This subpart provides clear and predictable technical standards to minimize interference.

Need: To provide space station and earth station operators a universal set of standards and operating procedures.

Legal Basis: 47 U.S.C. 154, 701–744. Interprets or applies 47 U.S.C. 303.

Section Number and Title:

25.201 Definitions.
25.202 Frequencies, frequency tolerance and emission limitations.
25.203 Choice of sites and frequencies.
25.204 Power limits.
25.208 Power flux density limits.
25.209 Antenna performance standards.
25.210 Technical requirements for space stations in the Fixed-Satellite Service.
25.211 Video transmissions in the Fixed-Satellite Service.
25.212 Narrowband transmissions in the 12/14 GHz GSO Fixed-Satellite Service.
25.213 Inter-Service coordination requirements for the 1.6/2.4 GHz Mobile-Satellite Service.

Subpart D—Technical Operations

Brief Description: This subpart provide clear and predictable operating rules to minimize interference.

Need: To provide space station and earth station operators a universal set of standards and operating procedures.

Legal Basis: 47 U.S.C. 154, 701–744.

Section Number and Title:

25.271 Control of transmitting stations.
25.272 General inter-system coordination procedures.
25.273 Duties regarding space communications transmissions.
25.274 Procedures to be followed in the event of harmful interference.
25.275 Particulars of operation.
25.276 Points of communication.
25.277 Temporary fixed earth station operations.
25.278 Additional Coordination Obligation for Non-Geostationary and Geostationary Satellite Systems in Frequencies Allocated to the Fixed-Satellite Service.
25.279 Inter-satellite service.

Subpart I—Equal Employment Opportunities

Brief Description: Section 25.601 requires entities that use a fixed satellite service or direct broadcast satellite service facility to provide video programming to the public on a subscription basis to comply with the equal opportunity requirements set forth in part 76 of the Commission's rules.

Need: To implement the equal opportunity provisions of the Cable Television Consumer Protection and Competition Act of 1992.

Legal Basis: 47 U.S.C. 154. Interprets or applies 47 U.S.C. 701–744, 554.

Section Number and Title:

25.601 Equal employment opportunity requirements.

Part 27—Miscellaneous Wireless Communications Services

Subpart M—Broadband Radio Service and Educational Broadband Service

Brief Description: These rules state the conditions under which spectrum is made available and licensed for the provision of the Broadband Radio Service and the Educational Broadband Service (previously the Multipoint Distribution Service and Instructional Television Fixed Service, respectively) in the 2495–2690 MHz band. These four rules were originally published in part 21.

Need: These rules provide a regulatory framework for the Broadband Radio Service and Educational Broadband Service, particularly with respect to licensing and auctions.

Legal Basis: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, 337.

Section Number and Title:

27.1201(a)(3) EBS eligibility.
27.1208 Service areas.
27.1212 License term.
27.1213 Designated entity provisions for BRS in Commission auctions commencing prior to January 1, 2004.

Part 43—Reports of Communication Common Carriers and Certain Affiliates

Brief Description: The rule sets forth the requirements and procedures for carriers to file information on how U.S. international carriers use their circuits.

Need: The rule provides essential data that enables the Commission to discharge its obligations to authorize the construction and use of international common carrier transmission facilities. The information is used by the agency and industry to determine whether an international common carrier is providing direct or indirect service to countries and to assess industry trends in the use of international transmission facilities. The data is extremely valuable because it is not available from any other source.

Legal Basis: 47 U.S.C. 154, 214, 219, 303, 403.

Section Number and Title:

43.82 International Circuit Status Reports.

Part 61—Tariffs

Subpart E—General Rules for Dominant Carriers

Brief Description: The part 61 rules are designed to implement the provisions of sections 201, 202, 203, and 204 of the Communications Act of 1934, as amended, and ensure that rates are just, reasonable, and not unjustly or unreasonably discriminatory. These rules govern the filing, form, content, public notice periods, and accompanying support materials for tariffs. Part 61 rules also establish the pricing rules and related requirements that apply to incumbent local exchange carriers.

Need: Section 61.33(e) requires all letters of transmittal for 14-day tariff filings to include an address and designated individual for personal service and a number for facsimile service. Sections 61.39(d) and 61.39(e) give smaller carriers providing service primarily to rural areas optional regulatory reforms that compliment the price cap system. These reforms are intended to reduce administrative burdens and increase flexibility, while continuing to ensure high service quality and universal service at reasonable rates. Sections 61.42(e)(1)(iii) and 61.42(e)(1)(iv) establish the price cap baskets for 800 data base access services and for billing name and address information.

Legal Basis: 47 U.S.C. 154, 201–205, and 403.

Section Number and Title:

61.33(e) Letters of transmittal.
61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in 69.602.
61.42 Price cap baskets and service categories.

Part 64—Miscellaneous Rules Relating to Common Carriers

Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities.

Brief Description: Part 64, subpart F implements section 225 of the Communications Act of 1934, as amended. Section 225 codifies Title IV of the Americans with Disabilities Act of 1990 (ADA) which requires that the Commission ensure that telecommunications relay services (TRS) are available, ''to the extent possible and in the most efficient manner,'' to individuals with hearing or speech disabilities in the United States. Section 225 defines TRS as telephone transmission services that make it possible for an individual with a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner functionally equivalent to that available to persons who do not have such a disability. The rules provide minimal functional, operational, and technical standards for TRS programs. The rules give states a significant role in ensuring the availability of TRS by treating carriers as compliant with their statutory obligations if they operate in a state that has a relay program certified as compliant by the Commission. The rules also establish a cost recovery and a carrier contribution mechanism (TRS Fund) for the provision of interstate TRS and require states to establish cost recovery mechanisms for the provision of intrastate TRS.

Need: Part 64, subpart F is intended to facilitate communication by persons with hearing or speech disabilities by ensuring that interstate and intrastate TRS are available throughout the country, and by ensuring uniform minimum functional, operational, and technical standards for TRS programs. The TRS rules ensure that individuals with hearing or speech disabilities receive the same quality of service when they make TRS calls, regardless of where their calls originate or terminate.

Legal Basis: 47 U.S.C. 225.

Section Number and Title:

64.604(a)(2) Operational Standards, Confidentiality and conversation content.
64.604(c)(ii) Jurisdictional separation of costs, Cost Recovery, 47 CFR.
64.604(c)(iii) Jurisdictional separation of costs, TRS Fund.

Subpart K—Changes in Preferred Telecommunications Service Providers

Brief Description: Part 64, subpart K implements section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. This section provides the Commission authority to deter and punish ''slamming,'' the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications service. The rules prescribe verification procedures for telecommunications carriers to use in confirming subscribers' decisions to change telecommunications carriers. A carrier that fails to comply with the Commission's verification procedures is liable to the subscriber's authorized carrier for all amounts paid by the subscriber after the violation. The rules absolve subscribers of liability for charges billed by unauthorized carriers in certain cases, impose liability on unauthorized carriers for all charges collected from subscribers, and establish procedures to govern preferred carrier freezes.

In 1992 the Commission first adopted rules requiring interexchange carriers to obtain verification from customers acquired through telemarketing before submitting a preferred interexchange carrier change order to a local exchange carrier (LEC). Verification could be in one of four allowable forms: (1) Written authorization; (2) electronic authorization, *i.e.*, by placing a call to an 800 number established to obtain verification; (3) oral authorization taken by an independent third party; and (4) sending of a ''welcome package'' including a prepaid postcard usable to deny, cancel or confirm a change order. The Commission subsequently revised these rules, then numbered 47 CFR 64.1100 and now numbered 47 CFR 64.1100–64.1196, several times in response to consumer complaints and industry changes.

In 1995, the Commission established requirements for the form and content of the written authorization or Letter of Agency (LOA) used to verify a change, and prohibited ''negative option'' LOAs that demanded an affirmative act by the customer to prevent a change. The Commission again revised the rules in 1999 in response to a provision of the Telecommunications Act of 1996 making it unlawful to ''submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' In addition to absolving subscribers from liability for certain slamming charges, the revised rules: (1) Extended the verification requirements to all telecommunications carriers; (2) toughened the LOA requirements and eliminated the ''welcome package''; (3) set rules for ''preferred carrier freezes'' requiring the customer to contact the LEC to consent to a change; and (4) allowed states to establish their own rules for intrastate presubscription. Many of these revised rules did not take effect until 2000 due to petitions for stay and waiver.

In 2001, the Commission amended the rules to permit LOAs submitted via the internet, expanded registration requirements for interstate telecommunications carriers, and provided for a streamlined process in situations involving carrier-to-carrier sale or transfer of subscriber bases. Finally, in 2003 the Commission clarified that LECs executing carrier change requests can be held liable for unauthorized carrier changes to their affiliates, and modified the ''drop-off'' requirement to allow sales agents, in certain circumstances, to remain silently on the line during verification.

Need: Part 64, subpart K attempts to eliminate the fraudulent practice of ''slamming,'' foster consumer choice, and facilitate competition in the market for telecommunications services. Establishing verification requirements, liability rules, and

complaint resolution procedures assists the Commission in preventing slamming.

Legal Basis: 47 U.S.C. 258.

Section Number and Title:

64.1100 Definitions.
64.1110 State notification of election to administer FCC rules.
64.1120 Verification of orders for telecommunications service.
64.1130 Letter of agency form and content.
64.1140 Carrier liability for slamming.
64.1150 Procedures for resolution of unauthorized changes in preferred carrier.
64.1160 Absolution procedures where the subscriber has not paid charges.
64.1170 Reimbursement procedures where the subscriber has paid charges.
64.1190 Preferred carrier freezes.
64.1195 Registration requirement.

Subpart L—Restrictions on Telemarketing and Telephone Solicitation

Brief Description: Part 64, subpart L implements Section 227 of the Communications Act of 1934 as amended. Section 227 codifies the Telephone Consumer Protection Act of 1991 (TCPA), which was enacted to address certain telemarketing practices thought to be an invasion of consumer privacy and a risk to public safety. The TCPA imposes restrictions on the use of automatic telephone dialing systems (autodialers), artificial or prerecorded messages, and telephone facsimile machines, and requires the Commission to adopt rules to implement these protections. Pursuant to the Commission's rules implementing the TCPA, a person or entity engaged in telemarketing is required to maintain a record of a called party's request not to receive future solicitations for a period of five years. Telemarketers must develop and maintain written policies for maintaining their lists, and they are required to inform their employees of the list's existence and train them to use the list. The rules prohibit telemarketers from calling residential telephone subscribers before 8 a.m. or after 9 p.m. and require telemarketers to identify themselves to called parties.

The Commission first adopted rules to implement the TCPA in 1992, and amended them in 1995 to prohibit telemarketers from providing a 900 number or any other number for which charges exceed local or long distance transmission charges for purposes of identification. In 2003, the Commission further amended the TCPA rules to establish, in conjunction with the FTC, a national Do-Not-Call Registry (Registry) for consumers who wish to avoid telemarketing calls. The Registry is nationwide in scope, includes all telemarketers (with the exception of certain non-profit organizations) and covers both interstate and intrastate telemarketing calls. The Commission also adopted restrictions on the use of predictive dialers, and tightened existing rules on unsolicited faxes to require that companies obtain express permission in writing before sending unsolicited facsimile advertisements. Most recently, the Commission delayed the effective date of the written consent requirement for sending unsolicited facsimile advertisements until July 1, 2005, created a limited ''safe harbor'' from liability for placing autodialed and prerecorded message calls when such calls are made to a wireless number ported from a wireline service within the previous 15 days, and required telemarketers to access the Do-Not-Call Registry and scrub their call lists every 31 days rather than every three months.

Need: Part 64, subpart L is intended to protect subscriber privacy and public safety without unnecessarily restricting legitimate telephone marketing and sales.

Legal Basis: 47 U.S.C. 227.

Section Number and Title:

64.1200, generally, 64.1200(e)(2)(iv), (vi) and (f)(3)(iii) Delivery Restrictions.

Brief Description: This rule imposes restrictions on the use of billing name and address information by telecommunications service providers and their authorized billing and collection agents. Section 64.1201 requires local exchange carriers (LECs) to provide interstate common carriers non-discriminatory access to the billing name and address (BNA) of LEC subscribers who use a LEC calling card or authorize collect and third party calls to pay for a carrier's services. The rule also includes safeguards protecting the privacy interests of end users.

Need: The Commission adopted this rule to limit billing name and address disclosure to telecommunications service providers and to prohibit use of billing name and address information for purposes other than billing for telecommunications services. This rule is designed to protect the privacy of end users.

Legal Basis: 47 U.S.C. 154, 201–205.

Section Number and Title:

64.1201 Restrictions on billing name and address disclosure.

Subpart N—Expanded Interconnection

Brief Description: This rule requires that larger incumbent local exchange carriers (LECs) that do not participate in the National Exchange Carrier Association tariff provide expanded interconnection. Subpart N requires that these incumbent LECs allow other parties to interconnect with their networks through physical or virtual collocation for the provision of special access and switched transport services. Interested parties including competitive LECs, interexchange carriers and end users can take expanded interconnection from the incumbent LECs subject to this rule.

Need: This rule promotes competition in the provision of interstate services by removing barriers to competitive provision of special access and switched transport services. In particular, subpart N makes collocation available to parties not covered by part 51 of the Commission's rules such as large businesses and universities.

Legal Basis: 47 U.S.C. 151, 154, and 201–205.

Section Number and Title:

64.1401 Expanded Interconnection.

Subpart O—Interstate Pay-Per-Call and Other Information Services

Brief Description: Part 64, subpart O implements section 228 of the Communications Act of 1934, as amended. Subpart O mandates that common carriers assigning telephone numbers to providers of interstate pay-per-call services require that the provider comply with the subpart O rules as well as certain other laws and regulations. Subpart O restricts the provision of pay-per-call services over 800 and ''toll free'' numbers and bars the provision of interstate pay-per-call services on a collect basis. It provides for 900 service access code assignment to pay-per-call services, and requires local exchange carriers to offer subscribers the option of blocking access to 900 numbers from their telephones. Subpart O establishes conditions for common carrier provision of billing and collection for pay-per-call services and bars the disconnection or interruption of local exchange or long-distance service for the non-payment of charges for interstate pay-per-call and certain information services.

In 1993, the Commission promulgated the pay-per-call rules summarized above to implement the Telephone Disclosure and Dispute Resolution Act and replace prior pay-per-call rules adopted in 1991. In 1996, the Commission amended the rules to incorporate expanded consumer protections enacted in the Telecommunications Act of 1996. These additional protections included a prohibition on charging callers for calls to toll-free numbers without a written presubscription agreement, a requirement for use of personal identification numbers to prevent unauthorized access, and certain required billing disclosures. The amended rules also permitted alternatives to written presubscription such as payment by prepaid account, debit, credit, charge, or calling card. In July 2004, the Commission released a *Notice of Proposed Rulemaking* seeking comment on possible modifications to address circumvention of the pay-per-call rules.

Need: Part 64, subpart O is intended both to promote the legitimate development of pay-per-call services and protect consumers from the fraudulent or unscrupulous provision of pay-per-call services.

Legal Basis: 47 U.S.C. 228.

Section Number and Title:

64.1501 Definitions.
64.1502 Limitations on the provision of pay-per-call services.
64.1503 Termination of pay-per-call and other information programs.
64.1504 Restrictions on the use of toll-free numbers.
64.1505 Restrictions on collect telephone calls.
64.1506 Number designation.
64.1507 Prohibition on disconnection or interruption of service for failure to remit pay-per-call and similar service charges.
64.1508 Blocking access to 900 service.
64.1509 Disclosure and dissemination of pay-per-call information.
64.1510 Billing and collection of pay-per-call and similar service charges.
64.1511 Forgiveness of charges and refunds.
64.1512 Involuntary blocking of pay-per-call services.
64.1513 Verification of charitable status.
64.1514 Generation of signaling tones.
64.1515 Recovery of costs.

Subpart P—Calling Party Telephone Number; Privacy

Brief Description: The requirements in part 64, subpart P are based on the Commission's authority under sections 1, 4, 201–205, and 218 of the Communications Act of 1934, as amended. Subpart P covers Calling Party Number (CPN) services, including ''Caller ID,'' which depend on capabilities that use out-of-band signaling techniques such as ''Signaling System Seven (SS7).'' Subpart P provides that common carriers using SS7 must, subject to certain exceptions, transmit the CPN associated with interstate calls to interconnecting carriers without additional charge. Originating carriers using SS7 must recognize *67 as a caller's request for privacy when dialed as the first three digits of an interstate call. Carriers providing line blocking services are required to recognize *82 as a caller's request that privacy not be provided and that the CPN be passed on an interstate call. Subpart P requires carriers to notify customers of their *67 and * 82 capabilities and restricts the use of telephone subscriber information. Finally subpart P restricts the reuse or sale of telephone numbers by subscribers to Automatic Number Identification (ANI) absent affirmative subscriber consent.

The Commission adopted the CPN rules in 1994, but stayed the effective date of portions of the rules regarding CPN passage, privacy, and education in March 1995. In May 1995, the Commission amended the rules to resolve uncertainties regarding financial arrangements and varying state privacy rights, and to prescribe an education program to support consumer use of Caller ID services. In 1997, the Commission amended the rules to exempt payphones from blocking and unblocking requirements, and to require private branch exchanges (PBXs) to provide blocking and unblocking if they passed CPN to the public switched network. In 2003, the Commission amended the rules to prohibit telemarketers from blocking Caller ID information.

Need: The purpose of part 64, subpart P is to protect subscriber privacy while fostering the development of new and innovative services.

Legal Basis: 47 U.S.C. 1, 4, 201–205, 218.

Section Number and Title:

64.1600 Definitions.
64.1601 Delivery requirements and privacy restrictions.
64.1602 Restrictions on use and sale of telephone subscriber information provided pursuant to automatic number identification or charge number services.
64.1603 Customer notification.
64.1604 Effective date.

Part 65—Interstate Rate of Return Prescription Procedures and Methodologies

Subpart C—Exchange Carriers

Brief Description: Part 65 sets forth procedures and methodologies for prescribing and enforcing the rate of return certain LECs may earn on interstate access service. These rules establish that the composite weighted average cost of capital is the sum of the cost of debt, the cost of preferred stock, and the cost of equity, each weighted by its proportion in the capital structure of the telephone companies, and the final determinations of the cost of equity, cost of debt, cost of preferred stock and their capital structure weights shall be accurate to two decimal places.

Need: The continued use of the weighted average cost of capital calculation allows us to estimate the cost of capital for LEC interstate access service. Previous cost of capital calculations were required to be carried out to the eighth decimal place. We stated that this degree of specificity was unnecessary and concluded that cost of capital calculations need only be carried out to two decimal places.

Legal Basis: 47 U.S.C. 151, 154, 201–205, 218–220, 403.

Section Number and Title:

65.305 Calculation of the weighted average cost of capital.
65.306 Calculation accuracy.

Subpart F—Maximum Allowable Rates of Return

Brief Description: This rule establishes that the maximum allowable rate of return for rates filed by LECs subject to 61.50 shall be determined by adding a fixed increment of one and one-half percent to the carriers prescribed rate of return.

Need: In designing an optional incentive-based regulatory system for the smaller carriers, we proposed to establish an earnings band similar to the price cap earnings band. In the Notice of Proposed Rulemaking (NPRM), the Commission proposed that incentive plan LECs be permitted to earn up to 1 percent (100 basis points) above the prescribed rate of return. In the final rule, to better balance the risks and rewards of the incentive plan, the Commission increased the permissible earnings zone for incentive plan carriers from a 100 to a 150 basis point maximum.

Legal Basis: 47 U.S.C. 51, 154, 201–205, 218–220, 403.

Section Number and Title:

65.700(c) Determining the maximum allowable rate of return.

Part 68—Connection of Terminal Equipment to the Telephone Network

Subpart A—General

Brief Description: Part 68 implements the Hearing Aid Compatibility Act of 1988 (HAC Act). The HAC Act requires that, unless exempt, all essential telephones and all telephones manufactured in or imported into the United States after August 16, 1989 must ''provide internal means for effective use with hearing aids that are designed to be compatible with telephones which meet established technical standards for hearing aid compatibility.'' The scope of this discussion is limited to part 68 as it applies to telephone compatibility with hearing aids.

Need: Part 68 establishes conditions for direct connection to the network of registered terminal equipment to prevent network harm and ensure that telephones are compatible with hearing aids. The purpose of part 68 is, in part, to provide for uniform standards for the compatibility of hearing aids and telephones to ensure that persons with hearing aids have reasonable access to the telephone network.

Legal Basis: 47 U.S.C. 151–154, 201–205, 303(r), 610.

Section Number and Title:

68.3 Definitions.

Subpart D—Conditions for Terminal Equipment Approval

Brief Description: Among its many provisions, part 68 includes certain requirements for terminal equipment which implement the Telephone Consumer Protection Act of 1991 (TCPA). Congress enacted the TCPA in an effort to address telephone marketing calls and certain telemarketing practices thought to be an invasion of consumer privacy and a risk to public safety. The TCPA imposes, among other things, certain restrictions on the use of automatic dialing machines and the use of telephone facsimile machines to send unsolicited advertisements. These restrictions include a requirement that addresses line seizure by automatic telephone dialing systems and a requirement that all facsimile transmissions include source labeling (47 CFR 68.318(c) and 68.318(d) respectively).

In 1995, the Commission amended § 68.318(c) to prohibit senders of unsolicited facsimiles from providing a 900 number or any other number for which charges exceed local or long distance transmission charges for purposes of identification. In 1997, the Commission redesignated § 68.318(c) as § 68.318(d), and added a new § 68.318(c) restricting the use of automatic dialers. In 2003, the Commission amended § 68.318(d) to require a facsimile broadcaster with a high degree of involvement in a sender's facsimile message to provide on the facsimile the name under which it is registered to conduct business with the State Corporation Commission or comparable regulatory authority.

Need: The purpose of §§ 68.318(c) and 68.318(d) is to implement the TCPA to address telephone marketing calls and certain telemarketing practices related to the sending of unsolicited facsimile advertisements thought to be an invasion of consumer privacy and a risk to public safety.

Legal Basis: 47 U.S.C. 227.

Section Number and Title:

68.318(c)–(d) Additional limitations.

Part 69—Access Charges

Subpart A—General

Brief Description: The part 69 rules are designed to implement the provisions of sections 201 and 202 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent local exchange carriers by ensuring that rates are just, reasonable, and not unjustly or unreasonably discriminatory. These rules also provide definitions for terms used in rules.

Need: Sections 69.2(uu) and (vv) define the terms ''price cap regulation'' and ''signalling for tandem switching'' and are essential for the implementation and understanding of other rule sections. Section 69.4(b)(9) was added to help correct the misallocation of

general support facility investment and related expenses among the part 69 cost categories for local exchange carriers.

Legal Basis: 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

Section Number and Title:

69.2 Definitions.
69.4 Charges to be filed.

Subpart B—Computation of Charges

Brief Description: The part 69 rules are designed to implement the provisions of sections 201 and 202 of the Communications Act of 1934, as amended, and protect consumers by preventing the exercise of market power by incumbent LECs by ensuring that rates are just, reasonable, and not unjustly or unreasonably discriminatory.

Need: Sections 69.110(f)–(h) were adopted to allow telephone companies to offer term and volume discounts for entrance facilities charges after certain conditions are met. Sections 69.111(i)–(k) were adopted to grant LECs additional flexibility in the form of density zone pricing, and volume and term discounts. Section 69.112(e) was adopted to provide LECs that did not have DS3 or DS1 special access rates in effect a means to determine appropriate rates. Sections 69.112(f)–(h) were adopted to allow telephone companies to offer term and volume discounts in direct-trunked transport charges after meeting certain conditions. Section 69.123(d) was adopted to grant LECs additional flexibility in the form of density zone pricing, and volume and term discounts. Section 69.128 enables telecommunications service providers without billing and collection agreements with LECs to perform their own billing and collection, thus improving competition in the market for billing and collection services. Section 69.129 was adopted to enable interested third parties, including competitive access providers, interexchange carriers (IXCs), and end users to carry traffic of multiple IXCs from local exchange carrier end offices to their own tandems, switch traffic at that point, and deliver the traffic to the appropriate IXC.

Legal Basis: 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

Section Number and Title:

69.110 Entrance facilities.
69.111 Tandem-switched transport and tandem charge.
69.112 Direct-trunked transport.
69.123 Density pricing zones for special access and switched transport.
69.128 Billing name and address.
69.129 Signalling for tandem switching.

Subpart D—Apportionment of Net Investment

Brief Description: The part 69 rules are designed to implement the provisions of sections 201 and 202 of the Communications Act of 1934, as amended and protect consumers by preventing the exercise of market power by incumbent local exchange carries by ensuring that rates are just, reasonable, and not unjustly or unreasonably discriminatory.

Need: Section 69.307(b) was adopted to enable telecommunications service providers without billing and collection agreements with local exchange carriers to perform their own billing and collection, thus improving competition in the market for billing and collection services.

Legal Basis: 47 U.S.C. 154, 220.

Section Number and Title:

69.307(b) General support facilities.

Subpart E—Apportionment of Expenses

Brief Description: The part 69 rules are designed to implement the provisions of Sections 201 and 202 of the Communications Act and protect consumers by preventing the exercise of market power by incumbent local exchange carriers by ensuring that rates are just, reasonable, and not unjustly or unreasonably discriminatory.

Need: Section 69.407(c) was adopted to assign a portion of Customer Operations Expense to the Billing Name and Address rate element.

Legal Basis: 47 U.S.C. 154, 220.

Section Number and Title:

69.407(c) Revenue accounting expenses in Account 6620.

Subpart G—Exchange Carrier Association

Brief Description: The part 69 rules also provide for the establishment and operation of the National Exchange Carrier Association (NECA), which files tariffs on behalf of many of the smaller, rate-of-return local exchange carriers.

Need: Section 69.601(c) was adopted to ensure that data provided by the member telephone companies to NECA are complete, accurate, and consistent with FCC rules.

Legal Basis: 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

Section Number and Title:

69.601(c) Exchange carrier association.

Part 73—Radio Broadcast Services

Subpart H—Rules Applicable to All Broadcast Stations

Brief Description: These rules describe authority to rebroadcast emergency communications and priority for EAS broadcasts at the national level.

Need: In setting priority for national EAS messaging and allowing for rebroadcast of emergency communications, these rules facilitate the EAS process.

Legal Basis: 47 U.S.C. 154, 303, 334, and 336.

Section Number and Title:

73.1207 Rebroadcasts.
73.1250 Broadcasting emergency information.

Brief Description: These rules provide compliance and authorization provisions for all broadcast services.

Need: These rules prescribe common operating procedures for all broadcast services.

Legal Basis: 47 U.S.C. 154, 303 and 304.

Section Number and Title:

73.1300 Unattended station operation.
73.1350 Transmission system operation.

Brief Description: Under section 73.3545 of the Commission's rules and section 325(c) the Communications Act of 1934, as amended, FCC Form 308 is used to apply for authority to locate, use, or maintain a studio in the United States for the purpose of supplying program material to a foreign radio or TV broadcast station, whose signals are consistently received in the United States, or for extension of existing authority. An informal application for a permit of this nature may also be used by applicants holding an AM, FM or TV broadcast station license or construction permit, so long as applications contain a description of the nature and character of the programming proposed, the applicant's ownership, and an explanation of the legal relationship between the applicant and foreign station(s) involved.

Need: Protects domestic broadcasters from interference from foreign station (*i.e.*, TV, AM and FM).

Legal Basis: 47 U.S.C. 325.

Section Number and Title:

73.3545 Application for permit to deliver programs to foreign stations.

Part 76—Multichannel Video and Cable Television Service

Subpart D—Carriage of Television Broadcast Signals

Brief Description: These rules provide for the carriage of television broadcast signals on cable television systems.

Need: These rules implement sections 4 and 5 of the Cable Television Consumer Protection and Competition Act of 1992.

Legal Basis: 47 U.S.C. 154(i), 154(j), and 303.

Section Number and Title:

76.55 Definitions applicable to the must-carry rules.
76.56 Signal carriage obligations.
76.57 Channel positioning.
76.59 Modification of television markets.
76.61 Disputes concerning carriage.
76.62 Manner of carriage.
76.64 Retransmission consent.

Subpart H—General Operating Requirements

Brief Description: These rules prescribe customer service standards for cable operators.

Need: These rules implement section 8 of the Cable Television Consumer Protection and Competition Act of 1992.

Legal Basis: 47 U.S.C. 154(i), 154(j), and 303.

Section Number and Title:

76.309 Customer service obligations.

Subpart J—Ownership of Cable Systems

Brief Description: These rules restrict the ownership interests of cable operators and their ability to own or control video programming services.

Need: These rules provide for diversity in the ownership of cable television systems and video programming providers.

Legal Basis: 47 U.S.C. 154(i), 154(j), and 303(r).

Section Number and Title:

76.501 Cross-ownership.
76.502 Time limits applicable to franchise authority consideration of transfer applications.
76.503 National subscriber limits.
76.504 Limits on carriage of vertically integrated programming.

Subpart M—Cable Inside Wiring

Brief Description: These rules allow subscribers the opportunity to acquire cable home wiring upon voluntary termination of service in order to use it for alternative providers and to avoid the disruption of having the wiring removed.

Need: These rules are required by section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992.

Legal Basis: 47 U.S.C. 154(i), 154(j), and 303(r).

Section Number and Title:

76.801 Scope.

Subpart N—Cable Rate Regulation

Brief Description: These rules provides for regulation of cable rates by local franchising authorities and the Commission.

Need: The rules ensure that subscribers pay reasonable rates for regulated cable services with minimum regulatory and administrative burden on cable entities.

Legal Basis: 47 U.S.C. 154(j), 303(r), 532, 542(c), and 543.

Section Number and Title:

76.901 Definitions.
76.905 Standards for identification of cable systems subject to effective competition.
76.906 Presumption of no effective competition.
76.907 Petition for a determination of effective competition.
76.910 Franchising authority certification.
76.911 Petition for reconsideration of certification.
76.912 Joint certification.
76.913 Assumption of jurisdiction by the Commission.
76.914 Revocation of certification.
76.916 Petition for recertification.
76.917 Notification of certification withdrawal.
76.920—Composition of the basic tier.
76.921—Buy-through of other tiers prohibited.
76.922—Rates for the basic service tier and cable programming services tiers.
76.923—Rates for equipment and installation used to receive the basic service tier.
76.924—Allocation to service cost categories.
76.925—Costs of franchise requirements.
76.930—Initiation of review of basic cable service and equipment rates.
76.933—Franchising authority review of basic cable rates and equipment costs.
76.934—Small systems and small cable companies.
76.935—Participation of interested parties.
76.936—Written decision.
76.937—Burden of proof.
76.938—Proprietary information.
76.939—Truthful written statements and responses to requests of franchising authority.
76.940—Prospective rate reduction.
76.941—Rate prescription.
76.942—Refunds.
76.943—Fines.
76.944—Commission review of franchising authority decisions on rates for the basic service tier and associated equipment.
76.945—Procedures for Commission review of basic service rates.
76.946—Advertising of rates.
76.950—Complaints regarding cable programming service rates.
76.951—Standard complaint form; other filing requirements.
76.952—Information to be provided by cable operator on monthly subscriber bills.
76.953—Limitation on filing a complaint.
76.954—Initial review of complaint; minimum showing requirement; dismissal of defective complaints.
76.955—Additional opportunity to file corrected complaint.
76.956—Cable operator response.
76.957—Commission adjudication of the complaint.
76.960—Prospective rate reductions.
76.961—Refunds.
76.962—Implementation and certification of compliance.
76.963—Forfeiture.
76.970—Commercial leased access rates.
76.971—Commercial leased access terms and conditions.
76.975—Commercial leased access dispute resolution.
76.977—Minority and educational programming used in lieu of designated commercial leased access capacity.
76.980—Charges for customer changes.
76.981—Negative option billing.
76.982—Continuation of rate agreements.
76.983—Discrimination.
76.984—Geographically uniform rate structure.
76.985—Subscriber bill itemization.
76.986—''A la carte'' offerings.
76.987—New product tiers.
76.990—Small cable operators.

Subpart O—Competitive Access to Cable Programming

Brief Description: These rules prescribe regulations that govern the access by competing multichannel video programming distributors to satellite cable and satellite broadcast programming.

Need: These rules implement section 19 of the Cable Television Consumer Protection and Competition Act of 1992, which adds section 628 to the Communications Act of 1934.

Legal Basis: 47 U.S.C. 152(a), 154(i), and 303(r).

Section Number and Title:

76.1000 Definitions.
76.1001 Unfair practices generally.
76.1002 Specific unfair practices prohibited.
76.1003 Program access proceedings.

Subpart Q—Regulation of Carriage Agreements

Brief Description: These rules govern agreements between multichannel video programming distributors and video programming vendors.

Need: These rules implement section 12 of the Cable Television Consumer Protection and Competition Act of 1992, which adds a new section 616 to the Communications Act of 1934.

Legal Basis: 47 U.S.C. 152(a), 154(i), and 303(r).

Section Number and Title:

76.1300 Definitions.
76.1301 Prohibited practices.
76.1302 Carriage agreement proceedings.

Part 87—Aviation Services

Subpart F—Aircraft Stations

Brief Description: This part states the conditions under which radio stations may be licensed and used in the aviation services. Subpart F sets forth, among other things, the requirements for emergency locator transmitters (ELTs) that operate in the 406.0–406.1 MHz band. An ELT is a transmitter of an aircraft or a survival craft actuated manually or automatically that is used as an alerting and locating aid for survival purposes.

Need: The specification of technical requirements for 406.0–406.1 MHz ELTs is intended to ensure that these devices, which are vital to aviation safety, perform effectively and reliably in transmitting information to search and rescue personnel in the event of an emergency.

Legal Basis: 47 U.S.C. 154, 303 and 307(e).

Section Number and Title:

87.199 Special requirements for 406.0–406.1 MHz ELTs.

Part 90—Private Land Mobile Radio Services

Subpart G—Applications and Authorizations

Brief Description: The part 90 rules state the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart G governs the application procedures and terms of authorizations in these services.

Need: The identified rule is necessary to ensure that certain part 90 licensees have in place an effective equal employment opportunity program and do not discriminate against qualified persons in employment because of sex, race, color, religion, or national origin.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

Section Number and Title:

90.168 Equal employment opportunities.

Subpart I—General Technical Standards

Brief Description: The part 90 rules state the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart I sets forth the general technical requirements for use of frequencies and equipment in the radio services governed by part 90.

Need: Technical standards are needed for part 90 equipment in part to ensure that part 90 devices are interoperable and do not cause harmful interference to other authorized communications.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

Section Number and Title:

90.210 Emission masks.
90.214 Transient frequency behavior.

Subpart M—Intelligent Transportation Systems Radio Service

Brief Description: The part 90 rules state the conditions under which radio

communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart M provides rules specific to the Intelligent Transportation Systems Radio Service.

Need: These rules provide a regulatory framework for the Intelligent Transportation Systems radio service, which was established for the purpose of integrating radio-based technologies into the nation's transportation infrastructure and to develop and implement the nation's intelligent transportation systems. Rules as to eligibility for licensing, frequencies available, and any special requirements for services in the Intelligent Transportation Systems Radio Service are set forth in this subpart.

Legal Basis: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

Section Number and Title:

90.350 Scope.
90.351 Location and Monitoring Service.
90.353 LMS Operations in the 902–928 MHz band.
90.355 LMS Operations below 512 MHz.
90.357 Frequencies for LMS systems in the 902–928 MHz band.
90.359 Field Strength Limits for MTA-licensed LMS systems.
90.361 Interference from part 15 devices [now titled, ''Interference from part 15 and Amateur operations.'']
90.363 Grandfathering provisions for existing AVM Licensees.

Subpart S—Regulations Governing Licensing and Use of Frequencies in the 806–824, 851–869, 896–901, and 935–940 MHz Bands

Brief Description: The part 90 rules state the conditions under which radio communications systems may be licensed and used in the Public Safety, Industrial/Business Radio Pool, and Radiolocation Radio Services. Subpart S sets forth the rules governing the licensing and operations of all systems operating in the 806–824/851–869 MHz and 896–901/935–940 MHz bands. It includes eligibility requirements, and operational and technical standards for stations licensed in these bands.

Need: Among other things, these rules establish requirements for Specialized Mobile Radio (SMR) licensees with MTA-based service areas to ensure that such licensees construct the authorized facilities in a timely manner, provide substantial service within their service areas, and do not cause harmful interference to site-based incumbent SMR licensees or other entities.

Legal Basis: 47 U.S.C. 54(i), 161, 303(g), 303(r), 332(c)(7).

Section Number and Title:

90.663 MTA-based SMR system operations.
90.665 Authorization, construction and implementation of MTA licenses.
90.669 Emission limits.
90.671 Field strength limits.

Part 101—Fixed Microwave Services

Subpart C—Technical Standards

Brief Description: The part 101 Rules prescribe the manner in which portions of the radio spectrum may be made available for private operational, common carrier, 24 GHz Service and Local Multipoint Distribution Service fixed, microwave operations that require transmitting facilities on land or in specified offshore coastal areas within the continental shelf. Subpart C governs the technical requirements set forth for these services.

Need: The identified rule is necessary to promote efficient utilization of the spectrum used for fixed microwave services.

Legal Basis: 47 U.S.C. 154, 303.

Section Number and Title:

101.139(f) (adopted as 21.120(e)(1993)) Authorization of transmitters.

[FR Doc. 05–11170 Filed 6–7–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 00–248; FCC 05–62]

Satellite License Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission invites comment on an off-axis equivalent isotropically radiated power (EIRP) method for reviewing earth station applications in the fixed satellite service (FSS). The intended purpose of this proceeding is to expedite the earth station license procedure.

DATES: Comments are due on or before September 6, 2005. Reply comments are due on or before October 6, 2005. The Federal Communications Commission will announce filing dates for written comments by the public on the proposed information collections in a future **Federal Register** document.

ADDRESSES: You may submit comments, identified by IB Docket No. 00–248, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission Web site: *http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accomodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* of phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments as set forth above, a copy of any comments on the information collections contained herein should be submitted to Judy Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jbHerman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Satellite Division, International Bureau, (202) 418–1539, or Mark Young, Satellite Division, International Bureau, (202) 418–0762.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Further Notice of Proposed Rulemaking, adopted March 10, 2005 and released March 15, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. It is also available on the Commission's Web site at *http://www.fcc.gov.*

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* (63 FR 2421 (May 1, 1998)). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for

each additional docket or rulemaking number.

Paperwork Reduction Act

This *Third Further Notice* contains proposed new and modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM in a future **Federal Register** document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13.

Summary of Further Notice of Proposed Rulemaking

Under the Commission's current rules, it limits routine treatment of earth station applications to those which meet both power level and antenna diameter requirements. In this NPRM, the Commission proposes combining its power level requirements and antenna diameter requirements into one off-axis EIRP requirement. The Commission anticipates that adoption of this proposal would give earth station operators more flexibility in their operations, and help expedite its review of some non-routine earth station applications.

The Commission proposes prohibiting analog video services after a one-year transition period, unless one of the commenters in this proceeding proposes an off-axis EIRP envelope for analog video services, and provides a sufficient basis for its proposal.

The Commission also invites comment on what revisions would be necessary to its rules providing protection from interference for earth stations, and the information requirements for earth station applications, in the event that it adopts an off-axis EIRP requirement for FSS earth stations. In addition, the Commission requests comment on whether to adopt a procedure for earth station applications that exceed any off-axis EIRP envelope it adopts, and if so, what that procedure should be.

When two or more remote earth stations using a contention protocol transmit simultaneously using the maximum allowed EIRP density per carrier, those transmissions can ''collide.'' The resulting power level caused by these collisions at a received satellite exceeds the level specified in the Commission's rules during the time period of simultaneous transmission, although for no more than tens of milliseconds. The Commission found that it needs to revise its rules so as not to prohibit the use of contention protocols, and invited comment on a contention protocol rule that would increase the allowed power level as the probability of collision decreases, and would be consistent with its proposed off-axis EIRP requirements.

Finally, the Commission invited comment on requiring VSAT operators planning to put a remote earth station in the Quiet Zone to coordinate with the National Radio Astronomy Observatory (NRAO).

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Third Further Notice.* We request written public comments on this IRFA. Commenters must identify their comments as responses to the IRFA and must file the comments by the deadlines for comments on the *Third Further Notice* provided above. The Commission will send a copy of the *Third Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2] In addition, the *Third Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.[3]

A. Need for, and Objectives of, the Proposed Rules

The Telecommunications Act of 1996 requires the Commission in every even-numbered year beginning in 1998 to review all regulations that apply to the operations or activities of any provider of telecommunications service and to determine whether any such regulation is no longer necessary in the public interest due to meaningful economic competition.

Our objective is to repeal or modify any rules in part 25 that are no longer necessary in the public interest, as required by section 11 of the Communications Act of 1934, as amended. Specifically, this *Third Further Notice* proposes adoption of an off-axis EIRP envelope for earth stations in the Fixed Satellite Service (FSS). Adoption of this proposal would allow earth station operators more flexibility in their choice of power level and antenna size. In addition, the *Third Further Notice* invites comment on revising the rules governing very small aperture terminal (VSAT) networks, to allow VSAT operators to use contention protocols, which are not allowed under the current VSAT rules. However, the *Third Further Notice* also invites comment on creating certain operating parameters for VSAT networks that use contention protocols, so that they do not cause harmful interference to adjacent satellites.

B. Legal Basis

The proposed action is supported by section 11 of the Communications Act of 1934, as amended, 47 U.S.C. 161.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[4] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[5] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[6] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[7]

1. Cable Services. The SBA has developed a small business size standard for Cable and Other Program Distribution, which consists of all such firms having $12.5 million or less in annual receipts.[8] According to Census Bureau data for 1997, in this category there was a total of 1,311 firms that operated for the entire year.[9] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional fifty-two firms had receipts of $10 million to $24,999,999.[10] Thus, under

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. Law 104–121, Title II, 110 Stat. 847 (1996) (CWAAA).

[2] *See* 5 U.S.C. 603(a).

[3] *See* 5 U.S.C. 603(a).

[4] 5 U.S.C. 604(a)(3).

[5] 5 U.S.C. 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[7] Small Business Act, 15 U.S.C. 632 (1996).

[8] 13 CFR 121.201, NAICS code 517510.

[9] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 513220 (issued October 2000).

[10] *Id.*

this size standard, the majority of firms can be considered small.

The Commission has developed its own small business size standard for a small cable operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide.[11] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995.[12] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small cable companies that may be affected by the proposed rules.

The Communications Act of 1934, as amended, also contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.''[13] The Commission has determined that there are 67,700,000 subscribers in the United States.[14] Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[15] Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450.[16] We do not request or collect information on whether cable operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[17] and therefore are unable to estimate accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

2. *Satellite Telecommunications.* The rules proposed in this *Third Further Notice* would affect providers of satellite telecommunications services, if adopted. Satellite telecommunications service providers include satellite operators and earth station operators. The Commission has not developed a definition of small entities applicable to satellite operators. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Satellite Telecommunications.[18] This definition provides that a small entity is expressed as one with $12.5 million or less in annual receipts.[19] 1997 Census Bureau data indicate that, for 1997, 273 satellite communication firms had annual receipts of under $10 million. In addition, 24 firms had receipts for that year of $10 million to $24,999,990.[20]

3. Auxiliary, Special Broadcast and other program distribution services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radio broadcasting stations,[21] and television broadcasting stations.[22] These definitions provide that a small entity is one with either $6.0 million or less in annual receipts for a radio broadcasting station or $12.0 million in annual receipts for a TV station.[23] There are currently 3,237 FM translators and boosters, 4913 TV translators.[24] The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either $6.0 million for a radio station or $12.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.

4. Microwave Services. Microwave services include common carrier,[25] private-operational fixed,[26] and broadcast auxiliary radio services.[27] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to cellular and other wireless communications companies—*i.e.*, an entity with no more than 1,500 persons.[28] We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

[11] 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable company is one with annual revenues of $100 million or less. *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation,* MM Docket Nos. 92–266 and 93–215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408–7409 ¶¶ 28–30 (1995).

[12] Paul Kagan Assocs., Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[13] 47 U.S.C. 543(m)(2).

[14] *See FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* Public Notice, 16 FCC Rcd 2225 (2001).

[15] 47 CFR 76.1403(b).

[16] *See FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* Public Notice, 16 FCC Rcd 2225 (2001).

[17] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.990(b).

[18] ''This industry comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Small Business Administration, NAICS code 517310.

[19] 13 CFR 120.121, NAICS code 517310.

[20] U.S. Census Bureau, 1997 Economic Census, Subject Service: Information, ''Establishment and Firm Size,'' Table 4, NAICS 513340 (Issued Oct. 2000).

[21] 13 CFR 121.201, NAICS code 515112.

[22] 13 CFR 121.201, NAICS code 515120.

[23] 13 CFR 121.201.

[24] FCC News Release, *Broadcast Station Totals as of September 30, 1999,* No. 71831 (Jan. 21, 1999).

[25] *See* 47 CFR part 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[26] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[27] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR part 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[28] *See* 13 CFR 121.201, NAICS code 517212.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

None of the proposed rules in this notice are intended to increase the reporting, recordkeeping and other compliance requirements of any telecommunications carrier. Adoption of an off-axis EIRP approach for the regulation of FSS earth stations would require changes to the application form for earth station licenses, those changes are not intended to be more or less burdensome than the current application requirements. Furthermore, those changes, if adopted, would not affect small business earth station operators any differently than other earth station operators.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

In the *Third Further Notice,* the Commission considers a proposal from the *Further Notice* regarding VSAT networks using contention protocols, and also considers several proposals from commenters. The Commission rejects all those proposals as too restrictive for all earth station operators, including small business operators, and seeks comment on a new proposal which it believes to be less restrictive.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Accordingly, *It is ordered,* pursuant to sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g), 303(r), that this *Third Further Notice of Proposed Rulemaking* is hereby *adopted.*

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief, Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–11172 Filed 6–7–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1477; MB Docket No. 04–124, RM–10936, RM–10937, RM–10938, RM–10939]

Radio Broadcasting Services; Dallas, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: The Audio Division denies Petitions for Rule Making filed separately by Northwest Community Radio Project, Dallas, Oregon Seventh-day Adventist Church, Radio Bilingue, Inc. and Lifetime Ministries, Inc. proposing the reservation of vacant Channel 252C3 at Dallas, Oregon for noncommercial educational. The proposals were denied because the reservation of vacant Channel 252C3 at Dallas, Oregon would not provide a first/second noncommercial educational service to at least ten percent of the total population within the proposed 60 dBu contour. *See* 69 FR 26353, May 12, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–124, adopted May 25, 2005, and released May 27, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was denied.)

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–11275 Filed 6–7–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1365; MB Docket No. 05–191; RM–11243]

Radio Broadcasting Services; Elberton and Union Point, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Georgia-Carolina Radiocasting Company, LLC (''Petitioner''), licensee of Station WEHR (FM), Channel 286A, Elberton, Georgia. Petitioner requests that the Commission upgrade Channel 286A to Channel 286C2 and reallot Channel 286C2 from Elberton to Union Point, Georgia. The coordinates for Channel 286C2 at Union Point are 33–22–42 NL and 83–00–16 WL, with a site restriction of 27.1 kilometers (16.8 miles) south of Union Point.

DATES: Comments must be filed on or before July 18, 2005, and reply comments on or before August 2, 2005.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve Petitioner's counsel, as follows: Dan J. Alpert, Esq., The Law Office of Dan J. Alpert; 2120 N. 21st Road; Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–191, adopted May 25, 2005 and released May 27, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals

II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4).

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 286A at Elberton, and by adding Union Point, Channel 286C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–11274 Filed 6–7–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–2005–21259]

RIN 2126–AA88

Parts and Accessories Necessary for Safe Operation: Protection Against Shifting and Falling Cargo

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) is proposing to amend its September 27, 2002, final rule concerning protection against shifting and falling cargo for commercial motor vehicles (CMVs) engaged in interstate commerce in response to petitions for rulemaking from the American Trucking Associations (ATA), Forest Products Association of Canada, Georgia-Pacific Corporation and Weyerhaeuser, and in response to issues raised by the Canadian Council of Motor Transport Administrators (CCMTA), the Forest Resources Association, Inc., the Washington Contract Loggers Association and the Washington Log Truckers Conference, and the Timber Producers Association of Michigan and Wisconsin. The amendments are intended to make the final rule more consistent with the December 18, 2000, notice of proposed rulemaking (NPRM) and the North American Cargo Securement Standard Model Regulations the new rules are based upon. This rulemaking would also include several editorial corrections to the final rule.

DATES: Comments must be received by August 8, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2004–19608 by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN 2126-AA90). Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading for further information.

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

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov.*

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Chief of the Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 202–366–4009.

SUPPLEMENTARY INFORMATION: This notice is organized as follows:

I. Legal Basis for the Rulemaking
II. Background
III. Petitions for Reconsideration
  A. Summary of the Petitions for Reconsideration
  B. FMCSA Response to the Petitioners
IV. ATA Petition for Rulemaking
  A. Summary of ATA Concerns
  B. FMCSA Response to ATA Concerns
V. CCMTA Concerns About the Relationship Between the Performance Criteria and Working Load Limits
  A. Summary of CCMTA's Concerns
  B. FMCSA Response to CCMTA
VI. Forest Resources Assocation's Concerns About Section 393.116
  A. Summary of the Forest Resource Association's Concerns

B. FMCSA Response to the Forest Resources Association
VII. Washington Contract Loggers Association and Washington Log Truckers Conference—Section 393.116
A. Summary of Washington Loggers' and Log Truckers' Concerns
B. FMCSA Response to Washington Loggers and Log Truckers
VIII. Timber Producers Association of Michigan and Wisconsin—Section 393.116
A. Summary of the Timber Producers Association's Concerns
B. FMCSA Response to Timber Producers Association
IX. Miscellaneous Amendments—Manufacturing Standards for Tiedowns, Dressed Lumber, Metal Coils, Paper Rolls, Intermodal Containers, Flattened or Crushed Cars
A. Manufacturing Standards for Tiedowns
B. Dressed Lumber and Similar Building Products
C. Metal Coils
D. Paper Rolls
E. Intermodal Containers
F. Flattened or Crushed Cars
X. Regulatory Analyses and Notices

I. Legal Basis for the Rulemaking

This rulemaking is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984.

The Motor Carrier Act of 1935, as amended, provides that ''[t]he Secretary of Transportation may prescribe requirements for: (1) Qualifications and maximum hours-of-service of employees of, and safely of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours-of-service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' (49 U.S.C. 31502(b)).

This NPRM proposes to amend regulations concerning protection against shifting and falling cargo (cargo securement), applicable to motor carriers of property, which were promulgated by FMCSA on September 27, 2002 (67 FR 61212). The cargo securement regulations deal directly with the ''safety of operation and equipment of * * * a motor carrier (§ 31502(b)(1)) and the ''standards of equipment of, a motor private carrier when needed to promote safety of operation'' (§ 31502(b)(2)). The adoption and enforcement of such rules is specifically authorized by the Motor Carrier Act of 1935. This NPRM rests squarely on that authority.

The Motor Carrier Safety Act of 1984 provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that: (1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators'' (49 U.S.C. 31136(a)).

This NPRM deals with cargo securement. It is based primarily on § 31136(a)(1) and (2), and secondarily on § 31136(a)(4). This rulemaking would ensure CMVs are maintained, equipped, loaded, and operated safely by requiring that cargo be secured in a manner that prevents it from shifting upon a CMV to such an extent that the vehicle's stability or maneuverability is adversely affected, or falling from the commercial motor vehicle and striking another vehicle. Compliance with the cargo securement regulations is necessary to ensure vehicles are equipped with appropriate cargo securement devices, loads are properly positioned on the vehicle, and vehicles are operated safely without the risk of shifting or falling cargo.

The proposed regulations would provide improved guidance to CMV drivers who are often responsible for securing articles of cargo against movement, thereby ensuring the cargo securement responsibilities imposed on them by their employers do not, if fulfilled in accordance with the regulations, impair their ability to operate vehicles safely.

Finally, the rulemaking would ensure the operation of CMVs does not have a deleterious effect on the physical condition of the operators of vehicles by preventing articles of cargo from shifting forward into the driver's compartment, or shifting upon the vehicle to such an extent that the vehicle's stability or maneuverability is adversely affected and likely to cause a crash.

Therefore, FMCSA considers the requirements of 49 U.S.C. 31136 (a)(1), (2) and (4) to be applicable to this rulemaking action. The rulemaking would amend regulations concerning commercial vehicle equipment, loading and operations, prescribe regulations applicable to the responsibilities frequently imposed upon drivers to ensure their ability to operate safely is not impaired, and help to prevent serious injuries to CMV drivers that could result from improperly secured loads.

With regard to 49 U.S.C. 31136(a)(3), FMCSA does not believe this provision concerning the physical condition of drivers is applicable to this rulemaking because this rulemaking does not concern the establishment of driver qualifications standards. This proposed rulemaking addresses safety requirements applicable to the cargo securement methods used by drivers who are often assigned the responsibility for ensuring that freight is restrained to prevent shifting upon or falling from the CMV, but it does not include issues related to the physical qualifications or physical capabilities of drivers who must complete such tasks.

FMCSA requests comments and information on all of these issues to enable the agency to evaluate the proposed changes. However, before prescribing any such regulations, FMCSA must consider the ''costs and benefits'' of any proposal (49 U.S.C. 31136(c)(2)(A)).

II. Background

On September 27, 2002 (67 FR 61212), FMCSA published a final rule revising its regulations concerning protection against shifting and falling cargo for CMVs operated in interstate commerce. The new cargo securement standards are based on the North American Cargo Securement Standard Model Regulations, reflecting the results of a multi-year comprehensive research program to evaluate the then-current U.S. and Canadian cargo securement regulations; the motor carrier industry's best practices; and recommendations presented during a series of public meetings involving U.S. and Canadian industry experts, Federal, State and Provincial enforcement officials, and other interested parties. The Agency indicated that the intent of the rulemaking is to reduce the number of crashes caused by cargo shifting on or within, or falling from, CMVs operating in interstate commerce, and to harmonize to the greatest extent practicable U.S., Canadian and Mexican cargo securement regulations. Motor carriers were given until January 1, 2004, to comply with the new regulations.

III. Petitions for Reconsideration

A. Summary of the Petitions for Reconsideration

FMCSA received separate petitions for reconsideration of the final rule from the Forest Products Association of Canada, Georgia-Pacific Corporation and Weyerhaeuser. However, each petition

requested the same changes to the final rule, for the same reasons. Therefore, for the purposes of this notice, the Agency refers to the Association and the two companies collectively as ''the Petitioners.'' A copy of each petition is included in the docket referenced at the beginning of this notice. Although each of the Petitioners considered its request to be a petition for reconsideration of the final rule, all the requests were submitted after the deadline provided in 49 CFR 389.35 (*i.e.*, petitions for reconsideration must be submitted no later than 30 days after publication of the final rule in the **Federal Register**). Therefore, the petitions are being treated as petitions for rulemaking in accordance with 49 CFR 389.35.

The Petitioners requested nine specific amendments to the final rule:

1. Revise § 393.102(d) to provide a third option regarding equivalent means of securement that would satisfy the performance criteria. The Petitioners believe the use of the term ''immobilized'' means the cargo securement system must not allow any movement at all which is in conflict with the reality that regardless of the securement system being used, there will be some movement.

2. Amend § 393.104 by removing the reference to ''vehicle structures'' from paragraph (b) and removing the reference to cuts and cracks from paragraphs (b) and (c). The Petitioners believe the reference to ''vehicle structures'' should only appear in § 393.104(c) and that the phrase ''must not have any cracks or cuts'' is problematic because most vehicles have minor areas of stress that could be considered cracks.

3. Revise § 393.106(a) to insert the proper paragraph numbers to encompass the commodity-specific rules. Section 393.106(a) incorrectly references §§ 393.122 through 393.142 instead of §§ 393.116 through 393.136.

4. Revise § 393.106(d) to explain in greater detail the methodology for determining the aggregate working load limit for a cargo securement system.

5. Revise the title of § 393.108 to include reference to friction mats, thereby avoiding the incorrect identification of friction mats as a tiedown.

6. Revise § 393.108(a) to include an example to clarify the working load limits of associated connectors and attachment mechanisms.

7. Revise § 393.110(a) to avoid suggesting that all types of cargo require the use of tiedowns to comply with the rules. The Petitioners recommend that paragraph (a) be revised so that it is applicable only when tiedowns are being used.

8. Revise § 393.110(c) to avoid suggesting that individual articles of cargo are required to be blocked, braced or immobilized. The Petitioners requested that paragraph (c) be revised to be applicable only when blocking and bracing is being used.

9. Revise § 393.114(b)(1) to eliminate a typographical error: the paragraph incorrectly states ''forward movement of any item of article'' instead of ''forward movement of any item or article.''

B. FMCSA Response to the Petitioners

1. Section 393.102(d)

FMCSA agrees with the Petitioners on this issue. Section 393.102(d) should be amended to explicitly state that the phrase ''equivalent means of securement'' includes loading arrangements in which the cargo fills a sided vehicle of adequate strength, and every article of cargo is in contact with, or sufficiently close to, a wall or other articles so that it cannot shift or tip if those articles are also unable to shift or tip. Although the Agency intended that use of the term ''immobilized'' in § 393.102(d) would encompass such loading arrangements as an option for satisfying the performance criteria in § 393.102(a), we agree the term could be construed to prohibit even the slightest of movements and consequently does not adequately express the full intent of § 393.102(d).

The proposed change to § 393.102(d) would clarify that van type trailers carrying cargo need not use tiedowns so long as cargo is loaded in such a way as to prevent cargo from shifting or falling during transport. The rule as originally written could be read to imply that all trailers with walls for restraining cargo (such as van type trailers) would have to use tiedowns when transporting cargo in order to prevent shifting of cargo. FMCSA did not intend to impose the use of tiedowns on cargo loaded on trailers with sidewalls that are of adequate strength, and which are loaded in such a way as to prevent cargo from shifting or spilling during transport. This section of the rule clarifies the conditions under which tiedowns are necessary, and those under which FMCSA considers sidewall restraints and proper loading to adequately contain cargo during shipment. This change was made in response to comments from industry representatives, including the following from the Weyerhauser Corporation:

> ''However, the sections of the proposed standard that cover general cargo (393.100 through 393.120) are confusing and far removed from the principles of the Model Regulation. These sections appear to require tiedowns for cargo transported in sided vehicles at all times. Cargo that will not fall from or out of a vehicle and cargo that will not shift to the extent that the vehicle's stability is adversely affected should not be subject to the requirements concerning tiedowns or other additional securement. The confusion in these proposed rules could lead to needless litigation based on the confusion and misinterpretation of the rules by shippers, carriers and enforcement agencies.''

Therefore, to avoid potential misunderstandings about the requirements by motor carriers, drivers and enforcement personnel, the Agency would revise § 393.102(d) to incorporate the change noted above.

2. Section 393.104(b) and (c)

FMCSA agrees with the Petitioners that the reference to ''vehicle structures'' should not appear in paragraph (b). The term ''vehicle structures'' should appear only in paragraph (c) of § 393.104. Paragraph (b) is intended to cover devices and components used to secure articles of cargo to the vehicle, while paragraph (c) is intended to focus on vehicle structures and anchor points. The Agency would revise paragraph (b) to remove the reference to ''vehicle structures.''

FMCSA also agrees with the Petitioners that the use of the phrase ''must not have any cracks or cuts'' at the end of paragraphs (b) and (c) could be construed as prohibiting all cracks and cuts on cargo securement devices, systems or vehicle components used to secure cargo regardless of whether such imperfections adversely affect their performance for cargo securement purposes. This is not the Agency's intent. As indicated in the preamble to the final rule (67 FR 61212, at 61220) the Agency indicated that the defects or deficiencies of concern were those that are capable of having an adverse effect on the performance of the cargo securement system. The Agency continues to believe this approach is appropriate and that a blanket prohibition against any visible damage, regardless of severity, is not warranted. Accordingly, FMCSA would revise §§ 393.104(b) and (c) to limit the prohibition against cracks or cuts to situations where the damage will adversely effect the performance of the cargo securement device.

3. Section 393.106(a)

The Petitioners are correct that § 393.106(a) of the final rule makes reference to the wrong sections when discussing the commodity-specific rules. Section 393.106(a) incorrectly

references §§ 393.122 through 393.142 when it should have made reference to §§ 393.116 through 393.136. Therefore, FMCSA would correct this error.

4. Section 393.106(d)

FMCSA agrees with the Petitioners that the current rules providing guidance on determining the aggregate working load limit should be revised. The Agency does not believe the revision needs to be as extensive as the Petitioners suggest.

The Petitioners are correct that the working load limit of a tiedown and its associated attachment point(s) is controlled by the weakest link. If a tiedown is stronger than the anchor points, the working load limit of the anchor points would be used to determine the working load limit of the tiedown, as installed. If an anchor point is stronger than the chain, synthetic webbing, wire rope, etc. connected to it, the tiedown is the weakest link and the working load limit for the tiedown should be based on that weakest link. FMCSA believes the weakest link concept for cargo securement systems is well understood by enforcement personnel, motor carriers and drivers, and reinforced by the Agency's definition of ''tiedown'' in § 393.5 and by § 393.108(a).

The definition of ''tiedown,'' provided in 49 CFR 393.5, explains it is a combination of securement devices which forms an assembly that attaches articles of cargo to, or restrains articles of cargo on, a vehicle or trailer, and is attached to anchor points. Section 393.108(a) provides that the working load limit of a tiedown, associated connector or attachment mechanism is the lowest working load limit of any of its components (including tensioner), or the working load limit of the anchor points to which it is attached, whichever is less.

FMCSA believes the formula for determining the aggregate working load limit for tiedowns should be more simply stated as the sum of:

(1) One-half the working load limit of each tiedown that goes from an anchor point on the vehicle to an attachment point on an article of cargo; and

(2) The working load limit for each tiedown that goes from an anchor point on the vehicle, through, over or around the cargo and then attaches to another anchor point on the vehicle.

The Agency believes this straightforward wording, combined with the Agency's definition of tiedown and the explicit guidance to use the lowest working load limit of any of the components in a given tiedown when determining the working load limit for that tiedown, will ensure motor carriers, drivers, and enforcement personnel better understand the aggregate working load limit requirement.

5. Section 393.108

FMCSA agrees with the Petitioners that the title of this section should be revised to more accurately reflect the role of friction mats in a cargo securement system. The current title provides the reader with no means of recognizing there is a paragraph therein concerning friction mats.

6. Section 393.108(a)

FMCSA disagrees with the Petitioners about the need for the inclusion of an example for determining the working load limit for a cargo securement system. While examples may be helpful they are not necessarily appropriate for publication in the Code of Federal Regulations. The Agency believes the revision of § 393.106(d) will resolve any remaining confusion regarding the process for determining the aggregate working load limit for a cargo securement system.

7. Section 393.110(a)

FMCSA agrees with Petitioners that § 393.110(a) should be revised so that the requirement is applicable only when tiedowns are being used. This change is consistent with the intent of the final rule and the Agency considers it to be an editorial correction.

8. Section 393.110(c)

FMCSA agrees with Petitioners that § 393.110(c) should be revised so that the requirement is applicable only when blocking, bracing or some other means of immobilization is being used. This change is consistent with the intent of the rule and the Agency considers it to be an editorial correction.

9. Section 393.114(b)(1)

FMCSA agrees with the Petitioners that the Agency should revise § 393.114(b)(1) to replace ''forward movement of any item of article'' with ''forward movement of any item or article.'' This is an editorial correction and the Agency would make this change.

IV. ATA Petition for Rulemaking

A. Summary of ATA Concerns

On June 9, 2004, ATA filed a petition for rulemaking for reconsideration of the September 27, 2002, final rule. Because the petition was submitted well after the deadline for petitions for reconsideration provided in 49 CFR 389.35 (*i.e.*, petitions for reconsideration must be submitted no later than 30 days after publication of the final rule in the **Federal Register**), FMCSA considers the ATA request to be a petition for rulemaking. A copy of the ATA petition is included in the docket referenced at the beginning of this document.

ATA requested FMCSA revise § 393.102(c) to adopt the forward and lateral acceleration values of 0.4 g (defined in § 393.5 as the acceleration due to gravity, 32.2 ft/sec^2 (9.81 m/sec^2)) and 0.25 g, respectively, based on the Agency's December 31, 2003, enforcement policy memorandum. This issue is discussed in detail in the section concerning CCMTA's concerns about the relationship between the performance criteria and working load limits.

ATA also requested that the Agency remove § 393.104(f)(4) from the new cargo securement regulations. Section 393.104(f)(4) requires that all tiedowns and other components of a cargo securement system used to secure loads on a trailer equipped with rub rails, must be located inboard the rub rails whenever practicable. ATA believes the term ''whenever practicable'' is inherently subjective. Requiring securement devices to remain inboard whenever practicable means motor carriers must: Attach tiedowns directly to the underside of the trailer, potentially preventing proper securement; or, attach tiedowns using industry standard practices and risk being issued a fine or placed out of service by enforcement personnel who have a different interpretation of ''practicable.''

In addition, ATA requested FMCSA to revise § 393.118(d)(3)(iv)(B) concerning securement requirements for dressed lumber or similar building products. ATA believes the wording is confusing because it is being used to account for every load of more than two tiers of products. Furthermore, the use of the word ''tier'' is subject to being misinterpreted because the paragraph does not clarify whether the usage of the word ''tier'' is intended to cover the vertical, longitudinal or lateral direction.

B. FMCSA Response to ATA Concerns

FMCSA agrees with ATA that § 393.102(c) should be revised to use 0.4 g deceleration in the forward direction and 0.25 g acceleration in a lateral direction when determining whether the working load limit for cargo securement devices or systems would be exceeded. A more in-depth discussion of this issue is presented in the section of this notice addressing CCMTA's concerns.

With regard to § 393.104(f)(4), FMCSA has provided a clarification of the

requirement indicating that if the trailer is designed and equipped so that there is no other practicable means of attaching the tiedowns to the trailer so that they are prevented from becoming loose, unfastened or released while the vehicle is in transit—required by § 393.104(f)(3)—then attaching the tiedown to the rub rails should not be considered a violation of § 393.104(f)(4). However, based on the number of inquiries received from State enforcement officials and motor carriers, and understanding their perspectives in interpreting the regulation, the Agency agrees the requirement should be rescinded. The Agency does not believe it is possible to achieve uniform and consistent enforcement of this provision.

Although § 393.104(f)(3) was adopted to ensure that motor carriers do not expose tiedowns to potential damages if the vehicle rubs against a fixed object such as a highway barricade, this mode of failure for tiedowns appears to be extremely rare. Therefore, the Agency does not believe rescinding this paragraph would have an adverse impact on safety.

FMCSA agrees with ATA about the need to revise § 393.118(d)(3)(iv)(B). The current wording is ambiguous at best. FMCSA agrees the requirement should be interpreted to mean that if a stack contains three bundles, then the middle and top bundles must be secured by tiedowns in accordance with the provisions of §§ 393.100 through 393.114. If a stack contains more than three bundles, then one of the middle bundles and the top bundle must be secured by tiedown devices in accordance with the provision of §§ 393.100 through 393.114. The maximum height for the middle bundle that is secured must not exceed 6 feet above the deck of the trailer. Otherwise, the second bundle from the bottom of the stack must be secured in accordance with §§ 393.100 through 393.114. However, FMCSA does not agree with ATA's argument about the need for changing the terminology in this provision from ''tier'' to ''stack.'' The Agency does not believe the continued use of the term ''tier'' has caused problems to date and points out that the petitioner has not identified any such occurrences.

V. CCMTA Concerns About the Relationship Between the Performance Criteria and Working Load Limits

A. Summary of CCMTA Concerns

CCMTA believes cargo securement devices and systems should be designed, installed and maintained to ensure that the maximum forces acting on the devices or systems do not exceed the working load limit for the devices when the devices or systems are subjected to the forces generated by the deceleration and accelerations provided in the performance criteria. CCMTA argues the requirement that the aggregate working load limit be at least one-half times the weight of the article being secured does not ensure compliance with the prohibition against exceeding the working load limit when the performance criteria (0.8 g deceleration in the forward direction, 0.5 g in the rearward and lateral directions) are applied. To correct this discrepancy, CCMTA believes the working load limit formula needs to be adjusted to increase cargo restraining capacity. A copy of CCMTA's comments to the Commercial Vehicle Safety Alliance concerning FMCSA's requirements is included in the docket for this rulemaking.

B. FMCSA Response to CCMTA

FMCSA shares CCMTA's concerns about safety but the Agency does not believe, given the limited amount cargo securement-related crash data available, there is a need to establish more stringent requirements than the Agency adopted on September 27, 2002. The Agency believes cargo securement systems should be designed, installed, and maintained to ensure that the maximum forces acting on these devices and systems do not exceed the working load limit of the tiedowns, but only under normal operating conditions. This is because working load limit is defined in § 393.5 as the maximum load that may be applied to a component of a cargo securement system during normal service. The performance criteria of § 393.102(a) do not represent normal service or operating conditions. Specifically, 0.8 g deceleration in the forward direction is not a routine force that commercial motor vehicles are subjected to on a regular basis. The same may be said of 0.5 g acceleration in a lateral direction. The preamble to the final rule stated:

> The values chosen are based on the researchers' analysis of previous studies concerning commercial motor vehicle performance. The analysis indicated that the highest deceleration likely for an empty or lightly loaded vehicle with an antilock brake system, with all brakes properly adjusted and warmed to provide optimal braking performance, is in the range of 0.8–0.85 g. However, a typical loaded vehicle would not be expected to achieve a deceleration greater than 0.6 g on a dry road.
>
> The typical lateral acceleration while driving a curve or ramp at the posted advisory speed is in the range 0.05–0.17 g. Loaded vehicles with a high center of gravity rollover at a lateral acceleration above 0.35 g. Lightly loaded vehicles, or heavily loaded vehicles with a lower center of gravity, may withstand lateral acceleration forces greater than 0.50 g. We continue to believe that the information presented by the researchers supports the use of the decelerations listed above.

FMCSA also considered the National Highway Traffic Safety Administration's (NHTSA) report ''An In-Service Evaluation of the Reliability, Maintainability, and Durability of Antilock Braking Systems (ABS) for Heavy Truck Tractors,'' DOT HS 807 846, March 1992, which provides data concerning routine brake application pressures and the resulting forces. NHTSA used on-board electronic data monitors/recorders installed on 216 vehicles, 200 ABS equipped truck tractors, and 16 control vehicles. The data were accumulated over nearly 600,000 hours and 18 million miles of tractor operation. More than 13 million brake applications occurred during that time period, at all times of the year and during all types of weather. Brake pressures of 15 pounds per square inch (psi) or less (light braking) accounted for approximately 84 percent of the total braking time recorded. An additional 10 percent of brake applications were between 15 and 20 psi and almost all the remaining brake applications were below 45 psi (moderate to hard braking). Only 0.02 percent of the total braking time was at pressures of 75 psi or greater.

Eighty-five percent of the braking resulted in 0.19 g, or less, decelerations indicating light braking, and another 14.7 percent resulted in moderate-to-hard braking from 0.19 to 0.40 g. Deceleration levels above 0.40 g were only encountered in 0.11 percent of brake applications.

Based on the Agency's review of its stated objectives in the preamble of the final rule and the NHTSA research data, FMCSA believes it would be inappropriate to require that the working load limits for the tiedowns be equal to or greater than the forces they would be subjected to, based on the performance criteria under § 393.102(a). A requirement to ensure the working load is adequate for such performance limits would mean motor carriers must double the number of tiedowns currently required. The aggregate working load limit would have to be increased from ½ times the weight of the articles being secured to one times the weight of the articles being secured. This is not necessary given that 99.7 percent of the braking measured during NHTSA's study resulted in 0.40 g or less

deceleration. The current requirement that the aggregate working load limit be equal to at least ½ times the weight of the article ensures an appropriate level of safety because 0.40 g deceleration in the forward direction (from the NHTSA study), and about 0.25 g acceleration in the lateral direction appear to represent maximum deceleration and acceleration values under normal operating conditions. Generally, these values would not result in forces that exceed the working load limit for the tiedowns.

Because the 0.8 g deceleration in the forward direction and the 0.5 g accelerations in the lateral and rearward directions represent the most extreme operating conditions short of a crash, FMCSA believes the rules should require that the breaking strength of the cargo securement system must be sufficient to ensure the load remains in place up to these limits. Compliance with the prohibition against exceeding the working load limits would then be determined by using 0.4 g deceleration in the forward direction, 0.25 g in the lateral directions, and 0.5 g in the rearward direction—the rearward acceleration would remain unchanged because it results from the vehicle backing slowly into the loading dock. The Agency is revising § 393.102 to provide appropriate performance limits for use in determining compliance with the working load limit rules.

VI. Forest Resources Association Concerns About § 393.116

A. Summary of Forest Resources Association Concerns

The Forest Resources Association identified three issues of concern. First, the December 18, 2000, NPRM proposed that the aggregate working load limit for all tiedowns used to secure a stack of logs be one-sixth the weight of the logs. The paragraph under the proposed § 393.116 was omitted from the final rule and they have requested that it be restored.

Second, the Forest Resources Association requested that § 393.116 be amended to allow one tiedown per bunk, spaced equally between the standards, when transporting short length logs loaded lengthwise between the first two standards and between the last two standards. They believe the current wording requiring the use of two tiedowns is unnecessary given the bunks and standards.

Third, the group indicated that the final rule omitted requirements for the transportation of longwood logs loaded lengthwise. They requested the agency restore the language originally proposed for the transportation of longwood. A copy of the Forest Resources Association's letter is included in the docket referenced at the beginning of this document.

B. FMCSA Response to the Forest Resources Association

FMCSA believes the Forest Resources Association's requests are reasonable and appropriate. The NPRM (65 FR 79050, December 18, 2000) included proposed requirements for the transportation of longwood on frame vehicles [§ 393.122(d)(2) of the proposal] and longwood on flatbed vehicles [§ 393.122(f)(4) of the proposal]. Sections 393.122(d)(3) and (f)(5) of the proposal would have provided that the aggregate working load limit for all tiedowns must be no less than one-sixth the weight of the stack of logs, for logs transported lengthwise. When the final rule was drafted, paragraphs (d)(2) and (3), and (f)(4) and (5) were inadvertently omitted. FMCSA would correct those errors.

With regard to allowing the use of one tiedown per bunk for short length logs loaded lengthwise between the first two standards and between the last two standards, FMCSA believes one tiedown is sufficient given the standards used to protect against lateral movement.

VII. Washington Contract Loggers Association and Washington Log Truckers Conference—§ 393.116

A. Summary of Washington Loggers and Log Truckers Concerns

The Washington Contract Loggers Association and Washington Log Truckers Conference also expressed concerns about § 393.116. These organizations are concerned that the new rules require tiedowns (as defined in § 393.5) for the transportation of logs on frame vehicles and appear to prohibit the continued use of wrappers—a tiedown-type device that encircles the entire load, which is then placed onto the frame vehicle with standards to keep the bundled logs in place. The groups presented photographs of several vehicle configurations requesting guidance whether the vehicles were considered frame vehicles, and require the use of tiedowns instead of wrappers. A copy of the Washington Contract Loggers Association and Washington Log Truckers Conference correspondence with FMCSA is included in the docket referenced at the beginning of this document.

B. FMCSA Response to Washington Loggers and Log Truckers

FMCSA has carefully reviewed the NPRM and the North American Cargo Securement Standard Model Regulations and determined § 393.116(e) should be amended to allow the use of wrappers that encircle the entire load at locations along the load that provide effective securement. The use of wrappers is currently allowed for the transportation of logs on pole trailers [see § 393.116(f)] and there is no discernible reason the use of wrappers and standards as a means of securing loads should be prohibited.

VIII. Timber Producers Association of Michigan and Wisconsin—§ 393.116

A. Summary of Timber Producers Association Concerns

The Timber Producers Association of Michigan and Wisconsin indicated the forest products industry has expressed an interest in using a crib-type system for transporting logs and pulpwood. Such systems are typically based, in whole or in part, upon a patented design ''Apparatus for Constraining the Position of Logs on a Truck Trailer'' (Patent No. U.S. 6,572,314 B2). These systems use stakes, bunks, a front-end structure, and a rear structure to restrain logs on trailers. The stakes prevent movement of the logs from side to side on the vehicle while the front-end and rear structures prevent movement of the logs from front to back on the vehicle. The intent of such systems is to enable motor carriers to transport logs without the use of wrapper chains or straps to secure the load, thereby expediting the loading and unloading process. Section 393.116 does not provide clear guidance whether these systems may be used without tiedowns.

B. FMCSA Response to Timber Producers Association

The agency explained in a clarification dated December 30, 2003, that, generally, the use of a crib-type log securement system, without wrappers or tiedowns, would satisfy the commodity-specific requirements of § 393.116, provided:

(1) All vehicle components in the crib-type system are designed and built to withstand all anticipated operational forces without failure, accidental release or permanent deformation. Stakes or standards that are not permanently attached to the vehicle must be secured in a manner that prevents unintentional separation from the vehicle in transit [49 CFR 393.116(b)(2)];

(2) Logs are solidly packed with the outer bottom logs in contact with, and

resting solidly against the stakes, bunks, bolsters or standards [49 CFR 393.116(c)(1)];

(3) Each outside log on the side of a stack of logs must touch at least two stakes, bunks, bolsters or standards. If one end does not actually touch a stake, it must rest on other logs in a stable manner and must extend beyond the stake, bunk, bolster or standard [49 CFR 393.116(c)(2)];

(4) The maximum height of each stack of logs being transported is below the height of the stakes and the front- and rear-end structures; and,

(5) The heights of the stacks are approximately equal so that logs in the top of one stack cannot shift longitudinally onto another stack on the vehicle.

The Agency further explained that § 393.116(b)(3), which requires that tiedowns be used in combination with the stabilization provided by stakes, bunks and bolsters to secure loads of logs, should not be considered applicable to the transportation of logs on crib-type vehicles under the conditions described above. However, § 393.116(c)(4), also concerning tiedowns, remains applicable for logs that are not held in place by contact with other logs or the stakes, bunks or standards. This means the decision whether tiedowns must be used is contingent upon how the logs are loaded onto the vehicle. If the tops of the stacks of logs are relatively level, then tiedowns would not be required when the logs are transported in crib-type vehicles. Uneven loads would require tiedowns on the taller stacks, and on logs that are not held in place by other logs, bunks or standards.

FMCSA is proposing to revise § 393.116(b)(3) to include an exception to the regulation requiring tiedowns to enable motor carriers to use crib-type trailers, without tiedowns, provided certain conditions are satisfied. The agency would also include a definition of ''crib-type log trailer'' under § 393.5. The term ''system'' is much more generic than ''log trailer,'' and the agency believes ''log trailer'' would ensure less confusion because the issue appears to involve only trailers, at this time.

IX. Miscellaneous Amendments—Manufacturing Standards for Tiedowns, Dressed Lumber, Metal Coils, Paper Rolls, Intermodal Containers and Flattened Cars

A. Manufacturing Standards for Tiedowns

FMCSA would replace the current reference to the November 15, 1999, edition of the National Association of Chain Manufacturers' Welded Steel Chain Specifications with the April 26, 2003, edition to ensure the most up-to-date edition of the standard is referenced in the regulations. These specifications cover properties and grades of welded chain for industrial and commercial uses, produced to accepted commercial tolerances. This change would not affect the table of working load limits or cause any other substantive change to the requirements motor carriers must satisfy. The agency would amend § 393.7, Matter incorporated by reference, and § 393.104(e) concerning manufacturing standards for tiedown assemblies.

B. Dressed Lumber and Similar Building Products

FMCSA would add a new paragraph to § 393.118(d) to include a fifth option for dressed lumber and building materials transported using more than one tier in a sided vehicle or container. The new paragraph would enable motor carriers to secure such loads in accordance with the general cargo securement provisions, §§ 393.100 through 393.114. Based on information from the Paper and Forest Industry Transportation Committee, the transportation of stacked units of dressed lumber and building products in sided vehicles or containers is common. However, the commodity-specific regulation does not include a provision to recognize this safe and effective option.

C. Metal Coils

FMCSA would propose adding a definition of ''metal coil'' to 49 CFR 393.5 to ensure uniform and consistent enforcement of § 393.120. The agency has received numerous telephone calls and several letters asking whether certain items comprised largely of metal must be secured in accordance with § 393.120. Although the previous cargo securement rules adopted in the 1970's included provisions applicable to the transportation of metal coils, there seemed to be a consensus the requirements were applicable to metal packaged as a roll. Questions concerning the applicability to metal packaged as a coil, spool, wind or wrap did not seem to arise. However, given the significant damage that would be caused if the load fell from the vehicle, there are clearly safety concerns about dense metal articles of cargo that are round.

Therefore, the Agency would propose a definition that captures round metal articles that present a significant safety risk to the traveling public if they are not secured properly. This definition would ensure the applicability of the commodity-specific regulation for metal coils is applicable to such loads. The Agency would define a metal coil as an article of cargo comprised of mixtures, compounds or alloys commonly known as metal, metal foil, metal leaf, forged metal, stamped metal, metal wire or metal chain that are packaged as a roll, coil, spool, wind or wrap.

D. Paper Rolls

FMCSA would revise § 393.122(b)(4) to clarify the requirements concerning protection against tipping or falling sideways or forwards. The current wording has prompted requests for clarification because the requirements are not presented in a manner that makes clear the applicability of the banding, blocking, bracing or tiedown rules. Therefore, based on a review of the NPRM and model regulations, FMCSA would revise paragraph (b) to read as follows:

- If a paper roll is not prevented from tipping or falling sideways or rearwards by vehicle structure or other cargo, and its width is more than 2 times its diameter, it must be prevented from tipping or falling by banding it to other rolls, bracing or tiedowns.
- If the forwardmost roll(s) in a group of paper rolls has a width greater than 1.75 times its diameter, and it's not prevented from tipping or falling forward by vehicle structure or other cargo, then it must be prevented from tipping or falling forwards by banding it to other rolls, bracing, or tiedowns.
- If the forwardmost roll(s) in a group of paper rolls has a width equal to or less than 1.75 times its diameter, and it is restrained against forward movement by friction mat(s) alone, then banding, bracing or tiedowns are not required to prevent tipping or falling forward.
- If a paper roll or the forwardmost roll in a group of paper rolls has a width greater than 1.25 times its diameter, and it is not prevented from tipping or falling forwards by vehicle structure or other cargo, and it is not restrained against forward movement by friction mat(s) alone, then it must be prevented from tipping or falling by banding it to other rolls, bracing or tiedowns.

FMCSA would also revise § 393.122(d)(4) to explicitly prohibit the use of friction mats as the sole means of securing paper rolls on risers at the rear of a vehicle. A best-case scenario involves using a friction mat between the floor of the trailer and the riser, and a second friction mat between the riser and the paper roll. This means the motor carrier must rely on friction between the floor of the trailer and the

friction mat, friction between the friction mat and the bottom of the riser, friction between the top of the riser and the second friction mat, and friction between the mat and the bottom of the paper roll. Effectively securing a paper roll under these circumstances is difficult, if not impossible, because of the sometimes limited amount of surface area for the risers, and the coefficients of friction involved. FMCSA believes, based on information from the Paper and Forest Industry Transportation Committee, paper rolls on risers must be secured using blocking, bracing or banding the paper rolls together. To ensure the paper rolls on risers are properly secured the agency would amend § 393.122(d)(4).

E. Intermodal Containers

FMCSA would amend § 393.126 to explicitly require that all lower corners of the intermodal container must be secured to the container chassis with securement devices or integral locking devices that cannot unintentionally become unfastened while the vehicle is in transit. The current regulatory language requires containers to be secured to the chassis but does not explicitly state that all lower corners must be secured. The amendment will ensure that all containers transported on chassis are properly secured.

F. Flattened or Crushed Cars

FMCSA would revise the current blanket prohibition against the use of synthetic webbing so that webbing could be used as part of a cargo securement system provided no part of the webbing, regardless of whether edge protection or similar devices are used, comes into contact with the flattened or crushed cars. This action would be taken in response to concerns raised by motor carriers using wire rope or chain over the top of flattened or crushed cars, and synthetic webbing to connect the ends of the wire rope or chain to the anchor points on the transport vehicle. There is no readily apparent reason to believe this method of securing flattened or crushed cars presents a safety problem. Therefore, the current blanket prohibition should be revised to provide more flexibility, while ensuring the same standard of safety.

FMCSA would also make an editorial correction to § 393.132(c)(2)(i) concerning containment walls on vehicles used to transport flattened or crushed vehicles. Currently the paragraph in question provides an option for containment walls or comparable means on three sides which extend to the full height of the load and which block against movement of the cargo in the forward, rearward and the lateral direction for which there is *no* (emphasis added) containment wall or comparable means. The agency is removing the ''no'' so that the rule clearly states the sidewall is only required to provide protection on the side of the vehicle for which it is installed.

X. Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has preliminarily determined this proposed action would not be a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of Department of Transportation regulatory policies and procedures. This document was not reviewed by the Office of Management and Budget (OMB). We expect the proposed rule would have minimal costs, but the Agency has prepared a preliminary regulatory analysis and regulatory flexibility analysis. A copy of the preliminary analysis document is included in the docket referenced at the beginning of this notice.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has considered the effects of this proposed regulatory action on small entities and determined that this proposed rule would not have a significant impact on a substantial number of small entities, as defined by the U.S. Small Business Administration's Office of Size Standards.

This rulemaking proposal would make only minor amendments and editorial corrections to FMCSA's September 27, 2002, final rule establishing new regulations concerning protection against shifting and falling cargo for CMVs operated in interstate commerce. The amendments would improve the clarity of certain provisions of the cargo securement regulations to ensure that the requirements are fully understood by motor carriers and enforcement officials. This proposed action would better enable motor carriers to meet the safety performance requirements of the final rule, while continuing to adhere to industry best-practices that have been shown to effectively prevent the shifting and falling of cargo.

Accordingly, FMCSA has considered the economic impacts of the requirements on small entities and determines preliminarily that this proposed rule would not have a significant economic impact on a substantial number of small entities. A copy of the agency's draft regulatory flexibility analysis is included in the docket listed at the beginning of this notice.

Unfunded Mandates Reform Act of 1995

FMCSA has preliminarily determined this proposal would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

FMCSA has preliminarily determined this proposed action would meet 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.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The agency has preliminarily determined this proposed rulemaking would not be an economically significant rule and would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

FMCSA has preliminarily determined this proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FMCSA has preliminarily determined this proposed rulemaking would not have a substantial direct effect on States, nor would it limit the policy-making discretion of the States. Nothing in this document would preempt any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposed rulemaking would not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

FMCSA has analyzed this proposed action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined preliminarily this action would not have an effect on the quality of the environment. However, a preliminary environmental assessment (EA) has been prepared because the rulemaking is not among the type covered by a categorical exclusion. A copy of the preliminary environmental assessment is included in the docket listed at the beginning of this notice.

Executive Order 13211 (Energy Effects)

FMCSA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined preliminarily this proposal would not be a ''significant energy action'' under that order because it would not be economically significant and would not be likely to have a significant adverse effect on the supply, distribution or use of energy. The proposed rule would merely make minor amendments and editorial corrections to FMCSA's September 27, 2002, final rule establishing new regulations concerning protection against shifting and falling cargo for CMVs operated in interstate commerce. The proposed action has no effect on the supply or use of energy, nor do we believe it will cause a shortage of drivers qualified to distribute energy, such as gasoline, fuel oil or other fuels.

Issued on: May 26, 2005.

Annette M. Sandberg,

Administrator.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, FMCSA would amend title 49, Code of Federal Regulations, chapter III, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914; 49 U.S.C. 31136 and 31502; and 49 CFR 1.73.

2. Amend § 393.5 to add definitions of ''crib-type trailer,'' and ''metal coil'' to read in alphabetical order as follows:

§ 393.5 Definitions.

* * * * *

Crib-type log trailer means a trailer equipped with stakes, bunks, a front-end structure, and a rear structure to restrain logs. The stakes prevent movement of the logs from side to side on the vehicle while the front-end and rear structures prevent movement of the logs from front to back on the vehicle.

* * * * *

Metal coil means an article of cargo comprised of elements, mixtures, compounds, or alloys commonly known as metal, metal foil, metal leaf, forged metal, stamped metal, metal wire, or metal chain that are packaged as a roll, coil, spool, wind, or wrap.

* * * * *

§ 393.7 [Amended]

3. Amend § 393.7(b)(3) by revising ''November 15, 1999'' to read ''April 26, 2003.''

4. Amend § 393.102 by revising paragraphs (c) and (d) to read as follows:

§ 393.102 What are the minimum performance criteria for cargo securement devices and systems?

* * * * *

(c) *Prohibition on exceeding breaking strength and working load limit ratings.* (1) *Breaking strength.* Cargo securement devices and systems must be designed, installed, and maintained to ensure that the maximum forces acting on the devices or systems do not exceed the manufacturer's breaking strength rating under the conditions listed in paragraphs (a) and (b) of this section.

(2) *Working load limits.* Cargo securement devices and systems must be designed, installed, and maintained to ensure that the forces acting on the devices or systems under normal operating conditions do not exceed the working load limit for the devices. For the purposes of this paragraph, normal operating conditions means a deceleration up to 0.4 g in the forward direction, 0.5 g acceleration in the rearward direction, and 0.25 g acceleration in the lateral direction.

(d) *Equivalent means of securement.* The means of securing articles cargo are considered to meet the performance requirements of this section if the cargo is—

(1) Immobilized; or

(2) Fills a sided vehicle that has walls of adequate strength, and each article of cargo within the vehicle is in contact with, or sufficiently close to a wall or other articles, so that it cannot shift or tip if those articles are also unable to shift or tip; or

(3) Secured in accordance with the applicable requirements of §§ 393.104 through 393.136.

5. Amend § 393.104 by removing paragraph (f)(4) and redesignating paragraph (f)(5) as (f)(4), revising ''November 15, 1999'' to read ''April 26, 2003'' after the publication title ''National Association of Chain Manufacturers' Welded Steel Chain Specifications'' in the table in paragraph (e); and by revising paragraphs (b) and (c) to read as follows:

§ 393.104 What standards must cargo securement devices and systems meet in order to satisfy the requirements of this subpart?

* * * * *

(b) *Prohibition on the use of damaged securement devices.* All tiedowns, cargo securement systems, parts and components used to secure cargo must be in proper working order when used to perform that function with no damaged or weakened components, such as but not limited to, cracks or cuts that will adversely affect their performance for cargo securement purposes, including reducing the working load limit.

(c) *Vehicle structures and anchor points.* Vehicle structures, floors, walls, decks, tiedown anchor points, headerboards, bulkheads, stakes, posts, and associated mounting pockets used to contain or secure articles of cargo must be strong enough to meet the performance criteria of § 393.102, with no damaged or weakened components, such as, but not limited to, cracks or cuts that will adversely effect their performance for cargo securement purposes, including reducing the working load limit.

* * * * *

6. Amend § 393.106 by revising paragraphs (a) and (d) to read as follows:

§ 393.106 What are the general requirements for securing articles of cargo?

(a) *Applicability.* The rules in this section are applicable to the transportation of all types of articles of cargo, except commodities in bulk that lack structure or fixed shape (*e.g.,* liquids, gases, grain, liquid concrete, sand, gravel, aggregates) and are

transported in a tank, hopper, box, or similar device that forms part of the structure of a commercial motor vehicle. The rules in this section apply to the cargo types covered by the commodity-specific rules of § 393.116 through § 393.136. The commodity-specific rules take precedence over the general requirements of this section when additional requirements are given for a commodity listed in those sections.

* * * * *

(d) *Aggregate working load limit for tiedowns.* The aggregate working load limit of tiedowns used to secure an article or group of articles against movement must be at least one-half times the weight of the article or group of articles. The aggregate working load limit is the sum of:

(1) One-half the working load limit of each tiedown that goes from an anchor point on the vehicle to an attachment point on an article of cargo; and

(2) The working load limit for each tiedown that goes from an anchor point on the vehicle, through, over or around the cargo and then attaches to another anchor point on the vehicle.

7. Revise the title of § 393.108 to read as follows:

§ 393.108 How is the working load limit of a tiedown, or the load restraining value of a friction mat, determined?

* * * * *

8. Amend § 393.110 by revising paragraphs (a) and (c) to read as follows:

§ 393.110 What else do I have to do to determine the minimum number of tiedowns?

(a) When tiedowns are used as part of a cargo securement system, the minimum number of tiedowns required to secure an article or group of articles against movement depends on the length of the article(s) being secured, and the requirements of paragraphs (b) and (c) of this section. These requirements are in addition to the rules under § 393.106.

* * * * *

(c) If an individual article is blocked, braced, or immobilized to prevent movement in the forward direction by a headerboard, bulkhead, other articles which are adequately secured or by an appropriate blocking or immobilization method, it must be secured by at least one tiedown for every 3.04 meters (10 feet) or article length, or fraction thereof.

* * * * *

9. Amend § 393.114 by revising paragraph (b)(1) to read as follows:

§ 393.114 What are the requirements for front-end structures used as part of a cargo securement system?

* * * * *

(b) *Height and width.* (1) The front end structure must extend either to a height of 4 feet above the floor of the vehicle or to a height at which it blocks forward movement of any item or article of cargo being carried on the vehicle, whichever is lower.

* * * * *

10. Amend § 393.116 by revising paragraph (b)(3), inserting a new paragraph (b)(4) and revising paragraph (e) read as follows:

§ 393.116 What are the rules for securing logs?

* * * * *

(b) *Components of a securement system.*

* * * * *

(3) Tiedowns must be used in combination with the stabilization provided by bunks, stakes, and bolsters to secure the load unless the logs:

(i) Are transported in a crib-type log trailer (as defined in 49 CFR 393.5), and

(ii) Are loaded in compliance with paragraphs (b)(2) and (c) of this section.

(4) The aggregate working load limit for tiedowns used to secure a stack of logs on a frame vehicle, or a flatbed vehicle equipped with bunks, bolsters, or stakes must be at least one-sixth the weight of the stack of logs.

* * * * *

(e) *Securement of logs loaded lengthwise on flatbed and frame vehicles.* (1) *Shortwood.* In addition to meeting the requirements of paragraphs (b) and (c) of this section, each stack of shortwood loaded lengthwise on a frame vehicle or on a flatbed must be secured to the vehicle by at least two tiedowns. However, if all the logs in any stack are blocked in the front by a front-end structure strong enough to restrain the load, or another stack of logs, and blocked in the rear by another stack of logs or vehicle end structure, the stack may be secured with one tiedown. If one tiedown is used, it must be positioned about midway between the stakes.

(2) *Longwood.* Longwood must be cradled in two or more bunks and must either:

(i) Be secured to the vehicle by at least two tiedowns at locations that provide effective securement, or

(ii) Be bound by tiedown-type devices such as wire rope, used as wrappers that encircle the entire load at locations along the load that provide effective securement. If a wrapper(s) is being used to bundle the logs together, the wrapper is not required to be attached to the vehicle.

* * * * *

11. Amend § 393.118 by revising paragraph (d)(3)(iv)(B), replacing the period at the end of paragraph (d)(4) with a semicolon (;) and ''or,'' and adding paragraph (d)(5) to read as follows:

§ 393.118 What are the rules for securing dressed lumber or similar building products?

* * * * *

(d) *Securement of bundles transported using more than one tier* * * *.

(3) * * *

(iv) * * *

(B) Secured by tiedowns as follows:

(1) If there are 3 tiers, the middle and top bundles must be secured by tiedowns in accordance with the general provisions of §§ 393.100 through 393.114; or

(2) If there are more than 3 tiers, then one of the middle bundles and the top bundle must be secured by tiedown devices in accordance with the general provision of §§ 393.100 through 393.114, and the maximum height for the middle tier that must be secured may not exceed 6 feet about the deck of the trailer; or

(3) Otherwise, the second tier from the bottom must be secured in accordance with the general provisions of §§ 393.100 through 393.114.

* * * * *

(5) When loaded in a sided vehicle or container of adequate strength, dressed lumber or similar building products may be secured in accordance with the general provisions of §§ 393.100 through 393.114.

12. Amend § 393.122 by revising paragraphs (b)(4) and (d)(4) to read as follows:

§ 393.122 What are the rules for securing paper rolls?

(b) *Securement of paper rolls transported with eyes vertical in a sided vehicle.* * * *

(4)(i) If a paper roll is not prevented from tipping or falling sideways or rearwards by vehicle structure or other cargo, and its width is more than 2 times its diameter, it must be prevented from tipping or falling by banding it to other rolls, bracing, or tiedowns.

(ii) If the forwardmost roll(s) in a group of paper rolls has a width greater than 1.75 times its diameter and it is not prevented from tipping or falling forwards by vehicle structure or other cargo, then, it must be prevented from tipping or falling forwards by banding it to other rolls, bracing, or tiedowns.

(iii) If the forwardmost roll(s) in a group of paper rolls has a width equal to or less than 1.75 times its diameter, and it is restrained against forward movement by friction mat(s) alone, then

banding, bracing, or tiedowns are not required to prevent tipping or falling forwards.

(iv) If a paper roll or the forwardmost roll in a group of paper rolls has a width greater than 1.25 times its diameter, and it is not prevented from tipping or falling forwards by vehicle structure or other cargo, and it is not restrained against forward movement by friction mat(s), then it must be prevented from tipping or falling by banding it to other rolls, bracing or tiedowns.

* * * * *

(d) *Securement of stacked loads of paper rolls transported with eyes vertical in a sided vehicle.* * * *

(4) A roll in the rearmost row of any layer raised using dunnage may not be secured by friction mats alone.

13. Amend § 393.126 by revising paragraph (b)(1) to read as follows:

§ 393.126 What are the rules for securing intermodal containers?

* * * * *

(b) *Securement of intermodal containers transported on container chassis vehicle(s).* (1) All lower corners of the intermodal container must be secured to the container chassis with securement devices or integral locking devices that cannot unintentionally become unfastened while the vehicle is in transit.

* * * * *

14. Amend § 393.132 by revising paragraphs (b) and (c)(2)(i) to read as follows:

§ 393.132 What are the rules securing flattened or crushed vehicles?

* * * * *

(b) *Prohibition on the use of synthetic webbing.* The use of synthetic webbing to secure flattened or crushed vehicles is prohibited except that such webbing may be used to connect wire rope or chain to anchor points on the commercial motor vehicle. However, the webbing (regardless of whether edge protection is used) must not come into contact with the flattened or crushed cars.

(c) *Securement of flattened or crushed vehicles.* Flattened or crushed vehicles must be transported on vehicles which have: * * *

(2)(i) Containment walls or comparable means on three sides which extend to the full height of the load and which block against movement of the cargo in the direction for which there is a containment wall or comparable means, and

* * * * *

[FR Doc. 05–11332 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[I.D. 022405B]

RIN 0648–AS92

Sea Turtle Conservation; Public Hearing Notification

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

ACTION: Notice of public hearing.

SUMMARY: The National Marine Fisheries Service (NMFS) is announcing its intent to hold public hearings in Massachusetts and New Jersey to inform interested parties of the proposed gear modification for the mid-Atlantic sea scallop dredge fishery and to accept public comments on this action.

DATES: NMFS will hold a public hearing in Fairhaven, MA on Thursday, June 16, 2005, from 7 p.m. to 9 p.m., eastern daylight time and in Cape May, NJ on Wednesday, June 22, 2005, from 7 p.m to 9 p.m., eastern daylight time.

ADDRESSES: The meeting locations are:

Hampton Inn New Bedford, 1 Hampton Way, Fairhaven, MA 02719 (ph. 508–990–8500).

Cape May City Hall, 643 Washington St., Cape May, NJ 08204 (ph. 609–884–9525).

Written comments on the proposed rule, identified by RIN 0648–AS92, may be submitted by any one of the following methods: NMFS/Northeast Region Website: *http://www.nero.noaa.gov/nero/regs/com.html* Follow the instructions on the website for submitting comments.

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instruction on the website for submitting comments.

E-mail: scallopchainmat@noaa.gov Please include the RIN 0648–AS92 in the subject line of the message.

Mail: Mary A. Colligan, Assistant Regional Administrator for Protected Resources, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930, ATTN: Sea Turtle Conservation Measures, Proposed Rule

Facsimile (fax): 978–281–9394, ATTN: Sea Turtle Conservation Measures, Proposed Rule

FOR FURTHER INFORMATION CONTACT: Ellen Keane (ph. 978–281–9300 x6526), NMFS, One Blackburn Drive, Gloucester, MA 01930.

SUPPLEMENTARY INFORMATION: A proposed rule was issued on May 27, 2005 (70 FR 30660), which would require all vessels with a Federal Atlantic sea scallop fishery permit and a sea scallop dredge, regardless of dredge size or vessel permit category, to modify their dredge(s) when fishing south of 41° 9.0′ N. latitude, from the shoreline to the outer boundary of the Exclusive Economic Zone from May 1 through November 30 each year. Additional information on the justification for this action can be found in the proposed rule.

Copies of the Draft Environmental Assessment/Regulatory Impact Review and documents cited in the proposed rule can be obtained from http://www.nero.noaa.gov/nero/regs/com.html listed under the **ADDRESSES** portion of this document or by writing to Ellen Keane, NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930 The public comment period closes at 5 p.m. EST on June 27, 2005.

In determining how to proceed with this proposed action, NMFS will consider the public comments received (either in writing or verbally during the public hearing) during the 30-day comment period.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ellen Keane, telephone 978–281–9328 x6526, fax 978–281–9394, at least 5 days before the scheduled meeting date.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 3, 2005.

P. Michael Payne,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–11393 Filed 6–7–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 70, No. 109

Wednesday, June 8, 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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Professional Responsibility on June 27 and June 28, 2005.

DATES: Monday, June 27, 2005, from 9 a.m. to 5 p.m., and Tuesday, June 28, 2005, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in Room 3716IR, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 3716IR, 1111 Constitution Avenue, NW., Washington, DC on Monday, June 27, 2005, from 9 a.m. to 5 p.m., and Tuesday, June 28, 2005, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 2005 Basic (EA–1) and Pension (EA–2B) Joint Board Examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2005 Pension (EA–2A) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 2005 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on June 28 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than June 21, 2005, to 202–622–8300, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director SE:OPR, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: June 1, 2005.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 05–11340 Filed 6–7–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval To Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this Notice invites the general public and other interested parties to comment on a proposed information collection by the Economic Research Service. This information collection will provide data needed to conduct research to develop questionnaires and related instruments capable of collecting reliable and valid information on topics including: food-related knowledge, attitudes, and behavior; food assistance program participation; and customer satisfaction. To do so, ERS plans to conduct data collections that involve formative research, including such methods as cognitive interviews (individual and/or small group), and pre-testing of survey items (mailed, in-person, telephone, or Web-based pretests).

DATES: Written comments on this Notice must be received by August 12, 2005 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Requests for additional information regarding this Notice should be directed to Eileen Stommes, Food Assistance Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street, NW., Room N–2148, Washington, DC 20036–5831. Submit electronic comments to *estommes@ers.usda.gov* or fax to 202–694–5677.

SUPPLEMENTARY INFORMATION:

Title: Formative Research for Development of Food Behavior Questionnaires and Related Measures.

Type of Request: Approval to collect information from civilian, non-institutionalized population, especially low-income individuals and households targeted by USDA food assistance programs.

OMB Number: Not yet assigned.

Expiration Date: Three years from date of issuance.

Abstract: Nutrition has been shown to have important effects on obesity, child development, learning, lifelong health, and productivity. Poor food behaviors have been linked to four leading causes of death, reduced quality of life, increased cost of living, and premature death. While these food-related problems affect many Americans, there is a lack of reliable, valid questionnaires or other short, practical population measures to assess such important information as: nutrition- and food-related knowledge, attitudes, and behaviors; food assistance program participation and its determinants; and program satisfaction.

Development of new questionnaires and related measures and assessment of their reliability and validity will require formative research. Formative research methods such as cognitive interviewing and pretesting will assist ERS to develop questionnaires and related measures that are understandable and yield reliable, valid information on food behavior and its social and economic determinants.

Findings from all subsequent data collections will be included in summary reports submitted to OMB. The reports will describe the data collection methods used in the formative research, findings, conclusions, implications, and recommendations for the development of reliable, valid questionnaires and related measures. There will be no attempt to generalize the findings to be nationally representative.

Methods of Collection: The data will be collected using a combination of methodologies appropriate to each formative research activity. These methodologies could include: Cognitive interviews, Pretest/Field test, and Focus groups.

Estimated Number of Respondents and Total Annual Burden on Respondents:

Type of data collection	Number of respondents	Average burden response (minutes)	Total hours of burden
Cognitive Interviews	600	120	1,200
Pretesting/Field Test	2,000	30	1,000
Focus Groups	600	120	1,200
Totals	3,200	N/A	3,400

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments on this Notice will become a matter of public record and be summarized in the request for OMB approval.

Dated: May 24, 2005.

Susan Offutt,

Administrator, Economic Research Service.

[FR Doc. 05–11374 Filed 6–7–05; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

Long Rail Project; Chequamegon-Nicolet National Forest; Florence and Forest Counties, WI

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Chequamegon-Nicolet National Forest, Eagle River-Florence Ranger District intends to prepare an environmental impact statement (EIS) to disclose the environmental consequences of a vegetation and transportation management project. In the EIS the USDA Forest Service will address the potential environmental impacts associated with the proposed land management activities and corresponding alternatives.

The Long Rail Project Area is approximately 74,800 acres in size and is located in Forest and Florence Counties, 17 miles west of Florence, Wisconsin. National Forest System lands comprise about 54,300 acres within the project area boundary. The approximate legal description for the area is as follows: T38N R13E Sections 1, 12, 13; T38N R14E Sections 1–11, 18; T38N R15E Sections 1–12, 14–17, 20–22; T39N R13E Sections 1, 12–13, 24–25, 36; T39N R14E Sections 1–36; T39N R15E Sections 4–7, 18–22, 25–36; T40N R13E Sections 25, 36; T40N R14E Sections 29–32, 24–26, 35–36; T40N R15E Sections 2–4, 7–11, 14–23, 25–33; T41N R15E Sections 22–23, 26–27, 34–35 *see* the **SUPPLEMENTARY INFORMATION** section for the purpose and need for the action.

DATES: Comments concerning the scope of the analysis should be received within 30 days following publication of this notice to receive timely consideration in the preparation of the draft EIS. The draft EIS is expected April 2006 and the final EIS is expected September 2006.

ADDRESSES: Send written comments to Anne Archie, c/o Christine Brunner, NEPA Coordinator, Eagle River-Florence Ranger District, 1247 E. Wall Street, Eagle River, WI 54521. Send electronic comments to: *comments-eastern-chequamegon-nicolet-eagle@fs.fed.us.See* **SUPPLEMENTARY INFORMATION** section for information on how to send electronic comments.

FOR FURTHER INFORMATION CONTACT: Debra Kidd, Eagle River-Florence Ranger District, Chequamegon-Nicolet National Forest, USDA Forest Service: telephone 715–479–2827. *See* above under **ADDRESSES**. Copies of documents may be requested at the same address. Another means of obtaining information is to visit the Forest Web page at *http://www.fs.fed.us/r9/cnnf/*—click on ''Natural Resources,'' then ''Long Rail Project.''

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action—The overall purpose of the Long Rail Project is to implement land management activities consistent with the direction in the 2004 Chequamegon-Nicolet National Forest Land and Resource Management Plan (2004 Forest Plan) and to respond to the specific needs that were identified during opportunity area and transportation system analyses.

One purpose for this proposal is to maintain or restore upland forest

communities and openings to their desired conditions as described in Chapter 3 (Forest Plan Objective 1.4a) by addressing the following needs: (1) Improve aquatic ecosystems; (2) maintain short-needled conifer habitat; (3) maintain continuous uneven-aged northern hardwood forests; (4) maintain forest types; (5) maintain permanent openings; (6) improve northern hardwood forest structure; (7) reduce northern hardwood and conifer stocking density; and (8) improve aspen age class distribution.

The second purpose for this proposal is to provide an efficient road system that meets the long-term transportation needs. This would be accomplished by addressing the need to reduce average open and total road densities by decommissioning 46.8 miles of open road, closing and maintaining 1.5 miles of road, and converting 3 miles of road to sections of connecting snowmobile trails.

Proposed Action—The following actions have been identified to address the above needs. (1) Increase the amount of long-lived conifer adjacent to Class I and II trout streams by removing the overstory on 40 acres of balsam fir and aspen to release the white pine understory, and underplanting white pine; (2) promote white spruce, balsam fir and jack pine understories on 168 acres by removing the overstories to maintain short-needled conifer habitat for Regional Forester's Sensitive Species; (3) maintain northern hardwood continuity by converting 122 acres of mature aspen, balsam fir and paper birch to northern hardwood through the use of overstory removal; (4) maintain current forest composition within the Forest Plan objective ranges by shelterwood harvesting 102 acres of white pine and 15 acres of paper birch, and clearcutting 586 acres of aspen; (5) maintain desired levels and improve the quality of permanent openings on 549 acres by hand brushing, mowing, burning, and planting fruit trees and shrubs along northern edges; (6) increase age and size diversity of 6,250 acres of northern hardwood through selection harvest; (7) reduce the density of red pine, white spruce, and red oak stands by lowering stocking levels to the levels described in the Forest Plan by thinning 1,268 acres of red pine, white spruce, and red oak; (8) improve aspen age class distribution by regenerating 586 acres of aspen (same acres described in item 4) in different age classes, converting 243 acres of mature aspen to other forest types discussed under items 1–3; and regenerating 40 acres of balsam fir/aspen to aspen; (9) reduce open and total road densities by decommissioning 46.8 miles of open road, closing and maintaining 1.5 miles of road, and converting 3 miles of road to sections of connecting snowmobile trails.

Responsible Official—Anne Archie, Forest Supervisor of the Chequamegon-Nicolet National Forest is the Responsible Official who will make the project-level decisions on the Long Rail Project.

Nature of Decision To Be Made—The decision will be limited to answering the following questions based on the environmental analysis: (1) What actions would be used to address the purpose and need; (2) where and when will these actions occur; and (3) what mitigation measures and monitoring requirements would be required.

Scoping Process—The Chequamegon-Nicolet National Forest will scope for information by contacting persons and organizations on the District's mailing list, by publishing notices in the local newspapers, and by holding at least one public meeting in the Long Rail Project area. The present solicitation is for comments on this Notice of Intent and scoping materials available elsewhere, such as on the Forest's Web page.

*Electronic Access and Filing Addresses*Information is available electronically on the Forest Web page: *http://www.fs.fed.us/r9/cnnf/*—click on ''Natural Resources'' and then on ''Long Rail Project.'' Send electronic comments to: *comments-eastern-chequamegon-nicolet-eagle@fs.fed.us.* When submitting electronic comments, please reference the Long Rail Project on the subject line. In addition, include your name and mailing address.

Comment Requested—This notice of intent initiates the scoping proces which guides the development of the environmental impact statement. Comments in response to this solicitation for information should focus on (1) the proposal described in numbers 1–9 of the proposed action; (2) possible alternatives for addressing issues associated with the proposal, and (3) any possible impacts associated with the proposal based on the individual's civil rights (race, color, national origin, age, religion, gender, disability, political beliefs, sexual orientation, or marital or family status). We are especially interested in information that might identify a specific undesired result of implementing the proposed action. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 and 217.

Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withold a submision from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances. The Forest Service will inform the requester of the agency's decision regarding the request for confidfentiality and, should the request be denied, return the submission and notify the requester that the comments may be resubmitted with or without name and address within 90 days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review—A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific

as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.)

Dated: May 31, 2005.

Anne F. Archie,

Forest Supervisor, Chequamegon-Nicolet National Forest.

Editorial Note: This document was received at the Office of the Federal Register on June 3, 2005.

[FR Doc. 05–11364 Filed 6–7–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Upper Strawberry Grazing Allotments Environmental Impact Statement

AGENCY: Forest Service, USDA.

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 (NEPA), 40 Code of Federal Regulations 1500–1508 Council on Environmental Quality Regulations, and, the Heber Ranger District of the Uinta National Forest will be preparing an Environmental Impact Statement (EIS) to analyze authorization of livestock grazing by updating allotment management plans (AMPs) on National Forest System lands on three grazing allotments.

DATES: To ensure full consideration, comments on the scope of the EIS must be post-marked or otherwise delivered within 30 days beginning the day following publication of this Notice of Intent.

ADDRESSES: Please submit your written issues or concerns to the Responsible Official: Julie King, District Ranger, Heber Ranger District, P.O. Box 190, Heber City, Utah 84032. Comments may be faxed to (801) 654–5772 or hand delivered to the Heber Ranger district located at 2460 South Highway 40 during normal business hours from 8 am to 5 pm, Monday through Friday. Comments may also be submitted to the following e-mail address: *comments-intermtn-uinta-heber@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jim Percy, at (435) 654–0470.

SUPPLEMENTARY INFORMATION: As part of the 1995 Rescission Act and its implementing regulations (Public Law 104–19 Section 504(a)), Congress directed the Forest Service to issue term grazing permits where existing permits were due for expiration and provide management direction for the permits in compliance with NEPA, Forest Plan direction, and other relevant laws and regulations. In accordance with the Rescission Act, the Forest Service prioritized those allotments that needed Allotment Management Plans.

Purpose and Need for Action

The purpose and need for this project is to analyze issuance of grazing permits and to maintain or improve rangeland conditions affected by domestic grazing. Grazing is a suitable use of Forest Service Land is permissible through the Multiple Use Act. The Uinta National Forest 2003 Land and Resource Management Plan (Forest Plan) identified some of the land within these allotments in the project area as suitable for domestic livestock grazing.

The need of this proposed action is to continue to provide forage for livestock at sustainable levels. The proposal would also help to meet desired resource conditions including: increased composition and density of desired plant species within riparian areas; an increased density and composition desired grass and forb species on upland range; improved water quality in affected streams within project area; and meeting the State of Utah's Total Maximum Daily Load (TMDL) standards. Proposed management directions have been designed to comply and implement relevant direction for grazing management in the Forest Plan and other applicable laws, regulations and policies.

Proposed Action

The proposed action is to authorize continued livestock grazing, update allotment management plans (AMPs), and allow permitted livestock grazing that meets or moves existing resource conditions toward desired conditions on three national forest grazing allotments while complying with applicable statutes. Adaptive management, which allows flexibility during the implementation of the grazing strategy, would allow managers to make adjustments and corrections to management based on monitoring. A portion of the Twin Peaks and all of the Strawberry Allotment allotments are proposed to be converted from sheep to cattle allotments.

Decisions Framework

Based on the environmental analysis in the EIS, the District Range will decide whether to authorize continued livestock grazing on the project area's suitable rangelands under updated management direction, and if so, what changes need to be made to the respective AMPs in accordance with Forest Plan goal, objectives and desired future conditions.

Alternatives

In addition to the Proposed Action, The No Grazing Alternative and the Current Management will also be analyzed.

Lead and Cooperating Agencies

The Forest Service is the lead agency in accordance with 40 CFR § 1501.5(b), and is responsible for preparation of the EIS. There are no cooperating agencies at this time.

Nature of Decision To Be Made

Based on the environmental analysis in this EIS, the District Ranger will decide whether to authorize continued livestock grazing on the project area's suitable rangelands under updated management direction, and if so, what changes need to be made to the respective allotment management plans in accordance with Forest Plan and desired conditions.

Scoping Process

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies, Native American Tribes and other individuals and organizations who may be interested in or affected by the proposal. This input will be used in preparation of the Draft EIS. The scoping process includes:

- Identifying major issues to be analyzed in depth.
- Identifying potential environmental effects of the alternatives identified to date.
- Identifying potential alternatives that meet the Purpose and Need of the project.
- Notifying interested members of the public of opportunities to participate and keeping the public informed.

Preliminary Issues

- Water Quality: Erosion, streambank stability, phosphorous, meeting State of Utah's Total Maximum Daily Load (TMDL) standards.
- Improve vegetation composition (both riparian & upland).

Comment Requested

This notice of intent initiates the scoping process, which guidesdevelopment of the EIS. The Forest Service is seeking public and agency comment on the proposed action to identify major issues to be analyzed in depth and assistance in identifying potential alternatives to be evaluated. Comments received to this notice, including the names and addresses of those who comment, will be considered part of the public record on this proposed action, and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality.

Persons requesting such confidentiality should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality. Where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted, without name and address, within a specified number of days.

A Draft EIS will be prepared for comment. Copies will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Draft EIS is expected to be filed in September 2005. The Final EIS is expected to be filed in February 2006.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the Draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft EIS stage but that are not raised until after completion of the Final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. In the Final EIS, the Forest Service is required to respond to comments received during the comment period. The Forest Supervisor for the Uinta National Forest will be the responsible official for the EIS and its Record of Decision. The Record of Decision will be subject to Forest Service appeal regulations (36 CFR part 215).

Julie K. King,

District Ranger.

[FR Doc. 05–11335 Filed 6–7–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes and Ochoco National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes and Ochoco National Forests Resource Advisory Committee will meet in Redmond, Oregon. The purpose of the meeting is to review proposed projects and make recommendations under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held July 6 and 7, 2005 from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the office of the Central Oregon Intergovernmental Council, 2363 SW Glacier Place, Redmond, Oregon 97756. Send written comments to Kevin D. Martin, acting as Designated Federal Official for Larry Timchak, for the Deschutes and Ochoco Resource Advisory Committee, c/o Forest Service, USDA, Ochoco National Forest, 3160 NE 3rd St., Prineville, OR 97754 or electronically to *kdmartin@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Kevin D. Martin, Acting as Designated Federal Official for Larry Timchak, Ochoco National Forest, 541–416–6625.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Title II matters to the attention of the Committee may file written statements with the Committee staff before the meeting. A public input session will be provided and individuals who made written requests by June 29 will have the opportunity to address the Committee at the session.

Dated: May 2, 2005.

Kevin Martin,

Acting Designated Federal Official.

[FR Doc. 05–11362 Filed 6–7–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Risk Management Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35) this notice announces the Risk Management Agency's intention to request an extension for and revision to a currently approved information collection for Risk Management and Crop Insurance Education; Request for Applications.

DATES: Comments on this notice will be accepted until close of business August 8, 2005.

FOR FURTHER INFORMATION CONTACT: Lon Burke, Risk Management Education Division, USDA/RMA, 1400 Independence Avenue, SW., Stop 0808, Washington, DC 20250–0808, telephone (202) 720–5265. Comments may also be submitted electronically to: *RMA.Risk-Ed@rma.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Risk Management and Crop Insurance Education; Request for Applications.

OMB Number: 0563–0067.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Federal Crop Insurance Act directs the Federal Crop Insurance Corporation. Corporation operating through RMA, to (a) establish crop insurance education and information programs in States that have been historically underserved by the Federal crop insurance program [7 U.S.C. 1524(a)(2)]; and (b) provide agricultural producers with training opportunities in risk management, with a priority given to producers of specialty crops and underserved commodities [7 U.S.C. 1522(d)(3)(F)]. With this submission, RMA seeks to obtain OMB's approval for an information collection project that will assist RMA in operating and evaluating these programs. The information collection project is a Request for Applications. The primary objective of the information collection projects is to enable RMA to better evaluate the performance capacity and plans of organizations that are applying for funds for cooperative and partnership agreements for risk management education programs and crop insurance education programs.

Estimate of burden: The public reporting burden for this collection of information is estimated to average: 15 hours, 45 minutes per response for the Commodity Partnerships Program and Targeted States Program for agri-business professionals, and 4 hours, 45 minutes per response for the Commodity Partnerships Small Sessions Program for a total of 2,255 hours.

Respondents/Affected Entities: Agribusiness professionals.

Estimated annual number of respondents: 220 respondents.

Estimated annual number of responses: 220 responses or 1 per respondent.

Estimated total annual burden on respondents: 523 hours.

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection 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 those who are to respond, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, e.g. permitting electronic submission of responses. Comments may be sent to Lon Burke, Risk Management Education Division, USDA/RMA, 1400 Independence Avenue, SW., Stop 0808, Washington, DC 20250–0808. All comments will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington, DC, on June 2, 2005.

R.J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 05–11313 Filed 6–7–05; 8:45 am]

BILLING CODE 3410–FA–P

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Risk Management Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35) this notice announces the Risk Management Agency's intention to request an extension for and revision to a currently approved information collection for Request for Applications for Research Partnerships.

DATES: Comments on this notice will be accepted until close of business, August 8, 2005.

FOR FURTHER INFORMATION CONTACT: Virginia Guzman, United States Department of Agriculture (USDA), Research and Evaluation Division, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Mail Stop 813, Kansas City, MO 64133, telephone (816) 926–6343. Comments may also be submitted electronically to: *RMARED_PRA@rm.fcic.usda.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Research and Development, Request for Applications.

OMB Number: 0563–0065.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Risk Management Agency intends to seek information in order to fulfill its mission to fund the development of non-insurance risk management tools that will be utilized by agricultural producers to assist them in mitigating the risks inherent in agricultural production and to improve the economic stability of agriculture through the maintenance and development of risk management tools. The Risk Management Agency (RMA), on behalf of the Federal Crop Insurance Corporation (FCIC), is committed to meeting the risk management needs and improving or developing risk management tools for the nation's farmers and ranchers. The Risk Management Agency proposes to publish Requests for Applications (RFA) to announce the availability of funds and solicit proposals requesting funding for the development of risk management tools. The information collections will be limited to the request for applications and status reports. Information collections are necessary to evaluate proposals and award funds based on a competitive process and to obtain the information necessary for the development of partnership agreements and to obtain information on the status of research agreements and projects.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 2,400 minutes per response for a total burden of 6,000 hours.

Respondents/Affected Entities: Applications for funding are invited from qualified public and private entities. Eligible applicants include colleges and universities, Federal, State, and local agencies, Native American tribal organizations, non-profit and for-profit private organizations or corporations, and other entities. Individuals are not eligible applicants.

Estimated annual number of respondents: 150.

Estimated annual number of responses: 150.

Estimated total annual burden on respondents: 6,000.

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection 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 those who are to respond, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, *e.g.* permitting electronic submission of responses. Comments may be sent to Virginia Guzman, United States Department of Agriculture (USDA), Research and Evaluation Division, Federal Crop Insurance Corporation, Risk Management Agency, 6501 Beacon Drive, Mail Stop 813, Kansas City, MO 64133. All comments will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington, DC, on June 2, 2005.

R.J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 05–11314 Filed 6–7–05; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Reinstatement of a Previously Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the Rural Economic Development Loan and Grant Program.

DATES: Comments on this notice must be received by August 8, 2005 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Director, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave. SW., Washington, DC 20250–3225, Telephone (202) 720–1400.

SUPPLEMENTARY INFORMATION:

Title: Rural Economic Development Loan and Grant Program.

OMB Number: 0570–0035.

Type of Request: Reinstatement of a Previously Approved Information Collection.

Abstract: Under this program, loans and grants are provided to electric and telecommunications utilities that have borrowed funds from RUS. The purpose of the program is to encourage these electric and telecommunications utilities to promote rural economic development and job creation projects such as business start-up costs, business expansion, community development, and business incubator projects. The utilities must use program loan funds to make a pass-through loan to an ultimate recipient such as a business. The utility is responsible for fully repaying its loan to the government even if the ultimate recipient does not repay its loan. The intermediary must use program grant funds, along with its required contribution, to create a revolving loan fund that the utility will operate and administer. Loans to the ultimate recipient are made from the revolving loan fund for a variety of community development projects.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 hours per response.

Respondents: Rural Utilities Service Electric and Telecommunications Borrowers.

Estimated Number of Respondents: 120.

Estimated Number of Responses per Respondent: 12.

Estimated Number of Responses: 1,440.

Estimated Total Annual Burden on Respondents: 4,143.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of USDA, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 27, 2005.

Peter J. Thomas,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 05–11339 Filed 6–7–05; 8:45 am]

BILLING CODE 3410–XY–P

ANTITRUST MODERNIZATION COMMISSION

Notice of Public Hearing

AGENCY: Antitrust Modernization Commission.

ACTION: Notice of public hearing.

SUMMARY: The Antitrust Modernization Commission will hold a public hearing on June 27, 2005. The topic of the hearing is indirect purchaser litigation.

DATES: June 27, 2005, 1 p.m. to 5 p.m. Interested members of the public may attend. Registration is not required.

ADDRESSES: Federal Trade Commission, 600 Pennsylvania Avenue, NW., Room 432, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew J. Heimert, Executive Director & General Counsel, Antitrust Modernization Commission: telephone: (202) 233–0701; e-mail: *info@amc.gov.* Mr. Heimert is also the Designated Federal Officer (DFO) for the Antitrust Modernization Commission.

SUPPLEMENTARY INFORMATION: The purpose of this hearing is for the Antitrust Modernization Commission to take testimony and receive evidence regarding indirect purchaser litigation. The hearing will consist of two panels. The first panel will run from 1 p.m. to 3 p.m. and the second panel will run from 3 p.m. to 5 p.m. Materials relating to the meeting, including a list of witnesses and the prepared statements of the witnesses, will be made available on the Commission's Web site (*http://www.amc.gov*) in advance of the hearing.

Interested members of the public may submit written testimony on the subject of the hearing in the form of comments, pursuant to the Commission's request for comments. See 70 Fed. Reg. 28,902 (May 19, 2005). Members of the public will not be provided with an

opportunity to make oral remarks at the hearing.

The AMC is holding this hearing pursuant to its authorizing statute. Antitrust Modernization Commission Act of 2002, Pub. L. 107–273, § 11057(a), 116 Stat. 1758, 1858.

Dated: June 3, 2005.

By direction of Deborah A. Garza, Chair of the Antitrust Modernization Commission.

Approved by Designated Federal Officer:

Andrew J. Heimert,

Executive Director and General Counsel, Antitrust Modernization Commission.

[FR Doc. 05–11346 Filed 6–7–05; 8:45 am]

BILLING CODE 6820–YM–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion–Resistant Carbon Steel Flat Products From Japan: Notice of Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 8, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett or James Terpstra, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4161 or (202) 482–3965.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (''the Department'') published an antidumping duty order on certain corrosion–resistant carbon steel flat products from Japan on August 19, 1993. *See Antidumping Duty Order: Certain Corrosion–Resistant Carbon Steel Flat Products from Japan*, 58 FR 44163 (August 19, 1993). Nucor Corporation (''Nucor''), a domestic interested party, requested that the Department conduct an administrative review of the order. *See Letter from Nucor Corporation*, August 31, 2004. On September 22, 2004, the Department published a notice of initiation of administrative review of the antidumping duty order on certain corrosion–resistant carbon steel flat products from Japan, covering the period of August 1, 2003, to July 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation, In Part*, 69 FR 56745. On May 3, 2005, the Department extended the time for issuing the preliminary results until June 2, 2005. *See Certain Corrosion–Resistant Carbon Steel Flat Products from Japan: Notice of Extension of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 24393 (May 9, 2005). On May 20, 2005, Nucor filed a letter withdrawing its request for administrative review. In its letter, Nucor requested that the Department rescind the review. *See Letter from Nucor Corporation re; Corrosion Resistant Steel Flat Products from Japan*. On June 2, 2005, United States Steel (''U.S. Steel''), a domestic interested party, filed comments objecting to the Department rescinding the review. *See Letter from U.S. Steel*. The preliminary results for this review are currently due no later than June 2, 2005.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend this deadline to a maximum of 365 days.

The Department received comments objecting to the rescission of the review on the deadline date for issuing the preliminary results. The Department requires time to evaluate the objection to rescinding the review. Therefore, the Department determines that it is not practicable to complete the review by June 2, 2005, and is extending the time limit for completion of the preliminary results by 28 days to no later than June 30, 2005. In the event the Department decides to proceed with this administrative review, we expect to issue the final results no later than 120 days after publication of the notice of the preliminary results. This notice is being issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: June 2, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–2931 Filed 6–7–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Coastal Zone Management Program Administration

AGENCY: National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 8, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Masi Okasaki, 301–713–3155, extension 180 or e-mail at *masi.okasaki@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The coastal zone management grants provide funds to state and territories to: implement federally approved coastal management plans; revise assessment and multi-year strategy documents; submit Section 306A documentation; submit requests to approve program changes and amendments; complete performance reports; complete National Coastal Management Performance Measurement System documentation, and complete the states coastal nonpoint source pollution program.

II. Method of Collection

Both electronic and paper submissions are accepted from respondents. A comprehensive web-based application information system is under development.

III. Data

OMB Number: 0648–0119.
Form Number: None.
Type of Review: Regular submission.
Affected Public: State, Local or Tribal government.

Estimated Number of Respondents: 35.

Estimated Time Per Response: Performance Reports, 27 hours; Assessment and Strategy, 240 hours; 306A Documentation, 5 hours; Amendments and Program Changes, 8 hours; National Coastal Management Performance Measurement System, 380 hours; and Coastal Nonpoint Pollution Program, 70 hours.

Estimated Total Annual Burden Hours: 17,974.

Estimated Total Annual Cost to Public: $500.

IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 2, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–11338 Filed 6–7–05; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

June 3, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a request for a determination that certain 100 percent cotton, piece dyed, seersucker fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On June 1, 2005, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of their client B*W*A of New York City, alleging that certain 100 percent cotton, piece dyed, plain weave double warp beam seersucker fabrics, of specifications detailed below, classified in subheadings 5208.32.30, 5208.32.40, 5208.32.50, and 5209.31.60 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that woven shirts, blouses, and sleepwear of such fabrics be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by June 23, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 211(a) of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Recovery Act (CBERA); Section 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7351 of October 2, 2000.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On June 1, 2005 the Chairman of CITA received a petition from B*W*A alleging that certain 100 percent cotton, piece dyed, plain weave double warp beam seersucker fabrics, of specifications detailed below, classified in HTSUS subheadings 5208.32.30, 5208.32.40, 5208.32.50, and 5209.31.60, for use in woven shirts, blouses, and sleepwear, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for such apparel articles that are both cut and sewn in one or more beneficiary countries from such fabrics.

Specifications:

Petitioner Style Number:	Various
Fiber Content:	100% Cotton
Yarn Number:	(1) 33/1 - 119/1 metric warp; (2) 33/1 - 119/1 & 33/2 - 119/2 metric warp 33/1 - 119/1 metric filling; overall average yarn number: 30 - 115 metric
Thread Count:	23 - 48 warp ends per centimeter; 19 - 40 filling picks per centimeter; total: 42 - 88 threads per square centimeter
Weave:	Plain weave double warp beam seersucker
Weight:	101 - 255 grams per square meter
Width:	136 - 152 centimeters
Finish:	(Piece) Dyed

The petitioner states that one very important feature of the fabrics is that they are genuine seersucker fabrics, woven with two warp beams, one with half the warp yarns subject to normal warp tension, the other with the warp yarns in a relaxed or tensionless state. Thus, the unique ''crinkled'' appearance and feel of the finished fabric is achieved on the loom and enhanced in the dyeing and finishing process, not merely by dyeing and finishing alone.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for these fabrics for purposes of the intended use. Comments must be received no later than June 23, 2005. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S.

Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA generally considers specific details, such as quantities and lead times for providing the subject product as business confidential. However, information such as the names of domestic manufacturers who were contacted, questions concerning the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. If this is not possible, an explanation of the necessity for treating such information as business confidential must be provided. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–11474 Filed 6–6–05; 4:11 pm]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

June 3, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a request for a determination that certain 100 percent cotton, yarn dyed, seersucker fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On June 1, 2005, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of their client B*W*A of New York City, alleging that certain 100 percent cotton, yarn dyed, plain weave double warp beam seersucker fabrics, of specifications detailed below, classified in subheadings 5208.42.30, 5208.42.40, 5208.42.50, and 5209.41.60 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that woven shirts, blouses, and sleepwear of such fabrics be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by June 23, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard Stetson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 211(a) of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Recovery Act (CBERA); Section 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7351 of October 2, 2000.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On June 1, 2005 the Chairman of CITA received a petition from B*W*A alleging that certain 100 percent cotton, yarn dyed, plain weave double warp beam seersucker fabrics, of specifications detailed below, classified in HTSUS subheadings 5208.42.30, 5208.42.40, 5208.42.50, and 5209.41.60, for use in woven shirts, blouses, and sleepwear, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for such apparel articles that are both cut and sewn in one or more beneficiary countries from such fabrics.

Specifications:

Petitioner Style Number:	Various
Fiber Content:	100% Cotton
Yarn Number:	(1) 33/1 - 119/1 metric warp; (2) 33/1 - 119/1 & 33/2 - 119/2 metric warp 33/1 - 119/1 metric filling; overall average yarn number: 30 - 115 metric
Thread Count:	23 - 48 warp ends per centimeter; 19 - 40 filling picks per centimeter; total: 42 - 88 threads per square centimeter
Weave:	Plain weave double warp beam seersucker
Weight:	101 - 255 grams per square meter
Width:	136 - 152 centimeters
Finish:	Of yarns of different colors in both warp and filling

The petitioner states that one very important feature of the fabrics is that they are genuine seersucker fabrics, woven with two warp beams, one with half the warp yarns subject to normal warp tension, the other with the warp yarns in a relaxed or tensionless state. Thus, the unique ''crinkled'' appearance and feel of the finished fabric is achieved on the loom and enhanced in the dyeing and finishing process, not merely by dyeing and finishing alone.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for these fabrics for purposes of the intended use. Comments must be

received no later than June 23, 2005. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA generally considers specific details, such as quantities and lead times for providing the subject product as business confidential. However, information such as the names of domestic manufacturers who were contacted, questions concerning the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. If this is not possible, an explanation of the necessity for treating such information as business confidential must be provided. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.05–11475 Filed 6–6–05; 4:11 pm]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Activity—Customer Satisfaction Surveys

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the February 25, 2005 **Federal Register** (70 FR 9275), the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) (PRA), to announce the agency's intention to seek extension of its PRA approval to conduct surveys to determine the kind and quality of services CPSC customers want and customers' level of satisfaction with existing services. The Commission now announces that it has submitted to the Office of Management and Budget a request for extension of approval of that collection of information.

The Commission received one comment stating that the CPSC should obtain all requested information at the initial contact without any additional follow up on customer satisfaction. For most of the CPSC programs, it is not possible to interview the customer regarding customer satisfaction at the time of initial contact because the requested service may not yet have been performed or completed. In those circumstances, customer satisfaction may only be assessed through follow up contact after the implementation of the CPSC program.

CPSC will use the information it obtains in these surveys to improve its work on behalf of the American public. In addition, the CPSC Office of Planning and Evaluation will use information from the surveys to prepare sections of the agency's annual Performance and Accountability report (required by the Government Performance and Results Act (GPRA)). This information will provide measures of the quality and effectiveness of agency efforts related to three goals in its strategic plan (informing the public, industry services, and customer satisfaction). In the past, information from these surveys has shown an overall high level of customer satisfaction. If this information is not periodically collected, the CPSC would not have useful measures of its effectiveness in reaching consumers and others, and the information necessary to guide program development and improvement would not be available. The Commission would be unable to measure its ability to meet identified GPRA goals. CPSC will collect this information in several ways, such as using telephone interviews, as well as mail and web-based questionnaires. Up to 6 customer surveys or information collection activities a year would be conducted using this clearance.

Additional Information About the Request for Extension of Approval of Information Collection Activity

Title of information collection: Customer Satisfaction Surveys: Fast track recall survey; ombudsman survey, state partner survey, hotline survey, web site survey and clearinghouse survey.

Type of request: Extension of approval.

Frequency of collection: Each survey will be conducted once during a 3-year period.

General description of respondents: (1) Persons telephoning the Hotline or accessing the CPSC web site via the Internet; (2) persons or companies contacting the National Injury Information Clearinghouse for information; (3) State representatives who work with CPSC on cooperative programs; (4) firms using CPSC's Fast-Track Product Recall Program; and (5) small business that have contacted the CPSC's small business ombudsman.

Estimated number of respondents: 745 per year.

Estimated average number of responses per respondent: One per year.

Estimated number of responses for all respondents: 745 per year.

Estimated number of hours per response: 4 minutes.

Estimated number of hours for all respondents: 50 hours per year.

Estimated cost of collection for all respondents: $1,170 per year.

Comments: Comments on this request for extension of approval of an information collection activity should be submitted by July 8, 2005, to (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Comments may be delivered to the Office of the Secretary, room 419, North Tower, 4330 East-West Highway, Bethesda, Maryland, 20814. Comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127, or by e-mail at *cpsc-os@cpsc.gov.*

Copies of this request for approval of an information collection activity are available from Linda L. Glatz, Management & Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–7671.

Dated: June 1, 2005.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 05–11300 Filed 6–7–05; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

New Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a proposed new public information collection request (ICR) entitled the *VISTA-Points of Light Foundation Strengthening Communities Initiative Volunteer Center and Community Partner Surveys* to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Kelly Arey, (202) 606–5000, ext. 197. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register:**

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_Astrich@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on February 28, 2005. This comment period ended on April 29, 2005. No public comments were received.

Description: Through this proposed data collection of Volunteer Centers and their community partners, the Corporation seeks to conduct an assessment of the implementation of the Points of Light Foundation (POLF) Strengthening Communities Initiative and the current needs of these organizations. The data collection will utilize two surveys to collect information from the Volunteer Centers and their community partners: *VISTA–POLF Strengthening Communities Initiative Volunteer Center Survey and VISTA–POLF Strengthening Communities Initiative Community Partner Survey.*

The information will be collected electronically through online survey forms. An attempt will be made by the Corporation to collect and record verbal responses for those respondents who do not complete the online survey form. The data from these reports, along with evaluation data generated by other Corporation-funded studies, will be used in assessing the degree to which Corporation policies are promoting growth and expansion of volunteer recruitment and management capacity within volunteer centers and community-based nonprofit organizations. The results of these analyses will be used in determining training and technical assistance priorities for the Corporation and in refining grant guidelines to promote program effectiveness.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: VISTA-Points of Light Foundation Strengthening Communities Initiative Volunteer Center and Community Partner Surveys.

OMB Number: None.

Agency Number: None.

Affected Public: Non-profit institutions.

Total Respondents: 128.

Frequency: On occasion.

Average Time Per Response: 10 minutes.

Estimated Total Burden Hours: 21.3.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: June 2, 2005.

Robert Grimm,

Director, Research and Policy Development.

[FR Doc. 05–11354 Filed 6–7–05; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

New Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a proposed new public information collection request (ICR) entitled AmeriCorps Member Activity Collection Form to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Kelly Arey, (202) 606–5000, ext. 197. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_Astrich@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

• Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on December 10, 2004. This comment period ended on March 29, 2005. No public comments were received.

Description: The State Performance Report is the Corporation's first comprehensive effort at presenting disaggregated performance data by state and program. The AmeriCorps Member Activity Collection Form will use email and telephone correspondence to solicit information annually from State Service Commissions about the programs in their portfolio, including competitive, formula, and commission Education Award Only Programs.

The purpose of this request is to seek approval for a new information collection for the annual State Performance Report using the AmeriCorps Member Activity Collection Form. The Corporation will use the information collected in the AmeriCorps Member Activity Collection Form to identify where AmeriCorps members are serving specifically, including the site address and zip code and in what capacity they are serving. This information is currently not required of our grantees to report to us, and is not available in our data systems. Collecting this information on an annual basis will allow the Corporation to assess how community needs are being met on a more comprehensive level and conduct more sophisticated policy analysis.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Member Activity Collection Form.

OMB Number: None.

Agency Number: None.

Affected Public: Non-profit institutions, Government.

Total Respondents: 52.

Frequency: Annual.

Average Time Per Response: 20 hours.

Estimated Total Burden Hours: 1040 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: May 25, 2005.

Robert Grimm,

Director, Research and Policy Development.

[FR Doc. 05–11355 Filed 6–7–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning System and Method for Evaluating Data Sets Over a Communications Network

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 60/634,987 entitled ''System and Method for Evaluating Data Sets Over a Communications Network,'' filed December 13, 2004. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–ZA–J, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The present invention relates to computer-implemented data analysis systems and methods. In particular, the present invention is related to a system and method for analyzing large time-series and non time-series data files stored on a server by collaborative researchers who are located at remote locations but who are in data communication with the server.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–11357 Filed 6–7–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Solicitation for Estuary Habitat Restoration Program

AGENCY: Department of the Army, Army Corps of Engineers, DoD.

ACTION: Notice of solicitation for project applications.

SUMMARY: Congress has appropriated limited funds to the U.S. Army Corps of Engineers (Corps) to implement the Estuary Habitat Restoration Program as authorized in Section 104 of the Estuary Restoration Act of 2000, Title I of the Estuaries and Clean Waters Act of 2000 (Pub. L. 106–457) (accessible at *http://restoration.nos.noaa.gov/pdfs/act_s835.pdf*). On behalf of the Estuary Habitat Restoration Council (Council), the Corps is soliciting proposals for estuary habitat restoration projects. This document describes project criteria and evaluation criteria the Council will use to determine which projects to recommend. Recommended projects must provide ecosystem benefits, have scientific merit, be technically feasible, and be cost-effective. Proposals selected for Estuary Habitat Restoration Program funding will be implemented in accordance with a cost-share agreement with the Corps. This is not a grants program.

DATES: Proposals must be received on or before July 25, 2005.

ADDRESSES: Proposal forms may be accessed at *http://www.usace.army.mil/civilworks/cecwp/estuary_act/* or by contacting the individuals listed in the following section. Project proposals may be submitted electronically, by mail, or by courier. Electronic submissions are preferred and will facilitate processing. Please follow the detailed instructions provided in section IX. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4750, e-mail: *Ellen.M.Cummings@usace.army.mil;* or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC (703)

695–6791, e-mail: *Cynthia.Garman-Squier@hqda.army.mil.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Estuary Habitat Restoration Program, the U.S. Army Corps of Engineers (Corps) is authorized to carry out estuary habitat restoration projects. However, the Estuary Habitat Restoration Council (Council) is responsible for soliciting, reviewing and evaluating project proposals. The Corps may only fund projects on the prioritized list provided by the Council. The Estuary Habitat Restoration Strategy prepared by the Council contains introductory information about the program and provides the context in which projects will be evaluated and the program will be conducted. The Strategy was published in the **Federal Register**, 67 FR 71942, December 3, 2002. It is also accessible at *http://www.usace.army.mil/civilworks/cecwp/estuary_act/.*

An emphasis will be placed on achieving cost-effective restoration of ecosystems while promoting increased partnerships among agencies and between public and private sectors. Projects funded under this program will contribute to the Estuary Habitat Restoration Strategy goal of restoring 1,000,000 acres of estuary habitat.

For purposes of this program, *estuary* is defined as ''a part of a river or stream or other body of water that has an unimpaired connection with the open sea and where the sea water is measurably diluted with fresh water from land drainage.'' Estuary also includes the ''* * * near coastal waters and wetlands of the Great Lakes that are similar in form and function to estuaries * * *.'' For this program, estuary is considered to extend from the head of tide to the boundary with the open sea (to downstream terminus features or structures such as barrier islands, reefs, sand bars, mud flats, or headlands in close proximity to the connection with the open sea). In the Great Lakes, riparian and nearshore areas will be considered to be estuaries. Estuary habitat includes the estuary and its associated ecosystems, such as: salt, brackish, and fresh water coastal marshes; coastal forested wetlands and other coastal wetlands; maritime forests; coastal grasslands; tidal flats; natural shoreline areas; shellfish beds; sea grass meadows; kelp beds; river deltas; and river and stream corridors under tidal influence.

II. Eligible Restoration Activities

Section 103 of the Estuary Restoration Act of 2000 (the Act) defines the term *estuary habitat restoration activity* to mean ''an activity that results in improving degraded estuaries or estuary habitat or creating estuary habitat (including both physical and functional restoration), with the goal of attaining a self-sustaining system integrated into the surrounding landscape.'' Projects funded under this program will be consistent with this definition.

Eligible habitat restoration activities include re-establishment of chemical, physical, hydrologic, and biological features and components associated with an estuary. Restoration may include, but is not limited to, improvement of estuarine wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; improvement or reestablishment of fish passage; appropriate reef/substrate/habitat creation; planting of native estuarine wetland and submerged aquatic vegetation; reintroduction of native species; control of invasive species; and establishment of riparian buffer zones in the estuary. Cleanup of pollution for the benefit of estuary habitat may be considered, as long as it does not meet the definition of excluded activities under the Act (see section III, Excluded Activities, below).

In general, proposed projects should clearly demonstrate anticipated benefits to habitats such as those habitats listed in the *Introduction.* Although the Council recognizes that water quality and land use issues may impact habitat restoration efforts and must be considered in project planning, the Estuary Habitat Restoration Program is intended to fund physical habitat restoration projects, not measures such as storm water detention ponds, wastewater treatment plant upgrades or combined sewer outfall improvements.

III. Excluded Activities

Estuary Habitat Restoration Program funds will not be used for any activity that constitutes mitigation required under any Federal or State law for the adverse effects of an activity regulated or otherwise governed by Federal or State law, or that constitutes restoration for natural resource damages required under any Federal or State law. Estuary Habitat Restoration Program funds will not be used for remediation of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601–9675). Additionally, Estuary Habitat Restoration Program funds will not be used to carry out projects on Federal lands.

IV. Project Sponsor and Cost Sharing

The non-Federal sponsor may be a State, a political subdivision of a State, a Tribe, or a regional or interstate agency. A nongovernmental organization may serve as a non-Federal sponsor as determined by the Secretary of the Army (Secretary) in consultation with appropriate State and local governmental agencies and Tribes.

The Federal share of the cost of an estuary habitat restoration project shall not exceed 65 percent except that the Federal share shall be 85 percent of the incremental additional cost of pilot testing or demonstration of an innovative technology having the potential for improved cost-effectiveness. Innovative technology is defined as novel processes, techniques and/or materials to restore habitat, or the use of existing processes, techniques, and/or materials in a new restoration application.

Prior to initiation of a project, the non-Federal sponsor must enter into a written agreement with the Corps in which the non-Federal sponsor agrees to provide its share of the project cost. The non-Federal sponsor shall provide lands, easements, rights-of-way, and relocations and may provide services and in-kind contributions for credit toward its share of the project cost. Credit for the value of in-kind contributions is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including but not limited to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*), and the Copeland Anti-Kickback Act (40 U.S.C. 276c). Credit may be afforded for the value of required work undertaken by volunteers, using the hourly value in common usage for grants program but not to exceed the Federal estimate of the cost of activity. The non-Federal sponsor shall also be responsible for all costs associated with operating, maintaining, replacing, repairing, and rehabilitating these projects as well as for the required post-construction monitoring.

Other Federal funds, *i.e.,* funds appropriated to agencies other than the Corps, may not be used by the non-Federal sponsor to meet its share of the project cost unless the other Federal agency verifies in writing that expenditure of funds for such purpose is expressly authorized by statute. Otherwise, other Federal funds may be used for the proposed project if consistent with the other agency's authorities and will count as part of the Federal share of the project cost. Any

non-Federal funds or contributions used as a match for these other Federal funds or any other Federal program may be used toward the project but will not be considered in determining the non-Federal share in relation to the Corps' costs.

Credit will be provided only for work necessary for the specific project being funded with Estuary Habitat Restoration Program funds. For example, a non-Federal entity is engaged in the removal of ten dams, has removed six dams, and now seeks assistance for the removal of the remaining four dams as an Estuary Habitat Restoration Program project. None of the costs associated with the removal of the six dams is creditable as part of the non-Federal share of the project for removal of four dams.

This is not a grants program. The Corps will not transfer funds to the non-Federal sponsor. The Corps will implement (construct) some portion of the proposed project. To the extent possible the Corps will use the planning, evaluation, and design products provided by the applicant. However, the Corps will be responsible for assuring compliance with Federal environmental statutes, assuring the project is designed to avoid adverse impacts on other properties and that the project can reasonably be expected to provide the desired benefits, and managing construction activities not performed by the non-Federal sponsor as in-kind contribution. These Corps activities will be part of the Federal cost of the project, and the non-Federal sponsor should consider these costs in developing the project cost estimate.

V. Funding Availability

Limited funds have been appropriated for implementation of projects under the Estuary Habitat Restoration Program. The Council will not accept proposals that indicate an estimated Federal cost of less than $25,000 or more than $1,000,000. There is no guarantee that sufficient funds will be available to fund all eligible proposals. The number of proposals funded as a result of this notice will depend on the number of eligible proposals received, the estimated amount of funds required for each selected project, and the merit and ranking of the proposals. The exact amount of the Federal and non-Federal cost share for each selected project will be specified in the written agreement discussed in *Project Cost Sharing,* Section IV above. Projects selected for funding must be capable of producing the ecosystem benefits described in the proposal in the absence of Federal funding beyond that established in the cost-share agreement.

VI. Proposal Review Process

Proposals will be screened as discussed in section VII. A. below to determine eligibility. The staff of the agencies represented on the Council will conduct a technical review of the eligible proposals in accordance with the criteria described in section VII. B. below. Agency scientists involved in estuarine research or the development and application of innovative methods for restoring estuary habitats will also review proposals that indicate the use of innovative technologies. Each agency will score and rank the proposals; the staff of the five agencies will use these rankings as the basis for a consolidated recommendation. The Council will consider the staff recommendation, the items discussed in sections VII. C. and D. below, and possibly other factors when preparing its prioritized list of recommended projects for the Secretary's use.

VII. Proposal Review Criteria

This section describes the criteria that will be used to review and select projects to be recommended to the Secretary for funding under the Act. It will benefit applicants to ensure that project proposals clearly address the criteria set forth under the following four subsections: Initial Screening of Project Proposals; Evaluation of Project Proposals; Priority Elements; and Other Factors.

A. Initial Screening of Project Proposals

Proposals will be screened according to the requirements listed in sections 104(b) and 104(c)(2) of the Act as described below. In addition, proposed projects must not include excluded activities as discussed in Section III above. Proposals that do not meet all of these initial screening criteria will not be evaluated further. To be accepted, the proposal must:

(1) Originate from a non-Federal sponsor (section 104(b));

(2) Address restoration needs identified in an estuary habitat restoration plan (section 104 (c)(2)(A)). The Act defines ''estuary habitat restoration plan'' as any Federal or State plan for restoration of degraded estuary habitat that was developed with substantial participation of the public. (section 103(6));

(3) Be consistent with the Estuary Habitat Restoration Strategy (section 104(c)(2)(B)) by:

(a) Including eligible restoration activities that provide ecosystem benefits;

(b) Addressing estuary habitat trends (including historic losses) in the project region, and indicating how these were considered in developing the project proposal;

(c) Involving a partnership approach, and

(d) Clearly describing the benefits expected to be realized by the proposed project;

(4) Include a monitoring plan that is consistent with standards developed by NOAA under section 104(c)(2)(C)) (available at: *http://era.noaa.gov/htmls/era/era_monitoring.html,* or from the contacts listed in the **FOR FURTHER INFORMATION CONTACT** section above), and;

(5) Include satisfactory assurances that the non-Federal sponsor has adequate authority and resources to carry out items of local cooperation and properly maintain the project (section 104(c)(2)(D)).

B. Evaluation of Project Proposals

Proposals that meet the initial screening criteria in A. above will be eligible for further review using the criteria listed below. The following criteria are listed in order of relative importance with the most important criteria first. The first four criteria are the most important. If the reviewers find that a response to any of the first four criteria is completely inadequate, the proposal will be rejected. For each of the listed criteria, the focus will be on the factors mentioned below but other factors may also be considered.

(1) *Ecosystem Benefits*—

Proposals will be evaluated based on the extent of proposed habitat restoration activities and the type(s) of habitat(s) that will be restored. Following are specific factors that reviewers will consider as part of this criterion:

(a) Prevention or reversal of estuary habitat loss or degradation in the project area and the nature and extent of the proposed project's potential contribution to the long-term conservation of estuary habitat function,

(b) Benefits for Federally listed endangered or threatened species, species proposed for Federal listing, recently delisted species or designated or proposed critical habitat in the project area,

(c) Extent to which the project will provide, restore, or improve habitat important for estuary-dependent fish and/or migratory birds (*e.g.* breeding, spawning, nursery, foraging, or staging habitat),

(d) Prevention or reduction of nonpoint source pollution or other contaminants to estuary habitats or restoration of estuary habitats that are already contaminated, and

(e) Benefits to nearby existing habitat areas, or contribution to the creation of wildlife/ecological corridors connecting existing habitat areas.

(2) *Cost-Effectiveness*—

Reviewers will evaluate the relationship between estimated project costs, including the costs of remaining planning, design, construction, required lands, and annual operation, maintenance, repair, rehabilitation and replacement and monitoring cost, to the monetary and non-monetary benefits described in the proposal. Clear quantitative and qualitative descriptions of the proposed outputs will facilitate this evaluation. Examples of units of measure include: Acres restored, flood damage reduction levels, changes in water quality parameters, increases in the productivity of various species, and presence and absence of certain species. The estimated persistence of the proposed project outputs will be considered. For example, will the area be maintained as a wetland, or allowed to erode or become upland? Will the proposed project produce additional benefits due to synergy between the proposed project and other ongoing or proposed projects? Reviewers will consider if the proposed project is a cost-effective way to achieve the proposed benefits. In some instances the costs and benefits of proposed projects may be compared to the costs and benefits of other similar projects in the area. The significance of the proposed outputs is also a factor to be considered as part of cost-effectiveness. The significance of restoration outputs should be recognized in terms of institutional (such as laws, adopted plans, or policy statements), public (such as support for the project), or technical (such as addresses scarcity, increases limiting habitat, or improves or increases biodiversity) importance.

(3) *Technical Feasibility*—

Reviewers will evaluate the extent to which, given current and projected environmental conditions of the restoration site—*e.g.*, soils, flood regime, presence of invasive species, surrounding land use—the proposed project is likely to be successfully implemented. Consideration will also be given to:

(a) Potential success of restoration techniques, based on history of successful implementation in field or pilot projects,

(b) Implementation schedule,

(c) Expected length of time before success can be demonstrated,

(d) Proposed corrective actions using monitoring information,

(e) Project management plans, and

(f) Experience and qualifications of project personnel.

(4) *Scientific Merit*—

Reviewers will evaluate the extent to which the project design is based on sound ecological principles and is likely to meet project goals. This may be indicated by the following factors:

(a) Goals of the project are reasonable considering the existing and former habitat types present at the site and other local influences,

(b) Conceptual approach demonstrates an understanding of habitat function, and

(c) Specific methods proposed (if successfully implemented—see criteria on technical feasibility) have a good chance of meeting project goals and achieving long-term sustainability.

(5) *Agency Coordination*—

Reviewers will evaluate the degree to which the project will encourage increased coordination and cooperation among Federal, State, and local government agencies. Some of the indicators used to evaluate coordination are:

(a) The State, Federal, and local agencies involved in developing the project and their expected roles in implementation,

(b) The nature of agency coordination, *e.g.*, joint funding, periodic multi-agency review of the project, collaboration on adaptive management decisions, joint monitoring, opportunities for future collaboration, etc., and

(c) Whether a formal agreement, such as a Memorandum of Understanding (MOU), exists between/among agencies as part of the project.

(6) *Public/Private Partnerships*—

One of the focuses of the Act is the encouragement of new public/private partnerships. Reviewers will evaluate the degree to which the project will foster public/private partnerships and uses Federal resources to encourage increased private sector involvement. Indicators of the success at meeting this criterion follow. How will the project promote collaboration or create partnerships among public and private entities, including potential for future new or expanded public/private partnerships? What mechanisms are being used to establish the partnership, *e.g.*, joint funding, shared monitoring, joint decision-making on adaptive management strategies? Is there a formal agreement, such as an MOU, between/among the partners as part of the project? Also important is the extent to which the project creates an opportunity for long-term partnerships among public and private entities.

(7) *Level of Contribution*—

Reviewers will consider the level and type (cash or in-kind) of non-Federal contribution. Providing more than the minimum 35-percent share will be rated favorably.

(8) *Monitoring Plan*—

Reviewers will consider the following factors in evaluating the quality of the monitoring plan:

(a) Linkage between the monitoring methods and the project goals, including success criteria,

(b) How results will be evaluated (statistical comparison to baseline or reference condition, trend analysis, or other quantitative or qualitative approach),

(c) How baseline conditions will be established for the parameters to be measured,

(d) If applicable, the use and selection of reference sites, where they are located, how they were chosen, and whether they represent target conditions for the habitat or conditions at the site without restoration,

(e) The appropriateness of the nature, frequency, and timing of measurements and which areas will be sampled,

(f) Provisions for adaptive management, and data reporting, and

(g) whether the length of the proposed monitoring plan is appropriate for the project goals (should be at least five years).

(9) *Multiple Benefits*—

In addition to the ecosystem benefits discussed in criterion (1) above, restored estuary habitats may provide additional benefits. Among those the reviewers will consider are: flood damage reduction, protection from storm surge, water quality and/or quantity for human uses, recreational opportunities, and benefits to commercial fisheries.

(10) *Dedicated Funding Source*—

Reviewers will consider if the State in which the proposed project will be located has a dedicated source of funding to acquire or restore estuary habitat, natural areas, and open spaces for the benefit of estuary habitat restoration or protection.

(11) *Supports Regional Restoration Goals*—

Reviewers will evaluate the extent to which the proposed project contributes to meeting and/or strengthening the needs, goals, objectives and restoration priorities contained in regional restoration plans, and the means that will be used to measure such progress.

(12) *Supports Federal Plan*—

If the proposed project supports a Federal plan (examples of Federal plans are listed in section 103(6)(B) of the Act), reviewers will consider the extent to which the project would contribute to meeting and/or strengthening the plan's

needs, goals, objectives and restoration priorities, and the means that will be used to measure such progress.

C. Priority Elements

Section 104(c)(4) of the Act directs the Secretary to give priority consideration to a project that merits selection based on the above criteria if it:

(1) Occurs within a watershed where there is a program being implemented that addresses sources of pollution and other activities that otherwise would adversely affect the restored habitat; or

(2) Includes pilot testing or demonstration of an innovative technology having the potential to achieve better restoration results than other technologies in current practice, or comparable results at lower cost in terms of energy, economics, or environmental impacts.

The Council will also consider these priority elements in ranking proposals.

D. Other Factors

In addition to considering the composite ratings developed in the evaluation process and the priority elements listed in C. above, the Council will consider other factors when preparing its prioritized list for the Secretary's use. These factors include (but may not be limited to) the following:

(1) Readiness of the project for implementation. Among the factors to be considered when evaluating readiness are the steps that must be taken prior to project implementation, potential delays to project implementation, and the status of real estate acquisition.

(2) Balance between large and small projects, as defined in the Estuary Habitat Restoration Strategy.

(3) Geographic distribution of the projects.

VIII. Project Selection and Notification

The Secretary will select projects for funding from the Council's prioritized list of recommended projects after considering the criteria contained in section 104(c) of the Act, availability of funds and any reasonable additional factors. It is expected that the Secretary will select proposals for implementation approximately 100 days after the close of this solicitation or 30 days after receiving the list from the Council, whichever is later. The non-Federal sponsor of each proposal will be notified of its status at the conclusion of the selection process. Staff from the appropriate Corps Districts will work with the non-Federal sponsor of each selected project to develop the cost-sharing agreements and schedules for project implementation.

IX. Application Process

Proposal application forms are available at *http://www.usace.army.mil/civilworks/cecwp/estuary_act/* or by contacting Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4750, e-mail: *Ellen.M.Cummings@usace.army.mil;* or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC (703) 695–6791, e-mail: *Cynthia.Garman-Squier@hqda.army.mil.* The application form has been approved by OMB in compliance with the Paper Work Reduction Act and is OMB No. 0710–0014 with an expiration date of 04/30/2008. Electronic submissions are preferred and should be sent to *estuary.restoration@usace.army.mil.* Questions may also be sent to this e-mail address. Hard copy submissions may be sent or delivered to HQUSACE, ATTN: CECW–PC, 7701 Telegraph Road #3D72, Alexandria, VA 22315–3860. The narrative portion of a nomination should be no more than twelve double-spaced pages, using a 10 or 12-point font. Paper copies should be printed on one side only of an 8.5 in. x 11 in. page and not bound. A PC-compatible floppy disk or CD–ROM in either Microsoft Word or WordPerfect format may accompany the paper copy. Nominations for multiple projects submitted by the same applicant must be submitted in separate e-mail messages and/or envelopes.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–11358 Filed 6–7–05; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel; Correction

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** of May 25, 2005, announcing a closed meeting of the CNO Executive Panel. The document contained incorrect date and time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Christopher Corgnati, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, (703) 681–4909.

Correction

In the **Federal Register** of May 25, 2005, in FR Doc. 05–10399, on page 30090, in the first column, correct the **DATES** caption to read:

DATES: The meeting will be held on Wednesday, June 15, 2005, from 9:30 a.m. to 10:30 a.m.

Dated: June 3, 2005.

S. K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 05–11446 Filed 6–7–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 8, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information

collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 1, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Study of Graduate Fellowship Programs.

Frequency: One time.

Affected Public: Individuals or household; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 3,862.

Burden Hours: 1,598.

Abstract: This project will assess education and employment outcomes of 4,400 Jacob K. Javits, Graduate Assistance in Areas of National Need Fellowship Program (GAANN), Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program (DDRA), and Foreign Language and Area Studies Fellowship Program (FLAS) fellowship recipients from 1997–1999. Data will be used to assess meeting fellowship program objectives, and to help refine program policies.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2719. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–11347 Filed 6–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 8, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 1, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: National Assessment of Educational Progress, Accommodations Validity Study.

Frequency: One time.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 140.

Burden Hours: 210.

Abstract: This is a study of the validity of accommodations provided during assessments for students with disabilities or for English language learner students. The information will contribute to knowledge about test administration for specific population of students.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2787. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–11348 Filed 6–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposes to use for the 2006–2007 year. The FAFSA is completed by students and their

families and the information submitted on the form is used to determine the students' eligibility and financial need for financial aid under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended, (Title IV, HEA Programs). The Secretary also requests comments on changes under consideration for the 2006–2007 FAFSA.

DATES: Interested persons are invited to submit comments on or before July 8, 2005.

ADDRESSES: Written comments should be addressed to Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

In addition, interested persons can access this document on the Internet: (1) Go to IFAP at *http://ifap.ed.gov;* (2) Scroll down to ''Publications''; (3) Click on ''FAFSAs and Renewal FAFSAs''; (4) Click on ''By 2006–2007 Award Year''; (5) Click on ''Draft FAFSA Form/Instructions''.

Please note that the free Adobe Acrobat Reader software, version 4.0 or greater, is necessary to view this file. This software can be downloaded for free from Adobe's Web site: *http://www.adobe.com.*

SUPPLEMENTARY INFORMATION: Section 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, ''in cooperation with agencies and organizations involved in providing student financial assistance,'' to ''produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student under'' the Title IV, HEA Programs. This form is the FAFSA. In addition, Section 483 authorizes the Secretary to include non-financial data items that assist States in awarding State student financial assistance.

FSA has awarded a Front-End Business Integration contract that will re-engineer the front-end student aid application processes, disbursement processes, funds management, and customer service functions into a single integrated business solution. The first implementation activities are scheduled for January, 2007. For this reason, we propose to make minimal changes to the 2006–2007 FAFSA, and will consider recommendations for improving the FAFSA and the application process in the 2007–2008 development cycle.

The draft 2006–2007 FAFSA (posted to the IFAP Web site) does not propose to add or to delete data elements. The questions appear in the same format and the same order as in 2005–2006. Several changes to the wording on the 2006–2007 FAFSA are proposed as follows: (1) Page 1, ''Using Your Tax Return'' is revised to note that applicants required to file a tax return must do so to receive student aid. (2) Page 2, Under Notes for Questions 43–45, two lines referring to filing on the Web are deleted. (3) Page 2, The paragraph beginning ''Investments include* * *'' is revised to direct applicants to a Web site for further guidance. (4) Pages 4 and 5, Questions 32 and 70, option ''c'' is revised to indicate that ''I (and my parents) will not file and I am not (my parents are not) required to file.'' (5) Page 8, Worksheet B, item 1, adds the word ''voluntary'' before ''contributions to tax-deferred pension and savings plans.'' A more detailed summary of changes is posted on the IFAP Web site. The Secretary requests comments on these proposed changes to wording, as well as suggestions for ways to further simplify the application for students, parents, and schools.

The Secretary is publishing this request for comment under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under procedure for obtaining approval from OMB, ED must first obtain public comment of the proposed form, and to obtain that comment, ED must publish this notice in the **Federal Register**.

In addition to comments requested above, to accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 2, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Annually.

Affected Public: Individuals or families.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 14,762,847.

Burden Hours: 7,624,153.

Abstract: The FAFSA collects identifying and financial information about a student applying for Title IV, Higher Education Act (HEA) Program funds. This information is used to calculate the student's expected family contribution, which is used to determine a student's financial need. The information is also used to determine the student's eligibility for grants and loans under the Title IV, HEA Programs. It is further used for determining a student's eligibility for State and institutional financial aid programs.

Requests for copies of the information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2696. When you access the information collection, click on ''Download attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 245–6566 or via his e-mail address *Joe_Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

[FR Doc. 05–11349 Filed 6–7–05; 8:45 am]

BILLING CODE 4001–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Child Care Access Means Parents in School (CCAMPIS) Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.335.

Dates: *Applications Available:* June 10, 2005.

Deadline for Transmittal of Applications: July 22, 2005.

Deadline for Intergovernmental Review: September 20, 2005.

Eligible Applicants: Any institution of higher education that during FY 2004 awarded a total of $350,000 or more of Federal Pell Grant funds to students enrolled at the institution. Institutions that currently have a CCAMPIS Program grant with a project period ending in 2006 are eligible to apply in accordance with section III.3 of this notice.

Estimated Available Funds: $10,353,010.

Estimated Range of Awards: $10,000–$300,000.

Estimated Average Size of Awards: $47,491.

Maximum Award: In accordance with section 419N(b)(2) of the Higher Education Act of 1965, as amended (HEA), the maximum amount an applicant may receive under this program is one percent of the total amount of all Federal Pell Grant funds awarded to students enrolled at the institution for FY 2004. A grant shall not be less than $10,000, for a single budget period of 12 months.

Estimated Number of Awards: 218.

Note: The Department is not bound by any estimates in this notice.

Project Period: 48 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The CCAMPIS Program supports the participation of low-income parents in postsecondary education through the provision of campus-based child care services.

Priority: In accordance with 34 CFR 75.105 (b)(2)(iv), this priority is from section 419N(d) of the HEA.

Competitive Preference Priority: For FY 2005 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on the extent to which the application meets this priority.

This priority is: Priority is given to institutions of higher education that submit applications describing child care programs that: (1) Leverage significant local or institutional resources, including in-kind contributions, to support the activities assisted under this program; and (2) utilize a sliding fee scale for child care services provided under this program to support a high number of low-income parents pursuing postsecondary education at the institution.

Program Authority: 20 U.S.C. 1070e.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Because there are no program-specific regulations for the CCAMPIS Program, applicants are encouraged to carefully read the authorizing statute, section 419N of the HEA.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $10,353,010.

Estimated Range of Awards: $10,000–$300,000.

Estimated Average Size of Awards: $47,491.

Maximum Award: In accordance with section 419N(b)(2) of the HEA, the maximum amount an applicant may receive under this program is one percent of the total amount of all Federal Pell Grant funds awarded to students enrolled at the institution for FY 2004. A grant shall not be less than $10,000, for a single budget period of 12 months.

Estimated Number of Awards: 218.

Note: The Department is not bound by any estimates in this notice.

Project Period: 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Any institution of higher education that during FY 2004 awarded a total of $350,000 or more of Federal Pell Grant funds to students enrolled at the institution. Institutions that currently have a CCAMPIS Program grant with a project period ending in 2006 are eligible to apply in accordance with section III.3 of this notice.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other:* At this time, we do not anticipate conducting a competition for new awards in FY 2006. Institutions that currently have a CCAMPIS Program grant with a project period ending in 2006 should apply for a new grant during this FY 2005 competition. Subject to the availability of funds, we plan to make new awards in FY 2006 by funding in rank order those applicants with project periods ending in 2006 who scored within the funding range under the FY 2005 competition; and by funding in rank order any other high-quality applications that remain on the slate, including applicants with project periods ending in 2006. Those applicants with project periods ending in 2006 may be awarded a new grant to begin in FY 2006 if: (1) The FY 2005 application scores in the funding range for new awards, and (2) the applicant met all the terms and conditions of the previous grant, including the submission of all required reports.

However, the HEA, the statute authorizing the CCAMPIS Program currently expires at the end of FY 2005. If the statute is not extended or the statute is extended and the terms of the program are substantially changed, the applications from applicants with project periods ending in 2006 that applied in FY 2005 and scored within the funding range will not be funded. If Congress substantially changes the terms of the CCAMPIS Program, the Department may conduct a new competition in FY 2006. If that is the case, we will require all institutions requesting new FY 2006 funding to submit applications in the FY 2006 competition.

IV. Application and Submission Information

1. *Address to Request Application Package:* Dorothy S. Marshall or Antoinette Clark-Ross, U.S. Department of Education, 1990 K Street, NW., suite 7000, Washington, DC 20006–8510. Telephone (202) 502–7600 or by email: *TRIO@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Services (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact persons listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: You must limit the narrative part of your application—Part

II—First Year Budget Narrative and Part III—Program Narrative—to the equivalent of no more than 45 pages using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the application face sheet (ED 424); Part I–A one-page abstract; Part I–B profile; the budget summary form (ED 524), Part IV CCAMPIS Program Assurances, and Part V Department of Education Certifications and Assurances. The page limit also does not apply to a table of contents, should the applicant wish to include one in its application.

No appendices or attachments should be included with the application. If you include any attachments or appendices, these items will be counted as part of the Program Narrative for purposes of the page limit requirement.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: June 10, 2005.

Deadline for Transmittal of Applications: July 22, 2005.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* in this notice.

The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: September 20, 2005.

4. *Intergovernmental Review:* This program competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

a. *Electronic Submission of Applications.*

Applications for grants under the CCAMPIS Program—CFDA Number 84.335 must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program [competition] after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Any narrative sections of your application must be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more

between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Department's e-Application system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Linda Byrd-Johnson, Ph.D., U.S. Department of Education, 1990 K Street, NW., Room 7085, Washington, DC 20006. FAX: (202) 502–7857.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.335), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.335), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.335), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from the statute authorizing the CCAMPIS Program, Section 491N(c) of the HEA, and are as follows:

The maximum score for the total of these criteria (A-E) is 100 points. The maximum score for each criterion is indicated in parentheses, and the maximum score for each subcriterion is in the application package for this competition.

A. Need for the Project. (Maximum 35 Points)

The applicant must demonstrate the need for campus-based child services for low-income students at the institution by including the following:

1. Information regarding student demographics;

2. An assessment of child care capacity on or near campus;

3. Information regarding the existence of waiting lists for existing child care;

4. Information regarding additional needs created by concentrations of poverty or by geographic isolation; and

5. Other relevant data.

B. Plan of Operation. (Maximum 25 Points)

The applicant must describe the activities to be assisted, and must specify whether the grant funds will support an existing child care program or a new child care program.

1. All applicants must address the following:

(a) The plan to identify and select students with the greatest need of child care services;

(b) The type of child care services to be provided and the likely impact of the services on the intended recipients of those services;

(c) 1. If the institution has an early childhood education curriculum, the extent to which the child care program will coordinate with that curriculum to

meet the needs of the students in the early childhood education program at the institution, and the needs of the parents and children participating in the child care program; or

2. If the institution does not have an early childhood education curriculum, the extent to which the project will coordinate with the institution's other programs for economically disadvantaged students to meet the needs of the parents and children participating in the child care program; and

(d) The plan to encourage parental involvement.

2. Only applicants requesting grant assistance for new child care programs must:

(a) Provide a timeline, covering the period from receipt of the grant through the provision of the child care services, delineating the specific steps the institution will take to achieve the goal of providing low-income students with child care services;

(b) Specify any measures the institution will take to assist low-income students with child care during the period before the institution provides child care services; and

(c) Include a plan for identifying resources needed for the child care services, including space in which to provide childcare services and technical assistance if necessary.

C. Management of Project. (Maximum 20 Points)

All applicants must describe the management plan for the proposed project, and include the following:

1. The resources, including technical expertise and financial support, the institution will draw upon to support the child care program and the participation of low-income students in the program, such as accessing social services funding, using student activity fees to help pay the costs of child care, using resources obtained by meeting the needs of parents who are not low-income students, and accessing foundation, corporate or other institutional support, and demonstrate that the use of the resources will not result in increases in student tuition;

2. The qualifications, including relevant training, experience, and time commitment of key project personnel;

3. The organizational placement of the project; and

4. Specific plans for financial management, student records management, and personnel management.

D. Evaluation. (Maximum 15 Points)

All applicants must describe the evaluation plan for the project and must:

1. Demonstrate that the evaluation plan is:

(a) appropriate to the project; and

(b) includes both quantitative and qualitative evaluation measures; and

2. Describe the specific and measurable ways by which the plan will evaluate the success of the project on the retention and graduation of students whose children are served by the project.

E. Budget. (Maximum 5 points)

The extent to which the budget is adequate to support the proposed project (costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. In addition, pursuant to Section 419N(e) of the HEA, you must submit reports 18 months and 36 months after receiving the first grant payment, as directed by the Secretary.

4. *Performance Measures:* The success of the CCAMPIS Program will be measured by the persistence and completion rates of students whose children are served by the program.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Dorothy S. Marshall or Antoinette Clark-Ross, U.S. Department of Education, 1990 K Street, NW., Suite 7000, Washington, DC 20006–8510. Telephone: 202–502–7600 or by e-mail: *TRIO@ed.gov.*

If you use a telecommunication device for the deaf (TDD), you may call the Federal Relay Services (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 persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at 202–512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 3, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–11390 Filed 6–7–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–220–B]

Application To Export Electric Energy; NRG Power Marketing, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: NRG Power Marketing, Inc. (NRGPMI) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before July 8, 2005.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery & Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On May 3, 2000, the Department of Energy (DOE) issued Order No. EA–220 authorizing NRGPMI to transmit electric energy from the United States to Canada as a power marketer. On September 24, 2002, in Order No. EA–220–A, DOE renewed the NRGPMI authorization to export electric energy to Canada for a two-year term that expired on September 24, 2004.

On May 31, 2005, NRGPMI filed an application with DOE for renewal of the export authority contained in Order No. EA–220–A for a five-year term. NRGPMI proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities presently owned by Basin Electric Power Corporative, Bonneville Power Administration, Eastern Maine Electric Power Cooperative, International Transmission Company, Joint Owners of the Highgate Interconnection Facilities, Long Sault Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power & Light, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, Vermont Electric Company, and Vermont Electric Transmission Company.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the dates listed above.

Comments on the NRGPMI application to export electric energy to Canada should be clearly marked with Docket EA–220-B. Additional copies are to be filed directly with NRG Power Marketing, Inc., 211 Carnegie Center, Princeton, NJ 08540–4543, ATTN: Contract Administration.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at *http://www.fe.doe.gov.* Upon reaching the Home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on June 1, 2005.

Ellen Russell,

Acting Senior Advisor to the Director for Regulatory Programs, Office of Electricity Delivery & Energy Reliability.

[FR Doc. 05–11365 Filed 6–7–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Petroleum Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

This notice announces a meeting of the National Petroleum Council. Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, June 22, 2005, 9 a.m.

ADDRESSES: Park Hyatt Washington Hotel, 24th and M Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Slutz, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda:

- Call to Order and Introductory Remarks.
- Remarks by the Honorable Samuel W. Bodman, Secretary of Energy.
- Remarks by a Guest Speaker—To Be Determined.
- Administrative Matters.
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council.
- Adjournment.

Public Participation: The meeting is open to the public. The chairperson of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James Slutz at the address or telephone number listed above. Request must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: Available for public review and copying at the Public Reading Room, Room 1E–90, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued at Washington, DC, on June 3, 2005.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 05–11385 Filed 6–7–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC05–598–000; FERC–598]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

June 2, 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 12, 2005.

ADDRESSES: Copies of sample filings 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 filings, the original and 14 copies of such

comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC05–598–000.

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 website 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–598 ''Determination for Entities Seeking Exempt Wholesale Generator Status'' (OMB No. 1902–0166) is used by the Commission to implement the statutory provisions of section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by section 711 of the Energy Policy Act of 1992, 16 U.S.C. 824d. Section 32(a) of PUHCA defines an Exempt Wholesale Generator (EWG) as an individual determined by the Commission to be engaged directly or indirectly through one or more affiliates, and exclusively in the business of owning and/or operating all or part of eligible facilities and selling electric energy at wholesale. An eligible facility may include interconnecting transmission facilities necessary to effect wholesale power sales. The Commission complements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 365.

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)
112	1	6	672

Estimated cost burden to respondents is $35,073. (672 hours/2080 hours per year times $108,558 per year average per employee = $35,073.). The cost per respondent is $393.

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. E5–2923 Filed 6–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–360–000, CP05–357–000, CP05–358–000 and CP05–359–000]

Creole Trail LNG, L.P. and Cheniere Creole Trail Pipeline Company; Notice of Applications

June 2, 2005.

Take notice that on May 23, 2005, Creole Trail LNG, L.P. (Creole Trail LNG) filed an application in Docket No. CP05–360–000 seeking authorization to site, construct and operate a liquefied natural gas (LNG) terminal and associated facilities to import and deliver 3.3 Bcf per day of natural gas. The terminal and associated facilities will be located in Cameron Parish, Louisiana as the place of importation of foreign source LNG. Creole Trail LNG made the request to site, construct and operate the LNG terminal pursuant to section 3(a) of the Natural Gas Act (NGA) and Part 153 of the Commission's regulations.

Also, take notice that on May 23, 2005, Cheniere Creole Trail Pipeline Company (Cheniere Creole Trail) filed in Docket No. CP05–357–000, an application seeking a certificate of public convenience and necessity, pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations, to construct and operate: (1)

116.8 miles of dual 42-inch pipeline connecting with the Creole Trail LNG terminal; (2) 46.9 miles of single 42-inch pipeline extending from the Sabine Pass LNG terminal, under construction in Cameron Parish, Louisiana, to an interconnection with the dual 42-inch pipeline; and (3) a 6.8-mile, 20-inch lateral line extending from the dual 42-inch line to the proposed Dominion Gas Storage facility. The proposed pipeline facilities will run through Cameron, Calcasieu, Beauregard, Jefferson Davis, Allen, and Acadia Parishes, Louisiana. In Docket No. CP05–358–000, Cheniere Creole Trail requests a blanket certificate under section 7(c) of the NGA and Part 157, Subpart F of the Commission's regulations to perform routine activities in connection with the future construction, operation and maintenance of the proposed pipeline. In Docket No. CP05–359–000, Cheniere Creole Trail requests a blanket certificate pursuant to section 7(c) of the NGA and Part 284, Subpart G of the Commission's regulations to provide open access natural gas transportation services.

These applications are on file with the Commission and open to public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

In Docket No. PF05–8–000, Creole Trail LNG and Cheniere Creole Trail participated in a pre-filing National Environmental Policy Act review of the proposed project to identify and resolve potential landowner and environmental problems before the applications were filed.

Any questions regarding these applications should be directed to Patricia Outtrim, Cheniere LNG, Inc., 717 Texas Avenue, Suite 3100, Houston, Texas 77002, (713) 659–1361 or Lisa Tonery, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036, (212) 556–2307.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. Eastern Time on June 23, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2920 Filed 6–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP04–203–000, RP05–105–000 and RP05–164–000]

Equitrans, L.P.; Notice of Informal Settlement Conference

June 2, 2005.

Take notice that an informal settlement conference will be held in the above-referenced dockets starting at 10 a.m. (EST) on Thursday, June 16 and 17, 2005 at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring a possible settlement in the above-referenced proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Lorna Hadlock (202 502–8737).

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2925 Filed 6–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–361–000]

Gas Transmission Northwest Corporation; Notice of Tariff Filing

June 2, 2005.

Take notice that on May 31, 2005, Gas Transmission Northwest (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No.

1–A, Fifth Revised Sheet No. 6, to become effective July 1, 2005.

GTN states that this tariff sheet is being submitted to implement its semi-annual fuel charge adjustment in compliance with Paragraph 37 of the general terms and conditions of GTN's tariff. In addition, GTN states that it is making corrections to a number of prior fuel tracker filings.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2929 Filed 6–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–360–000]

Gulf South Pipeline Company, LP; Notice of Cash-Out Report

June 2, 2005.

Take notice that on May 31, 2005, Gulf South Pipeline Company, LP (Gulf South) tendered for filing its report of the net revenues attributable to the operation of its cash-in/cash-out program for an annual period beginning April 1, 2004, and ending March 31, 2005.

Gulf South states that this filing reflects its annual report of the activities attributable to the operation of its cash-in/cash out program. The report shows a negative cumulative position that will continue to be carried forward and applied to the next cash-in/cash-out reporting period as provided in Gulf South's tariff, section 20.1(E)(i) of the General Terms and Conditions.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. eastern time, June 9, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2928 Filed 6–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–59–000]

MidAmerican Energy Company; Notice of Institution of Proceeding and Refund Effective Date

June 2, 2005.

On June 1, 2005, the Commission issued an order that instituted a proceeding in Docket No. EL05–59–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e, concerning the justness and reasonableness of MidAmerican Energy Company's market-based rates. *MidAmerican Energy Company*, 111 FERC ¶ 61,320 (2005).

The refund effective date in Docket No. EL05–59–000, established pursuant to section 206(b) of the FPA, will be 60 days from the date of publication of this notice in the **Federal Register**.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2922 Filed 6–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–359–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

June 2, 2005.

Take notice that on May 31, 2005, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Seventy Seventh Revised Sheet No. 9, to become effective June 1, 2005.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2927 Filed 6–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–358–000]

Questar Southern Trails Pipeline Company; Notice of Annual Fuel Gas Reimbursement Report

June 2, 2005.

Take notice that on May 31, 2005, Questar Southern Trails Pipeline Company (Southern Trails) submitted its annual Fuel Gas Reimbursement Percentage (FGRP) report pursuant to the Fuel Gas Reimbursement Provision (section 30) of the general terms and conditions of Original Volume No. 1 of its FERC Gas Tariff.

Southern Trails states that copies of this filing have been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona and California.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time June 9, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2926 Filed 6–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings

June 2, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–2317–005.
Applicants: Metro Energy, L.L.C.
Description: Metro Energy, LLC submits its revised Tariff incorporating the change in status reporting requirements provisions under ER01–2317.
Filed Date: 05/27/2005.
Accession Number: 20050601–0009.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER03–1312–008.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission & Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume 1 in compliance with the Commission's March 29, 2005 order.
Filed Date: 05/27/2005.
Accession Number: 20050601–0014.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1028–000.
Applicants: Southern Company Services, Inc.
Description: Southern Co. Services Inc., as agent for Alabama Power Company, *et al.*, submits the Generator Balancing Service Agreement between KGen Murray I and II LLC and Southern Companies dated as of 5/1/05.
Filed Date: 05/27/2005.
Accession Number: 20050531–0013.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1029–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume 1, etc., under ER05–1029.
Filed Date: 05/27/2005.
Accession Number: 20050601–0022.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1030–000.
Applicants: Pennsylvania Electric Company.
Description: Pennsylvania Electric Co. submits an amended Interconnection

Agreement with Penelec and Reliant Energy Mid-Atlantic Power Holdings, LLC and Reliant Energy Maryland Holdings, LLC under ER05–1030.
Filed Date: 05/27/2005.
Accession Number: 20050601–0021.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1031–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits five Network Integration Transmission Service Agreements executed by certain customers taking service under the PJM Open Transmission Tariff under ER05–1031.
Filed Date: 05/27/2005.
Accession Number: 20050601–0026.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1032–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric Power Co. submits its Third Revised Power Sale Agreement with Wisconsin Public, Inc. under ER05–1032.
Filed Date: 05/27/2005.
Accession Number: 20050601–0019.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1033–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Wolverine Power Supply Cooperative, Inc. submits new Amended and Consolidated Wholesale Power Contracts between Wolverine and four member distribution cooperatives under ER05–1033.
Filed Date: 05/27/2005.
Accession Number: 20050601–0018.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1034–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to the Midwest ISO Agreement under ER05–1034.
Filed Date: 05/27/2005.
Accession Number: 20050601–0017.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1035–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Co. submits its 2004 Costs and Accruals for Post-Employment Benefits other than Pensions under ER05–1035.
Filed Date: 05/27/2005.
Accession Number: 20050601–0016.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1036–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits a Large Generator Interconnection Agreement among Fenton Power Partners I, LLC, Midwest ISO and Northern States Power Company d/b/a Xcel Energy under ER05–1036.
Filed Date: 05/27/2005.
Accession Number: 20050601–0020.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1037–000.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric and Power Co. d/b/a Dominion Power submits an executed Mutual Operating Agreement with Old Dominion Electric Cooperative under ER05–1037.
Filed Date: 05/27/2005.
Accession Number: 20050601–0025.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1038–000.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric and Power Co. d/b/a Dominion Virginia submits an executed Mutual Operating Agreement with Central Virginia Electric Cooperative under ER05–1038.
Filed Date: 05/27/2005.
Accession Number: 20050601–0024.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1039–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits revisions to its Schedule 2 of the PJM Open Access Transmission Tariff to reflect the new revenue requirements of Duke Energy Hanging Rock, LLC and Duke Energy Washington LLC under ER05–1039.
Filed Date: 05/27/2005.
Accession Number: 20050601–0006.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1040–000.
Applicants: Virginia Electric and Power Company.
Description: Virginia Electric & Power Co d/b/a Dominion Virginia Power submits an executed Mutual Operating Agreement with the Town of Enfield, NC under ER05–1040.
Filed Date: 05/27/2005.
Accession Number: 20050601–0004.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1041–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits a notice of cancellation of an Electric Power Supply Agreement with the City of Morrill, KS designated as Rate Schedule 260 under ER05–1041.
Filed Date: 05/27/2005.
Accession Number: 20050601–0003.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–1042–000.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc as agent for Alabama Power Co. and Southern Electric Generating Company, submits an Updated Depreciation Rates for Alabama Power Co. and Southern Electric Generating Co. under ER05–1042.
Filed Date: 05/27/2005.
Accession Number: 20050602–0088.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER04–106–011, ER04–691–044, EL04–104–042.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to Attachment P (list of Grandfather Agreements etc) contained in Midwest ISO's Open Access Transmission and Energy Markets Tariff
Filed Date: 05/27/2005.
Accession Number: 20050601–0005.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER04–789–003, ER04–802–004, ER04–1033–002.
Applicants: Wabash Valley Power Association, Inc.
Description: Wabash Valley submits First Revised Tariff Sheet 2, *et al.*, to FERC Electric Tariff, Original Volume 1.
Filed Date: 05/27/2005.
Accession Number: 20050601–0002.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–226–001.
Applicants: American Electric Power Service Corporation.
Description: Southwest Power Pool submits Interchange & Interconnection Agreement among Grand River Dam Authority, Public Service Company of Oklahoma and Southwest Power Pool.
Filed Date: 05/27/2005.
Accession Number: 20050601–0013.
Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–454–002, ER05–455–002, ER02–2407–003, ER05–639–002, ER05–98–001, ER05–118–001, ER05–131–001, ER02–2397–004, ER03–796–003.
Applicants: Bear Swamp Power Company LLC.
Description: Bear Swamp Power Co, LLC et al. submits a Notice of Change

in Status and a revised market-based rate tariffs, pursuant to Order 652.

Filed Date: 05/27/2005.

Accession Number: 20050602–0060.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–654–002.

Applicants: Phoenix Energy Trading, LLC.

Description: Phonenx Energy Trading, LLC submits amended Phoenix Rate Schedule FERC 1 under ER05–654.

Filed Date: 05/27/2005.

Accession Number: 20050601–0012.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–692–001.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection LLC submits revisions to Schedule 2 of the PJM Open Access Transmission Tariff to revise the effective date of Buckeye Power Inc.'s revenue requirement for providing cost-based Reactive Support and Voltage Control from Generation Sources Service.

Filed Date: 05/27/2005.

Accession Number: 20050601–0010.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–766–001.

Applicants: Soyland Power Cooperative, Inc.

Description: Soyland Power Cooperative, Inc. submits Revised Rate Schedules in compliance with FERC's 5/6/05 letter order.

Filed Date: 05/27/2005.

Accession Number: 20050601–0266.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–833–001.

Applicants: American Transmission Company LLC.

Description: American Transmission Co, LLC submits a replacement page to the Table of Contents of the Amended and Restated Generation Transmission Interconnection Agreement that was filed on 4/13/05 under ER05–833.

Filed Date: 05/27/2005.

Accession Number: 20050601–0008.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–834–001.

Applicants: American Transmission Company LLC.

Description: American Transmission Co, LLC submits two replacement pages to the Table of Contents of the Amended & Restated Generation Transmission Interconnection Agreement that was filed on 4/14/05 under ER05–834.

Filed Date: 05/27/2005.

Accession Number: 20050601–0007.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–936–001.

Applicants: Black Hills Power, Inc.

Description: Black Hills Power, Inc submits a replacement tariff sheet for the canceled Common Use Agreement in conformance with Order 614 et al. under ER05–936.

Filed Date: 05/27/2005.

Accession Number: 20050601–0015.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05–990–001.

Applicants: Southwest Power Pool.

Description: Southwest Power Pool submits a revision to their 5/19/05 filing to revise its Open Access Transmission Tariff to implement a rate change for Westar Energy, Inc.

Filed Date: 05/27/2005.

Accession Number: 20050601–0011.

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 e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlinSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2930 Filed 6–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–8–000]

Starks Gas Storage L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Starks Gas Storage Project

June 2, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Starks Gas Storage L.L.C. (Starks Gas Storage) in the above-referenced docket number.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed Starks Gas Storage Project in Calcasieu and Beauregard Parishes, Louisiana. The Starks Gas Storage Project would initially utilize Starks No. 1 cavern to store approximately 13.3 billion cubic feet (Bcf) of natural gas, comprised of approximately 8.8 Bcf of working or top gas and approximately 4.5 Bcf of base or cushion gas. Facilities would be designed to allow cycling of the entire storage volume 5 to 6 times per year with injections and withdrawals of approximately 400 million cubic feet per day (MMcfd). Starks No. 2 cavern would be available for similar conversion to gas storage approximately 18 months later, adding an incremental working gas volume of approximately 10.4 Bcf and approximately 5.3 Bcf of base gas and the overall project injection and

withdrawal rates would double. The total storage volume of Starks No. 2 cavern would be approximately 15.6 Bcf.

In Docket No. CP05–8–000, Starks Gas Storage proposes to construct, operate, and maintain the following facilities. The proposed natural gas and brine disposal pipelines connected with the future natural gas storage caverns and debrining operations of the existing brine wells west of the proposed Starks Compressor Station are designated as mileposts (MP) 0.00—0.68 on Segment 1. The proposed natural gas and brine disposal pipelines east of the proposed Starks Compressor Station are designated as MPs 0.00–33.77 on Segments 2 and 3. The proposed facilities include:

- Conversion of two existing brine extraction wells (formerly called PPG–10 and PPG–9) to natural gas storage caverns (Starks No. 1 at MP 0.68 and Starks No. 2 at MP 0.47, respectively, on Segment 1) with a combined maximum capacity to store approximately 28.9 Bcf of natural gas, comprised of approximately 19.2 Bcf of working capacity and approximately 9.7 Bcf of cushion gas, with withdrawal rates of 800 million cubic feet per day (MMcfd) and peak injection rates of 750 MMcfd;
- About 0.88 mile of two new 16-inch diameter natural gas pipelines and two new collocated 10-inch diameter brine disposal pipelines associated with the interconnects on the Starks salt dome west of the Starks Compressor Station from MP 0.00 to 0.68 (identified as Segment 1);
- About 1.80 miles of new 30-inch diameter natural gas pipeline from the Starks Compressor Station to the Tennessee Gas Pipeline Company (Tennessee Gas) interconnect from MP 0.0 to MP 1.8 (identified as Segment 2) and about 1.2 miles of new collocated 10-inch diameter brine disposal line from the Starks Compressor Station to the salt water disposal (SWD) injection wells from MP 0.00 to 1.21 (identified as Segment 2a);
- About 31.97 miles (a continuation) of the new 30-inch diameter natural gas pipeline from the Tennessee Gas interconnect terminating at the Texas Eastern Transmission LP (Texas Eastern) interconnect in Beauregard Parish from MP 1.80 to 33.77 (identified as Segment 3);
- A new compressor station with dehydration facilities (Starks Compressor Station) at MP 0.00, including seven natural gas fueled reciprocating engine driven reciprocating compressor units each rated at 4,735 brake horsepower (BHP), with seven exhaust noise silencers with integral emission control catalysts, and related piping, valves, controls, and buildings; two triethylene glycol (TEG) dehydration units and appurtenant, auxiliary facilities with one vapor recovery/condensing unit and one thermal oxidizer;
- Three new interconnect valve stations connecting to existing natural gas pipelines at the Tennessee Gas (MP 1.80), Transco (MP 29.80), and Texas Eastern pipelines (MP 33.77) on Segments 2 and 3;
- Three temporary natural gas fueled reciprocating engine driven reciprocating compressor units each rated at 1,150 BHP, with three exhaust noise silencers with integral emission control catalysts for dewatering existing brine extraction well (PPG–9), located at the Starks Compressor Station;
- Three new natural gas fueled reciprocating engine driven centrifugal multi-stage pumps rated at 860 BHP, with three exhaust noise silencers with integral emission control catalysts for injecting dewatered brine from the caverns into two disposal wells, located at the Starks Compressor Station;
- Two new brine injection (SWD) wells, MP 1.21 on Segment 2, located on a two-acre tract to dispose of any surplus brine removed from the two caverns as they are converted to gas storage service; and
- One temporary skid mounted brine disposal meter system, first located at Starks No. 1 (MP 0.68) and then at Starks No. 2 (MP 0.47) on Segment 1.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502–8371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Gas Branch 2, PJ11.2.
- Reference Docket No. CP05–8–000; and
- Mail your comments so that they will be received in Washington, DC on or before July 5, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to see rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2921 Filed 6–7–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7758–004]

City of Holyoke Gas & Electric; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protest

June 2, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* P–7758–004.

c. *Date Filed:* February 25, 2005.

d. *Applicant:* City of Holyoke Gas & Electric Department.

e. *Name of Project:* Holyoke Canal No. 4 Project.

f. *Location:* Adjacent to the Connecticut River in Hampden County, Massachusetts. The project does not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Paul Ducheney, Superintendent-Hydro, Holyoke Gas & Electric Department, One Canal Street, Holyoke, MA 01040, (413) 536–9340 or *ducheney@hged.com*.

i. *FERC Contact:* Jack Hannula, *john.hannula@ferc.gov*, or call (202) 502–8917.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commissions Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See CFR 385.200 (a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The Holyoke No. 4 Canal Hydro Project consists of the following existing facilities: (a) Two 7-foot-diameter, 76-foot-long penstocks drawing water from the first level canal of the Holyoke Canal System; (b) a powerhouse with two 375 kW generating units with a total installed capacity of 750 kW; (c) two 13-foot-wide, 300-foot-long tailraces discharging into the second level canal; (d) a 25-foot-long, 4.8-kV transmission line; and (e) appurtenant facilities. One of the generating units was destroyed in an October 2004 fire; unit rehabilitation has yet to be determined.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in the EA. Staff intends to give at least 30 days for entities to comment on the EA before final action is taken on the license application.

Issue Scoping Document for Comments: June 2005.

Notice application ready for environmental analysis: September 2005.

Notice of the availability of the EA: March 2006.

Ready for Commission's decision on the Application: April 2006.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2924 Filed 6–7–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7922–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Regulatory Pilot Projects (Project XL); EPA ICR Number 1755.06, OMB Control Number 2010–0026

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit for

renewal the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Regulatory Pilot Projects (Project XL) (EPA ICR No. 1755.06) (OMB Control No. 2010–0026, current ICR expires August 31, 2005). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 8, 2005.

ADDRESSES: The public may contact Mr. Douglas Heimlich in EPA's Office of Environmental Policy Innovation for a paper copy of the ICR (free of charge). Mr. Heimlich may be reached by mail at the U.S. EPA Office of Environmental Policy Innovation (Mail Code 1807T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone at (202) 566–2234, by e-mail at *heimlich.douglas@epa.gov*, or by FAX at 202–566–2220.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Heimlich in the Office of Environmental Policy Innovation. Mr. Heimlich may be reached by phone at (202) 566–2234, by e-mail at *heimlich.douglas@epa.gov*, or by FAX at 202–560–2220. Or, contact Dr. Gerald Filbin in the Office of Environmental Policy Innovation. Dr. Filbin may be reached by phone at (202) 566–2182, by e-mail at *filbin.gerald@epa.gov*, or by FAX at 202–566–2211.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action include XL project sponsors, XL project stakeholders, state, tribal and local regulatory agencies, select members of the business industry, environmental organizations, industry trade associations, academics, and community members.

Title: Regulatory Pilot Projects (EPA ICR No.1755.06) (OMB Control No. 2010–0026, current ICR expires August 31, 2005).

Abstract: In March 1995, the U.S. Environmental Protection Agency initiated Project XL in response to a challenge to transform the environmental regulatory system to better meet the needs of a rapidly changing society while maintaining the nation's commitment to protect human health and safeguard the natural environment. Project XL, or eXcellence and Leadership (*http://www.epa.gov/ProjectXL/*), was one approach to innovation piloting designed to test innovative ideas by those who must comply with EPA regulations and policies. Through innovation pilots EPA is gathering data and project experience that will help the Agency redesign current approaches to public health and environmental protection. Through site-specific agreements with project sponsors, Project XL gives companies, communities, local governments, military bases, and universities flexibility from certain environmental regulations in exchange for commitments to achieve superior environmental performance at less cost. Since 1995, under Project XL, sponsors—private facilities, multiple facilities, industry sectors, Federal facilities, communities, universities, and states—have implemented innovative strategies that produce superior environmental performance, provide flexibility, cost savings, paperwork reduction or other benefits to sponsors, and promote greater accountability to stakeholders. In addition to Project XL, EPA provides other mechanisms for piloting new ideas such as the EPA State Innovation Grant Program (*http://www.epa.gov/innovation/stategrants/*) and the EPA/ECOS Joint Agreement to Pursue Regulatory Innovation (*http://www.ecos.org/files/1426_file_Agreement.pdf*) as opportunities for collaborative innovation with a variety of stakeholders. EPA is completing the earlier projects submitted under Project XL, and is continuing piloting under the other mechanisms.

The intent of Project XL was to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide superior environmental performance and other benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or state-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute. Similarly, the other mechanisms for innovation, the EPA State Innovation Grant Program and the EPA/ECOS Joint Agreement to Pursue Regulatory Innovation provide a process for States, Tribes, municipalities, and whole business sectors to test regulatory innovation at a broad, systemic scale.

The adoption of such alternative approaches or interpretations in the context of a given project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other innovation projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful for the particular projects that embody them. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative approach or interpretation again, either generally or for other specific facilities. EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site- or state-specific basis and in connection with a carefully selected pilot project is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions. Also, consistent with the President's Management Agenda, these pilot projects are designed to demonstrate the performance of new approaches through environmental outcomes.

Before submitting an official Project XL proposal to EPA, the project sponsor typically engaged in informal discussions with EPA about proposal design. Once a formal proposal was submitted, EPA along with the corresponding state environmental agency reviewed the proposal. EPA based acceptance of proposals on the extent to which proposals met the following eight criteria: (1) Superior environmental performance, (2) cost savings and reduced paperwork, (3) stakeholder involvement, (4) innovation or pollution prevention, (5) transferability, (6) feasibility, (7) monitoring, reporting and evaluation, and (8) no shifting of risk burden. If the proposal was accepted, EPA and the partnering state agency negotiated the conditions of the proposal with the project sponsor along with other interested stakeholders, including local and national environmental groups and nearby community residents. Once an agreement was reached regarding the conditions of the proposal and the necessary regulatory flexibility, the Final Project Agreement (FPA) was signed and the project sponsor began implementation.

XL project proposals were collected by EPA's Office of Environmental Policy

Innovation (OEPI) which has been given responsibility for implementation of this program. Since its inception in 1995, over 100 Project XL proposals have been received and reviewed, and over 50 pilot projects have been implemented. Of these approximately nine (9) have been completed, thirteen (13) have been terminated prior to completion and thirty (30) remain to be completed. The program itself includes other offices within EPA headquarters, EPA regions, federal, state, tribal and local government agencies. The renewal of this ICR is important as it will allow the Agency to continue to work with sponsors of these innovation pilots, and to respond to additional regulated entities who are interested in innovation pilot projects.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) 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;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of information to be collected: and

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

Burden Statement: This section presents EPA's estimates of the burden and cost to complete the information collection activities associated with this collection. In using this analysis, however, it should be remembered not only that all responses to this solicitation are voluntary, but also that respondents have some expected value attached with their participation. Fundamental to projects in this program will be reduced cost of compliance due to increased regulatory flexibility. Not unlike a contracts-based Request For Proposals, one would not expect a response from any entity where the burdens associated with preparing the response outweigh the expected benefits to the respondent.

Information requests are expected for approximately 40 XL projects over the lifetime of this ICR as well as approximately 30 other projects that have been developed under the State Innovation Grants and other mechanisms. The State Grants Program uses a competition process established under 40 CFR 31 and compliant with the requirements established in the Agency's Assistance Agreement Competition Policy (EPA E.O. 5700.5A1). Under that policy, States compete for funds by responding to an annual solicitation with a brief initial proposal. States that are selected based upon an evaluation using published criteria are asked to submit a more detailed proposal leading to award. The average number of annual awards is eight (8).

Information will also be requested for implemented projects as part of periodic reporting required for grants management and for projects that are approaching completion, or have reached completion and for which information is requested to document the outcome of each project. In the ten years since the March 16, 1995 announcement of the program, EPA received over 100 Project XL proposals. In the tenth year of the program, EPA continues to receive inquiries about the program.

During the lifetime of this ICR, EPA will solicit information from project sponsors regarding the process and outcomes for projects at completion. This addresses the commitment of each project sponsor established in the project FPA to report on the final outcomes of the project and to provide relevant information to allow EPA to assess the degree of success for each of these projects and examine the impediments to implementation that are relevant to potential future attempts to scale up successful innovations demonstrated in Project XL or other families of innovation to broader scale application. To complete a project final report and respond to a follow-up questionnaire, EPA estimates that each project sponsor will use forty (40) hours of time, and further estimates the thirty (40) XL projects at or approaching completion will require a total of 1600 hours (40 hours x 40 projects). Further, EPA estimates that its own analysts will require an additional twenty (20) hours of time per project to read and extract information on project measures and outcomes, or a total of 600 hours. EPA estimates that eighteen hundred (2200) hours of time may reflect a cost of $660,000. Similarly, EPA anticipates that State Innovation Grants Projects may require States to expend up to 40 hours in preparation for each pre-proposal for a total of 1000 hours as an annual average (40x25). The small number of States selected and asked to provide a more detailed proposal may expend up to 100 hours per proposal for a total of 800 hours (8x100) annually (1800 hours annually). Over the period of this ICR, States may expend up to 5400 hours (1800x3) preparing proposals for State Innovation Grants; EPA anticipates expending up to 2000 hours for analysis of this information. In addition, quarterly reporting on projects, now required under assistance agreement policy may account for 64 hours of time annually for recipient States and 100 hours annually for EPA to complete analysis. The anticipated total cost of this reporting is estimated at $2,400,000.

No capital or start-up costs will be associated with this effort.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 23, 2005.

Gregory Ondich,

Acting Office Director, Office of Environmental Policy Innovation.

[FR Doc. 05–11383 Filed 6–7–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0131; FRL–7715–5]

Ferric Sodium EDTA; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition

proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0131, must be received on or before July 8, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Todd Peterson, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7224; e-mail address: *peterson.todd@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0131. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket,

and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0131. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2005–0131. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0131.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2005–0131. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 24, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the Woodstream Corporation and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Woodstream Corporation

PP 5F6899

EPA has received a pesticide petition (PP 5F6899) from Woodstream Corporation, 69 N. Locust Street, Lititz, PA 17543–0327, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide ferric sodium EDTA.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Woodstream Corporation has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Woodstream Corporation and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected

EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Ferric sodium EDTA (technical grade active ingredient) and slug and snail killer (end-use product). Ferric sodium EDTA is a highly efficacious replacement for metaldehyde for the control of snails and slugs. The proposed end-use product (slug and snail killer) contains 6.00% active ingredient in a flour-based pellet. All intentionally added inert ingredients are exempt from the requirement of a tolerance when used in pesticides and are on EPA's List 4. Use sites proposed include agricultural crops, turf and ornamentals and home gardens; all areas where slugs and snails are a problem. The end-use product is applied directly to the soil surface. A draft end-use product label has been submitted with the corresponding application for FIFRA section 3 registration.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The active ingredient, ferric sodium EDTA, is comprised of iron in a sodium EDTA chelate. Ferric sodium EDTA is a commodity ingredient used in the photographic industry as a bleaching agent, used in agriculture as a micronutrient, and used in the chemical industry as a catalyst. Ferric sodium EDTA is also currently being evaluated as a way of fortifying foods to prevent anemia and iron deficiencies in developing countries. Iron is an essential element for nutrition and is listed as GRAS for direct addition to food per 21 CFR 184.1375. Sodium EDTA is a common chelating agent, which immobilizes metal ions until in an environment where they are available for uptake. Sodium EDTA is exempt per 40 CFR 180.1001 when used in pesticide formulations, and is a direct food additive per 21 CFR 172.135.

Ferric sodium EDTA has been classified as ''Not a biochemical, but eligible for a reduced data set'' per the Agency's letter received May 16, 2001. EPA states the classification is based on the abundance of iron in nature, its low toxicity, its use as a nutritional supplement, and it slow water solubility.

The end-use product Snail and Slug Control is formulated in pellet form with food attractants (flour-based ingredients). Snails and slugs are attracted to and ingest the pellets. When ingested, the iron in ferric sodium EDTA is available for uptake into the mollusks gut. Normally iron is prevented from passing through the gut barrier; however, the formulation of iron with the chelating agent EDTA allows for iron to pass the gut barrier. Once passed, the iron partially acidifies the mollusks copper-based blood resulting in sickness. The mollusk stops feeding and leaves the area.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.*

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method for residues is not applicable. It is expected that, when used as proposed, ferric sodium EDTA would not result in residues that are of toxicological concern.

C. Mammalian Toxicological Profile

Studies to evaluate the safety to mammals were conducted on the technical grade active ingredient (tgai) and are summarized as follows:

1. *Acute oral toxicity* (OPPTS Harmonized Guideline 870.1100): No adverse effects were seen in rats that received an oral gavage dose of 5,000 milligrams/kilogram body weight (mg/kg bwt) of the technical grade active ingredient. No rats died during the 14–day observation period, and no gross pathological changes were found in organs in the thoracic or abdominal cavities at necropsy. A LD_{50} >5,000 mg/kg was established.

2. *Acute dermal toxicity* (OPPTS Harmonized Guideline 870.1200): No adverse effects were seen in rats that received a dermal dose of 5,000 mg/kg bwt of the technical grade active ingredient. No effects on appearance, behavior or body weight were observed in any rats any time after exposure. No rats died during the 14–day observation period, and no gross pathological changes were found in organs in the thoracic or abdominal cavities at necropsy. A LD_{50} >5,000 mg/kg was established.

3. *Acute inhalation toxicity (OPPTS Harmonized Guideline 870.1300).* No adverse effects were seen in rats that were exposed by inhalation for 4 hours to a concentration of 2.05 milligrams/Liter (mg/L) of the technical grade active ingredient. No effects on appearance, behavior or body weight were observed in any rats any time after exposure. No rats died during the 14–day observation period, and no gross pathological changes were found in organs in the thoracic or abdominal cavities at necropsy. A LD_{50} >2.05 mg/L was established.

4. *Primary eye irritation (OPPTS Harmonized Guideline 870.2400).* In an eye irritation study on rabbits, ferric sodium EDTA was classified as mildly irritating to the eye. The active ingredient was instilled into the right eye of three healthy rabbits. Twenty four hours after instillation, conjunctivitis and corneal opacity were observed. Conjunctivitis cleared in all test animals by Day 10, and corneal opacity persisted in one test animal through Day 21. No iritis was observed in any treated eye during the study.

5. *Primary Dermal Irritation (OPPTS Harmonized Guideline 870.2500).* In a skin irritation study on rabbits, ferric sodium EDTA was classified as slightly irritating to the skin. The active ingredient was applied to the skin of healthy rabbits for 4 hours. No edema was noted at any test site during the study. One hour after test material application all treated sites exhibited erythema. All animals were free of dermal irritation by 24 hours.

6. *Dermal sensitization (OPPTS Harmonized Guideline 870.2600).* In a dermal sensitization study on guinea pigs, ferric sodium EDTA was not considered to be a contact sensitizer. The active ingredient was topically applied to test animals once a week for a 3–week induction period, and 28 days after the first induction dose as a challenge dose at the highest non-irritation concentration. No positive responses were observed.

A waiver is requested for subchronic, teratogenicity, genotoxicity and immunotoxicity data requirements. The active ingredient, ferric sodium EDTA, is comprised of iron in a sodium EDTA chelate. Ferric sodium EDTA is a commodity ingredient used in the photographic industry as a bleaching agent, used in agriculture as a micronutrient, and used in the chemical industry as a catalyst. Ferric sodium EDTA is also currently being evaluated as a way of fortifying foods to prevent anemia and iron deficiencies in developing countries. Iron is an essential element for nutrition and is listed as GRAS for direct addition to food per 21 CFR 184.1375. Sodium EDTA is a common chelating agent, which immobilizes metal ions until in an environment where they are available for uptake. Sodium EDTA is exempt per 40 CFR 180.1001 when used in pesticide formulations, and is a direct food additive per 21 CFR 172.135.

A complete literature search was conducted on ferric sodium EDTA, its components and related compounds. In a safety assessment of ferric sodium EDTA (also referred to as ''iron EDTA'') for Food and Drug Administration (FDA) GRAS evaluation, the ingredient is regarded as safe for use in foods to

increase iron bioavailability in human diets (Heimbach *et al.* 2000).

The results of toxicity testing and information found in published literature indicate there is no risk to human health or the environment from ferric sodium EDTA. Both dietary and non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Dietary exposure from use of ferric sodium EDTA, as proposed, is minimal. Ferric sodium EDTA is intended for application to soil surfaces in agricultural crops, turf and ornamentals, and home gardens to control slugs and snails. The product is not applied directly to fruits, vegetables, or plant surfaces.

Ferric sodium EDTA is a commodity ingredient used in the photographic industry as a bleaching agent, used in agriculture as a micronutrient, and used in the chemical industry as a catalyst. Ferric sodium EDTA is also currently being evaluated as a way of fortifying foods to prevent anemia and iron deficiencies in developing countries. The components of ferric sodium EDTA are approved as direct food additives by FDA. Acute toxicity studies have shown that ferric sodium EDTA is not toxic or irritating to mammals. Further, a published safety assessment on ferric sodium EDTA for FDA GRAS evaluation, the ingredient is regarded as safe for use in foods to increase iron bioavailability in human diets (Heimbach *et al.* 2000),

The results of toxicity testing and information found in published literature indicate there is no risk to human health or the environment from ferric sodium EDTA. Dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern.

ii. *Drinking water.* Similarly, exposure to humans from residues of ferric sodium EDTA in consumed drinking water would be unlikely. Potential exposure to surface water would be negligible and exposure to drinking water (well or ground water) would be impossible to measure. Ferric sodium EDTA is intended for application to soil surfaces in agricultural crops, turf and ornamentals, and home gardens to control slugs and snails. The product is not applied directly to water.

The results of toxicity testing and information found in published literature indicate there is no risk to human health or the environment from ferric sodium EDTA. Drinking water exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern.

2. *Non-dietary exposure.* The potential for non-dietary exposure to the general population, including infants and children, is limited. Ferric sodium EDTA is intended for application to soil surfaces in agricultural crops, turf and ornamentals, and home gardens to control slugs and snails.

The results of toxicity testing and information found in published literature indicate there is no risk to human health or the environment from ferric sodium EDTA. Non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern.

E. Cumulative Exposure

It is not expected that, when used as proposed, ferric sodium EDTA would result in residues that are of toxicological concern. Ferric sodium EDTA is a commodity ingredient used in the photographic industry as a bleaching agent, used in agriculture as a micronutrient, and used in the chemical industry as a catalyst. Ferric sodium EDTA is also currently being evaluated as a way of fortifying foods to prevent anemia and iron deficiencies in developing countries. The components of ferric sodium EDTA are approved as direct food additives by FDA. Acute toxicity studies have shown that ferric sodium EDTA is not toxic or irritating to mammals. Further, a published safety assessment on ferric sodium EDTA for FDA GRAS evaluation, the ingredient is regarded as safe for use in foods to increase iron bioavailability in human diets (Heimbach *et al.* 2000).

Ferric sodium EDTA is intended for application to soil surfaces in agricultural crops, turf and ornamentals, and home gardens to control slugs and snails. The results of toxicity testing and information found in published literature indicate there is no risk to human health or the environment from ferric sodium EDTA.

F. Safety Determination

1. *U.S. population.* Ferric sodium EDTA is a commodity ingredient used in the photographic industry as a bleaching agent, used in agriculture as a micronutrient, and used in the chemical industry as a catalyst. Ferric sodium EDTA is also currently being evaluated as a way of fortifying foods to prevent anemia and iron deficiencies in developing countries. The components of ferric sodium EDTA are approved as direct food additives by FDA. Acute toxicity studies have shown that ferric sodium EDTA is not toxic or irritating to mammals. Further, a published safety assessment on ferric sodium EDTA for FDA GRAS evaluation, the ingredient is regarded as safe for use in foods to increase iron bioavailability in human diets (Heimbach *et al.* 2000).

When used as proposed, ferric sodium EDTA would not result in residues that are of toxicological concern. Ferric sodium EDTA is intended for application to soil surfaces in agricultural crops, turf and ornamentals, and home gardens to control slugs and snails. The results of toxicity testing and information found in published literature indicate there is no risk to human health or the environment from ferric sodium EDTA. There is a reasonable certainty of no harm to the general U.S. population from exposure to this active ingredient.

2. *Infants and children.* As mentioned above, it is not expected that, when used as proposed, ferric sodium EDTA would result in residues that are of toxicological concern. There is a reasonable certainty of no harm for infants and children from exposure to ferric sodium EDTA from the proposed uses.

G. Effects on the Immune and Endocrine Systems

To date there is no evidence to suggest that ferric sodium EDTA functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

H. Existing Tolerances

There is no EPA tolerance for ferric sodium EDTA.

I. International Tolerances

A Codex Alimentarium Commission Maximum Residue Level (MRL) is not required for ferric sodium EDTA.

[FR Doc. 05–11165 Filed 6–7–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–05–81–E (Auction No. 81); DA 05–1337]

Auction of Low Power Television Construction Permits Scheduled for September 14, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 81

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids

for the upcoming auction of construction permits for certain low power television (LPTV), television translator, and Class A television broadcast stations. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 81 is scheduled to begin on September 14, 2005.

FOR FURTHER INFORMATION CONTACT: Auctions and Spectrum Access Division, Wireless Telecommunications Bureau: For legal questions: Lynne Milne at (202) 418–0660. For general auction questions: Jeff Crooks at (202) 418–0660 or Linda Sanderson at (717) 338–2888: Media Contact: Lauren Patrich at (202) 418–7944. Video Division, Media Bureau: For service rule questions: Shaun Maher or Hossein Hashemzadeh at (202) 418–1600. To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 81 Procedures Public Notice,* released on May 20, 2005. The complete text of the *Auction No. 81 Procedures Public Notice,* including attachments, as well as related Commission documents, are available for public inspection and coping from 8 a.m. to 4:30 p.m. eastern time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 81 Procedures Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* The *Auction No. 81 Procedures Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/81/.*

I. General Information

A. Introduction

1. The *Auction No. 81 Procedures Public Notice* announces the procedures and minimum opening bid amounts for the upcoming auction of construction permits in Auction No. 81, scheduled to begin on September 14, 2005. On February 28, 2005, in accordance with 47 U.S.C. 309(j)(4), the Media Bureau (MB) and Wireless Telecommunications Bureau (WTB) (collectively the Bureaus) released a public notice seeking comment on reserve prices or minimum opening bid amounts and the procedures to be used in Auction No. 81. The Bureaus received comments and reply comments from the National Translator Association in response to the *Auction No. 81 Comment Public Notice,* 70 FR 11975, March 10, 2005.

i. Background

2. On June 23, 2000, the Bureaus announced a limited auction filing window for certain LPTV, television translator, and Class A television broadcast stations. *Auction No. 81 Filing Window Public Notice,* 65 FR 39619, June 27, 2000. On February 28, 2005, the Bureaus by public notice required each Auction No. 81 applicant to submit its FCC registration number (FRN). *Auction No. 81 FRN Public Notice,* 70 FR 11974, March 10, 2005. On April 13, 2005, the Bureaus by public notice revised the auction inventory. *Auction No. 81 Revised Inventory Public Notice,* 70 FR 22042, April 28, 2005.

ii. Construction Permits To Be Auctioned

3. Auction No. 81 will offer 113 construction permits for specified LPTV, television translator and Class A television broadcast stations. These construction permits are the subject of pending mutually-exclusive (MX) short-form applications (FCC Forms 175) filed on or before August 4, 2000. Participation in this auction will be limited to those applicants and engineering proposals identified in Attachment A of the *Auction No. 81 Procedures Public Notice.* Qualifying applicants will be eligible to bid only on those construction permits for which the applicant's engineering proposal is specified in the particular mutually exclusive group (MX group) as set forth in Attachment A of the *Auction No. 81 Procedures Public Notice.* All engineering proposals within an MX group are directly mutually exclusive with one another, and therefore a single construction permit will be auctioned for each MX group identified in Attachment A of the *Auction No. 81 Procedures Public Notice.*

4. The National Translator Association (NTA) submitted comments and reply comments concerning the treatment of daisy chain MX groups. For LPTV, television translator and Class A television broadcast stations, a daisy chain occurs when two or more non-table, site-based applications propose stations with projected contours that do not directly overlap, but are linked together into a chain by the overlapping projected contours of other proposed stations. A daisy chain may contain numerous proposals in a long link proposing facilities in communities of differing population sizes. The NTA argues that, when the Commission addresses the issue of daisy chain applications, it should develop auction procedures whereby the daisy chain will be offered as an MX group, and at the conclusion of the auction those applications which are then not mutually exclusive with the auction winner would be processed for further grant or auction, as appropriate.

5. MX groups with a daisy chain of mutual exclusivity are not proceeding to auction at this time. A separate auction of construction permits for daisy chain MX groups will be announced at a later date. The issues raised by the NTA with respect to daisy chain applications would be raised more appropriately when the auction for the daisy chain applications is announced. As the NTA acknowledges, none of the MX groups in Auction No. 81 contain daisy chains and, therefore, we will not resolve those issues here.

6. As stated in the *Broadcast First Report and Order,* 63 FR 48615, September 11, 1998, all pending mutually exclusive applications for broadcast services must be resolved through a system of competitive bidding. When two or more short-form applications are accepted for filing within an MX group, mutual exclusivity exists for auction purposes. Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit.

7. The Bureaus note that some MX groups contain multiple engineering proposals submitted by a single applicant. In such cases, one bidder with multiple engineering proposals in an MX group may only bid for a single construction permit in the MX group. If that bidder is the winning bidder for that MX group at the conclusion of the auction, the bidder would file a long-form application for no more than one of its engineering proposals. Note: In no instance will more than a single construction permit be licensed to the winning bidder for a particular MX group, even if that bidder had submitted more than one engineering proposal that is included in that MX group.

B. Rules and Disclaimers

i. Relevant Authority

8. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications. Broadcasters should also familiarize themselves with the Commission's rules relating to broadcast auctions contained in 47 CFR 73.5000–73.5009. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, terms) contained in the *Auction No. 81 Procedures Public Notice;* the *Auction No. 81 Inventory Public Notice;* the *Auction No. 81 Comment Public Notice;* the *Auction No. 81 Filing Window Public Notice;* the *Broadcast First Report and Order;* the *Broadcast First Reconsideration Order,* 64 FR 24523, May 7, 1999; the *New Entrant Bidding Credit Reconsideration Order,* 64 FR 44856, August 18, 1999; and the *Noncommerical Educational Second Report and Order,* 68 FR 26220, May 15, 2003.

9. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents related to auctions, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions.*

ii. Prohibition of Collusion

10. Auction No. 81 applicants are reminded that the anti-collusion rules found at 47 CFR 1.2105(c) and 73.5002(d) are in effect. These rules prohibit applicants competing for construction permits in either the same geographic license area or the same MX group from communicating with each other during the auction about bids, bidding strategies, or settlements unless they have identified each other on their short-form applications (FCC Forms 175) filed in 2000 as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii). Thus, applicants competing for construction permits in either the same geographic license area or the same MX group must affirmatively avoid all communications with each other that affect, or in their reasonable assessment have the potential to affect, bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. For Auction No. 81, this prohibition became effective at the short-form application filing deadline on August 4, 2000, and will end on the post-auction down payment deadline, which will be announced in a future public notice. This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid. For purposes of this prohibition, 47 CFR 1.2105(c)(7)(i) defines applicant as including all controlling interests in the entity submitting a short-form application to participate in the auction, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application, and all officers and directors of that entity. Under 47 CFR 1.2105(c), if parties had agreed in principle on all material terms of an agreement, those parties must have been identified on the short-form application filed in 2000, even if the agreement had not been reduced to writing. If parties had not agreed in principle on all material terms by the 2000 filing deadline, an applicant should not have included the names of those parties on its application, and must not have continued negotiations, discussions or communications with other applicants for construction permits in the same geographic area or the same MX group.

11. Applicants competing for construction permits in either the same geographic license area or the same MX group are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the applicants the authorized bidder is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or engineering firm or consulting firm), a violation similarly could occur.

12. By electronically submitting its short-form application (FCC Form 175), each Auction No. 81 applicant certified its compliance with 47 CFR 1.2105(c) and 73.5002. However, the Bureaus caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.

13. In addition, 47 CFR 1.65 requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, 47 CFR 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Applicants are therefore required by 47 CFR 1.65 to make such notification to the Commission immediately upon discovery. In addition, 47 CFR 1.2105(c)(6) requires that any applicant that makes or receives a communication prohibited by 47 CFR 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.

14. A summary listing of documents issued by the Commission and the Bureaus addressing the application of the anti-collusion rule may be found in Attachment E of the *Auction No. 81 Procedures Public Notice* and these documents are available on the Commission's auction anti-collusion web page at *http://wireless.fcc.gov/auctions/anticollusion.*

iii. Due Diligence

15. Potential bidders are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC construction permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding, as they would with any new business venture.

16. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 81 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in bidding in the auction. Participants in Auction No. 81 are strongly encouraged

to continue such research during the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

17. Potential bidders should also be aware that certain pending and future applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review before the Commission may relate to particular applicants or incumbent permittees or incumbent licensees or the engineering proposals included in Auction No. 81. In addition, pending and future judicial proceedings may relate to particular applicants, incumbent permittees, or incumbent licensees, or the engineering proposals included in Auction No. 81. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on construction permits available in this auction.

18. Potential bidders should also note that LPTV and television translator stations are authorized with secondary frequency use status. These stations may not cause interference to, and must accept interference from, full service television stations, certain land mobile radio operations, and other primary services. *See* 47 CFR 74.703, 74.709 and 90.303.

19. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction No. 81. Potential applicants are strongly encouraged to physically inspect any sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental assessment obligations described in the *Auction No. 81 Procedures Public Notice.*

20. Potential bidders may research the licensing database for the Media Bureau on the Internet in order to determine which channels are already licensed to incumbent licensees or previously authorized to construction permittees. Licensing records for the Media Bureau are contained in the Media Bureau's Consolidated Data Base System (CDBS) and may be researched on the Internet at *http://www.fcc.gov/mb/.* Potential bidders may query the database online and download a copy of their search results if desired. Detailed instructions on using Search for Station Information, Search for Ownership Report Information and Search for Application Information and downloading query results are available online by selecting the CDBS Public Access (main) button at the bottom of the Electronic Filing and Public Access list section. The database searches return either station or application data. The application search provides an application link that displays the complete electronically filed application in application format. An AL/TC search under the application search link permits searching for Assignment of License/Transfer of Control groups using the AL/TC group lead application. For further details, click on the Help file. Potential bidders should direct questions regarding the search capabilities of CDBS to the Media Bureau help line at (202) 418–2662, or via e-mail at *mbinfo@fcc.gov.*

21. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by a bidder, bidders may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database.

iv. Bidder Alerts

22. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 81 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the Federal Trade Commission (FTC) at (202) 326–2222 and from the Securities and Exchange Commission (SEC) at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 81 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

v. National Environmental Policy Act Requirements

23. Construction permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act (NEPA). The construction of a broadcast facility is a federal action and the permittee must comply with the Commission's NEPA rules for each such facility. Among other things, 47 CFR 1.1305–1.1319 require that the permittee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permittee must prepare environmental assessments for broadcast facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permittee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

24. The competitive bidding in this auction will begin on Wednesday, September 14, 2005, as announced in the *Auction No. 81 Comment Public Notice.* The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all construction permits will be conducted on each business day until bidding has stopped on all construction permits.

ii. Auction Title

25. Auction No. 81—LPTV.

iii. Bidding Methodology

26. The bidding methodology for Auction No. 81 will be simultaneous multiple round bidding. The Commission will conduct this auction over the Internet using the FCC's Integrated Spectrum Auction system (ISAS or FCC Auction System), and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.

iv. Pre-Auction Dates and Deadlines

Auction Seminar: June 24, 2005.

FCC Form 175 Remedial Filing Window Opens: June 24, 2005; 12 p.m. ET.

FCC Form 175 Remedial Filing Window Deadline: July 8, 2005; 6 p.m. ET.

Upfront Payments (via wire transfer): August 12, 2005; 6 p.m. ET.

Mock Auction: September 12, 2005.

Auction Begins: September 14, 2005.

v. Requirements for Participation

27. Those wishing to participate in the auction must: (A) Be listed on Attachment A of the Auction No. 81 Procedures Public Notice; (B) Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6 p.m. ET, August 12, 2005; and (C) Comply with all provisions outlined in the *Auction No. 81 Procedures Public Notice* and applicable Commission rules.

vi. General Contact Information

GENERAL AUCTION INFORMATION General Auction Questions Seminar Registration
FCC Auctions Hotline (888) 225–5322, option two; or (717) 338–2888 Hours of service: 8 a.m.–5:30 p.m. ET, Monday through Friday

AUCTION LEGAL INFORMATION Auction Rules, Policies, Regulations
Auctions and Spectrum Access Division (202) 418–0660

LICENSING INFORMATION Rules, Policies, Regulations Licensing Issues, Engineering Issues, Due Diligence, Incumbency Issues
Video Division (202) 418–1600

TECHNICAL SUPPORT Electronic Filing FCC Auction System
FCC Auctions Technical Support Hotline (877) 480–3201, option nine; or (202) 414–1250 (202) 414–1255 (TTY) Hours of service: 8 a.m.—6 p.m. ET, Monday through Friday

PAYMENT INFORMATION Wire Transfers Refunds
FCC Auctions Accounting Branch (202) 418–0578 (202) 418–2843 (Fax)

TELEPHONIC BIDDING
Will be furnished only to qualified bidders

FCC COPY CONTRACTOR Additional Copies of Commission Documents
Best Copy and Printing, Inc 445 12th Street, SW., Room CY–B402 Washington, DC 20554 (800) 378–3160 *http://www.bcpiweb.com*

PRESS INFORMATION
Lauren Patrich (202) 418–7944

FCC FORMS
(800) 418–3676 (outside Washington, DC) (202) 418–3676 (in the Washington area) *http://www.fcc.gov/formpage.html*

ACCESSIBLE FORMATS Braille, large print, electronic files, or audio format for people with disabilities
Consumer and Governmental Affairs Bureau (202) 418–0530 or (202) 418–0432 (TTY) *fcc504@fcc.gov*

II. Short-Form Application (FCC Form 175) Requirements

A. Transition of Applicant's FCC Form 175 to Integrated Spectrum Auction System—Remedial Filing Window Closes July 8, 2005

28. Applicants seeking construction permits available in Auction No. 81 were required to file a short-form application, FCC Form 175, by the filing deadline on August 4, 2000. At that time, the Commission used the FCC's Automated Auction System (AAS). However, the Commission will conduct Auction No. 81 using the FCC's new Integrated Spectrum Auction System (ISAS). Each Auction No. 81 applicant will need to provide some additional information in its FCC Form 175 to comply with current Commission requirements. Each applicant must review its FCC Form 175 in ISAS to assure that all relevant information is provided. It is possible that an applicant may need to revise information previously submitted to keep its FCC Form 175 accurate and complete as required by 47 CFR 1.65 or other rule requirements. To accommodate these needs, the Commission will open a remedial filing window to allow each applicant in Auction No. 81 to provide required new information in its FCC Form 175 and to review, update and confirm information previously submitted. Applicants listed in Attachment A of the *Auction No. 81 Procedures Public Notice* must use ISAS to review the information previously submitted and provide required new and corrected information from noon ET on Friday, June 24, 2005, until 6 p.m. ET on Friday, July 8, 2005.

29. To insure that the FCC Form 175 is accurate and complete, each applicant must review carefully all of the information provided in the *Auction No. 81 Procedures Public Notice,* including the section regarding declarations as to former defaults and delinquencies. In addition, applicants will find a description of the new information which must be submitted during this remedial window, as well as the review of information previously submitted, in Attachment C of the *Auction No. 81 Procedures Public Notice.* In this same attachment, the Bureaus also provide instructions on how to submit new information or revise information previously submitted.

B. Minor Modifications to Short-Form Applications (FCC Forms 175)

30. Following the deadline for filing short-form applications (FCC Forms 175) on August 4, 2000, applicants in Auction No. 81 are permitted to make only minor changes to their applications. As prescribed by 47 CFR 1.2105, applicants are not permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, or seek additional bidding credit eligibility). Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and phone numbers of the applicants and their contact persons.

31. In addition, applicants should submit a letter briefly summarizing the changes by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access Division, at the following address: *auction81@fcc.gov.* The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 81 and the name of the applicant. A separate copy of the letter should be sent by facsimile to the attention of Kathryn Garland at (717) 338–2850. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Questions about short-form application (FCC Form 175) amendments should be directed to Lynne Milne of the Auctions and Spectrum Access Division at (202) 418–0660.

C. Maintaining the Accuracy of FCC Form 175 Information

32. Each applicant is required by 47 CFR 1.65 to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. If an amendment reporting substantial changes is a major amendment as defined by 47 CFR 1.2105, the major amendment will not be accepted and may, in some instances, result in the dismissal of the FCC Form 175 application.

33. Applicants must report these modifications to their FCC Form 175 by electronic mail and submit a letter briefly summarizing the changes to the attention of Margaret Wiener, Chief, Auctions and Spectrum Access

Division, at the following address: *auction81@fcc.gov.* The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 81 and the name of the applicant. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. A separate copy of the letter should be sent by facsimile to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Lynne Milne of the Auctions and Spectrum Access Division at (202) 418–0660.

34. In addition, an applicant must make these changes to its short-form application (FCC Form 175) on-line during the remedial filing window or during the time period that will be specified in the public notice explaining the status of the applications in Auction No. 81. During the remedial filing window or during the time period specified in a subsequent public notice explaining the status of the applications in Auction No. 81, applicants must click on the SUBMIT button in the FCC Auction System for the changes to be submitted and considered by the Commission. After the revised application has been submitted, a confirmation page will be displayed that states the submission time and date, along with a unique file number.

D. Requirements for Logging on to the FCC Auction System

35. Although applicants submitted their original FCC Form 175 applications by using a Taxpayer Identification Number (TIN), any review of and updates to these applications will require the use of an FCC Registration Number (FRN). Use of an FRN is mandatory for all applicants for Auction No. 81 so that each applicant may log on to the FCC Auction System to review its FCC Form 175 and continue to participate in the auction process. A remedial filing window for review of FCC Form 175 applications and the submission of required information will be open from noon ET on Friday, June 24, 2005, until 6 p.m. ET on Friday, July 8, 2005. In Attachment C of the *Auction No. 81 Procedures Public Notice,* the Bureaus provide specific instructions about logging on to the FCC Auction System.

E. Provisions Regarding Former Defaulters

36. Pursuant to current Commission rules, including 47 CFR 1.2105(a)(2), each applicant in Auction No. 81 now must submit a statement, under penalty of perjury, as part of its short-form application (FCC Form 175), regarding whether or not the applicant, its affiliates, its controlling interests, or any affiliates of its controlling interests, as defined by 47 CFR 1.2110, have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. Each applicant in Auction No. 81 must make this statement as provided on the current FCC Form 175 and must attach to its FCC Form 175 information identifying the person making the statement.

37. The new format of FCC Form 175 in ISAS provides a screen where the applicant must select one of two form statements describing the status of the applicant, its affiliates, its controlling interests, or any affiliates of its controlling interests regarding former defaults or delinquencies. In addition, because the statement must be made under penalty of perjury, each applicant in Auction No. 81 must submit an attachment identifying the party responsible for making the statement on behalf of the applicant. Applicants in Auction No. 81 are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

38. Former defaulters—*i.e.*, applicants, including their attributable interest holders, that, as of the day the statement is submitted to the Commission, in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 81, provided that they are otherwise qualified. However, former defaulters are required by 47 CFR 1.2106(a) to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

39. Applicants are reminded that current defaulters—*i.e.*, applicants, including their attributable interest holders, that are in default on any payment for Commission licenses (including down payments) or are delinquent on any non-tax debt owed to any Federal agency—are not eligible to bid in Auction No. 81.

40. Applicants are encouraged to review the Wireless Telecommunications Bureau's previous guidance on default and delinquency disclosure requirements in the context of our short-form application process. Applicants are reminded that the Commission's Red Light Display System, which provides information regarding debts owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105.

41. The applicants listed in Attachment A of the *Auction No. 81 Procedures Public Notice* must file the additional information identified above from noon ET on Friday, June 24, 2005, until 6 p.m. ET on Friday, July 8, 2005. Further details about this particular submission are provided in Attachment C of the *Auction No. 81 Procedures Public Notice.*

F. Electronic Review of Short-Form Applications (FCC Forms 175)

42. During the remedial window, an applicant may review and update its own completed FCC Form 175 application in the FCC Auction System. There is no fee for accessing this system. Attachment C of the *Auction No. 81 Procedures Public Notice* provides further information about access to the FCC's ISAS.

43. Applicants will also be able to view other applicants' completed FCC Form 175 applications after the Commission has issued a subsequent public notice concerning the status of the Auction No. 81 applications. Instructions for electronic review of FCC Form 175 applications will be discussed in the public notice concerning the status of the applications.

G. Installment Payments

44. In 1997, the Commission suspended the use of auction installment payments. Installment payment plans will not be available in Auction No. 81.

III. Pre-Auction Procedures

A. Application Processing and Minor Corrections

45. The FCC will process all timely-submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) Those applications accepted for filing; (2) those applications rejected; and (3) those applications which have minor defects that may be corrected, and the deadline for resubmitting such corrected applications.

46. Applications for construction permits for noncommercial educational broadcast stations (NCE stations) are exempted from competitive bidding by 47 U.S.C. 309(j)(2)(C). For purposes of this auction, this exemption applies to a proposal for a new LPTV, television

translator or Class A television broadcast station that is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes. In the *NCE Second Report and Order,* the Commission held that LPTV and television translator facilities qualify as NCE stations, and are exempt from auction, only if they are owned and operated by municipalities and transmit only NCE programs.

47. The Commission also stated that proposals for NCE stations may be submitted for non-reserved spectrum in a filing window, subject to being returned as unacceptable for filing if there is any mutually exclusive application for a commercial station. Accordingly, with a specified deadline of May 13, 2005, the Bureaus provided applicants in Auction No. 81 with an opportunity to designate their status as an NCE station applicant. If any Auction No. 81 applicants made such a claim and one or more of the NCE applicant's engineering proposals is determined to be mutually exclusive with one or more engineering proposals filed by an applicant for a commercial station, the NCE station engineering proposal(s) will be returned as unacceptable for filing.

B. Auction Seminar—June 24, 2005

48. On Friday, June 24, 2005, the FCC will sponsor a seminar for parties interested in participating in Auction No. 81 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, revision of FCC Form 175 during the remedial filing window, auction conduct, the FCC Auction System, auction rules, and the LPTV, television translator and Class A television broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of Commission staff.

49. To register, complete the registration form provided as Attachment B of the *Auction No. 81 Procedures Public Notice* and submit it no later than Tuesday, June 21, 2005. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

50. For individuals who are unable to attend, an Audio/Video recording of this seminar will be available via webcast from the FCC's Auction 81 Web page at *http://wireless.fcc.gov/auctions/81/,* if you select Auction Seminar.

C. Upfront Payments—Due August 12, 2005

51. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). All upfront payments must be received at Mellon Bank by 6 p.m. ET on August 12, 2005.

i. Making Auction Payments by Wire Transfer

52. Wire transfer payments must be received by 6 p.m. ET on August 12, 2005. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. The specific information needed to make the required wire transfer payments is provided in the *Auction No. 81 Procedures Public Notice.*

53. Applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the facsimile, write Wire Transfer—Auction Payment for Auction Event No. 81. In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account. All payments must be made in U.S. dollars. All payments must be made by wire transfer. Upfront payments for Auction No. 81 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments. Failure to deliver the upfront payment by the deadline on August 12, 2005 will result in dismissal of the application and disqualification from participation in the auction.

ii. FCC Form 159

54. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/03) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/03) is critical to ensuring correct crediting of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment D of the *Auction No. 81 Procedures Public Notice.* An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175 during the remedial period. Payors using a pre-filled FCC Form 159 are responsible for ensuring that all of the information on the form, including payment amounts, is accurate. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

55. In the *Part 1 Competitive Bidding Order,* 62 FR 13540, March 21, 1997, the Commission delegated to the Wireless Telecommunications Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Fifth Report and Order,* 65 FR 52323, August 29, 2000, the Commission ordered that former defaulters, *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies, be required to pay upfront payments 50 percent greater than non-former defaulters. For purposes of this calculation, the applicant includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by 47 CFR 1.2110.

56. In the *Auction No. 81 Comment Public Notice,* the Bureaus proposed that the amount of the upfront payment would determine a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids. In order to bid on a construction permit, otherwise qualified bidders that are designated in Attachment A of the *Auction No. 81 Procedures Public Notice* for that construction permit must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the *Auction No. 81 Procedures Public Notice,* or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all construction permits designated for that applicant in Attachment A of the *Auction No. 81 Procedures Public Notice,* but rather to cover the maximum number of bidding units that are associated with construction permits on which the bidder wishes to place bids and hold provisionally winning bids at any given time. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round.

57. In the *Auction No. 81 Comment Public Notice,* the Bureaus proposed upfront payments for each construction permit, taking into account various factors related to the efficiency of the auction process and the potential value of similar spectrum. No comments were received on this issue; therefore, the Bureaus adopted its proposal. The specific upfront payments and bidding units for each construction permit are specified in Attachment A of the *Auction No. 81 Procedures Public Notice.*

58. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active on (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all construction permits on which it seeks to be active in any given round. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

Market No.	Channel	Location	Bidding units	Upfront payment
MX001	11	Port Arthur, TX	1,000	$1,000
MX007	43	Aberdeen, SD	1,000	1,000

59. In this example, if a bidder wishes to bid on both construction permits in a round, it must be identified in Attachment A of the *Auction No. 81 Procedures Public Notice* for both and have purchased at least 2,000 bidding units (1,000 + 1,000). If a bidder only wishes to bid on one, but not both, purchasing bidding units would meet the requirements of either construction permit. The bidder would be able to bid on either construction permit, but not both at the same time.

60. Former defaulters, as required by 47 CFR 1.2106(a), should calculate their upfront payment by multiplying the number of bidding units on which they wish to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the *Auction No. 81 Procedures Public Notice,* the applicant will not be eligible to participate in the auction.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

61. The Commission will use wire transfers for all Auction No. 81 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed below be supplied to the FCC. Applicants can provide the information electronically during the remedial period designated in the *Auction No. 81 Procedures Public Notice.* Wire Transfer Instructions can also be sent by facsimile manually to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser, at (202) 418–2843. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. The information necessary for a refund is specified in the *Auction No. 81 Procedures Public Notice.* For additional information, please call Gail Glasser at (202) 418–0578.

D. Auction Registration

62. Approximately ten (10) days before the auction, the Commission will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the construction permits for which they applied.

63. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID cards which will be required to place bids (or access the FCC Auction System) and the telephonic bidding phone number.

64. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, any qualified bidder that has not received this mailing by noon on Thursday, September 8, 2005, should telephone (717) 338–2888. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

65. Qualified bidders should note that lost SecurID cards can be replaced only by appearing in person at the FCC headquarters, located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a government-issued photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

E. Remote Electronic Bidding

66. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid telephonically and electronically through the FCC Auction System, but each applicant should indicate its preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards, the telephonic bidding phone number, and the Integrated Spectrum Auction System (ISAS) Bidder's Guide are only mailed to the contact person at the contact address listed on the FCC Form 175.

67. Please note that each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 81. The SecurID cards can be recycled, and we encourage bidders to return the cards to the FCC. The Bureaus will provide pre-addressed envelopes that bidders may use to

return the cards once the auction is over.

F. Mock Auction—September 12, 2005

68. All qualified bidders will be eligible to participate in a mock auction on Monday, September 12, 2005. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by a future public notice.

IV. Auction Event

69. The first round of bidding for Auction No. 81 will begin on Wednesday, September 14, 2005. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately ten (10) days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

70. In the *Auction No. 81 Comment Public Notice,* the Bureaus proposed to award all construction permits in Auction No. 81 in a simultaneous multiple round auction. In a simultaneous multiple round auction, all construction permits are available during the entire auction, and bids are accepted on any construction permit until bidding in the auction concludes. The Bureaus received no comment on this proposal. The Bureaus concluded that it is operationally feasible and appropriate to auction the LPTV, television translator and Class A television broadcast stations through a simultaneous multiple round auction. The Bureaus adopted the proposal. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction.

ii. Eligibility and Activity Rules

71. In the *Auction No. 81 Comment Public Notice,* the Bureaus proposed that the amount of the upfront payment submitted by a bidder would determine the initial (maximum) eligibility (as measured in bidding units) for each bidder. The Bureaus received no comments on this issue.

72. For Auction No. 81 the Bureaus adopted this proposal. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, which is the maximum number of bidding units on which a bidder may place bids. Note again that each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 81 Public Notice* on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any combination of construction permits as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units on which it may wish to bid and hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

73. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders in Auction No. 81 are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

74. A bidder's activity level in a round is the sum of the bidding units associated with construction permits on which the bidder is active. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round and does not withdraw the provisionally winning bid in the current round, or if it submits a bid in the current round. The minimum required activity is expressed as a percentage of the bidder's current eligibility, and increases by stage as the auction progresses. Because these activity and bidding unit eligibility procedures have proven successful in maintaining the pace of previous auctions the Bureaus adopted them for Auction No. 81.

iii. Auction Stages

75. In the *Auction No. 81 Comment Public Notice*, the Bureaus proposed to conduct the auction in two stages and employ an activity rule. The Bureaus further proposed that, in each round of Stage One, a bidder desiring to maintain its current bidding eligibility would be required to be active on construction permits representing at least 80 percent of its current bidding eligibility. Finally, the Bureaus proposed that in each round of Stage Two, a bidder desiring to maintain its current bidding eligibility would be required to be active on at least 95 percent of its current bidding eligibility. The Bureaus received no comments on this proposal.

76. Because the proposed procedures for activity levels, bidding unit eligibility and auction stages have proven successful in maintaining proper pace in previous auctions, the Bureaus adopted them for Auction No. 81. The activity levels for each stage of the auction are described below. The Bureaus reserve the discretion to further alter the activity percentages before and/or during bidding in the auction.

77. *Stage One:* During the first stage of the auction, a bidder desiring to maintain its current bidding eligibility will be required to be active on construction permits representing at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility for the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by five-fourths (5/4).

78. *Stage Two:* During the second stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility for the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity (the sum of bidding units of the bidder's provisionally winning bids and bids during the current round) by twenty-nineteenths (20/19).

79. *Caution:* Since activity requirements increase in Stage Two, bidders must carefully check their activity during the bidding period of the first round following a stage transition to ensure that they are meeting the increased activity requirement. This is especially critical for bidders that have provisionally winning bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not verify their activity status at stage transitions. Bidders may check their activity against the required activity level by either logging in to the

FCC Auction System or by accessing the Bidder Summaries on the public results page.

iv. Stage Transitions

80. In the *Auction No. 81 Comment Public Notice*, the Bureaus proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately 20 percent or below for three consecutive rounds of bidding in Stage One. The Bureaus further proposed that the Bureaus would retain the discretion to change stages unilaterally by announcement during the auction. The Bureaus received no comments on this issue.

81. The Bureaus adopted the proposal. Thus, the auction will start in Stage One and will generally advance to the next stage (*i.e.*, from Stage One to Stage Two) when, in each of three consecutive rounds of bidding, the provisionally winning bids have been placed on 20 percent or less of the construction permits being auctioned (as measured in bidding units). In addition, the Bureaus will retain the discretion to regulate the pace of the auction by announcement. As proposed in the *Auction No. 81 Comment Public Notice*, this determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. When monitoring activity for determining when to change stages, the Bureaus may consider the percentage of bidding units of the construction permits receiving new provisionally winning bids, excluding any FCC-held construction permits. The Bureaus believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 81.

v. Activity Rule Waivers and Reducing Eligibility

82. Based upon experience in previous auctions, the Bureaus adopt their proposal that each bidder be provided three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either applied proactively by the bidder (known as a proactive waiver) or applied automatically by the FCC Auction System (known as an automatic waiver) and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round. The Bureaus are satisfied that the use of three waivers over the course of the auction provides a sufficient number of waivers and flexibility to the bidders, while safeguarding the integrity of the auction.

83. The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any round where a bidder's activity level is below the minimum required unless: (1) There are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

84. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

85. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or withdrawals will not keep the auction open. The submission of a proactive waiver cannot occur after a bidder has submitted a bid in a round and will preclude a bidder from placing any bids later in that round. Note: Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.

vi. Auction Stopping Rules

86. For Auction No. 81, the Bureaus proposed to employ a simultaneous stopping rule approach. The Bureaus also sought comment on a modified version of the simultaneous stopping rule. The modified version of the stopping rule would close the auction for all construction permits simultaneously after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule.

87. The Bureaus further proposed retaining the discretion to keep the auction open even if no new bids or proactive waivers are submitted and no previous provisionally winning bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility.

88. In addition, the Bureaus proposed that the Bureaus reserve the right to declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

89. The Bureaus proposed to exercise this special stopping rule only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity.

90. The Bureaus received no comments concerning the auction stopping rules; therefore the Bureaus adopted the above proposals. Auction No. 81 will begin under the simultaneous stopping rule approach,

and the Bureaus will retain the discretion to invoke the other versions of the stopping rule. These stopping rules are most appropriate for Auction No. 81, because experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

vii. Auction Delay, Suspension, or Cancellation

91. Because our approach to notification of delay during an auction has proven effective in resolving exigent circumstances in previous auctions, the Bureaus adopted their proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair or competitive conduct of bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasized that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

92. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the qualified bidders public notice.

93. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

94. Pursuant to the Congressional mandate of 47 U.S.C. 309(j)(4)(F) and the previous delegation of authority to the Bureaus by the Commission, the Bureaus proposed in the *Auction No. 81 Comment Public Notice* to establish minimum opening bids for Auction No. 81, reasoning that a minimum opening bid, successfully used in other broadcast auctions, is a valuable tool, effectively regulating the pace of the auction. Specifically, a minimum opening bid was proposed for each MX group listed in Attachment A of the *Auctions No. 81 Procedures Public Notice*. The minimum opening bid amounts were determined by taking into account various factors relating to the efficiency of the auction and the potential value of the spectrum. Based on experience in using minimum opening bids in other auctions, the Bureaus believe that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient awarding of construction permits.

95. In the alternative, the Bureaus sought comment on whether, consistent with 47 U.S.C. 309(j), the public interest would be served by having no minimum opening bid or reserve price.

96. The Bureaus adopted its proposed minimum opening bids for Auction No. 81. The minimum opening bid amounts adopted for Auction No. 81 are reducible at the discretion of the Bureaus. The Bureaus emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureaus will not entertain requests to reduce the minimum opening bid amount on specific construction permits.

97. The specific minimum opening bid amounts for each construction permit available in Auction No. 81 are specified in Attachment A of the *Auction No. 81 Procedures Public Notice*.

iii. Minimum Acceptable Bid Amounts and Bid Increment Amounts

98. In the *Auction No. 81 Comment Public Notice*, the Bureau proposed to use a minimum acceptable bid increment of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. The minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage—*i.e.*, (provisionally winning bid amount) * (1.10). The Bureaus will round the result using our standard rounding procedures which are described in the *Auction No. 81 Procedures Public Notice*. The Bureaus further proposed to retain the discretion to change the minimum acceptable bid amounts and bid increments amounts if it determines that circumstances so dictate. The Bureaus received no comment on this issue. The Bureaus adopted the proposal and will begin the auction with a minimum acceptable bid percentage of 10 percent.

99. In each round, if the bidder has sufficient eligibility, each eligible bidder will be able to place a bid on a particular construction permit for which it is designated in Attachment A of the *Auction No. 81 Procedures Public Notice* in any of nine different amounts. The FCC Auction System will list the nine acceptable bid amounts for each construction permit. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount.

100. The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid amount and eight other bid amounts based on the bid increment percentage. The first additional acceptable bid amount, above the minimum acceptable bid amount, equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded—*e.g.*, if the bid increment percentage is 10 percent, then the next bid amount will equal (minimum acceptable bid amount) * 1.10, rounded, the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.30, rounded, etc. The Bureaus will begin the auction with a bid increment percentage of 10 percent. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

101. In the case of a construction permit for which the provisionally winning bid amount has been withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the

construction permit, which may be less than, or equal to, in the case of tied bids, the amount of the withdrawn bid. The additional bid amounts above the minimum acceptable bid amount are calculated using the bid increment percentage as described in the previous paragraph.

102. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if it determines that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System. The Bureaus may also use their discretion to adjust these amounts without prior notice if circumstances warrant.

iv. Provisionally Winning Bids

103. At the end of each bidding round, a provisionally winning bid amount will be determined based on the highest bid amount received for each construction permit. A high bid from a previous round is referred to as a provisionally winning bid. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Bidders are reminded that the bidding units of provisionally winning bids are counted as activity for purposes of the activity rule.

104. In the *Auction No. 81 Comment Public Notice*, the Bureaus proposed to use a random number generator to select a provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids). No comments were received on this proposal. Therefore, the Bureaus adopted their proposal. A Sybase® SQL pseudo-random number generator based on the L'Ecuyer algorithms will be used to assign a random number to each bid. The tied bid having the highest random number will become the provisionally winning bid. Eligible bidders, including the provisionally winning bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in subsequent rounds, the provisionally winning bid from the previous round will win the construction permit, unless that provisionally winning bid was withdrawn. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid will once again be determined based on the highest bid amount received for the construction permit.

v. Bidding

105. During a round, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), withdraw provisionally winning bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each round. If a bidder submits multiple bids for a single construction permit in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders were warned that the bidding units associated with construction permits for which the bidder has removed or withdrawn its bid do not count towards the bidder's activity at the close of the round.

106. All bidding will take place remotely either electronically or by telephonic bidding through the FCC Auction System. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, at least five to ten minutes are necessary to complete a telephonic bid submission). There will be no on-site bidding during Auction No. 81.

107. A qualified bidder's ability to bid on specific construction permits in the first round of the auction is determined by two factors: (1) The construction permits designated for that applicant in Attachment A of the *Auction No. 81 Procedures Public Notice*, and (2) the upfront payment amount deposited. The bid submission screens will allow bidders to submit bids on only those construction permits for which the bidder's engineering proposal is specified in the particular MX group as listed in the revised Attachment A of the *Auction No. 81 Procedures Public Notice*.

108. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the password generated by the SecurID card and a personal identification number (PIN) created by the bidder. Bidders are strongly encouraged to print a round summary for each round after they have completed all of their activity for that round.

109. In each round, if the bidders have sufficient eligibility, bidders will be able to place bids on a given construction permit in any of nine different amounts. For each construction permit, the FCC Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

110. Until a bid has been placed on a construction permit, the minimum acceptable bid amount for that construction permit will be equal to its minimum opening bid amount. Once there is a provisionally winning bid on a construction permit, the FCC Auction System will calculate a minimum acceptable bid amount for that construction permit for the following round.

111. Finally, bidders were cautioned to select their bid amounts carefully because, as explained in the following section, bidders that withdraw a provisionally winning bid from a previous round, even if the bid was mistakenly or erroneously made, are subject to bid withdrawal payments.

vi. Bid Removal and Bid Withdrawal

112. In the *Auction No. 81 Comment Public Notice*, the Bureaus proposed bid removal and bid withdrawal procedures. With respect to bid withdrawals, the Bureaus proposed limiting each bidder to withdrawals in no more than one round during the course of the auction. The round in which withdrawals are used would be at each bidder's discretion. The Bureaus received no comments on this issue. These procedures will enhance bidder flexibility during the auction, and therefore, the Bureaus adopted them for Auction No. 81.

113. In previous auctions, the Bureaus have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Bureaus continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various construction permits in combination, the Bureaus conclude that, for Auction No. 81, adoption of a limit on the use of withdrawals to one round per bidder is appropriate. By doing so, the Bureaus believe the limitation strikes a reasonable compromise that will allow bidders to use withdrawals. The decision on this issue was based upon experience in prior auctions, particularly the PCS D, E and F block, 800 MHz SMR, and FM Broadcast auctions, and is in no way a reflection of the view of the Bureaus regarding the likelihood of any speculation or gaming in this auction.

114. The Bureaus therefore will limit the number of rounds in which bidders may place withdrawals to one round. The round will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in the round. Withdrawals during the auction will be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a construction permit.

115. Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the remove bids function in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count toward bidding activity.

116. Once a round closes, a bidder may no longer remove a bid. However, in one later round, a bidder may withdraw any provisionally winning bids from previous rounds using the withdraw bids function in the FCC Auction System (assuming that the bidder has not reached its withdrawal limit). A provisionally winning bidder that withdraws its provisionally winning bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Note: Submitting a withdrawal is irreversible; once a withdrawal is submitted during a round, that withdrawal cannot be unsubmitted.

117. If a provisionally winning bid is withdrawn, the minimum acceptable bid amount will equal the amount of the second highest bid received for the construction permit, which may be less than, or in the case of tied bids, equal to, the amount of the withdrawn bid. The Bureaus, however, retain the discretion to lower the minimum acceptable bid on such construction permits in the next round or in later rounds. To set the additional bid amounts, the second highest bid amount also will be used in place of the provisionally winning bid in the formula used to calculate bid increment amounts. The Commission will serve as a place holder provisionally winning bidder on the construction permit until a new bid is submitted on that construction permit.

118. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction pursuant to 47 CFR 1.2104(g) and 1.2109. If a bidder withdraws its bid and there is no higher bid in the same or subsequent auction(s), the bidder that withdrew its bid is responsible for the difference between its withdrawn bid and the provisionally winning bid in the same or subsequent auction(s). In the case of multiple bid withdrawals on a single construction permit, within the same or subsequent auctions(s), the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids, in either the same or subsequent auctions(s), equals or exceeds that withdrawn bid. Thus, a bidder that withdraws a bid will not be responsible for any withdrawal payments if there is a subsequent higher bid in the same or subsequent auction(s). This policy allows bidders most efficiently to allocate their resources as well as to evaluate their bidding strategies and business plans during an auction while, at the same time, maintaining the integrity of the auction process. The Bureaus retain the discretion to scrutinize multiple bid withdrawals on a single construction permit for evidence of anti-competitive strategic behavior and take appropriate action when deemed necessary.

119. The payment obligations, including interim bid withdrawal payments, of a bidder that withdraws a high bid on a construction permit during the course of an auction is specified by 47 CFR 1.2104(g)(1). As amended, 47 CFR 1.2104(g)(1) provides that in instances in which bids have been withdrawn on a construction permit that is not won in the same auction, the Commission will assess an interim withdrawal payment equal to 3 percent of the amount of the withdrawn bids. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed after subsequent auction of the construction permit. Assessing an interim bid withdrawal payment ensures that the Commission receives a minimal withdrawal payment pending assessment of any final withdrawal payment. Section 1.2104(g) provides specific examples showing application of the bid withdrawal payment rule.

vii. Round Results

120. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureaus will compile reports of all bids placed, bids withdrawn, current provisionally winning bids, new minimum acceptable bid amounts, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 81 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

vii. Auction Announcements

121. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available by clicking a link in the FCC Auction System.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

122. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments, final payments, and any withdrawn bid payments due.

123. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 81 to 20 percent of the net amount of its winning bids (gross bids less any applicable New Entrant bidding credits). In addition, by the same deadline, all bidders must pay any bid withdrawal payments due under 47 CFR 1.2104(g). (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Final Payments

124. If a winning bidder's long-form application is uncontested, after the termination of the pleading cycle for petitions to deny, the Commission will issue, as specified by 47 CFR 73.5006, a public notice announcing that it is prepared to grant the winning bidder's long-form application. If a petition to deny is filed within the pleading cycle for petitions to deny, and if the petition to deny is dismissed or denied, the Commission will issue a public notice announcing that it is prepared to grant the winning bidder's long-form application promptly after the Media Bureau disposes of any such petition to deny and is otherwise satisfied that the applicant is qualified to hold the specified construction permit. Within ten (10) business days after the date of

the release of the public notice announcing that the Commission is prepared to grant a winning bidder's long-form application, each winning bidder will be required to submit the balance of the net amount of its winning bids (gross bids less any applicable New Entrant bidding credits). Broadcast construction permits will be granted only after the full and timely payment of winning bids and any applicable late fees, in accordance with 47 CFR 1.2109(a).

C. Long-Form Application

125. Within 30 business days after release of the auction closing notice, winning bidders must electronically submit a properly completed FCC Form 346 or FCC Form 301–CA, as appropriate, for each construction permit won through Auction No. 81. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit, as required by 47 CFR 1.2109(a), 73.3573(f)(5)(ii), and 73.5006(d). Further filing instructions will be provided to auction winners at the close of the auction.

D. Default and Disqualification

126. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event, the Commission may re-auction the construction permit or offer it to the next highest bidder (in descending order) at its final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission has the discretion to declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses or construction permits held by the applicant.

E. Refund of Remaining Upfront Payment Balance

127. All applicants that submit upfront payments but are not winning bidders for a construction permit in Auction No. 81 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from the applicant after any applicable bid withdrawal payments have been paid. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

128. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a provisionally winning bid during the auction must submit a written refund request. If the bidder has completed the specified refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions and FCC Registration Number (FRN). Send refund requests to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser, 445 12th Street, SW., Room 1–C864, Washington, DC 20554.

129. Bidders are encouraged to file their refund information electronically using the Refund Information icon in the FCC Form 175, but bidders can also send their information by facsimile to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the payer of record, as identified on the FCC Form 159.

Federal Communication Commission.

Gary D. Michaels,

Deputy Chief, Auction Spectrum and Access Division, WTB.

[FR Doc. 05–11379 Filed 6–7–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov.* Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 009831–022.

Title: New Zealand/United States Container Lines Association.

Parties: P&O Nedlloyd Limited, Hamburg-Sud, Australia-New Zealand Direct Line, and Lykes Lines Limited LLC.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes Lykes' name to CP Ships USA LLC.

Agreement No.: 010050–015.

Title: U.S. Flag Discussion Agreement.

Parties: American President Lines, Ltd.; A.P. Moller-Maersk A/S; Lykes Lines Limited, LLC; P&O Nedlloyd Limited; and Farrell Lines Incorporated.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes Lykes' name to CP Ships USA, LLC.

Agreement No.: 011117–036.

Title: United States/Australasia Discussion Agreement.

Parties: A.P. Moller-Maersk A/S; Australia-New Zealand Direct Line; CMA CGM, S.A.; Compagnie Maritime Marfret, S.A.; Fesco Ocean Management Limited; Hamburg-Süd; Lykes Lines Limited, LLC; P&O Nedlloyd Limited; Safmarine Container Lines NV; and Wallenius Wilhelmsen Lines AS.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes the name of Lykes Lines Limited, LLC to CP Ships USA, LLC.

Agreement No.: 011268–017.

Title: New Zealand/United States Discussion Agreement.

Parties: New Zealand/United States Container Lines

Association; P&O Nedlloyd Limited; Hamburg-Süd; LauritzenCool AB; Australia-New Zealand Direct Line; FESCO Ocean Management Ltd., A.P. Moller-Maersk A/S; and Lykes Lines Limited, LLC.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes the name of Lykes Lines Limited, LLC to CP Ships USA, LLC.

Agreement No.: 011275–017.

Title: Australia/United States Discussion Agreement

Parties: A.P. Moller-Maersk A/S; Australia-New Zealand Direct Line; FESCO Ocean Management Inc.; Hamburg-Süd; LauritzenCool AB; Lykes Lines Limited, LLC; P&O Nedlloyd Limited; Safmarine Container Lines NV; and Seatrade Group NV.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes the name of Lykes Lines Limited, LLC to CP Ships USA, LLC.

Agreement No.: 011384–004.

Title: M.O.S.K./HUAL Space Charter Agreement.

Parties: HUAL AS and Mitsui O.S.K. Lines Ltd.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes the name of HUAL to Hoegh Autoliners AS and restates the agreement to reflect the name change throughout the agreement.

Agreement No.: 011407–008.

Title: Australia/United States Containerline Association.

Parties: Hamburg-Süd; P&O Nedlloyd Limited, Australia-New Zealand Direct Line, and Lykes Lines Limited, LLC.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes the name of Lykes Lines Limited, LLC to CP Ships USA, LLC.

Agreement No.: 011426–035.

Title: West Coast of South America Discussion Agreement.

Parties: Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sud Americana de Vapores, S.A.; Hamburg-Süd KG; APL Co. Pte Ltd.; Seaboard Marine Ltd.; Trinity Shipping Line; Mediterranean Shipping Company, S.A.; P&O Nedlloyd B.V.; South Pacific Shipping Company, Ltd. (d/b/a Ecuadorian Line); CMA CGM, S.A.; Lykes Lines Limited, LLC; Frontier Liner Services, Inc.; and King Ocean Services Limited, Inc.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment deletes A.P. Moller-Maersk A/S as a party to the agreement.

Agreement No.: 011502–004.

Title: NYK/HUAL Space Charter and Cooperative Working Agreement.

Parties: HUAL AS and Nippon Yusen Kaisha (''NYK'').

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes the name of HUAL to Hoegh Autoliners AS, restates the agreement to reflect the name change throughout the agreement, and corrects NYK's address.

Agreement No.: 011523–004.

Title: Wallenius Wilhelmsen Lines/ HUAL Space Charter Agreement.

Parties: HUAL AS and Wallenius Wilhemsen Lines AS.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes the name of HUAL to Hoegh Autoliners AS and restates the agreement to reflect the name change throughout the agreement.

Agreement No.: 011526–005.

Title: M.O.S.K./HUAL Space Charter Agreement.

Parties: HUAL AS and Mitsui O.S.K. Lines Ltd.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes the name of HUAL to Hoegh Autoliners AS and restates the agreement to reflect the name change throughout the agreement.

Agreement No.: 011692–005.

Title: Indamex Agreement.

Parties: CMA CGM, S.A.; Contship Containerlines; MacAndrews & Company Limited; Lykes Lines Limited, LLC; and The Shipping Corporation of India, Ltd.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes the name of Lykes Lines Limited, LLC to CP Ships USA, LLC and deletes The Shipping Corporation of India, Ltd., as a member.

Agreement No.: 011737–015.

Title: The MCA Agreement.

Parties: Atlantic Container Line AB; Alianca Navegacao e Logistica Ltda.; Antillean Marine Shipping Corporation; A.P. Moller-Maersk A/S; China Shipping Container Lines Co., Ltd.; CMA CGM S.A.; Companhia Libra de Navegacao; Compania Sud Americana de Vapores S.A.; CP Ships (UK) Limited, d/b/a ANZDL and also as Contship Containerlines; CP Ships USA LLC, d/b/a Italia Di Navigazione LLC, Lykes Lines Limited LLC, and TMM Lines Limited LLC; Crowley Liner Services, Inc.; Dole Ocean Cargo Express, Inc.; Hamburg-Süd; Hapag-Lloyd Container Linie; HUAL AS; Montemar Maritima S.A.; Norasia Container Line Limited; Safmarine Container Lines N.V.; Tropical Shipping & Construction Co., Ltd.; Wallenius Wilhelmsen Lines AS.

Filing Party: James R. Halley, Esq., Halley & Halley, P.A., 328 Crandon Boulevard, Suite 224–225, Key Biscayne, Florida 33149.

Synopsis: The amendment changes the name of HUAL to Hoegh Autoliners AS and adds P&O Nedlloyd Limited as a member.

Agreement No.: 011753–003.

Title: HUAL/EUKOR Space Charter Agreement.

Parties: HUAL AS and EUKOR Car Carriers, Inc.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes the name of HUAL to Hoegh Autoliners AS and restates the agreement to reflect the name change throughout the agreement.

Agreement No.: 011772–001.

Title: NMCC/HUAL Space Charter Agreement.

Parties: HUAL A/S and Nissan Motor Car Carrier Co., Ltd.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes the name of HUAL to Hoegh Autoliners AS and restates the agreement to reflect the name change throughout the agreement.

Agreement No.: 011776–002.

Title: Lykes/CSAV Slot Charter Agreement.

Parties: Compañia Sud Americana de Vapores S.A. and Lykes Lines Limited LLC.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes Lykes' name to CP Ships USA, LLC, restates the agreement, and updates Article 5.4 regarding further agreements.

Agreement No.: 011821–003.

Title: MSC/CMA CGM Space Charter Agreement.

Parties: CMA CGM, S.A. (''CMA'') and Mediterranean Shipping Company, S.A. (''MSC'').

Filing Party: Paul M. Keane, Esq., Cichanowicz, Callan, Keane, Vengrow & Textor, LLP, 61 Broadway, Suite 3000, New York, NY 10006–2802.

Synopsis: The amendment reduces the geographic scope by deleting the U.S. Gulf Coast, deletes language relating to MSC's South Atlantic service, reduces CMA's allocation from 425 to 175 TEUs, and updates CMA's address.

Agreement No.: 011837–002.

Title: HUAL/EUKOR Caribbean and Central America Space Charter Agreement.

Parties: HUAL AS and EUKOR Car Carriers, Inc.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes the name of HUAL to Hoegh Autoliners AS and restates the agreement to reflect the name change throughout the agreement.

Agreement No.: 011850–002.

Title: CMA CGM/CSCL Cross Space Charter, Sailing and Cooperative Working Agreement—North China, Japan/USWC Loop Agreement.

Parties: China Shipping Container Lines Co., Ltd.; China Shipping Container Lines (Hong Kong) Co., Ltd.; and CMA CGM, S.A.

Filing Party: Paul M. Keane, Esq., Cichanowicz, Callan, Keane, Vengrow, & Textor, LLP, 61 Broadway, Suite 3000, New York, NY 10006–2802.

Synopsis: The amendment makes changes in the vessel capacity, port rotation, vessel provision, space allocations, and duration and termination provisions for the service. It also restates and renames the agreement.

Agreement No.: 011878–001.

Title: Lykes/MOL Slot Charter Agreement.

Parties: Lykes Lines Limited LLC and Mitsui O.S.K. Lines, Ltd.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment changes Lykes' name to CP Ships USA, LLC, restates the agreement, and updates Article 5.6 regarding further agreements.

By order of the Federal Maritime Commission.

Dated: June 3, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–11402 Filed 6–7–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 011988N.

Name: All World Services, Inc.

Address: 8384 NW 30th Terrace, Miami, FL 33122.

Date Revoked: May 18, 2005.

Reason: Failed to maintain a valid bond.

License Number: 015131F.

Name: Formosa International Freight Forwarder, Inc.

Address: 20 West Lincoln Avenue, Suite 302, Valley Stream, NY 11580.

Date Revoked: May 15, 2005.

Reason: Failed to maintain a valid bond.

License Number: 018936N.

Name: I-Dream S&A, Inc.

Address: 460 E. Carson Plaza Drive, Suite 220, Carson, CA 90746.

Date Revoked: May 16, 2005.

Reason: Surrendered license voluntarily.

License Number: 013482N.

Name: J & N Transportation.

Address: 7272 Cherokee Circle, Buena Park, CA 90620.

Date Revoked: May 18, 2005.

Reason: Failed to maintain a valid bond.

License Number: 012361N.

Name: North American Van Lines, Inc.

Address: 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46818.

Date Revoked: May 4, 2005.

Reason: Failed to maintain a valid bond.

License Number: 014411NF.

Name: Rocky Mountain Express Corp. dba RMX Global Logistics.

Address: P.O. Box 4209, Evergreen, CO 80437–4209.

Date Revoked: March 3, 2005.

Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–11400 Filed 6–7–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to sections 14 and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 003966NF.

Name: Amerasa Rapid Transit USA Inc.

Address: 2490–M Arnold Industrial Way, Concord, CA 94520.

Order Published: FR: 10/06/04 (Volume 69, No. 193, Pg. 59927).

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–11401 Filed 6–7–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.: 003957F

Name/Address: Maramara, Inc., 6 Self Boulevard, Carteret, NJ 07008

Date Reissued: April 22, 2005.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–11403 Filed 6–7–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

Pioneer Shipping Logistics Inc., 99–32 66th Road, Suite 7X, Rego Park, NY 11374. Officers: David Xiao Wu Lou, Vice President (Qualifying Individual), Xiao-Zhi Lou, President.

St. Lucia Express Freight Services, Inc., 9515 NW 13th Street, Doral, FL 33172. Officers: Darryl S. Ramroop, Treasurer (Qualifying Individual), Tammy S. Kelly, President.

Multi-Trans Shipping Agency, Inc., 17890 Castleton Street, Suite 350, City of Industry, CA 91748. Officers: Calvin Kan Cheng, President (Qualifying Individual), Eric Chan, Vice President.

Transair Express Inc., 1425 Avondal Road, Hillsborough, CA 94010. Officer: Chia-Chi Chiu, President (Qualifying Individual).

Ri-Time Logistic Corp., 14632 E. Nelson Avenue, Suite E, City of Industry, CA 91744. Officer: Biyu Gao, President (Qualifying Individual).

Gammacor, Inc., 594 Industry Drive,

Bldg. 6, Tukwila, WA 98188. Officers: Joseph Paul DeRoche, Vice President, Jorge Z. Gacila, Asst. Secretary (Qualifying Individuals), Cecilia Almonidovar, President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Hughes Int'l L.L.C., 8 Mockingbird Road, Edison, NJ 08820. Officer: Yiduo Hu, Owner (Qualifying Individual).

American Trans Solutions, LLC, 2315 N.W. 107th Avenue, Suite 1M34, Doral, FL 33172. Officers: Gloria M. Gutierrez, Logistics Coordinator (Qualifying Individual), Hector Eduardo Velez, Chief Executive.

Summer Breeze Transport, Inc., 1106 A1A North, Suite 100–A, Ponte Vedra Beach, FL 32082. Officers: Tom W. Brown, President (Qualifying Individual), Keith J. Phillips, Vice President.

Freight Services of West Coast Corp. dba Omega Logistics, 8622 Bellanca Avenue, Ste. #H, Los Angeles, CA 90045. Officers: Jesse Camarena, Director (Qualifying Individual), Soci Mayor, CEO.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

B.R. Anderson & Co., 1011 S.W. Klickitat Way, Suite 203, Seattle, WA 98134. Officers: Stuart A. Harris, Co-President (Qualifying Individual), Ronald A. Portscheller, Co-President.

Dated: June 3, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–11404 Filed 6–7–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 22, 2005.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. John C. Elsenpeter and Vicki J. Elsenpeter, as trustees, both of Hackensack, Minnesota; to acquire voting shares of Walker Ban Company, Walker, Minnesota, and thereby indirectly acquire voting shares of First National Bank of Walker, Walker, Minnesota, and Lakes State Bank, Pequot Lakes, Minnesota.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Landon H. Rowland and Sarah F. Rowland, both of Kansas City, Missouri; to acquire voting shares of Garden City Bancshares, Inc., Garden City, Missouri, and thereby indirectly acquire voting shares of Garden City Bank, Garden City, Missouri.

Board of Governors of the Federal Reserve System, June 2, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–11352 Filed 6–7–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 1, 2005.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Oswego Community Bank Employee Stock Ownership Plan, Oswego, Illinois; to increase its ownership from 35.98 percent to 51 percent of Oswego Bancshares, Inc., Oswego, Illinois, and thereby indirectly acquire Oswego Community Bank, Oswego, Illinois.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Greater Southwest Bancshares, Inc., Irving, Texas; to acquire 100 percent of the voting shares of The Bank of Vernon, Vernon, Texas.

Board of Governors of the Federal Reserve System, June 2, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–11351 Filed 6–7–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 23, 2005. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, D.C., in Dining Room E on the Terrace level of the Martin Building. Anyone planning to attend the meeting should, for security purposes, register no later than Tuesday, June 21, by completing the form found on-line at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm.*

Additionally, attendees must present photo identification to enter the building.

The meeting will begin at 9 a.m. and is expected to conclude at 1 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Truth in Lending Act. Discussion of the Truth in Lending Act amendments in the new bankruptcy legislation and specific issues with regard to review of Regulation Z, which implements the Truth in Lending Act.

Information Security. Discussion of issues and concerns involving adoption and implementation of the interagency guidelines for security standards and guidance for response programs for security breaches.

Community Reinvestment Act (CRA) and Community Development. Discussion of issues concerning community development services and identification of ''underserved rural areas'' with regard to community development initiatives.

Committee Reports. Council committees will report on their work.

Other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Bistay, 202–452–6470.

Board of Governors of the Federal Reserve System, June 2, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–11408 Filed 6–7–05; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0112]

Proposed Information Collection; Federal Management Regulation; GSA Form 3040, State Agency Monthly Donation Report of Surplus Property

AGENCY: Federal Supply Service, General Services Administration(GSA).

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding GSA Form 3040, State Agency Monthly Donation Report of Surplus Property. A request for public comments was published at 70 FR 12687, March 15, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: July 8, 2005.

FOR FURTHER INFORMATION CONTACT: Denise Thomas, Federal Supply Service, GSA at telephone (703) 308–0742 or via e-mail to *denise.thomas@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VIR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0112, GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

This report complies with Public Law 94–519, which requires annual reports of donations of personal property to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

B. Annual Reporting Burden

Respondents: 55.
Responses Per Respondent: 4.
Total Responses: 220.
Hours Per Response: 1.5.
Total Burden Hours: 330.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 3090–0112, GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, in all correspondence.

Dated: May 27, 2005.

Daryle M. Seckar,

Acting Chief Information Officer.

[FR Doc. 05–11359 Filed 6–7–05; 8:45 am]

BILLING CODE 6820–YT–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0429X]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

A Survey of the Knowledge, Attitudes, and Practice of Medical and Allied Health Professionals Regarding Fetal Alcohol Exposure—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description: Maternal prenatal alcohol use is one of the leading preventable causes of birth defects and developmental disabilities. Children exposed to alcohol during fetal development can suffer a wide array of disorders, from subtle changes in I.Q. and behaviors to profound mental retardation. One of the most severe results of drinking during pregnancy is Fetal Alcohol Syndrome (FAS). FAS is a condition that involves disorders of the brain, growth retardation, and facial malformations.

Physicians and other health practitioners play a vital role in diagnosing FAS and in screening women of childbearing age for alcohol consumption and drinking during pregnancy. In Diekman's, *et al.* 2000, study of obstetricians and gynecologists, only one fifth of doctors surveyed

reported abstinence to be the safest way to avoid the adverse outcomes associated with fetal alcohol exposure. Importantly 13% of doctors surveyed were unsure of thresholds of alcohol consumption associated with adverse outcomes.

This survey will be used to gather information on the knowledge, attitudes, and practice about FAS and alcohol consumption during pregnancy from members of professional practitioner organizations. Data will be collected from pediatricians, obstetricians and gynecologists, psychologists, psychiatrists, family physicians, and other allied health professionals. This information will be used to identify gaps in knowledge regarding the screening, diagnosis, and treatment of FAS. The results of this survey will be used to develop model FAS curricula that will be disseminated among medical and allied health students and professionals.

The FAS curricula will be used in a variety of formats including computer interactive learning applications, workshops, conferences, Continuing Medical Education (CME) credit courses, medical and allied health school clerkships. There are no costs to respondents other than their time. The total burden hours per year are 2,000 hours.

Estimated Annual Burden Hours:

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)
Pediatricians	800	1	30/60
Obstetricians/Gynecologists	800	1	30/60
Psychologists/Psychiatrists	800	1	30/60
Allied Health Professionals	800	1	30/60
Family Physicians	800	1	30/60
Total			

Dated: May 31, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–11367 Filed 6–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05–05CI]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

CDC Oral Health Management Information System—New —Division of Oral Health (DOH), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) Centers for Disease Control and Prevention (CDC).

Background and Brief Description: The CDC seeks to improve the oral health of the nation by targeting efforts to improve the infrastructure of state and territorial oral health departments, strengthen and enhance program capacity related to monitoring the population's oral health status and behaviors, develop effective programs to improve the oral health of children and adults, evaluate program accomplishments, and inform key stakeholders, including policy makers, of program results. Through a cooperative agreement program (Program Announcement 03022), CDC provides approximately $3 million per year over 5 years to 12 states and one territory to strengthen the states' core oral health infrastructure and capacity and reduce health disparities among high-risk groups. The CDC is authorized to do this under sections 301 and 317(k) of the Public Health Service Act (42 U.S.C. 241 and 247b(k)).

Information systems provide a central repository of information, such as the plans of the state or territorial oral health programs (their goals, objectives, performance milestones and indicators), as well as state and territorial oral health performance activities including programmatic and financial information. A management information system (MIS) will allow a CDC project officer to enter information related to technical assistance, consultative plans, communication and site visits. For state and territorial oral health programs, a MIS will provide a central location that will allow for the more efficient collection of information needed to meet reporting requirements. The system will allow state and territorial oral health programs immediate access to information and better equip them to respond to inquiries in a timely fashion and to make programmatic decisions in a more efficient, informed manner.

A MIS will support CDC's broader mission of reducing oral health disparities by enabling CDC staff to more effectively identify the strengths and weaknesses of individual state and territorial oral health programs; to identify national progress toward reaching the goals of Healthy People 2010; and to disseminate information related to successful public health interventions implemented by state and territorial programs to prevent and control the burden of oral diseases. The CDC anticipates that the state burden of providing hard-copy reports will be

reduced with the introduction of the Web-based progress reporting system. It is assumed that states will experience a learning curve in using this application that burden will be reduced once they have familiarized themselves with it. There is no cost to respondents other than their time.

Estimate of Annualized Burden Hours:

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State Program Staff	13	2	9	234

Dated: May 31, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–11368 Filed 6–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05–04JL]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Intervention Development to Increase Cervical Cancer Screening Among Mexican American Women: Phase 2—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description: Differences in incidence of invasive cervical cancer exist among some minority populations. Among women older than 29 years cervical cancer incidence for Hispanic women was approximately twice that for non-Hispanic women. Papanicolaou (Pap) tests can prevent cervical cancer. Nevertheless, recent studies suggest that Hispanic women in the United States and Puerto Rico under-use cervical cancer screening tests. Additionally, survey data have shown that Hispanic women in the international border region of the United States under-utilize these Pap tests compared to non-Hispanic women in the same region. The need exists to increase Pap test screening among Hispanic women living in the United States.

The purpose of this project is to refine a multi-component behavioral intervention delivered by lay health workers to increase cervical cancer screening among U.S. and foreign-born Mexican women. The proposed study will use personal interviews and workshops. There will be no cost to respondents other than their time.

Estimate of Annualized Burden Hours:

Type of data collection	Number of respondents	Number of responses per respondent	Average burden per responses (in hours)	Total burden (in hours)
Personal interviews	128	1	2	256
Workshops	60	1	5.5	330
Total				586

Dated: May 31, 2005.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–11369 Filed 6–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–04KI]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

State Medicaid Survey—New—National Center for Chronic Disease Prevention and Control (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The proposed 2004 State Medicaid Survey will assess State Medicaid Programs to determine the extent of coverage for tobacco-dependence treatment. Tobacco use is the leading preventable cause of death in the United States. One of the 2010 National Health Objectives is to increase insurance coverage of evidence-based treatment for nicotine dependence (*i.e.*, Food and Drug Administration [FDA]-approved pharmacotherapies and total coverage of behavioral therapies in Medicaid programs) from 36 states to all 50 states and the District of Columbia. To increase both the use of treatment by smokers attempting to quit and the number of smokers who quit successfully, the Guide to Community Preventive Services recommends reducing the out-of-pocket cost of effective tobacco-dependence treatments (*i.e.*, individual, group and telephone counseling and FDA-approved pharmacotherapies). The 2000 Public Health Service (PHS) Clinical Practice Guideline supports expanded insurance coverage for tobacco-dependence treatment.

In 2000, approximately 32 million low-income persons in the United States received their health insurance coverage through federally funded State Medicaid programs; approximately 11.5 million (36%) of these persons smoked. The amount and type of coverage for tobacco-dependence treatment offered by Medicaid has been reported for 1998 and annually from 2000–2003. In 2002 and 2003, surveys were funded by the Robert Wood Johnson Foundation (RWJF). RWJF will no longer be tracking this coverage; therefore, CDC proposes to fund the survey. CDC proposed to fund the survey from 2004–2010. The survey will allow CDC to continue to measure progress of State Medicaid Programs toward the 2010 National Health Objective and document changes in the provision of coverage toward reaching the Healthy People 2010 goal.

The objectives of the project are as follows:

- Conduct a study of all 50 states and the District of Columbia Medicaid Programs to determine coverage for tobacco dependence treatment (counseling and FDA-approved pharmacotherapies) and assess compliance with the PHS recommendations.
- Analyze and publish the data.

Medicaid recipients have approximately 50% greater smoking prevalence than the overall U.S. adult population, and they are disproportionately affected by tobacco-related disease and disability. Substantial action to improve coverage will be needed if the United States is to achieve the 2010 National Health Objective of 12% smoking prevalence among adults.

This project will provide an opportunity to assess the extent of coverage for tobacco-dependence treatment under Medicaid. In 2002, 36 states provided coverage for some FDA approved medications; however, only 10 states provided some form of coverage for counseling and only 2 states provided comprehensive coverage, counseling and medication. Fifteen states provided no coverage. This project will be conducted with a mailed request to State Medicaid directors to identify a knowledgeable person within their system to respond to the survey. The survey will be mailed to the identified individuals.

Respondents will be asked to submit a written copy of their Medicaid coverage policies. If responses are not received, individuals will receive a telephone follow-up. Respondents are mailed the survey that they completed the previous year and asked to make revisions if changes have occurred. If this is being done by the person who completed the survey the previous year, the response burden is reduced. If the questions are not answered or not answered clearly, follow-up is required which takes additional time. All 50 states plus the District of Columbia have reported in the past. There is no cost to respondents except the time to complete the survey. The estimated total burden hours are 26.45.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hrs)
State Medicaid Directors	51	1	2/60
State Medicaid Programs with Minimal Response	35	1	15/60
State Medicaid Programs with Maximum Response	16	1	1

Dated: May 31, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–11370 Filed 6–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0445X]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

A Multi-Center Study to Assess Exposure to Environmental Pollutants Among Primiparous Women in North America—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Persistent organic pollutants (POPs) are a group of man-made chemicals that can stay in the environment for long periods of time and can be transported long distances in the environment. Heavy metals such as lead and mercury are naturally found substances that can also be released into the environment as a result of human activities (*e.g.*, smelting). Exposure to these contaminants, even at low levels, may lead to adverse health effects, particularly in high-risk groups such as the unborn child. However, before we attempt to determine if these contaminants are associated with health effects, we have to find out if these contaminants are present in our blood and in what amounts. The Arctic Monitoring and Assessment Program (AMAP), established in 1991 under the Arctic Environmental Protection Strategy (AEPS), has the responsibility to monitor levels and assess effects of selected pollutants (*i.e.*, POPs and heavy metals) in all Arctic locations. To our knowledge, a similar integrated program for monitoring exposure to POPs and metals does not exist in North America.

The proposed program will monitor levels of POPs and heavy metals in first-time pregnant (Primiparous) women. The program will help determine geographical and temporal trends of these exposures in selected cities within the United States, Canada, and Mexico. CDC will be responsible for the investigation in the United States; Canada and Mexico will be responsible for the investigation in their countries. The findings will inform first-time pregnant women in the vicinity of the study sites of their exposure to selected POPs and heavy metals. This program will also provide unique information regarding accumulation of POPs and heavy metals in relation to dietary patterns, and will allow assessment of trends in diet, which is critical public health information. Biomonitoring for POPs and metals will enhance awareness among this vulnerable population of the risks posed by these chemicals in various regions of North America and help identify ways to reduce exposure. The program will enroll 25 pregnant women (20–25 years of age) per site (United States: 5 sites; Canada: 5 sites; Mexico: 10 sites). The current protocol only describes and seeks approval for enrollment of 75 pregnant women from three of the five U.S. sites. Two U.S. sites have ongoing studies, in collaboration with CDC, where they are testing maternal blood for POPs and metals; these two sites are non-federal, academic institutions, and CDC does not have a formal funding agreement with these institutions. Data from previous projects in the United States and Canada will be used for comparing results of the current project. As there has been little national or regional monitoring in Mexico, more sites will be selected in Mexico than in the United States and Canada.

In collaboration with obstetricians at the local sites, study participants will be recruited during their prenatal clinic visit, after their 36th week of pregnancy but prior to delivery. One person from the study team will approach the mother during a routine prenatal visit, explain the project, and obtain signed consent if the mother is willing to participate. The study will involve administering an exposure questionnaire and collection of blood and urine samples during the 3rd trimester of the pregnancy. This is only a one-time study; blood collection and administration of the questionnaire will only be done once. All samples will be analyzed at a single laboratory in each country, and the results will be distributed to the study participants and their physicians prior to publication. There are no costs to respondents other than their time. The estimated total annualized burden hours are 53 hours.

Estimate of Annualized Burden Table:

Type or respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Screening First-time Pregnant Women	106	1	5/60
Demographic and Health History Questionnaire	75	1	10/60
Food Frequency Questionnaire	75	1	25/60

Dated: May 31, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–11371 Filed 6–7–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families, Family and Youth Services Bureau; FY 2005 Discretionary Grants for the Family Violence Prevention and Services Program—Demonstration of Enhanced Services to Children and Youth Who Have Been Exposed to Domestic Violence

Announcement Type: Initial.

Funding Opportunity Number: HHS–2005–ACF–ACYF–EV–0031.

CFDA Number: 93.592.

Due Date For Letter of Intent: Letter of Intent is due June 29, 2005.

Due Date for Applications: Application is due July 25, 2005.

Executive Summary Demonstration of Enhanced Services to Children and Youth Who Have Been Exposed to Domestic Violence

The Administration for Children and Families (ACF) announces this funding opportunity to offer awards for the demonstration of enhanced services for children and youth who have been exposed to domestic violence.

I. Funding Opportunity Description

Authorizing Statutes and Regulations: The Family Violence Prevention and Services Act (the Act) was originally enacted in sections 301–313 of Title III of the ''Child Abuse Amendments of 1984'' (Pub. L. 98–457, 10/9/84). The Act was most recently amended by the ''Keeping Children and Families Safe Act of 2003'' (Pub. L. 108–36).

Program and Focus Areas: It is the purpose of these demonstration grants to provide enhanced services and support to the children and youth who have been exposed to domestic violence in order to mitigate the impact of that exposure and increase the opportunity for these children and youth to lead healthy, non-violent, and safe lives as adults. The proposed demonstrations require the collaboration of the State agency that administers the family violence prevention and services programs and the State domestic violence coalition within that state. The collaboration need not be limited to the above entities but must include them as principal participants. The lead applicant may be the coalition or the

family violence administrating State agency. The demonstration will address the specific effects of exposure to domestic violence, including the traumatic responses which may inhibit the positive development of children and youth.

Priority Area 1: Demonstration of Enhanced Services to Children and Youth Who Have Been Exposed to Domestic Violence

1. Description

Background: The Safe and Bright Futures Departmental initiative afforded the Family and Youth Services Bureau (FYSB), within the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), the opportunity to support the development of a more comprehensive set of improved children's services, particularly for children and youth who have been exposed to domestic violence. There exists an abundance of documentation that have as their major premise that growing up in a violent home can dramatically impact children. Various studies have identified the emotional and cognitive costs to children exposed to domestic violence.

In an article for the National Electronic Network on Violence Against Women (VAWnet, 1997) Edleson cited the associated problems with children witnessing violence. (Our use of ''witness'' should not be equated with the legal sense of the word.) Children who witnessed violence were also found to show more anxiety, loss of self-esteem, depression, anger and temperament problems. These children were also shown to exhibit less skill in understanding how others feel and [to examine] situations from other [persons] perspectives when compared to children from non-violent households. In addition to the behavioral and emotional problems, Edleson also cited cognitive, attitude, and physical functioning inadequacies of children who have witnessed or have been exposed to domestic violence.

Parent-child relationships have been shown to be a key factor in how children are affected by witnessing (being exposed to) domestic violence (Wolfe, Jaffe, Wilson and Zak, 1985). Durant, *et al.* (1994) found that family support and children's perception of their parental relationship were key parental-child variables in how children were affected. Edleson argues, however, that we need to be aware of the over reliance on a single reporter in the studies that are available, that few investigators have ventured beyond the repeated use of the Child Behavior Checklist or the Trauma Symptoms Checklist. Edleson presses the point that there is not currently a standardized measure developed that addresses the unique problems experienced by children who witness violence at home. These experiences would include: The child's perception of safety, the support network among the family and friends, the effect of visitation arrangements, and changed economic factors. The experience of each child in being exposed to domestic violence is a unique happening. Each child, Edleson argues, depending upon its age, gender, time exposed, and relationships to the adults in their lives, will experience violence in different ways. The ultimate goal is to identify ways to provide safety and services to the children and to the adults who reside in their homes.

The Stop Family Violence Stamp provides the revenue stream for the current funding opportunity in support of enhanced services to children who have been exposed to domestic violence. It is difficult to foretell the length of time that the proceeds from the sale of the stamp will be available but the activity has provided the energy to establish a comprehensive set of enhanced children's services and provide them through a sequence of technical assistance, training and demonstration efforts.

Moreover, the current legislation for the Family Violence Prevention and Services program has projected that at the point that ACF's budget exceeds $130 million a ''portion of that excess'' must be dedicated to the improvement and provision of services to children who have been exposed to domestic violence. We view this announcement as being preparatory for that activity and providing us with the time and opportunity to engage our State and non-profit partners in the development of those required services, while taking advantage of the work that is progressing with the Safe Start Projects and the Greenbook collaborations.

The need to expand services and supports for children exposed to domestic violence and is particularly acute in at least three areas:

- Expanding the capacity of domestic violence programs to address the needs of children and adolescents coming into emergency shelters. On average, domestic programs provide emergency shelter to twice as many children as adults. As contrasted to those seeking other types of services from a domestic -violence program, those who are seeking emergency shelter are typically experiencing higher levels of violence, are more isolated, and often lack other resources and supports. These children may be at higher risk for ongoing violence and often face the most serious disruptions in their lives due to the violence and their parents' attempts to escape it. This group of sheltered children should be a priority population for any initiative focusing on children exposed to domestic violence.
- Expanding the capacity of domestic violence programs to address the needs of non-sheltered families and their children. The vast majority of families reaching out for services from a domestic violence program neither seek nor need emergency shelter, but instead use other services and supports provided by the programs such as support groups, court and welfare advocacy services, information and referral, and counseling. As with the group of children referenced above, these are children of parents who have sought help in dealing with domestic violence and often need more assistance in dealing with its impact on their children than is currently available.

In both of these two preceding areas, the ability of a community-based domestic violence program, whether shelter-based or not, to provide specialized, age- and culturally-appropriate services and supports to children in the shelter, as well as their abused parent, varies significantly across the country and is primarily a function of the funding available to provide such enhanced children's services.

- Developing and enhancing community-based interventions for children exposed to domestic violence whose parent have not sought services or support from a domestic violence program. For these families, the design and competent use of linguistically- and culturally-competent screening and assessment tools becomes particularly important. Services and treatment, whether provided by faith-based organizations, child and youth agencies, schools, health or mental health agencies, must attend to the safety needs of children AND the abused parent.

Four issues that must be attended to in all program services focusing on children exposed to domestic violence are:

- Ensure that these programs and services attach no stigma to program participation and do not define exposure to domestic violence as per se child abuse or neglect;
- Provide linguistically and culturally competent, as well as developmentally and age appropriate programming and services, which responsibly address confidentiality issues and custody implications;

• Ensure that all professionals working with children as part of these demonstrations receive the training they need to respond appropriately to children exposed to domestic violence; and

• Address the safety of the non-abusing parent and support their ongoing care-giving capacity.

Minimum Requirements: These requirements identify the minimum expectations for the demonstration grants that are to offer and provide services to children who have been exposed to domestic violence. Applicants for these demonstration grants should:

Specifically: Identify, design and test approaches for providing enhanced and direct services for the children of the abused parent being served in shelters or through other services of the domestic violence program; and/or

Develop an expanded capacity to work within community collaborations and with institutional efforts focused on responding to children exposed to domestic violence.

Generally: Provide specialized age- and culturally-appropriate services and support to children in the shelter, as well as to the abused parent, related to their role as parent;

Provide the collaborative prevention/intervention services that will be available for children who have been exposed to domestic violence;

Provide the training that needs to be available to service providers to effectively deliver services to children who have been exposed;

Develop the process and assure the confidentiality of the children who have been exposed, and the adult victim of domestic violence, from sharing information without the informed written consent of the adult;

Provide and design specific services that are responsive to the needs of children who have witnessed domestic violence, these services may include: Respite care; mental health care; counseling; child care; transportation; education; legal advocacy; and supervised visitation;

Provide the linkages and cooperation that must be developed with other helping systems and agencies to ensure services and safety to the child and the adult victim;

Provide and develop educational materials that are age appropriate for intervention and prevention services for children who have been exposed to domestic violence;

Agree to cooperate and to participate in evaluation efforts supported by the Family Violence Prevention and Services Program that will measure the impact and effect of the interventions, collaborations, and comprehensive services to the children and youth who have been exposed to domestic violence; and

Develop a dissemination strategy by which the expertise, information and experience generated in these demonstrations can be distributed for maximum application to providers of services to children and the non-abusive adult victim.

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $650,000.

Anticipated Number of Awards: 4 to 5.

Ceiling on Amount of Individual Awards: $130,000 per budget period.

Floor on Amount of Individual Awards: None.

Average Projected Award Amount: $130,000 per budget period.

Length of Project Periods: 36 months project with three 12-month budget periods.

III. Eligibility Information

1. Eligible Applicants

State governments, Native American tribal governments (Federally recognized) and

Non-profits having a 501(c)(3) status with the IRS, other than institutions of higher education.

Additional Information on Eligibility

''State governments'' refer to State agencies administering family violence programs.

Faith-based and community organizations are eligible to apply under this announcement.

Eligible applicants must present a collaboration, which at minimum consists of the State Domestic Violence Coalition and the State agency administering the family violence program in that state. The collaboration, which may be led by the State Domestic Violence Coalition, should provide documentation explicating the roles and protocols in the collaboration and may also include other helping services such as a child welfare agency, or an Indian Tribal Organization that serves as a local child welfare agency. Other private non-profit organizations/public agencies may be included in these collaborations if they have a documented history of work concerning the impact of domestic violence on children and have proof of their non-profit status, as appropriate.

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.

IV. Application and Submission Information

1. Address To Request Application Package

ACYF Operations Center, c/o The Dixon Group, Attn: FV–FYSB Funding for Children's Services, 118 Q Street, NE., Washington, DC 20002–2132. *Phone:* 866–796–1591. E-mail: *fysb@dixongroup.com.*

2. Content and Form of Application Submission

Letter of Intent

All applicants intending to apply for this funding are encouraged to submit the non-binding letter of intent, included in this announcement as attachment A, to the Division of Family Violence, Family and Youth Services Bureau by the due date (*see* section IV.3). Please fax the letter to the Family and Youth Services Bureau, Administration for Children and Families at (202) 260–9333, Attention: William Riley.

The Division of Family Violence Prevention and Services will use Letter of Intent information to forecast the number of peer review panels needed to review competitive applications. Do not include a description of your proposed project. Failure to submit a Letter of Intent will not impact eligibility to submit an application and will not disqualify an application from competitive review based on non-responsiveness.

Content and Form of Application Submission

The narrative should be typed and double-spaced on a single-side of an 8½″ x 11″ plain white paper, with 1″ margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, exhibits, *etc.*) must be sequentially numbered, beginning with ''Objectives and Need for the Project'' (*see* Section V) as page number one. Applicants should not submit reproductions of larger size paper that has been reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½″ x 11″ sheet of paper. Applicants are requested not to send pamphlets, maps, brochures or other printed material along with their application as these present photocopy difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

You may submit your application to us in either electronic or paper format.

To submit an application electronically, please use the *www.Grants.gov/Apply* site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. ACF will not accept grant applications via e-mail or facsimile transmission.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary, but strongly encouraged.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- We recommend you visit Grants.gov at least 30 days prior to filing your application to fully understand the process and requirements. We encourage applicants who submit electronically to submit well before the closing date and time so that if difficulties are encountered an applicant can still send in a hard copy overnight. If you encounter difficulties, please contact the Grants.gov Help Desk at 1–800–518–4276 to report the problem and obtain assistance with the system.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov*
- You must search for the downloadable application package by the CFDA number.

An original and two copies of the complete application are required. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound.

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. 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 the 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.*

Please see Section V.1. Criteria, for instructions on preparing the full project description.

3. Submission Dates and Times

Due Date for Letters of Intent: June 29, 2005.

Due Date for Applications: July 25, 2005.

Explanation of Due Dates

The closing time and 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.

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.

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*

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.

What to submit	Required content	Required form or format	When to submit
Letter of Intent	See Section IV.2. and Attachment A.	See Attachment A	June 29, 2005.
Project Summary/Abstract	See Sections IV.2. and V	Found in Sections IV.2. and V	By application due date.
Project Narrative/Description	See Sections IV.2. and V	Found in Sections IV.2. and V	By application due date.
Budget Narrative/Justification	See Section V	Found in Section V	By application due date.
SF424	See Section IV.2	See: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
SF424A	See Section IV.2	See: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
SF424B	See Section IV.2	See: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By application due date.
Support Letters	See Section V	Found in Section V	By application due date.
Other: 3rd Party Agreements	See Section Per request	Found in Section V	By application due date.
SF–LLL Certification Regarding Lobbying.	See Section IV.2	See: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By date of award.
Certification Regarding Environmental Tobacco Smoke.	See Section IV.2	See: *http://www.acf.hhs.gov/programs/ofs/forms.htm.*	By date of award.
Assurances	See Section IV.2	Found in Section IV.2	By date of award.
Proof of non-profit status	See Section III.3	Found in Section III.3	By date of award.

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	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 1, 2004, the following jurisdictions have elected to participate in the Executive Order process: Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New York, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam, North Mariana Islands, Puerto Rico, and Virgin Islands. As these jurisdictions have elected to participate in the Executive Order process, they have established SPOCs. Applicants from participating jurisdictions should contact their SPOC, as soon as possible, to alert them of prospective applications and receive instructions. Applicants must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th floor, Washington, DC 20447.

Although the remaining jurisdictions have chosen not to participate in the process, entities that meet the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, *etc.* does not have a SPOC. Therefore, applicants from these jurisdictions, or for projects administered by federally-recognized Indian Tribes, need take no action in regard to E.O. 12372.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs.

Construction and purchase of real property are not allowable activities or expenditures under this program.

ACYF will not fund any project where the role of the applicant is to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which the funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities needed to conduct the project.

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. The application must be received at the address below by 4:30 p.m. eastern time on or before the closing date. Applications should be mailed to: Operations Center, c/o The Dixon Group, Inc., FV–FYSB Funding for Children's Services, 118 Q Street, NE., Washington, DC 20002–2132.

Attention: Administration on Children, Youth and Families (ACYF).

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: Operations Center, c/o The Dixon Group, Inc., FV–FYSB Funding for Children's Services, 118 Q Street, NE., Washington, DC 20002–2132. Attention: Administration on Children, Youth and Families (ACYF).

Electronic Submission: www.Grants.gov. Please see section IV. 2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

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 25 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

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.

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. For example, describe the population to be served by the program. Explain how the project will reach the targeted population; how it will benefit participants.

Approach

Outline a plan of action that 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 that 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. Account for all functions or activities identified in the application.

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.

Evaluation

Provide a narrative addressing how the conduct of the project and the results of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Staff and Position Data

Provide a biographical sketch and job description for each key person appointed. Job descriptions for each vacant key position should be included as well. As new key staff is appointed, biographical sketches will also be required.

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.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application OR by application deadline.

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.

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 30 Points

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished, the provision of services and the range of services to be provided; relates each task to the objectives and identifies key staff members who will be the lead persons; provides a chart indicating the timetable for completing each task, the lead person, and the time committed; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as collaborations, agency and organizational relationships, design or technological innovations, reductions in cost or time, or extraordinary social and community involvement in the planning and implementation.

The extent to which the application describes the evaluation methodology that will be used to determine that the results and benefits identified are being achieved.

Results or Benefits Expected 20 Points

The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the application, the extent to which the application indicates the anticipated contributions to service delivery, policy, practice, and theory, and the extent to which the proposed project costs are reasonable in view of the expected results. The extent to which the application identifies, in specific terms, the results and benefits, for children who have been exposed to violence and the adult care giver, and for service providers, to be derived from implementing the proposed project. The extent to which the application describes how the expected results and benefits will relate to previous and/or ongoing demonstration efforts. The extent to which results or benefits expected are quantifiable in nature and able to be evaluated.

Objectives and Need for Assistance 20 Points

Objectives: The extent to which the specific goals and objectives have national or local significance, the clarity of the goals and objectives as they relate to the identified need for and the overall purpose of the project, and their applicability to policy and practice. The provision of a detailed discussion of the objectives and the extent to which the objectives are realistic, specific, and achievable.

Need: The extent to which the need for the project and the problems it will address have both national and local significance; the applicability of the project to coordination and service delivery efforts by national, Tribal, State and local governmental and non-profit agencies, and its ultimate impact on domestic violence prevention services and intervention efforts, policies and practice; the relevance of other demonstrations and documentation as it relates to the applicant's knowledge of the need for the project.

Staff and Position Data 5 Points

The extent to which the application describes the staffing pattern for the proposed project, clearly linking responsibilities to project tasks and specifying the contributions to be made by key staff. The extent to which the application describes the variety of skills to be used, relevant educational background and the demonstrated ability to produce final results that are usable and in accord with the project's objectives.

Budget and Budget Justification 5 Points

The extent to which the application relates the proposed budget to the level of effort required to obtain project objectives and provide a cost/benefit analysis. The extent to which the application demonstrates that the project's costs are reasonable in view of the anticipated results.

Organizational Profiles 5 Points

The extent to which the application describes the qualifications of the project team including their experiences working on similar projects. One or two pertinent paragraphs on each key member of the project team are preferred to resumes.

Evaluation 5 Points

The extent to which the application provides a narrative addressing how the conduct of the project and the results of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. The extent to which the application discusses the criteria to be used to evaluate results, discusses whether the evaluation will be qualitative or quantitative, and explains the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved.

Letters of Support 5 Points

The extent to which the letters from these agencies and organizations discuss the specifics of their commitment (as these letters must be included in the application).

Third-Party Agreements 5 Points

The extent to which the application discusses in detail and provides documentation for any collaborative or coordinated efforts with other agencies or organizations. The extent to which the identification of these agencies or organizations explains how their participation will enhance this project.

2. Review and Selection Process

Since ACF will be using non-Federal reviewers in the process, 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 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.

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, 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).

Direct Federal grants, sub-award funds, or contracts under this Family Support Initiative 2005 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 Equal Treatment For Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at either 45 CFR 87.1 or the HHS Web site at: *http://www.os.dhhs.gov/fbci/waisgate21.pdf*.

3. Reporting Requirements

Programmatic Reports: Semi-annually.

Financial Reports: Semi-annually.

Grantees will be required to submit program progress and financial reports (SF 269) throughout the project period. Program progress and financial reports are due 30 days after the reporting period. In addition, final programmatic and financial reports are due 90 days after the close of the project period.

VII. Agency Contacts

Program Office Contact

William D. Riley, Family Violence Division, 330 C Street, SW., Switzer Building, Room 2117, Washington, DC 20447. Phone: 202–401–5529. E-mail: *wriley@acf.hhs.gov*.

Grants Management Office Contact

Peter Thompson, Grants Officer, Administration on Children, Youth and Families, 330 C Street, SW., Switzer Building, Room 2070, Washington, DC 20447. Phone: 202–401–4608. E-mail: *PAThompson@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*.

Please reference Section IV.3 for details about acknowledgement of received applications.

Dated: June 1, 2005.

Joan E. Ohl,

Commissioner, Administration on Children, Youth & Families.

Attachment A—Letter of Intent

Family Violence Prevention and Services Program
Family and Youth Services Bureau
Administration on Children, Youth and Families
Administration for Children and Families

To Whom It May Concern:

I intend to apply for funds for the Demonstration of Enhanced Services to Children and Youth Who Have Been Exposed to Domestic Violence. These funds will be made through the Family Violence Prevention and Services Discretionary Program for Family and Youth Services Bureau.

Organization: _____
Address: _____
Name: _____
Position: _____
Date: _____
Phone: _____
FAX: _____
E-mail: _____

Please fax to (202) 206–9333.
Please submit by June 29, 2005.

[FR Doc. 05–11297 Filed 6–7–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families, Children's Bureau; Demonstration Projects That Improve Child Well-Being by Fostering Healthy Marriages Within Underserved Communities

Announcement Type: Initial.

Funding Opportunity Number: HHS–2005–ACF–ACYF–CA–0089.

CFDA Number: 93.670.

Due Date for Applications: Application is due August 8, 2005.

Executive Summary: This funding announcement seeks proposals that improve child well-being by removing barriers to and strengthening family formation and healthy marriage in underserved communities. The Children's Bureau believes that by designing strategies to target funding for healthy marriage activities to community-based agencies in underserved communities where high rates of child protection and foster care resources are used, child well-being may be improved and the rate of children of color in foster care could be reduced. Projects will explore and remove barriers to forming lasting families and healthy marriages as a means to promote the well-being of children and families who are at risk of entering, or are already in the child welfare system. Projects will also explore what particular services, delivery, and outreach efforts designed to support the formation and stability of healthy marriages are most effective at helping children and families in targeted communities.

Grantees must comply with applicable laws, including those that prohibit discrimination on the basis of race, color, national origin, disability, and age in their programs.

I. Funding Opportunity Description

Priority Area 1: Demonstration Projects That Improve Child Well-Being by Fostering Healthy Marriages within Underserved Communities

1. Description

This funding announcement seeks proposals that improve child well-being by removing barriers to and strengthening family formation and healthy marriage in underserved communities. The Children's Bureau believes that by designing strategies to target funding for healthy marriage activities to community-based agencies in underserved communities where high rates of child protection and foster care resources are used, child well-being may be improved and the rate of children of color in foster care could be reduced. Projects will explore and remove barriers to forming lasting families and healthy marriages as a means to promote the well-being of children and families who are at risk of entering, or are already in the child welfare system. Projects will also explore what particular services, delivery, and outreach efforts designed to support the formation and stability of healthy marriages are most effective at helping children and families in targeted communities.

Grantees must comply with applicable laws, including those that prohibit discrimination on the basis of race, color, national origin, disability, and age in their programs.

Background

The Administration for Children and Families (ACF) Healthy Marriage Initiative (HMI) seeks to improve child well-being by helping those who choose marriage for themselves to develop the skills and knowledge necessary to form and sustain healthy marriages. Research demonstrates the strong correlation between family structure and a family's social and economic well-being.

Congress, recognizing the fact that two-parent, married families represent the ideal environment for raising children, incorporated marriage, family formation and responsible fatherhood as key components in welfare reform legislation (the Temporary Assistance for Needy Families program), enacted in 1996. More information on the HMI is available at *http://www.acf.hhs.gov/healthymarriage/index.html.* The ACF HMI has recognized the importance of adapting these program components to address the unique needs of various cultures and to make them relevant to various underserved populations.

It has been widely known for decades that there is an over-representation of children of color in the child welfare system. In fact, over-representation extends to all the major public child serving systems. Yet, despite efforts to improve this situation, children of color continue to be over-represented in the child welfare system. For example, African American children make up 20 per cent of the nation's children, yet they make up 40 per cent of the foster care population. As the largest minority group, Hispanics were overrepresented in child welfare caseloads versus general population by 12.2 percent in Connecticut, 6 percent in Colorado, 6.1 percent in Massachusetts, and 4.9 percent in Rhode Island (2001 Child Welfare Outcomes Report). Native American children make up 1.1 per cent of the nation's children, but they make up 1.7 per cent of the foster care population (Fact Sheet 2: Racial Disproportionality in the Child Welfare System. The Annie E. Casey Foundation). Further, according to the results of the Child and Family Service Reviews, children of color were over-represented in the 2002 Foster Care Cases by a substantial margin. Even when children and families of color have the same characteristics as their Caucasian counterparts, research reveals differential treatment at virtually all points of the child welfare decision-making process including reporting, investigation, child placement, service provision, and permanency decision-making (Casey Fact Sheet). Clearly there is a need to address issues of over-representation if there is to be any substantial improvement in reducing these rates. Enhancing the array of prevention and family support services in communities may contribute to reducing the need for child welfare involvement.

By creating components of the Healthy Marriage Initiative that are adapted to the Hispanic and the African American communities, ACF has taken steps to begin to address the unique needs of minority and underserved populations. Excerpts and references to these initiatives follow:

The African American Healthy Marriage Initiative (AAHMI) is a component of the ACF Healthy Marriage Initiative and more specifically promotes a culturally competent strategy for fostering healthy marriage and responsible fatherhood, improving child well-being, and strengthening families within the African American community. Cultural orientation, traditions, and practices form a diversity of beliefs, attitudes, interpersonal styles, and behaviors. Differences in age, race, ethnicity, gender, education, religious background, and socio-economic status can influence how people and organizations view and respond to ACF's healthy marriage activities.

AAHMI Goals and Objectives are to:

- Improve the well-being of African American children by increasing the proportion of African American children living in healthy, two-parent married households.
- Increase the proportion of healthy marriages in the African American community.
- Improve the overall well-being of the African American community.
- Develop and improve the capacity within the African American community to provide healthy marriage programs and services.

More information on the AAHMI is available at *http://www.acf.hhs.gov/healthymarriage/aa_hmi/AAHMI.html.*

The Hispanic Healthy Marriage Initiative (HHMI) is another focused strategy within the ACF Healthy Marriage Initiative. The goal of the HHMI is to address the unique cultural, linguistic, demographic, and socio-economic needs of children and families in Hispanic communities.

ACF's targeted strategy to engage the Hispanic community in an effective, culturally appropriate healthy marriage initiative will:

- Increase awareness in the Hispanic community of the importance of the ACF Healthy Marriage Initiative.
- Promote collaboration with the Hispanic community and its leadership to design and inform an ongoing Hispanic Healthy Marriage Initiative strategy.
- Establish a base of receptivity and readiness in the Hispanic community.
- Develop a long term strategy to broaden Hispanic Healthy Marriage discussion, strategy, and action.

More information on the HHMI is available at *http://www.acf.hhs.gov/healthymarriage/about/hispanic_hm_initiative.html#mission.*

The Children's Bureau is interested in supporting projects that contribute to understanding how removing barriers to and strengthening family formation and healthy marriage can contribute to improving child well-being and reducing over-representation of children of color in the child welfare system. Further, these projects will have the potential to inform the ACF Healthy Marriage Initiative with respect to the needs of particular underserved populations, and contribute to the array of prevention and family support services available to the target population. Through these projects, the Children's Bureau hopes to understand which particular services, delivery, and outreach efforts designed to support the formation and stability of healthy marriages are most effective at helping children and families in targeted communities.

Note: Activities funded under this funding announcement are demonstration projects. For the purposes of this program, a demonstration project is one that puts into place and tests new, unique or distinctive approaches for delivering services to a specific population. Demonstration projects may test whether a program or service that has proven successful in one location or setting can work in a different context. Demonstration projects may test a theory, idea, or method that reflects a new and different way of thinking about service delivery. Demonstration projects may be designed to address the needs of a very specific group of clients, or focus on one service component available to all clients. The scope of these projects may be broad and comprehensive or narrow and targeted to specific populations. A demonstration project must:

(a) Develop and implement an evidence-based model with specific components or strategies that are based on theory, research, or evaluation data; or, replicate or test the transferability of successfully evaluated program models;

(b) Determine the effectiveness of the model and its components or strategies using multiple measures of results; and

(c) Produce detailed procedures and materials, based on the evaluation, that will contribute to and promote evidence-based strategies, practices and programs that may be used to guide replication or testing in other settings.

Projects funded under this announcement will be expected to:

1. Have the project fully functioning within 90 days following the notification of the grant award.
2. Participate if the Children's Bureau chooses to do a national evaluation or a technical assistance contract that relates to this funding announcement.
3. Submit all performance indicator data, program and financial reports in a timely manner, in recommended format

(to be provided), and submit the final report on disk or electronically using a standard word-processing program.

4. Submit a copy of the final report, the evaluation report, and any program products to the National Clearinghouse on Child Abuse and Neglect Information, 330 C Street, SW., Washington, DC 20447, within 90 days of project end date. This is in addition to the standard requirement that the final program and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.

5. Allocate sufficient funds in the budget to:

(a) Provide for the project director, the evaluator and a child welfare representative to attend an annual 3-day grantees' meeting in Washington, DC,

(b) Provide for the project director, the evaluator and a child welfare representative to attend an early kickoff meeting for grantees funded under this priority area to be held within the first three months of the project (first year only) in Washington, DC; and

(c) Provide for 10–15 percent of the proposed budget to project evaluation.

ACF strongly encourages applicants to consult their local domestic violence coalition to learn more about the information and services they provide to the community.

Legislative Authority

The Promoting Safe and Stable Families Program (Section 430, Title IV–B, subpart 2, of the Social Security Act) (42 U.S.C. 629a)

The Child Abuse Prevention and Treatment Act Section 105 (b)(5) (42 U.S.C. 5106)

II. Award Information

Funding Instrument Type: Grant.

Anticipated Total Priority Area Funding: $1,500,000.

Anticipated Number of Awards: 0 to 10.

Ceiling on Amount of Individual Awards Per Budget Period: $150,000.

Average Projected Award Amount Per Budget Period: $150,000.

Length of Project Periods: 48 month project with four 12 month budget periods.

In the first budget period, the maximum Federal share of each project is not to exceed $150,000. The projects awarded will be for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

III. Eligibility Information

Eligible Applicants

State governments
County governments
City or township governments
Special district governments
Independent school districts

Non-profits having a 501(c)(3) status with the IRS, other than institutions of higher education and Non-profits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education.

Additional Information on Eligibility

Applicants, and their partner organizations (if any), must have experience and background in working with children and families in the targeted minority community. Applicants or their partner organizations should have the experience and capability to provide healthy marriage services. Applicants must either be engaged in child welfare activities, or have a partnership with their local public child welfare agency, or they must be engaged in child welfare research. Applicants must have a demonstrated capacity to engage children and families in the targeted minority community who are at risk of entering, or are already in the child welfare system.

Collaborative efforts are acceptable, but applications should identify a primary applicant responsible for administering the grant. Applicants must be engaged in research or child welfare activities.

Faith-based and community organizations that meet all eligibility requirements are eligible to apply.

2. Cost Sharing/Matching

None.

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.

When applying electronically we strongly suggest you attach your proof of non-profit status with your electronic application.

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 received after 4:30 p.m. eastern time on the deadline date will not be considered for competition.

IV. Application and Submission Information

1. Address To Request Application Package

ACYF Operations Center, The Dixon Group, ATTN: Children's Bureau, 118 Q St., NE., Washington, DC 20002–2132. Phone: 866–796–1591.

2. Content and Form of Application Submission

Originals, Copies and Signatures

If submitting your application in paper format, an original and two copies of the complete application are required. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, have original signatures, and be submitted unbound.

Each application must contain the following items in the order listed:

Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in ''Organizational DUNS:'' box.

In Item 5 of Form 424, include name, phone number, and, if available, email and fax numbers of the contact person.

In Item 8 of Form 424, check 'New.'

In Item 10 of Form 424, clearly identify the Catalog of Federal Domestic Assistance (CFDA) program title and number for the program for which funds are being requested as stated in this funding opportunity announcement.

In Item 11 of Form 424, identify the single funding opportunity the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

Budget Information Non-Construction Programs (Form 424A) and Budget Justification

Follow the instructions provided here and those in Section V. Application Review Information.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

Proof of non-profit status (if applicable). Please see Section III.3 Other Eligibility for ways to demonstrate non-profit status.

Indirect cost rate agreement. If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

General Content and Form Information

The application limit is 75 pages total including all forms and attachments. Pages over this page limit will be removed from the application and will not be reviewed.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

The application must be typed, double spaced, printed on only one side, with at least ½ inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times New Roman or Courier). Pages must be numbered.

All copies of an application must be submitted in a single package, and a separate package must be submitted for each funding opportunity. The package must be clearly labeled for the specific funding opportunity it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation; however, each complete copy must be stapled securely in the upper left corner. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review.

Tips for Preparing a Competitive Application. It is essential that applicants read the entire announcement package carefully before preparing an application and include all of the required application forms and attachments. The application must reflect a thorough understanding of the purpose and objectives of the applicable legislation. Reviewers expect applicants to understand the goals of the legislation and the Children's Bureau's interest in each topic. A ''responsive application'' is one that addresses all of the evaluation criteria in ways that demonstrate this understanding. Applications that are considered to be ''unresponsive'' generally receive very low scores and are rarely funded.

The Children's Bureau's Web site (*http://www.acf.dhhs.gov/programs/cb*) provides a wide range of information and links to other relevant Web sites. Before you begin preparing an application, we suggest that you learn more about the mission and programs of the Children's Bureau by exploring the Web site.

Organizing Your Application. The specific evaluation criteria in Section V of this funding announcement will be used to review and evaluate each application. The applicant should address each of these specific evaluation criteria in the project description. Applicants should organize their project description in this sequence: (1) Objectives and Need for Assistance; (2) Approach; (3) Organizational Profiles; (4) Budget and Budget Justification; and should use the same headings as these criteria, so that reviewers can readily find information that directly addresses each of the specific review criteria.

Project Evaluation Plan. Project evaluations are very important. If you do not have the in-house capacity to conduct an objective, comprehensive evaluation of the project, then the Children's Bureau advises that you propose contracting with a third-party evaluator specializing in social science or evaluation, or a university or college, to conduct the evaluation. A skilled evaluator can assist you in designing a data collection strategy that is appropriate for the evaluation of your proposed project. Additional assistance may be found in a document titled ''Program Manager's Guide to Evaluation.'' A copy of this document can be accessed at *http://www.acf.hhs.gov/programs/opre/other_resrch/pm_guide_eval/reports/pmguide/pmguide_toc.html.*

Logic Model. A logic model is a tool that presents the conceptual framework for a proposed project and explains the linkages among program elements. While there are many versions of the logic model, they generally summarize the logical connections among the needs that are the focus of the project, project goals and objectives, the target population, project inputs (resources), the proposed activities/processes/outputs directed toward the target population, the expected short- and

long-term outcomes the initiative is designed to achieve, and the evaluation plan for measuring the extent to which proposed processes and outcomes actually occur. Information on the development of logic models is available on the Internet at *http://www.uwex.edu/ces/pdande/* or *http://www.extension.iastate.edu/cyfar/capbuilding/outcome/outcome_logicmdir.html.*

Use of Human Subjects. If your evaluation plan includes gathering data from or about clients, there are specific procedures which must be followed in order to protect their privacy and ensure the confidentiality of the information about them. Applicants planning to gather such data are asked to describe their plans regarding an Institutional Review Board (IRB) review. If applicable, applicants must include a completed Form 310, Protection of Human Subjects. For more information about use of human subjects and IRB's you can visit these web sites:

http://www.hhs.gov/ohrp/irb/irb_chapter2.htm#d2 and

http://www.hhs.gov/ohrp/humansubjects/guidance/ictips.htm.

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov/Apply* site. If you use Grants.gov, you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. ACF will not accept grant applications via email or facsimile transmission.

Please note the following if you plan to submit your application electronically via Grants.gov:

- Electronic submission is voluntary, but strongly encouraged.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- We recommend you visit Grants.gov at least 30 days prior to filing your application to fully understand the process and requirements. We encourage applicants who submit electronically to submit well before the closing date and time so that if difficulties are encountered, an applicant can still send in a hard copy overnight. If you encounter difficulties, please contact the Grants.gov Help Desk at 1–800–518–4276 to report the problem and obtain assistance with the system.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov*.
- You must search for the downloadable application package by the CFDA number.

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

Explanation of Due Dates

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on the date noted above. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street NE., Washington, DC 20002–2132. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are

received on or before the deadline time and date.

Applications handcarried 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., EST, at the ACYF Operations Center, c/o The Dixon Group, Inc., ATTN: Children's Bureau, 118 Q Street NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications: Applications which 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. 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.

What to submit	Required content	Required form or format	When to submit
Project Abstract	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
Project Description	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
Budget Narrative/Justification	See Sections IV.2 and V	Found in Sections IV.2 and V	By application due date.
SF424	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
SF–LLL Certification Regarding Lobbying.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By date of award.
Certification Regarding Environmental Tobacco Smoke.	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By date of award.
Assurances	See Section IV.2	Found in Section IV.2	By date of award.
SF424A	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
SF424B	See Section IV.2	See *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Proof of Non-Profit Status (if applicable).	See Section III.3	Found in Section III.3	By date of award.
Indirect Cost rate Agreement, if applicable.	See Section IV	Format described in IV	By application due date.
Letters of commitment from partner organizations, if applicable.	See Section IV	Format described in IV	By time of award.

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

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of October 1, 2004, the following jurisdictions have elected to participate in the Executive Order process: Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New York, North Dakota, Rhode Island, South Carolina, Texas, Utah, West Virginia, Wisconsin, American Samoa, Guam, North Mariana Islands, Puerto Rico, and Virgin Islands. As these jurisdictions have elected to participate in the Executive Order process, they have established SPOCs. Applicants from participating jurisdictions should contact their SPOC, as soon as possible, to alert them of prospective applications and receive instructions. Applicants must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2).

A SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process

recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th floor, Washington, DC 20447.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Although the remaining jurisdictions have chosen not to participate in the process, entities that meet the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. Therefore, applicants from these jurisdictions, or for projects administered by federally-recognized Indian Tribes, need take no action in regard to E.O. 12372.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

5. Funding Restrictions

Grant awards will not allow reimbursement of pre-award costs.

Construction is not an allowable activity or expenditure under this solicitation.

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds. The size of the actual awards will vary.

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: ACYF Operations Center, The Dixon Group, Attention: Children's Bureau, 118 Q St. NE., Washington, DC 20002–2132.

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: ACYF Operations Center, The Dixon Group, Attention: Children's Bureau,118 Q St. NE., Washington, DC 20002–2132.

Electronic Submission: http://www.Grants.gov Please see Section IV.2 for guidelines and requirements when submitting applications electronically.

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 40 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).

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.

Approach

Outline a plan of action that 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 that 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.

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.

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.

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.

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 50 Points

In reviewing the approach, the following factors will be considered: (50 points)

(1) The extent to which there is a sound timeline for effectively implementing the proposed project, including major milestones and target dates. The extent to which the applicant would complete the development and implementation of the project in a timely manner and conduct a thorough evaluation of its effectiveness within the 4 year project time frame.

(2) The extent to which the applicant proposes a sound strategy for identifying and engaging a substantial number of target population children and families who are at risk of entering, or are already in the child welfare system. The extent to which the applicant can effectively demonstrate that they have adequate knowledge of the information and services provided by domestic violence coalitions within their community.

(3) The extent to which the proposed project would improve child well-being and reduce the over-representation of children of color in the child welfare system, by removing barriers to and strengthening family formation and healthy marriage in the targeted community. The extent to which specific measurable outcomes will occur as a result of the proposed project. The extent to which there will be a strong relationship between the proposed project and improved outcomes for the targeted population of children and families who are at risk of entering, or are already in the child welfare system.

(4) The extent to which the proposed project would develop strong and effective partnerships with the appropriate child welfare agencies, targeted community organizations, community agencies, etc., to further the goal of improving child well-being and reducing the over-representation of children of color in the child welfare system through healthy marriage related activities. The extent to which the proposed project would utilize community partnerships and/or collaborations in providing community supports. The extent to which the proposed project would build on and partner with other ACF marriage initiatives in the applicant's location (if applicable). The extent to which there are appropriate letters of commitment from these partner organizations.

(5) The extent to which the application demonstrates a thorough understanding of the challenges to improving child well-being and reducing the over-representation of children of color in the child welfare system, by removing barriers to and strengthening family formation and healthy marriage in the targeted community. The extent to which the application demonstrates a thorough understanding of the challenges that the proposed project will have in promoting the well-being of children in targeted families through healthy marriage activities. The extent to which the applicant provides a sound plan explaining how the project would successfully overcome these challenges.

(6) The extent to which the proposed project will provide culturally competent services to the targeted population. The extent to which the proposed project would inform the ACF Healthy Marriage Initiative with respect to the particular needs of the target population, and identify particular services, delivery, and outreach that are most effective at helping children and families in targeted communities.

(7) The extent to which the project's evaluation plan would measure achievement of project objectives, customer satisfaction, acquisition of competencies, effectiveness of program services and project strategies, the efficiency of the implementation process, and the impact of the project. The extent to which the methods of evaluation would provide performance feedback, support periodic assessment of program progress and provide a sound basis for program adjustments

(*e.g.*, using AFCARS data to assist in identifying the target population and establishing a baseline for evaluation purposes). The extent to which the proposed evaluation plan would be likely to yield useful findings or results about effective strategies, and contribute to and promote evaluation research and evidence-based practices that could be used to guide replication or testing in other settings. The extent to which applicants that do not have the in-house capacity to conduct an objective, comprehensive evaluation of the project present a sound plan for contracting with a third-party evaluator specializing in social science or evaluation, or a university or college to conduct the evaluation.

(8) The extent to which there is a sound plan for documenting project activities and results, including the development of a data collection infrastructure that is sufficient to support a methodologically sound and thorough evaluation. The extent to which relevant data would be collected. The extent to which there is a sound plan for collecting these data, securing informed consent and implementing an Institutional Review Board (IRB) review, if applicable.

(9) The extent to which there is a sound plan for developing useful products during the proposed project and a reasonable schedule for developing these products. The extent to which the intended audience (*e.g.*, researchers, policymakers, and practitioners) for product dissemination is comprehensive and appropriate. The extent to which the dissemination plan includes appropriate mechanisms and forums that would effectively convey the information and support successful replication by other interested agencies.

(10) The extent to which there is a sound plan for continuing this project beyond the period of Federal funding.

Organizational Profiles 20 Points

In reviewing the organizational profiles, the following factors will be considered: (20 points)

(1) The extent to which the application evidences sufficient experience and expertise in culturally competent service delivery involving the targeted population; in removing barriers to and strengthening family formation and healthy marriage; in providing healthy marriage services to promote the well-being of children; in collaboration with child welfare agencies and other appropriate entities; and in administration, development, implementation, management, and evaluation of similar projects. The extent to which each participating organization (including partners and/or subcontractors) possesses the organizational capability to fulfill their assigned roles and functions effectively (if the application involves partnering and/or subcontracting with other agencies/organizations) in serving the targeted population.

(2) The extent to which the proposed project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively (*e.g.*, resume). The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project with respect to serving the targeted population.

(3) The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead agency. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and consultants (if applicable). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Objectives and Need for Assistance 20 Points

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points)

(1) The extent to which the application demonstrates a thorough understanding (*e.g.*, a literature review and their own experience) of the need to improve child well-being and reduce the over-representation of children of color in the Child Welfare System, by removing barriers to and strengthening family formation and healthy marriage in the targeted community. The extent to which the proposed project will contribute to meeting those needs.

(2) The extent to which the applicant demonstrates a thorough understanding (*e.g.*, a literature review and their own or partner organization's experience) of the need for providing healthy marriage services to promote the well-being of children and families in the target population who are at risk of entering, or are already in the child welfare system. The extent to which the proposed project will contribute to meeting those needs.

(3) The extent to which the applicant clearly identifies the boundaries of the community to be served and provides appropriate demographics and statistics (*e.g.*, data from their State's Child and Family Service Review) identifying the children and families to be served by the project. The extent to which the applicant demonstrates that these children and families are at risk of entering, or are already in the child welfare system. The extent to which the applicant demonstrates that the targeted population it intends to serve is appropriate to the objectives of this funding announcement.

(4) The extent to which the application presents a thorough review of the relevant literature that reflects a clear understanding of the research on best practices and promising approaches as it relates to the proposed project. The extent to which the review of the literature sets a sound context and rationale for the project. The extent to which it provides evidence that the proposed project is innovative and, if successfully implemented and evaluated, likely to contribute to the knowledge base on improving child well-being and reducing the over-representation of children of color in the Child Welfare System, by removing barriers to and strengthening family formation and healthy marriage in the targeted community.

(5) The extent to which the application presents a clear vision for the proposed project. The extent to which the applicant makes a clear statement of the goals (end products of an effective project) and objectives (measurable steps for reaching these goals) of the proposed project. The extent to which these goals and objectives closely relate to the needs of targeted children and families who are at risk of entering, or are already in the child welfare system.

(6) The extent to which the lessons learned through the proposed project would benefit policy, practice and theory development in addressing the needs of targeted children and families who are at risk of entering, or are already in the child welfare system.

Budget and Budget Justification 10 Points

In reviewing the budget and budget justification, the following factors will be considered: (10 points)

(1) The extent to which the costs of the proposed project are clearly identified, justified, reasonable and

appropriate, in view of the activities to be conducted and expected results and benefits.

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

2. Review and Selection Process

No grant award will be made under this announcement on the basis of an incomplete application.

Since ACF will be using non-Federal reviewers in the review 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.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project (if applicable); or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions. The Commissioner may give special consideration to applications proposing services of special interest to the Government and to achieve geographic distributions of grant awards. Applications of special interest may include, but are not limited to, applications focusing on unserved or inadequately served clients or service areas and programs addressing diverse ethnic populations.

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

Applications will be reviewed in the summer of 2005. Grant awards will have a start date no later than September 30, 2005.

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

Direct Federal grants, sub-award funds, or contracts under this CB Demonstration Projects that Improve Child Well-Being by Fostering Healthy Marriages Within Underserved Communities 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 Equal Treatment For Faith-Based Organizations, which includes the prohibition against Federal funding of inherently religious activities, can be found at either 45 CFR 87.1 or the HHS Web site at *http://www.os.dhhs.gov/fbci/waisgate21.pdf*.

45 CFR Part 74 and 45 CFR Part 92

Grantees are subject to the requirements in 45 CFR Part 74 (non-governmental) or 45 CFR Part 92 (governmental) as well as 45 CFR Part 87.

3. Reporting Requirements

All grantees are required to submit semi-annual (quarterly or annual) program reports; grantees are also required to submit semi-annual expenditure reports using the required financial standard form (SF–269) which can be found at the following URL: *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

Final reports are due 90 days after the end of the grant period.

Programmatic Reports: Semi-annually.

Financial Reports: Semi-annually.

Grantees will be required to submit program progress reports and financial reports (SF269) throughout the project period. Program progress and financial reports are due 30 days after the reporting period. In addition, final programmatic and financial reports are due 90 days after the close of the project period.

VII. Agency Contacts

Program Office Contact

Julie Lee, Children's Bureau, 330 C St. SW., Washington, DC 20447. Phone: 202–205–8640. E-mail: *jlee@acf.hhs.gov*.

Grants Management Office Contact

Peter Thompson, Grants Officer, Administration for Children and Families, Children's Bureau, 330 C Street, SW., Room 2070, Washington, DC 20447. Phone: 202–401–4608. E-mail: *pathompson@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*.

Additional information about this program and its purpose can be located on the following Web sites: *http://www.acf.hhs.gov/programs/cb/*.

For general questions regarding this announcement please contact: ACYF Operations Center, The Dixon Group ATTN: Children's Bureau, 118 Q Street, NE., Washington DC 20002–2132. Telephone: 866–796–1591.

Applicants will not be sent acknowledgements of received applications.

Dated: June 2, 2005.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 05–11298 Filed 6–7–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOMELAND SECURITY

Homeland Security Advisory Council

[Docket No. DHS–2005–0042]

Notice

AGENCY: The Homeland Security Advisory Council, Office of the Secretary, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet in partially closed session on Thursday, June 23, 2005. The HSAC will meet for purposes of receiving reports and briefings, and holding member deliberations. The HSAC will receive reports from the Private Sector Information Sharing Task Force, the Critical Infrastructure Task Force, and the Prevention of the Entry of Weapons of Mass Effect on American Soil Task Force. The HSAC will also hold roundtable deliberations and discussions among HSAC members.

DATES: This meeting will be held in Washington, DC on Thursday, June 23, 2005.

ADDRESSES: If you desire to submit comments, they must be submitted by June 15, 2005. Comments must be identified by DHS–2005–0042 and may be submitted by *one* of the following methods:

- EPA Federal Partner EDOCKET Web Site: *http://www.epa.gov/feddocket*. Follow instructions for submitting comments on the Web site.
- E-mail: *HSAC@dhs.gov*. Include docket number in the subject line of the message.
- Fax: (202) 772–9718.
- Mail: Katie Knapp, Homeland Security Advisory Council, Department of Homeland Security, Washington, DC 20528.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket*.

FOR FURTHER INFORMATION CONTACT: Katie Knapp, Homeland Security Advisory Council, Washington, DC 20528, (202) 692–4283, *HSAC@dhs.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. app. 1, *et seq.*).

Meeting Format

This meeting will be partially closed; the open portions of the meeting for purposes of receiving the Task Force reports listed above will be held at the Park Hyatt, 24th and M Streets, NW., Washington, DC, from 10 a.m. to 12 p.m. The portions of the meeting closed for the purposes of the detailed briefings will be held at The Park Hyatt from 8 a.m. to 10 a.m. and from 12 p.m. to 1:15 p.m. A closed session will then be held at the Department of Homeland Security Headquarters from 2 p.m. to 5 p.m.

Public Attendance

A limited number of members of the public may register to attend the public session on a first-come, first-served basis per the procedures that follow. Security requires that any member of the public who wishes to attend the public session provide his or her name and date of birth no later than 5 p.m., e.s.t., on June 15, 2005, to the Agency Official (listed above) via e-mail at *HSAC@dhs.gov* or via phone at (202) 692–4283. Persons with disabilities who require special assistance should indicate so in their admittance request and are encouraged to indicate their desires to attend and anticipated special needs as early as possible. Photo identification will be required for entry into the public session, and everyone in attendance must be present and seated by 9:45 a.m.

Basis for Closure: In accordance with section 10 (d) of FACA, the Secretary has issued a determination that the closed portions of this HSAC meeting will be addressing specific law enforcement issues and classified information which, if disclosed, would be likely to significantly frustrate implementation of a proposed agency action which has not been disclosed to the public nor is required by law to be disclosed to the public. Accordingly, the Secretary has determined that these portions of the meeting shall be closed pursuant to 5 U.S.C. App. 10(d) and 5 U.S.C. 552b(c).

Dated: June 3, 2005.

Michael Chertoff,

Secretary.

[FR Doc. 05–11436 Filed 6–7–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4974–N–01]

Notice of Proposed Information Collection: Comment Request; Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions)

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: *Comments Due Date:* August 8, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to:

Wayne Eddins, AYO, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., L'Enfant Plaza Bldg., Rm. 800a, Washington, DC 20410; fax: 202–708–3135; e-mail *Wayne_Eddins@HUD.gov.*

FOR FURTHER INFORMATION CONTACT: Debra Murphy, Ginnie Mae, 451 7th Street, SW., Room B–133, Washington, DC 20410; e-mail: *Debra_L._Murphy@hud.gov;* telephone (202) 475–4923; fax: 202–485–0225 (this is not a toll-free number) or the Ginnie Mae Web site at *http://www.ginniemae.gov* for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

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 technolgy, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions).

OMB Control Number, if applicable: 2503–0033.

Description of the need for the information and proposed use: Ginnie Mae's Mortgage-Backed Securities Guide 5500.3, Revision 1 (''Guide'') provides instructions and guidance to participants in the Ginnie Mae Mortgage-Backed Securities (''MBS'') programs (''Ginnie Mae I and Ginnie Mae II''). Participants in the Ginnie Mae I program issue securities backed by single-family or multifamily loans. Participants in the Ginnie Mae II program issue securities backed by single-family loans. The Ginnie Mae II MBS are modified pass-through MBS on which registered holders receive an aggregate principal and interest payment from a central paying agent on all of their Ginnie Mae II MBS. The Ginnie Mae II MBS also allow small issuers who do not meet the minimum dollar pool requirements of the Ginnie Mae I MBS to participate in the secondary mortgage market. In addition, the Ginnie Mae II MBS permit the securitization of adjustable rate mortgages (''ARMs''). Included in the Guide are forms and documents used to collect information from the public, in order for Ginnie Mae to properly administer its MBS programs.

Agency form numbers, if applicable: 11700, 11701, 11702, 11704, 11705, 11706, 11707, 11708, 11709, 11709–A, 11710–A, 1710–B, 1710–C, 11710–D, 11710–E, 11711–A, 11711–B, 11712, 11712–II, 11714, 11714–SN, 11715, 11717, 11717–II, 11720, 1724, 11728, 11728–II, 1731, 11732, 1734, 11747, 11747–II, 11748–A, 11748–C, 11772–II.

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE

Form	Appendix No.	Title	Number of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
11700	II–1	Letter of Transmittal	160	4	640	0.17	109
11701	I–1	Application for Approval FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer.	16	1	16	1.50	24
11702	I–2	Resolution of Board of Directors and Certificate of Authorized Signatures.	271	1	271	0.17	46
11704	II–2	Commitment to Guaranty Mortgage-Backed Securities.	160	4	640	0.25	160
11705	III–6	Schedule of Subscribers and Ginnie Mae Guaranty Agreement.	271	12	24,144	0.0166	401
11706	III–7	Schedule of Pooled Mortgages.	271	12	24,144	0.0166	401
11707	III–1	Master Servicing Agreement.	271	1	271	0.17	46
11708	V–5	Document Release Request.	271	10	2,710	0.2	1,843
11709	III–2	Master Agreement for Servicer's Principal and Interest Custodial Account.	271	1	271	0.03	8
11709–A	I–6	ACH Debit Authorization.	271	1	271	0.25	68
11710A, 1710B, 1710C and 11710E.	VI–4, VI–12, VI–13.	Issuer's Monthly Accounting Report and Liquidation Schedule.	271	12	4,728,000	0.0166	78,485
11710D	VI–5	Issuer's Monthly Summary Reports.	271	12	4,920	0.0166	81.67
1171A and 11711B.	III–5	Release of Security Interest and Certification and Agreement.	271	12	24,144	0.0166	400.79

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE—Continued

Form	Appendix No.	Title	Number of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
11712, 11712–II, 11717, 11717–II, 1724, 11728, 11728–II, 1724, 11728, 11728–II, 1731, 1734, 11747, 11747–II and 11772–II.	IV–6, IV–23, IV–4, IV–20, IV–8, IV–24, IV–5, IV–22, IV–21, IV–9, IV–10, IV–7.	Ginnie Mae I, and II Prospectus Forms.	271	12	24,144	0.0166	401
11714 and 11714SN.	VI–10, VI–11.	Issuer's Monthly Remittance Advice and Issuer's Monthly Serial Note Remittance Advice.	271	398	107,858	0.0166	1,790.44
11715	III–4	Master Custodial Agreement.	271	1	271	0.25	67.75
11720	III–3	Master Agreement for Servicer's Escrow Custodial Account.	271	1	271	0.25	67.75
11732	III–22	Custodian's Certification for Construction Securities.	75	1	75	0.0166	1.25
11749 A and 11748 C.	VI–6, VI–16.	Addendum to Monthly Accounting Report—Adjustable Rate Mortgage Loan Package.	196	8	1,568	0.0166	26.03
		Monthly Loan Level Reporting.	271	12	3,252	4	13,008
	IX–1	Financial Statements and Audit Reports.	271	1	271	1	271
		Mortgage Bankers Financial Reporting Form.	245	4	980	0.50	490
	XI–6, XI–8, XI–9.	Soldiers' and Sailors' Quarterly Reimbursement Request and SSCRA Loan Eligibility Information.	68	1,245	84,660	0.034	2,878.44
	VI–2	Form Letter for Loan Repurchase.	271	12	2,376	0.25	594.00
	III–21	Certification Requirements for the Pooling of Multifamily Mature Loan Program.	75	1	75	0.0166	1.25
	VI–9	Request for Reimbursement of Mortgage Insurance Claim Costs for Multifamily Loans.	20	1	68	0.25	17
	VII–1	Collection of Remaining Principal Balances.	271	12	3,252	0.001	7,329
		Data Verification Form	271	2	542	0.08	43
	III–9	Ginnie Mae Pool Issuance Correction Request Form.	41	12	492	0.0166	8.17
	III–13	Electronic Data Interchange System Agreement.	271	1	271	0.25	67.75
	III–14	Enrollment Administrator Signatories for Issuers and Document Custodians.	271	1	271	0.25	67.75

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE—Continued

Form	Appendix No.	Title	Number of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
		Corporate Guaranty Agreement.	34	1	34	0.25	8.50
	I–4	Cross Default Agreement.	71	1	71	0.25	17.75
	VIII–2, VIII–3.	Transfer Agreements and Assignment Agreements.	79	1	79	0.25	19.75
	VIII–2, VIII–3.	Transfer Agreements and Assignment Agreements.	79	1	79	0.25	19.75
	VIII–1	Acknowledgement Agreement and Accompanying Documents—Pledge of Servicing.	10	1	10	1.00	10
	XI–2	Supervisory Agreement.	10	1	10	1	10
Total	.....	.....	193	.....	5,041,343	.....	100,642

Calculations

Total Annual Responses × Hours per Response = Total Annual Hours Estimated Cost to Respondents:

1. Mortgage industry employee salary: $25.00 per hour $25.00 × total Annual Hours = Cost Estimated Annual Cost to Government:

2. Ginnie Mae employee salary: $29.00 per hour $29.00 × Total Annual Hours = Cost.

3. Contractor expense is based on contract with Ginnie Mae.

Status of the proposed information collection: Extension/Modification of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 27, 2005.

Michael J. Frenz,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 05–11310 Filed 6–7–05; 8:45 am]

BILLING CODE 4210–66–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Post-delisting Monitoring Plan for the Tinian Monarch (*Monarcha takatsukasae*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Post-delisting Monitoring Plan for the Tinian Monarch (*Monarcha takatsukasae*) (Monitoring Plan). The status of the Tinian monarch will be monitored over a 5-year period from 2006 to 2010, through regular field surveys of the distribution and abundance of the Tinian monarch, regular field surveys for the brown treesnake (*Boiga irregularis*) on Tinian, and tracking of land use and development on Tinian.

ADDRESSES: Copies of the Monitoring Plan are available by request from the Hawaiian Bird Recovery Coordinator, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., Box 50088, Honolulu, Hawaii 96850 (telephone: 808–792–9400; fax: 808–792–9580). This Monitoring Plan is also available on the World Wide Web at *http://pacificislands.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Eric VanderWerf, Hawaiian Bird Recovery Coordinator, at the above Honolulu address, at *eric_vanderwerf@fws.gov,* or at 808–792–9400.

SUPPLEMENTARY INFORMATION:

Background

The Tinian monarch, or Chuchurican Tinian in the Chamorro language, is a forest bird endemic to the island of Tinian in the Mariana Archipelago in the western Pacific Ocean. The Tinian monarch inhabits a variety of forest types on Tinian, including native limestone forest, secondary vegetation consisting primarily of non-native plants, and nearly pure stands of introduced tangantangan (*Leucaena leucocephala*).

The Tinian monarch was listed as endangered on June 2, 1970 (35 FR 8491) under the authority of the Endangered Species Conservation Act of 1969 (16 U.S.C. 668cc) and remained as endangered under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (Act), because its population was reported to be critically low due to the destruction of native forests by pre-World War II (WW II) agricultural practices, and by military activities during WW II. We conducted forest bird surveys on Tinian in 1982, which resulted in a population estimate of 39,338 Tinian monarchs. On November 1, 1985, we published a proposed rule to delist the Tinian monarch (50 FR 45632). Based on comments received, we instead downlisted the Tinian monarch, and a final rule reclassifying it from endangered to threatened was published on April 6, 1987 (52 FR 10890). There is no recovery plan specifying delisting criteria for the Tinian monarch. A study of Tinian monarch breeding biology in 1994 and 1995 resulted in a population estimate of approximately 52,900 birds. In 1996, a replication of the 1982 surveys yielded a population estimate of 55,720 birds. The 1996 survey also found a significant increase in forest density since 1982, indicating an improvement in Tinian monarch habitat quality.

On September 21, 2004, we published a final rule removing the Tinian monarch from the Federal List of Endangered and Threatened Wildlife and Plants (69 FR 65367). Our decision

to delist this species was based primarily on information from population surveys and demographic research, which indicated the Tinian monarch had increased in number or was stable, and that the primary listing factor, loss of habitat, had been ameliorated.

Section 4(g)(1) of the Act, requires that we implement a system, in cooperation with the States, to monitor for no fewer than 5 years the status of all species that have recovered and been removed from the Federal List of Endangered and Threatened Wildlife and Plants. The purpose of post-delisting monitoring is to verify that a species delisted due to recovery remains secure from risk of extinction after it has been removed from the protections of the Act. In keeping with that mandate, we developed this Monitoring Plan in cooperation with the Commonwealth of the Northern Mariana Islands (CNMI), Division of Fish and Wildlife; the U.S. Geological Survey, Biological Resources Discipline; the U.S. Department of Agriculture, Wildlife Services; and the Department of the Navy. A draft of this plan was peer-reviewed by nine scientific experts familiar with the Tinian monarch, the brown treesnake, and methods of monitoring bird and brown treesnake populations. The Draft Post-delisting Monitoring Plan for the Tinian Monarch was available for comment from December 13, 2004, through January 12, 2005 (69 FR 72211). Information submitted during the comment period has been considered in the preparation of this Monitoring Plan and is summarized in Appendix A.

The Monitoring Plan is designed to monitor the status of the Tinian monarch by detecting whether the abundance and distribution of Tinian monarchs is declining across the island, and whether the survival of adult monarchs or the number of occupied Tinian monarch territories is declining in ''early warning plots.'' The Monitoring Plan also includes a brown treesnake monitoring component and a land use and development monitoring component. Data on abundance and distribution of monarchs across the island will be collected monthly using point count surveys similar to the North American Breeding Bird Survey. Information on territory occupancy and survival of individually marked monarchs will be collected annually in small ''early warning'' plots located in areas where brown treesnakes might be most likely to occur. Monitoring of the brown treesnake will be done monthly by field crews that search for snakes visually, and eventually by dog teams trained to detect snakes by smell in the forest. The point count surveys are already being implemented by the Department of the Navy. We intend to implement the remaining aspects of the Monitoring Plan annually from 2006–2010.

We will work cooperatively with the CNMI Division of Fish and Wildlife, other Federal agencies, and other partners to collect this information, which we will analyze each year and, if necessary, propose adjustments to the sampling design. If the data indicates that the Tinian monarch is experiencing significant decreases in abundance, distribution, survival, or territory occupancy, we will initiate more intensive review or studies to determine the cause and, if necessary, take action to re-list the Tinian monarch under section 4 of the Act.

Author

The primary author of this document is Dr. Eric A. VanderWerf, Hawaiian Bird Recovery Coordinator (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended in 1988 (16 U.S.C. 1531 *et seq.*).

Dated: May 11, 2005.

David J. Wesley,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 05–11258 Filed 6–7–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–05–1020–JB]

Corrected Notice of Public Meetings, Southwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings—correction.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Southwest Colorado RAC meeting will be held July 22, 2005.

ADDRESSES: A correction from the previously published notice, the Southwest Colorado RAC meeting will be held at the Silverton Town Hall, 1360 Greene St., in Silverton, CO.

The Southwest Colorado RAC meeting will begin at 9 a.m. and adjourn at approximately 4 p.m. Public comment periods regarding matters on the agenda will be at 3:15 p.m.

FOR FURTHER INFORMATION CONTACT: Barbara Sharrow, BLM Uncompahgre field office manager, 2505 S. Townsend Ave., Montrose, CO; telephone 970–240–5300; or Melodie Lloyd, Public Affairs Specialist, 2815 H Rd., Grand Junction, CO, telephone 970–244–3097.

SUPPLEMENTARY INFORMATION: The Southwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

Topics of discussion for all Southwest Colorado RAC meetings may include the BLM National Sage Grouse Conservation Strategy, committee reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, land exchange proposals, cultural resource management, and other issues as appropriate.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: June 1, 2005.

Barbara Sharrow,

Uncompahgre Field Office Manager, Designated Federal Official for the Southwest Colorado RAC.

[FR Doc. 05–11341 Filed 6–7–05; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 120 5882 CC99; HAG 05–0140]

Notice of Public Meeting, Coos Bay Resource Advisory Committee Meeting

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of Bureau of Land Management Coos Bay District Resource Advisory Committee Meeting as identified in Section 205 (f) (2) of the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106–393.

SUMMARY: The Bureau of Land Management Coos Bay District Resource Advisory Committee is scheduled to meet on June 28, 2005, from 9 a.m. until 12 p.m. at the Bureau of Land Management Coos Bay District Office. The Bureau of Land Management Office is located at 1300 Airport Lane in North Bend, Oregon. The purpose of this meeting will be for the orientation of the newly appointed Coos Bay District Resource Advisory Committee, the election of a Chair person, and designation of first and second alternates. There will be an opportunity for the public to address the Coos Bay District Resource Advisory Committee at approximately 10 a.m.

FOR FURTHER INFORMATION CONTACT: Sue Richardson, Bureau of Land Management Coos Bay District Manager, at (541) 756–0100 or Glenn Harkleroad, District Restoration Coordinator, at (541) 751–4361, or *glenn_harkleroad@or.blm.gov*. The mailing address for the Bureau of Land Management Coos Bay District Office is 1300 Airport Lane, North Bend, Oregon 97459.

Dated: May 31, 2005.

Sue E. Richardson,

Coos Bay District Manager.

[FR Doc. 05–11366 Filed 6–7–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The OCS Policy Committee will meet via teleconference at the Days Hotel and Conference Center at Dulles in Herndon, Virginia.

DATES: Wednesday, June 22, 2005, from 1 p.m. to 5 p.m. eastern standard time.

ADDRESSES: The Days Hotel and Conference Center at Dulles, 2200 Centerville Road, Herndon, Virginia 20170, telephone (703) 471–6700.

FOR FURTHER INFORMATION CONTACT: Ms. Jeryne Bryant at Minerals Management Service, 381 Elden Street, Mail Stop 4001, Herndon, Virginia 20170–4187. She can be reached by telephone at (703) 787–1211 or by electronic mail at *jeryne.bryant@mms.gov*.

SUPPLEMENTARY INFORMATION: The OCS Policy Committee represents the collective viewpoint of coastal States, local government, the environmental community, industry and other parties involved with the OCS Program. It provides policy advice to the Secretary of the Interior through the Director of the MMS on all aspects of leasing, exploration, development, and protection of OCS resources.

At the November 2004 OCS Policy Committee meeting, three subcommittees were established to address alternative energy/uses in the OCS, the 5-Year OCS Oil and Gas Leasing Program, and hard minerals (the Marine Minerals Program). The 5-Year OCS Oil and Gas Leasing Program Subcommittee held its first meeting on May 4, 2005, in Herndon, Virginia. At this meeting, the Subcommittee developed a resolution relative to the next 5-year (2007–2012) OCS oil and gas leasing program. The Hard Minerals Subcommittee held its first meeting on May 5, 2005, in Herndon, Virginia. At this meeting, the Subcommittee developed two resolutions relative to the Minerals Management Service's sand and gravel program and a proposed Marine Minerals Program Information Transfer Meeting. In compliance with the Federal Advisory Committee Act, the resolutions will be presented to the full OCS Policy Committee for consideration.

A special meeting of the full OCS Policy Committee has been called to address the resolutions of the 5-Year Oil and Gas Leasing Program and the Hard Minerals Subcommittee. Members have been given the option to participate in person or via teleconference.

The meeting is open to the public. Approximately 100 visitors can be accommodated on a first-come-first-served basis.

Upon request, interested parties may make oral or written statements to the OCS Policy Committee. Such requests should be made no later than June 16, 2005, to Jeryne Bryant. Requests to make oral statements should be accompanied by a summary of the statement to be made. Please see **FOR FURTHER INFORMATION CONTACT** section for address and telephone number.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the MMS in Herndon, Virginia.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: June 3, 2005.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 05–11353 Filed 6–7–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Petition Form

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Written comments must be submitted to the office listed below on or before August 8, 2005.

ADDRESSES: Tim Sullivan, U.S. Department of Labor, Employment and Training Administration, Room C–5311, 200 Constitution Avenue, Phone: 202–693–3708, Fax: 202.693.3584, E-mail *sullivan.timothy@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Section 221 (a) of title II, chapter 2 of the Trade Act of 1974, as amended by the Trade Act of 2002, authorizes the Secretary of Labor and the Governor of each state to accept petitions for certification of eligibility to apply for trade adjustment assistance. The petitions may be filed by a group of workers, their certified or recognized union or duly authorized representative, employers of such workers, local One-Stop Career Center operators or partners. ETA Form 9042a, Petition for Trade Adjustment Assistance and Alternative Trade Adjustment Assistance, and its Spanish translation, ETA Form 9042a–1, Solicitud De Asistencia Para Ajuste (TAA)y Asistencia Alterna Para Ajuste (ATAA),

establish a format that may be used for filing such petitions. Section 246 of the Trade Act requires that the Secretary provide petitioners with an opportunity to apply for ATAA at the time the petition is filed. In addition, this version will be used for the purpose of online filing, as well as submission by fax and mail.

II. Review Focus

Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision of the Petition for Trade Adjustment Assistance and Alternative Trade Adjustment Assistance (formerly Petition for Trade Adjustment Assistance), and is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: Revision of a currently approved collection.

Agency: Employment and Training Administration.

Title: Petition for Trade Adjustment Assistance and Alternative Trade Adjustment Assistance, ETA 9042a.

OMB Number: 1205–0342.

Record Keeping: Respondent is expected to maintain data which support requested data for three years.

Affected Public: Individuals or households/Business or other for-profit/Not-for-profit institutions/Farms/Federal Government/State, Local or Tribal Government.

Burden: 4,100 Responses x 20 minutes = 1,367 hours.

Total Respondents: 4,100.

Frequency: On Occasion.

Total Responses: 4,100.

Average Time Per Response: 20 Minutes.

Estimated Total Burden Hours: 1,367.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 2, 2005.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. 05–11373 Filed 6–7–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Native American Employment and Training Funding Awards

AGENCY: Employment and Training Administration, U.S Department of Labor.

ACTION: Notice.

SUMMARY: This notice announces funding amounts awarded to Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, and Native Hawaiian organizations for the purpose of providing employment and training services to Indian, Alaska Native and Native Hawaiian individuals. Funding awards are based on formulas defined in the implementing regulations of the Workforce Investment Act (WIA) at 20 CFR 668.296(b) for the Comprehensive Services program and 20 CFR 668.440(a) for the Supplemental Youth Services program.

ADDRESSES: Comments and questions regarding these funding awards may be submitted to the Employment and Training Administration (ETA), Office of National Programs, Division of Indian and Native American Programs, Room C–4311, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Ms. Athena Brown, 202–693–3737 (voice), 202–693–3818 (fax), e-mail: *brown.athena@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Duane Hall, Division of Indian and Native American Programs, (214) 767–2154 or toll free at 1–800–877–8339 (TTY); speech-to-speech at 1–800–877–8339; or by fax; 202–693–3818 or e-mail at: *hall.duane@dol.gov.*

SUPPLEMENTARY INFORMATION: The Department of Labor is announcing final WIA section 166 formula funds for Program Year (PY) 2005 (July 1, 2005–June 30, 2006) for the Supplemental Youth Services and Comprehensive Services programs. This document provides information on the amount of funds awarded to designated grantees under WIA section 166.

Comprehensive Services Allotments. $54,237,600 has been appropriated for the PY 2005 Comprehensive Services program. Of this amount, $540,000 has been reserved for technical assistance and training purposes pursuant to the regulations at 20 CFR 668.296(e). The remaining $53,697,600 will be awarded to 184 grantees indicated in the table below. Of this amount, $7,752,571 will be transferred to the Department of the Interior, Office of Self-Governance and Self-Determination, for grantees participating in the demonstration under Pub. L. 102–477, the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended. The tribes participating in the ''477 program'' are identified with an asterisk (*) in the following funding table.

Supplemental Youth Services Allotments. The ETA will also award an additional $14,794,321 to 97 of the 184 grantees indicated above for supplemental youth services (see table attached). SYS funds are only available to section 166 grantees serving reservation areas on which Native American youth reside. This includes Native areas in Alaska, tribal jurisdictional areas in Oklahoma, and Native Hawaiian youth in Hawaii.

Signed in Washington, DC, this 31st day of May, 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

BILLING CODE 4510–30–P

State	Grantee Name	CSP Funding Amount	SYS Funding Amount
Alabama	Inter-Tribal Council of Alabama	$258,267	$1,315
Alabama	Poarch Band of Creek Indians	$90,928	$4,295
Alaska	Aleutian-Pribilof Islands Assn., Inc. *	$26,435	$25,054
Alaska	Association of Village Council Presidents *	$395,964	$198,587
Alaska	Bristol Bay Native Association *	$109,391	$52,663
Alaska	Central Council of Tlingit and Haida Indian Tribes *	$186,444	$152,981
Alaska	Chugachmiut *	$22,566	$16,668
Alaska	Cook Inlet Tribal Council, Inc. *	$406,807	$258,307
Alaska	Copper River Native Association *	$18,711	$7,637
Alaska	Ilisagvik College	$76,066	$48,062
Alaska	Kawerak Incorporated *	$148,513	$81,603
Alaska	Kenaitze Indian Tribe	$31,402	$24,295
Alaska	Kodiak Area Native Association *	$27,685	$29,758
Alaska	Maniilaq Association	$111,234	$69,638
Alaska	Metlakatla Indian Community *	$17,989	$14,316
Alaska	Orutsararmuit Native Council *	$48,280	$37,529
Alaska	Tanana Chiefs Conference	$279,586	$152,367
Arizona	Affiliation of Arizona Indian Centers, Inc.	$275,410	$0
Arizona	American Indian Association of Tucson	$299,892	$0
Arizona	Colorado River Indian Tribes	$61,059	$34,299
Arizona	Gila River Indian Community	$529,583	$181,041
Arizona	Hopi Tribal Council	$251,376	$116,874
Arizona	Hualapai Tribe	$34,225	$13,587
Arizona	Inter-Tribal Council of Arizona, Incorporated	$87,392	$39,476
Arizona	Native Americans for Community Action, Inc.	$186,570	$0
Arizona	Navajo Nation	$6,011,664	$2,706,072
Arizona	Pascua Yaqui Tribe	$99,103	$46,567
Arizona	Phoenix Indian Center, Inc.	$861,161	$0
Arizona	Quechan Indian Tribe	$38,206	$18,578
Arizona	Salt River Pima-Maricopa Indian Community	$123,266	$55,735
Arizona	San Carlos Apache Tribe	$360,037	$149,343
Arizona	Tohono O odham Nation	$413,804	$175,457
Arizona	White Mountain Apache Tribe	$446,042	$189,646
Arkansas	American Indian Center of Arkansas, Inc.	$541,835	$0
California	California Indian Manpower Consortium	$3,042,421	$160,767
California	Candelaria American Indian Council	$279,547	$0
California	Indian Human Resources Center	$320,306	$0
California	Northern California Indian Development Council, Inc.	$223,310	$12,942
California	Southern California Indian Center, Inc.	$1,299,194	$0
California	Tule River Tribal Council	$107,575	$12,169
California	United Indian Nations, Inc.	$447,987	$0
California	Ya-Ka-Ama Indian Education and Development, Inc.	$73,300	$0
Colorado	Denver Indian Center, Inc.	$594,404	$0
Colorado	Southern Ute Indian Tribe	$41,215	$16,975
Colorado	Ute Mountain Ute Tribe	$85,115	$23,364

Delaware	Nanticoke Indian Association, Inc.	$34,747	$0
Florida	Florida Governors Council on Indian Affairs, Inc.	$1,000,841	$0
Florida	Miccosukee Tribe of Indians of Florida	$94,564	$5,150
Florida	Seminole Tribe of Florida *	$85,053	$21,986
Hawaii	Alu Like, Inc.	$1,499,971	$1,997,900
Idaho	Nez Perce Tribe *	$67,630	$29,962
Idaho	Shoshone-Bannock Tribes, Inc. *	$200,542	$49,335
Indiana	American Indian Center of Indiana, Inc.	$231,906	$0
Kansas	Mid-American All Indian Center, Incorporated	$135,211	$0
Kansas	United Tribes of Kansas and Southeast Nebraska, Inc.	$208,554	$12,987
Louisiana	Inter-Tribal Council of Louisiana, Inc.	$540,612	$3,678
Maine	Penobscot Nation	$160,612	$24,311
Massachusetts	Mashpee-Wampanoag Indian Tribal Council, Inc.	$56,874	$0
Massachusetts	North American Indian Center of Boston, Inc.	$205,903	$0
Michigan	Grand Traverse Band of Ottawa and Chippewa Indians	$42,799	$3,579
Michigan	Inter-Tribal Council of Michigan, Inc.	$63,384	$40,700
Michigan	Michigan Indian Employment and Training Services, Inc.	$592,894	$0
Michigan	North American Indian Association of Detroit, Inc.	$220,943	$0
Michigan	Pokagon Band of Potawatomi Indians	$87,533	$0
Michigan	Sault Ste. Marie Tribe of Chippewa Indians	$187,551	$54,504
Michigan	Southeastern Michigan Indians, Inc.	$109,463	$0
Minnesota	American Indian Opportunities, Inc.	$483,430	$0
Minnesota	Bois Forte Reservation Tribal Council	$21,450	$7,155
Minnesota	Fond Du Lac Reservation	$189,359	$21,372
Minnesota	Leech Lake Band of Ojibwe	$172,488	$51,712
Minnesota	Mille Lacs Band of Ojibwe Indians *	$47,815	$11,821
Minnesota	Minneapolis American Indian Center	$356,776	$0
Minnesota	Red Lake Tribal Council *	$207,372	$69,052
Minnesota	White Earth Reservation Tribal Council *	$128,908	$45,071
Mississippi	Mississippi Band of Choctaw Indians	$271,671	$67,247
Missouri	American Indian Council	$580,886	$9,842
Montana	Assiniboine and Sioux Tribes	$249,812	$104,470
Montana	B.C. of The Chippewa Cree Tribe	$129,689	$35,241
Montana	Blackfeet Tribal Business Council	$284,413	$109,074
Montana	Confederated Salish & Kootenai Tribes *	$259,194	$109,005
Montana	Crow Tribe of Indians	$198,508	$83,906
Montana	Fort Belknap Community Council *	$115,680	$40,133
Montana	Montana United Indian Association	$331,255	$0
Montana	Northern Cheyenne Tribe	$200,630	$78,916
Nebraska	Indian Center, Inc.	$270,388	$0
Nebraska	Omaha Tribe of Nebraska	$81,846	$34,643
Nebraska	Winnebago Tribe of Nebraska *	$41,463	$18,830
Nevada	Inter-Tribal Council of Nevada, Inc.	$278,061	$66,264
Nevada	Las Vegas Indian Center, Inc.	$153,272	$0
Nevada	Reno Sparks Indian Colony *	$13,898	$9,134
Nevada	Shoshone-Paiute Tribes *	$113,558	$14,117
New Jersey	Powhatan Renape Nation	$275,085	$0
New Mexico	Alamo Navajo School Board	$71,711	$34,654
New Mexico	Eight Northern Indian Pueblo Council	$61,675	$29,655

New Mexico	Five Sandoval Indian Pueblos, Inc.	$145,217	$98,261
New Mexico	Jicarilla Apache Tribe	$58,546	$38,347
New Mexico	Mescalero Apache Tribe	$100,367	$47,106
New Mexico	National Indian Youth Council	$1,350,940	$0
New Mexico	Pueblo of Acoma	$132,069	$37,632
New Mexico	Pueblo of Isleta	$55,613	$34,359
New Mexico	Pueblo of Laguna *	$89,468	$45,097
New Mexico	Pueblo of Taos	$42,994	$17,480
New Mexico	Pueblo of Zuni *	$270,241	$126,964
New Mexico	Ramah Navajo School Board, Inc.	$101,067	$32,870
New Mexico	Santa Clara Indian Pueblo Tribal Government	$30,754	$16,975
New Mexico	Santo Domingo Tribe	$83,121	$48,590
New York	American Indian Community House, Inc.	$842,810	$8,731
New York	Native American Community Services of Erie and Niagara Counties, Inc.	$150,958	$0
New York	Native American Cultural Center, Inc.	$192,402	$11,658
New York	Seneca Nation of Indians *	$213,043	$45,608
New York	St Regis Mohawk Tribe	$131,846	$25,155
North Carolina	Cumberland County Association for Indian People, Inc.	$78,654	$0
North Carolina	Eastern Band of Cherokee Indians	$200,709	$84,262
North Carolina	Guilford Native American Association	$64,199	$0
North Carolina	Haliwa - Saponi Tribe, Inc.	$63,302	$0
North Carolina	Lumbee Regional Development Association, Inc.	$949,828	$0
North Carolina	Metrolina Native American Association	$85,176	$0
North Carolina	North Carolina Commission on Indian Affairs	$248,698	
North Dakota	Spirit Lake Sioux Tribe *	$142,073	$56,532
North Dakota	Standing Rock Sioux Tribe	$214,331	$104,890
North Dakota	Three Affiliated Tribes *	$178,335	$52,913
North Dakota	Turtle Mountain Band of Chippewa Indians	$329,245	$119,515
North Dakota	United Tribes Technical College	$204,621	$0
Ohio	North American Indian Cultural Center, Inc.	$490,893	$0
Oklahoma	Absentee Shawnee Tribe	$23,523	$17,179
Oklahoma	Cherokee Nation of Oklahoma *	$1,257,379	$971,363
Oklahoma	Cheyenne Arapaho Tribes of Oklahoma	$199,433	$111,150
Oklahoma	Chickasaw Nation *	$448,939	$335,820
Oklahoma	Choctaw Nation of Oklahoma	$651,089	$446,669
Oklahoma	Citizens Potawatomi Nation *	$355,507	$340,728
Oklahoma	Comanche Tribe of Oklahoma	$150,390	$91,829
Oklahoma	Creek Nation of Oklahoma	$587,882	$435,625
Oklahoma	Four Tribes Consortium of Oklahoma	$117,653	$55,985
Oklahoma	Inter-Tribal Council of Northeast Oklahoma	$74,197	$52,561
Oklahoma	Kiowa Tribe of Oklahoma	$185,237	$95,983
Oklahoma	Native American Resource Center, Inc.	$303,643	$237,037
Oklahoma	Osage Nation *	$109,384	$69,127
Oklahoma	Otoe - Missouria Tribe	$37,188	$21,270
Oklahoma	Pawnee Nation of Oklahoma *	$39,389	$26,383
Oklahoma	Ponca Tribe of Oklahoma	$90,705	$55,696
Oklahoma	Seminole Nation of Oklahoma	$114,994	$73,060
Oklahoma	Tonkawa Tribe of Oklahoma	$65,941	$37,529

Oklahoma	United Urban Indian Council, Inc.	$466,031	$324,163
Oklahoma	Wyandotte Nation	$104,689	$0
Oregon	Confederated Tribes of Siletz Indians *	$463,989	$19,532
Oregon	Confederated Tribes of The Umatilla Indian Reservation	$33,366	$15,720
Oregon	Confederated Tribes of Warm Springs	$113,759	$44,994
Oregon	Organization of Forgotten Americans, Inc.	$321,208	$3,829
Pennsylvania	Council of Three Rivers American Indian Center, Inc.	$885,572	$0
Rhode Island	Rhode Island Indian Council, Inc.	$255,151	$0
South Carolina	South Carolina Indian Development Council, Inc.	$200,425	$2,058
South Dakota	Cheyenne River Sioux Tribe *	$220,981	$105,706
South Dakota	Lower Brule Sioux Tribe	$50,366	$18,628
South Dakota	Oglala Sioux Tribe	$629,778	$265,299
South Dakota	Rosebud Sioux Tribe (Sicangu Nation) *	$474,584	$208,148
South Dakota	Sisseton-Wahpeton Sioux Tribe *	$139,654	$51,979
South Dakota	United Sioux Tribes of South Dakota Development Corporation	$511,258	$13,364
South Dakota	Yankton Sioux Tribe	$102,113	$45,657
Texas	Alabama-Coushatta Indian Tribal Council	$737,412	$8,487
Texas	Dallas Inter-Tribal Center	$345,622	$0
Texas	Ysleta Del Sur Pueblo	$509,582	$9,166
Utah	Indian Training and Education Center	$397,133	$4,922
Utah	Ute Indian Tribe	$113,678	$47,455
Vermont	Abenaki Self-Help Association/N.H. Indian Council	$97,455	$0
Virginia	Mattaponi Pamunkey Monacan Consortium	$229,833	$0
Washington	American Indian Community Center	$429,385	$40,241
Washington	Colville Confederated Tribes *	$171,735	$53,482
Washington	Confederated Tribes and Bands of the Yakama Nation	$201,525	$109,823
Washington	Lummi Indian Business Council	$103,327	$28,302
Washington	Makah Tribal Council	$31,002	$13,364
Washington	Puyallup Tribe of Indians	$129,365	$14,738
Washington	Seattle Indian Center, Inc.	$304,991	$0
Washington	The Tulalip Tribes	$35,732	$17,018
Washington	Western Washington Indian Employment and Training Program	$638,481	$93,567
Wisconsin	Ho-Chunk Nation *	$173,683	$10,328
Wisconsin	Lac Courte Oreilles Tribal Governing Board	$121,836	$35,728
Wisconsin	Lac Du Flambeau Band of Lake Superior Chippewa Indians, Inc.	$66,074	$20,964
Wisconsin	Menominee Indian Tribe of Wisconsin *	$126,623	$49,934
Wisconsin	Oneida Tribe of Indians of Wisconsin	$164,371	$32,723
Wisconsin	Spotted Eagle, Inc.	$211,331	$0
Wisconsin	Stockbridge-Munsee Community *	$59,619	$5,419
Wisconsin	Wisconsin Indian Consortium	$115,918	$28,296
Wyoming	Eastern Shoshone Tribe *	$128,047	$29,813
Wyoming	Northern Arapahoe Business Council	$217,776	$70,162
		$53,697,600	**$14,794,321**

* Denotes grantees that are administered by the Bureau of Indian Affairs under Public Law 102-477.

[FR Doc. 05–11378 Filed 6–7–05; 8:45 am]

BILLING CODE 4510–30–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–098)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 8, 2005.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No. ARC–15448–1: Whole Cell MRNA/DNA Identification Procedure;

NASA Case No. ARC–ARC 14569–1: Spatial Standard Observer;

NASA Case No. ARC–15392–1: Delay Banking For Air Traffic Management;

NASA Case No. ARC–15356–2: Historical Analysis of Aircraft Flight Parameters;

NASA Case No. ARC–15356–3: Real-Time Analysis and Display of Aircraft Approach Maneuvers;

NASA Case No. ARC–15450–1: Recovery and Nonrecovery Bands for Flight Parameter Values and Prediction of Future Values for An Aircraft in Motion;

NASA Case No. ARC–15522–1: Image Compression Encoding With Perceptual Distortion Control;

NASA Case No. ARC–14995–1: Egg Viability Detection Circuit;

NASA Case No. ARC–15475–1: Methods for Stimulating Nervous System Regeneration and Repair by Pharmacological Activation of STAT3 Alpha.

Dated: May 31, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–11301 Filed 6–7–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–099)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: June 8, 2005.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Counsel, Glenn Research Center at Lewis Field, Code 500–118, Cleveland, OH 44135; telephone (216) 433–8855; fax (216) 433–6790.

NASA Case No. LEW–17678–1: Magnetic Circuit For Hall Effect Plasma Accelerator;

NASA Case No. LEW–17498–1: Selective Wavelength Filtering;

NASA Case No. LEW–17664–1: Elimination Of Lifetime Limiting Mechanism Of Hall Thrusters;

NASA Case No. LEW–17484–2: Operation Of A Cartesian Robotic System In A Compact Microscope Imaging System With Intelligent Controls;

NASA Case No. LEW–17484–3: Identification Of Cells With A Compact Microscope Imaging System With Intelligent Controls;

NASA Case No. LEW–17484–4: Tracking Of Cells With A Compact Microscope Imaging System With Intelligent Controls;

NASA Case No. LEW–17563–1: Improved Emitter Conductivity Layer For Solar Cells;

NASA Case No. LEW–17425–1: Flexible/Rigid Tubular Structronic Surgical Retractor And/Or Endoscopie Instrument.

Dated: May 31, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–11302 Filed 6–7–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–100)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: June 8, 2005.

FOR FURTHER INFORMATION CONTACT: David Walker, Patent Counsel, Goddard Space Flight Center, Mail Code 503, Greenbelt, MD 20771–0001; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No. GSC–14790–1: Phase-Oriented Gears;

NASA Case No. GSC–14757–1: Systems And Methods For Fabricating Thin Films.

Dated: May 31, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–11303 Filed 6–7–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–101)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: June 8, 2005.

FOR FURTHER INFORMATION CONTACT: Edward K. Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, TX 77058–8452; telephone (281) 483–4871; fax (281) 244–8452.

NASA Case No. MSC–23805–1: Advanced Resistive Exercise Device;

NASA Case No. MSC–23781–1: Directional Microwave Applicator And Methods.

Dated: May 31, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–11304 Filed 6–7–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–102)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: June 8, 2005.

FOR FURTHER INFORMATION CONTACT: Linda B. Blackburn, Patent Counsel, Langley Research Center, Mail Code 141, Hampton, VA 23681–2199; telephone (757) 864–9260; fax (757) 864–9190.

NASA Case No. LAR–16867–1: Sensing/Actuating Materials Made From Carbon Nanotube Polymer Composites And Methods For Making Same;

NASA Case No. LAR–16698–1: Hybrid Elecromechanical Actuator And Actuation System;

NASA Case No. LAR 17712–4: Multilayer Electroactive Polymer Composite Material.

Dated: May 31, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–11305 Filed 6–7–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–103)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: June 8, 2005.

FOR FURTHER INFORMATION CONTACT: Jerry L. Seemann, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544–6580; fax (256) 544–0258.

NASA Case No. MFS–31709–1: System for Controlling Child Safety Seat;

NASA Case No. MFS–31771–1: Cushion System for Multi-Use Child Safety Seat;

NASA Case No. MFS–32008–1: Film Processing For Automated Fiber Placement;

NASA Case No. MFS–32104–1: Channel-Wall Rocket Nozzle Built With A Slotted Intermediate Layer.

Dated: May 31, 2005.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. 05–11306 Filed 6–7–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–104)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that FARO Technologies, Inc. of Kennett Square, Pennsylvania has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,965,879, entitled ''Method and Apparatus for Ultra-High-Sensitivity, Incremental and Absolute Optical Encoding ''which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to NASA Goddard Space Flight Center. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by June 23, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher Kirkman, NASA Goddard Space Flight Center, Code 503, Greenbelt, MD 20771, (301) 286–0602.

Dated: May 20, 2005.

Keith T. Sefton,

Deputy General Counsel, (Admin. and Mgmt.).

[FR Doc. 05–11308 Filed 6–7–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that seven meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

Theater & Musical Theater (Access to Artistic Excellence, Panel 1A): June 27–July 1, 2005, Room 730. A portion of this meeting, from 3 p.m. to 4:30 p.m. on Thursday, June 30th, will be open to the public for policy discussion. The remainder of the meeting, from 9:30 a.m. to 6 p.m. on June 27th, 28th, and 29th, from 9:30 a.m. to 3 p.m. and 4:30 p.m. to 6 p.m. on June 30th, and from 10 a.m. to 3:30 p.m. on July 1st, will be closed.

Theater & Musical Theater (Access to Artistic Excellence, Panel 1B): July 1, 2005, Room 730. This meeting, from 3:30 p.m. to 4 p.m., will be closed.

Presenting (Access to Artistic Excellence, Panel 1A): July 18, 2005, Room 716. A portion of this meeting, from 4 p.m. to 4:30 p.m., will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 4 p.m. and 4:30 p.m. to 5 p.m., will be closed.

Presenting (Access to Artistic Excellence, Panel 1B): July 19–22, 2005, Room 716. A portion of this meeting, from 11 a.m. to 12 p.m. on Friday, July 22nd, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on July 19th, 20th, and 21st, and from 9 a.m. to 11 a.m. and 12 p.m. to 2 p.m. on July 22nd, will be closed.

Dance (Access to Artistic Excellence): July 25–29, 2005, Room 716. This meeting, from 9 a.m. to 6 p.m. on July 25th, 26th, 27th, and 28th, and from 9 a.m. to 3:30 p.m. on July 29th, will be closed.

Museums (Access to Artistic Excellence): August 2–5, 2005, Room 716. This meeting, from 9 a.m. to 5:30 p.m. on August 2nd, 3rd, and 4th, and from 9 a.m. to 3:30 p.m. on August 5th, will be closed.

Design (Access to Artistic Excellence): August 9–10, 2005, Room 730. A portion of this meeting, from 9:30 a.m. to 10:30 p.m. on Wednesday, August 10th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5 p.m. on August 9th, and from 10:30 a.m. to 3 p.m. on August 10th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: June 2, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 05–11337 Filed 6–7–05; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Privacy Act of 1974; Notice of Amendment to System of Records; Correction

AGENCY: Institute of Museum and Library Services (IMLS), National Foundation on the Arts and the Humanities.

ACTION: Notice of amendment to system of records; Correction.

SUMMARY: This document corrects the Institute of Museum and Library Services' Notice of amendment to system of records information published in the **Federal Register** on April 14, 2005. This correction provides updated information for managers and reflects the agency's move to a new location, thus enabling individuals who wish to access information maintained in IMLS systems to make accurate and specific requests for such information.

Corrections

In the **Federal Register** of April 14, 2005, in FR Doc. 05–7498, on page 19788, in the third column, correct the **FOR FURTHER INFORMATION CONTACT** section to read as follows:

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel or Rebecca W. Danvers, Director of Research and Technology, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036–5802; by telefax at (202) 653–4625; or by electronic mail at *info@imls.gov.*;

On page 19789, in the second column, correct **SYSTEMS LOCATION:** section to read as follows:

SYSTEMS LOCATION:

Office of Research and Technology, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036–5802; and

On page 19790, in the first and second columns, correct the **SYSTEM LOCATION:** section to read as follows:

SYSTEMS LOCATION:

Office of Research and Technology, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036–5802; and

On page 19791, in the first column, correct the **SYSTEMS LOCATION:** section to read as follows:

SYSTEMS LOCATION:

Office of Research and Technology, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036–5802; and,

On page 19791, in the second column, correct the **SYSTEMS MANAGERS(S) AND ADDRESS** section to read as follows:

SYSTEMS MANAGERS(S) AND ADDRESS:

Human Resources Officer, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036–5802.

EFFECTIVE DATE: May 25, 2005.

Nancy E. Weiss,

General Counsel.

[FR Doc. 05–11360 Filed 6–7–05; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On April 11, 2005 and May 2, 2005, the National Science Foundation published notices in the **Federal Register** of a permit applications received. Permits were issued on June 2, 2005 to:

Tom Yelvington; Permit No. 2006–002.

Tom Yelvington; Permit No. 2006–004.

Tom Yelvington; Permit No. 2006–011.

Tom Yelvington; Permit No. 2006–012.

Doug MacAyeal; Permit No. 2006–023.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 05–11386 Filed 6–7–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On March 9, 2005, the National Science Foundation published a notice in the Federal Register of a permit applications received. A permit was issued on May 12, 2005 to:

Steven D. Emslie; Permit No. 2006–001.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 05–11387 Filed 6–7–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On April 5, 2005, the National Science Foundation published a notice in the **Federal Register** of a permit applications received. Permits were issued on May 17, 2005, to:

Tom Yelvington; Permit No. 2006–003.

Natalie Goodall; Permit No. 2006–005.

Tom Yelvington; Permit No. 2006–006.

Tom Yelvington; Permit No. 2006–007.

Tom Yelvington; Permit No. 2006–008.

Nadene G. Kennedy,

Permit Officer

[FR Doc. 05–11388 Filed 6–7–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No 72–13]

Entergy Operations, Incorporated; Notice of Docketing of Request for Exemption for Arkansas Nuclear One, Unit 1 and Unit 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of request for exemption from the requirements of 10 CFR 72.212(a)(2) and 10 CFR 72.214.

FOR FURTHER INFORMATION CONTACT: Christopher M. Regan, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1179; fax number: (301) 415–1179; e-mail: *cmr1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering a request dated May 23, 2005, from Entergy Operations, Inc. (applicant or Entergy Operations) for exemption from the requirements of 10 CFR 72.212(a)(2) and 10 CFR 72.214 pursuant to 10 CFR 72.7, for the Arkansas Nuclear One, Unit 1 (ANO–1) and Unit 2 (ANO–2), facility located 6 miles west-northwest of Russellville, Arkansas. If granted, the exemption will authorize the applicant to load spent nuclear fuel in accordance with proposed Amendment 2 to Certificate of Compliance (CoC) 1014 granted to Holtec International (Holtec) for the HI-STORM 100 system. This request was docketed under 10 CFR Part 72; the Independent Spent Fuel Storage Installation Docket No. is 72–13.

An NRC administrative review, documented in a letter to Entergy Operations dated June 2, 2005, found that the application contains sufficient information for the NRC staff to begin its technical review. Prior to issuance of the requested exemption, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. These findings will be documented in a Safety Evaluation Report. The issuance of the exemption will not be approved until the NRC has reviewed the application and has concluded that granting of the request will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. The NRC will complete an environmental assessment, in accordance with 10 CFR part 51. This action will be the subject of a subsequent notice in the **Federal Register**.

II. Further Information

In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents regarding this proposed action, including the exemption request dated May 23, 2005, are publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of June 2005.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–2917 Filed 6–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Nuclear Management Company, LLC, Palisades Nuclear Plant; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License No. DPR–20 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering application for the renewal of Operating License No. DPR–20, which authorizes the Nuclear Management Company, LLC, to operate the Palisades Nuclear Plant at 2530 megawatts thermal. The renewed license would authorize the applicant to operate the Palisades Nuclear Plant, for an additional 20 years beyond the period specified in the current license. The current Operating License for the Palisades Nuclear Plant expires on March 24, 2011.

The Commission's staff has received an application dated March 22, 2005 and a supplement dated May 5, 2005, from Nuclear Management Company, LLC, pursuant to 10 CFR Part 54, to renew the operating license DPR–20 for the Palisades Nuclear Plant. A Notice of Receipt and Availability of the license renewal application, ''Nuclear Management Company, LLC; Palisades Nuclear Plant; Notice of Receipt and Availability of Application for Renewal Facility Operating License No. DPR–20 for an Additional 20-Year Period,'' was published in the **Federal Register** on April 12, 2005.

The Commission's staff has determined that Nuclear Management Company, LLC has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is acceptable for docketing. The current Docket No. 50–255 for Operating License No. DPR–20 will be retained. The docketing of the renewal application and supplement does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of each requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed licenses will continue to be conducted in accordance with the current licensing basis (CLB), and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' dated May 1996. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be the subject of a separate **Federal Register** notice.

Within 60 days after the date of publication of this **Federal Register** notice, the requestor/petitioner may file a request for a hearing, 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 with respect to the renewal of the licenses. 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 Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 and is accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1–800–397–4209, or by email at *pdr@nrc.gov*. If a request for a hearing or a petition for leave to intervene is filed within the 60-day period, 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. In the event that no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the licenses without further notice.

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, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) 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 requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide 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 action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner 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 and all like subject-matters shall be grouped together:

1. Technical—primarily concerns issues relating to technical and/or health and safety matters discussed or referenced in the Palisades Nuclear Plant, safety analysis for the application (including issues related to emergency planning and physical security to the extent that such matters are discussed or referenced in the application).

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the license renewal application

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners will be required to jointly designate a representative who shall have the authority to act for the requestors/petitioners 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, including the opportunity to participate fully in the conduct of the hearing. A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed

[1] To the extent that the application contains 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 to discuss the need for a protective order.

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) Email 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 must 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. Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition, request and/or contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Detailed information about the license renewal process can be found under the Nuclear Reactors icon at *http://www.nrc.gov/reactors/operating/licensing/renewal.html* on the NRC's Web site. Copies of the application and supplement to renew the operating licenses for Palisades Nuclear Plant, are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852–2738, and at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html* the NRC's Web site while the application is under review. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS accession numbers ML050940434 and ML051300128. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, may contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

The staff has verified that a copy of the license renewal application and supplement are also available to local residents near the Palisades Nuclear Plant, at the South Haven Memorial Library, 314 Broadway, South Haven, MI 49090.

Dated at Rockville, Maryland, this 2nd day of June, 2005.

For the Nuclear Regulatory Commission.

Samson S. Lee,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5–2914 Filed 6–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Nuclear Management Company, LLC, Point Beach Nuclear Plant, Units 1 and 2; Exemption

1.0 Background

Nuclear Management Company, LLC (NMC, the licensee), is the holder of Facility Operating License Nos. DPR–24 and DPR–27 which authorizes operation of the Point Beach Nuclear Plant, Units 1 and 2. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors (PWR) located in Manitowoc County, Wisconsin.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' established fire protection (FP) requirements to satisfy 10 CFR 50, appendix A, General Design Criterion 3, ''Fire Protection.''

Appendix R, Section III.G.1.a of 10 CFR Part 50 requires: ''one train of systems necessary to achieve and maintain hot shutdown from either the control room or emergency control station(s) is free of fire damage * * *''

By letter dated March 5, 2004, the licensee requested a permanent exemption from the requirements of 10 CFR Part 50, appendix R, Section III.G.1.a for a repair consisting of powering a dedicated air compressor from one of two pre-planned 480 volt power sources using pre-staged power cords and connecting the air compressor to nitrogen bottle manifolds on one or both reactor units using a pre-staged pneumatic hose with quick connect fittings.

The licensee stated:

> The existing Safe Shutdown Analysis (SSA) for Point Beach credits a hard-piped nitrogen bottle bank to provide the first several hours of charging pump control air during hot shutdown. However, if the normal source of instrument air is not restored prior to depletion of this bottle bank, a dedicated air compressor is available to provide continued support for long term hot shutdown (and/or subsequent transition to cold shutdown) operation. This air compressor must be connected to a suitable power supply by means of electrical cables and to the charging pump backup control air manifolds by portable hoses.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present whenever ''application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. * * *''

10 CFR Part 50, Appendix R, Section III.G.1.a requires that, ''one train of systems necessary to achieve and maintain hot shutdown conditions from either the control room or emergency control station(s) is free of fire damage.'' Appendix R, Section III.L.1, of 10 CFR Part 50 requires that an alternative or dedicated shutdown capability shall be able to, among other things, ''(c) achieve and maintain hot standby conditions for a PWR; and (d) achieve cold shutdown conditions within 72 hours.'' NRC Inspection Report 50–266/2003–007; 50–301/2003–007, dated February 4, 2004, documents a Non-Cited Violation of Appendix R, Section III.L.1.c, in that NMC, ''failed to ensure, without the need for 'hot standby repairs,' adequate

control air to the speed controllers for the charging pumps during a postulated fire requiring an alternative shutdown method.'' The installed backup nitrogen gas bottle bank (for the charging pump speed controllers) meets the requirements of the regulation, with the exception that it is of limited capacity. This means that the hot shutdown conditions could not be maintained indefinitely while relying only on the installed bottle bank. However, the 8 to 14 hour capacity of the bottle banks is ample time to extinguish the fire, achieve stable plant conditions in hot shutdown, augment staff with personnel from the emergency response organization, and connect dedicated power cabling and hoses to the dedicated compressor using the furnished plugs and quick connect fittings (*i.e.,* no tools required).

Because the bottle banks, hoses, cables, and compressor are all located in areas that would not be affected by the fires of concern, none would be damaged. The installed backup bottle banks are normally isolated from the charging pump pneumatic controls by the bottle stop-cocks, a manual valve on the bottle manifold, and an in-line manual isolation valve. These valves must be opened to bring the backup nitrogen on line. In contrast, the (staged) dedicated air compressor must be connected to its power supply by retrieving the staged cable and hose(s) from their storage locations in the same fire area (Turbine Hall), laying them out from the compressor to the selected power supply and to the affected unit's backup bottle bank manifold, and then connecting the cable and hoses using the installed plugs and quick connect fittings before starting the compressor.

Although this activity could be considered a ''hot standby repair,'' connection of these undamaged components to support continued hot shutdown conditions within 8 hours of the initiating event is reasonably achievable. This can be performed without invoking extraordinary action and without perturbing the stable plant conditions. Therefore, strict application of the interpretation proscribing any hot standby repair is not necessary to achieve and maintain hot shutdown conditions while relying only on the operating shift personnel, without undue encumbrances, and without having to resort to significant time consuming ''repairs.'' The NRC staff concludes that application of Section III.G.1.a under these circumstances is not necessary to achieve the underlying purpose of the rule.

The NRC staff examined the licensee's rationale to support the exemption request and concluded that sufficient time (8 hours) is available to make the necessary connections to operate the backup air compressor. The NRC staff is satisfied that on-site and augmented response resources will be available to complete the repair. The appropriate equipment for this evolution is pre-staged. The NRC staff considered the location of the air compressor, the transformer, the pre-staging locations and routing of the electrical cables, and the pre-staging locations and routing of the pneumatic hoses. Equipment is pre-staged such that no single fire will affect permanent plant equipment and the repair equipment. The repair steps are feasible and reliable. The actions requested, hooking up power cables and connecting pneumatic fittings for the air compressor, are repairs as commonly implemented by appendix R [but would not meet the requirements of] Section III.G.1.a (achieving and maintaining hot standby). The NRC staff agrees, therefore, that an exemption is appropriate to meet the underlying purpose of Section III.G.1.a, and that the 10 CFR 50.12.(a)(2)(ii) criterion applicable to this request.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants NMC an exemption from the requirements of 10 CFR Part 50, appendix R, Part III.G.1.a, for Point Beach Nuclear Plant, Units 1 and 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (70 FR 30819).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of June, 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–2915 Filed 6–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–42]

Southern Nuclear Operating Company, Incorporated; Notice of Docketing of Request for Exemption for the Joseph M. Farley Nuclear Plant, Unit 1 and Unit 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of request for exemption from the requirements of 10 CFR 72.212(a)(2) and 10 CFR 72.214.

FOR FURTHER INFORMATION CONTACT: Christopher M. Regan, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1179; fax number: (301) 415–1179; e-mail: *cmr1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering a request dated May 20, 2005, from Southern Nuclear Operating Company, Inc. (applicant or SNC) for exemption from the requirements of 10 CFR 72.212(a)(2) and 10 CFR 72.214 pursuant to 10 CFR 72.7, for the Joseph M. Farley Nuclear Plant (FNP), Unit 1 and Unit 2, facility located in Houston County, Alabama. If granted, the exemption will authorize the applicant to load spent nuclear fuel in accordance with proposed Amendment 2 to Certificate of Compliance (CoC) 1014 granted to Holtec International (Holtec) for the HI–STORM 100 system. This request was docketed under 10 CFR Part 72; the Independent Spent Fuel Storage Installation Docket No. is 72–42.

An NRC administrative review, documented in a letter to SNC dated June 2, 2005, found that the application contains sufficient information for the NRC staff to begin its technical review. Prior to issuance of the requested exemption, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. These findings will be documented in a Safety Evaluation Report. The issuance of the exemption will not be approved until the NRC has reviewed the application and has concluded that granting of the request will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. The NRC will complete an environmental

assessment, in accordance with 10 CFR part 51. This action will be the subject of a subsequent notice in the **Federal Register**.

II. Further Information

In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents regarding this proposed action, including the exemption request dated May 20, 2005, are publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of June, 2005.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–2918 Filed 6–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305; License No. DPR–43]

In the Matter of Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Nuclear Management Company, LLC (Kewaunee Nuclear Power Plant, Unit No. 1); Order Extending the Effectiveness of the Approval of the Transfer of License and Conforming Amendment

Wisconsin Public Service Corporation (WPSC), Wisconsin Power and Light Company (WPL), and Nuclear Management Company, LLC (NMC) (the licensees) are the holders of Facility Operating License No. DPR–43, which authorizes operation of Kewaunee Nuclear Power Plant, Unit No. 1 (Kewaunee or the facility). The facility is located at the licensees' site in Kewaunee County, Wisconsin. The license authorizes WPSC and WPL to possess, and NMC to use and operate, Kewaunee.

By order dated June 10, 2004, the Commission approved the transfer of the license for Kewaunee to Dominion Energy Kewaunee, Inc. (Dominion Energy Kewaunee). By its terms, the order of June 10, 2004, becomes null and void if the license transfer is not completed by June 30, 2005, unless upon application and for good cause shown, the Commission extends the effectiveness of the approval.

By letter dated May 4, 2005, NMC, on behalf of itself, WPSC, and WPL, submitted a request to extend the effectiveness of the order of June 10, 2004, until December 31, 2005. According to the letter, Kewaunee is currently in an extended unit shutdown to address certain recently identified design issues. Based on the current asset sales agreement between the owners and Dominion Energy Kewaunee, the license transfer will not occur until the unit has been returned to full power operation. The licensee's present schedule for addressing the plant design issues, returning the unit to full power operation, and completing the license transfer shows that all of these items will be done before June 30, 2005. However, Dominion Energy Kewaunee and NMC consider it prudent to request an extension of the order approving the license transfer if unforeseen circumstances make an extension necessary. Therefore, NMC requests an extension of the order until December 31, 2005, to permit completion of the Kewaunee license transfer. In its May 4, 2005, letter, NMC also stated that no conditions under which the NRC order was granted have been significantly changed or detrimentally affected since the order was issued.

The NRC staff has considered the licensee's May 4, 2005, request and has determined that the licensee has shown good cause for extending the effectiveness of the order of June 10, 2004, as requested.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, it is hereby ordered that the effectiveness of the herein described order of June 10, 2004, is extended such that if the subject license transfer from NMC, WPSC, and WPL to Dominion Energy Kewaunee referenced above is not completed by December 31, 2005, the order of June 10, 2004, shall become null and void, unless upon application and for good cause shown, the Commission further extends the effectiveness of the order.

This Order is effective upon issuance.

For further details with respect to this action, see the submittal dated May 4, 2005, which is available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and is accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

Dated at Rockville, Maryland, this 1st day of June, 2005.

For The Nuclear Regulatory Commission.

J. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E5–2916 Filed 6–7–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Interim Staff Guidance Documents for Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Wilkins Smith, Project Manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Telephone: (301) 415–5788; fax number: (301) 415–5370; e-mail: *wrs@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is preparing and issuing Interim Staff Guidance (ISG) documents for fuel cycle facilities. These ISG documents provide clarifying guidance to the NRC staff when reviewing licensee integrated safety analyses, license applications or amendment requests or other related licensing activities for fuel cycle facilities under Subpart H of 10 CFR Part 70. The NRC is soliciting public comments on one ISG Draft document (ISG–08) which will be considered in the final version or subsequent revision.

II. Summary

The purpose of this notice is to provide the public an opportunity to review and comment on the Interim Staff Guidance document for fuel cycle facilities. Draft Interim Staff Guidance–08, Version 0, provides guidance to NRC staff relative to evaluation of natural

phenomena hazards in the context of a review of a license application or amendment request or other licensee submittal under 10 CFR Part 70, Subpart H.

III. Further Information

Documents related to this action 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 number for the document related to this notice is provided in the following table. If you do not have access to ADAMS or if there are problems in accessing the document located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Interim Staff Guidance	ADAMS Accession No.
Interim Staff Guidance–08, Version 0	ML051470304

This document may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Comments and questions on ISG–08 should be directed to the NRC contact listed below by July 8, 2005. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Comments should be directed to Wilkins Smith, Project Manager, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20005–0001. Comments can also be submitted by telephone, fax, or e-mail which are as follows: Telephone: (301) 415–5788; fax number: (301) 415–5370; e-mail: *wrs@nrc.gov.*

Dated at Rockville, Maryland this 1st day of June, 2005.

For the Nuclear Regulatory Commission.

Melanie A. Galloway,

Chief, Technical Support Group, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5–2919 Filed 6–7–05; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Postal Service Board of Governors; Sunshine Act Meeting

DATE AND TIMES: Tuesday, June 14, 2005; 9 a.m. and 3 p.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: June 14–9 a.m. (closed); 3 p.m. (open).

MATTERS TO BE CONSIDERED:

Tuesday, June 14 at 9 a.m. (Closed)

1. Strategic Planning.
2. Personnel Matters and Compensation Issues.
3. Financial Update.
4.Capital Investments.
a. Flat Recognition Improvement Program Phase 2.
b. Postal Automated Redirection System Phase 2.
c. Modification to Automated Package Processing System.
5. Rate Case Planning.
6. Postal Rate Commission Decision on Negotiated Service Agreement with HSBC North America Holdings, Inc./Household International, Docket No. MC2005–2.
7. Proposed Filing with the Postal Rate Commission for a Negotiated Service Agreement.

Tuesday, June 14 at 3 p.m. (Open)

1. Minutes of the Previous Meeting, May 10–11, 2005.
2. Remarks of the Postmaster General and CEO Jack Potter.
3. Committee Reports.
4. Capital Investments.
a. 1,406 Tractors and 382 Spotters.
b. 3,120 Carrier Route Vehicles.
5. Tentative Agenda for the August 1–2, 2005, meeting in Newport Beach, California.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 05–11471 Filed 6–6–05; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 10A–1; SEC File No. 270–425; OMB Control No. 3235–0468.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 10A–1 implements the reporting requirements in Section 10A of the Exchange Act, which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law No. 104–67. Under section 10A and Rule 10A–1 reporting occurs only if a registrant's board of directors receives a report from its auditors that (1) there is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board.

Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

It is estimated that Rule 10A–1 results in an aggregate additional reporting burden of 10 hours per year. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to

minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

May 26, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2935 Filed 6–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27981]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 2, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 27, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 27, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Transmission Company LLC, et al. (70–10302)

American Transmission Company LLC (''ATC LLC''), an electric transmission public-utility company under the Act, ATC Management Inc. (''ATCMI''), a public-utility company and a public-utility holding company exempt from registration under section 3(a)(1) of the Act by rule 2, both located at N19 W23993 Ridgeview Parkway West, Waukesha, WI 53188, and Alliant Energy Corporation (''Alliant''), a registered public-utility holding company and an indirect, partial owner of ATC LLC and ATCMI, located at 4902 N. Biltmore Lane, Madison, WI 53707 (ATC LLC and ATCMI together, ''Applicants''), have filed an application-declaration, as amended (''Application''), with the Commission under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 54.

Applicants seek authority to enter into financing and certain related transactions for the period beginning with an order in this matter through June 30, 2008 (''Authorization Period'').

I. Background and Summary of the Request

ATC LLC is an electric transmission company, organized as limited liability company under Wisconsin law, with its sole purpose to plan, construct, operate, maintain and expand transmission facilities, to provide adequate and reliable transmission services and to support effective competition in energy markets. ATC LLC was formed after the State of Wisconsin enacted legislation in 1999, encouraging, among other things, formation of for-profit transmission companies (''Transco Legislation'').[1]

ATC LLC is operated and managed by ATCMI, a Wisconsin corporation that also owns a nominal interest in ATC LLC.[2] A total of 28 investor-owned and cooperative systems contributed some combinations of transmission assets or cash in the process of forming ATC LLC.[3]

Applicants propose, generally, to enter into the following financing transactions through the Authorization Period:[4]

(i) For ATC LLC, to issue unsecured short-term debt securities and secured and unsecured long-term debt securities in an aggregate amount of up to $1.6 billion at any one time outstanding during the Authorization Period;

(ii) For ATC LLC, to issue member interests and, for ATCMI, to issue certain equity interests and preferred securities in an aggregate amount of up to $1.4 billion at any one time outstanding during the Authorization Period;[5]

(iii) For ATC LLC and ATCMI, to provide guarantees and other credit support in an aggregate amount not to exceed $200 million outstanding at any one time during the Authorization Period;

(iv) For ATC LLC and ATCMI, to enter into various interest rate hedging transactions; and

(v) For ATC LLC and ATCMI, to undertake transactions to extend the terms of or replace, refund or refinance existing obligations, as well as the issuance of new obligations in exchange for existing obligations, subject to the limits, terms and conditions that will be contained in the proposed authorization.

II. The Requested Authority

A. Financing Parameters

Applicants state that they propose that proceeds from the sale of securities in external financing transactions will

[1] Applicants current financing authorization was received by order dated July 1, 2004 (''2004 Omnibus Financing Order''), *American Transmission Company, et al.*, Holding Co. Act Release No. 27871. Applicants received certain additional financing authority by order dated April 11, 2005. *American Transmission Company, et al.*, Holding Co. Act Release No. 27958.

[2] ATC LLC, as a Wisconsin limited liability company, may elect to be ''member-managed'' or ''manager-managed'' and ATC LLC elected to be managed by ATCMI. Applicants state that ATCMI is structured as a corporation, rather than a limited liability company, to facilitate access to the public markets, including any potential public offering of ATCMI.

[3] *See also Alliant Energy Corp.*, note 2 above. One of the initial members was Alliant (through its subsidiaries Wisconsin Power and Light Company (''WPL'') and South Beloit Water, Gas and Electric Company (''South Beloit''). WPL and South Beloit are both subsidiary companies of Alliant. WPL contributed transmission assets to ATC LLC, but member units were issued for the assets to WPL's subsidiary, WPL Transco LLC. Applicants state that neither ATC LLC nor ATCMI are wholly owned subsidiaries of Alliant; they are only partially owned by Alliant. There are a number of other equity investors that each hold over 10% of ATC LLC. Applicants state, in addition, Alliant owns 20% of the voting securities of ATCMI. Applicants state that they finance on their own balance sheets without credit support from Alliant or any upstream owners and they maintain an arm's length relationship with Alliant. They also state that all information regarding Alliant in this Application comes from Alliant's public filings.

[4] *See generally, Alliant Energy Corporation, et al.*, Holding Co. Act Release No. 27331 (Dec. 29, 2000). Applicants state that ATC LLC is obliged, under the Transco Legislation, to construct, operate, maintain and expand its transmission facilities to provide adequate, reliable transmission service under an open-access transmission tariff. Applicants state that, effective February 1, 2002, ATC LLC transferred operational control of its facilities to the Midwest Independent Transmission System Operator, Inc.

[5] Applicants state that, as of March 31, 2005, approximately $555.5 million of member interests and Class A and Class B Shares were outstanding.

be used for general corporate purposes including (i) The financing of capital expenditures of ATC LLC and ATCMI; (ii) the financing of working capital requirements of ATC LLC and ATCMI; (iii) the refinancing or acquisition, retirement or redemption of securities previously issued by ATC LLC or ATCMI; (iv) to meet unexpected contingencies, payment and timing differences, and cash requirements; and (v) other lawful purposes.

Applicants also propose that the requested authorizations will be subject to the following restrictions, among other things: (i) The maturity, of short-term debt, will not exceed 364 days and, of long-term debt, will not exceed fifty years; (ii) any short-or long-term debt security or credit facility issued will have the designation, aggregate principal amount, interest rate(s) (or methods of determining interest rates), terms of payment of interest, collateral, redemption provisions, non-refunding provisions, sinking fund terms, conversion or put terms, and other terms and conditions as Applicants might determine at the time of issuance, provided that, in no event, however, will (i) the effective cost of money on short-term debt exceed 300 basis points over the London Interbank Offered Rate for maturities of one year or less in effect at the time; or (ii) the interest rate on long-term debt exceed 500 basis points over the yield-to-maturity of a U.S. Treasury security having a remaining term approximately equal to the average life of the debt; and (iii) the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution, of securities under this Application will not exceed 7% of the principal or total amount of the securities being issued.

Applicants also represent that ATCMI and ATC LLC each will maintain common equity of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term and short-term debt). Applicants further represent that, other than Class A and Class B Shares and Member Interests, no security may be issued in reliance upon the requested order, unless: (i) The security to be issued, if rated, is rated investment grade; (ii) all outstanding rated securities of the issuer are rated investment grade; and (iii) all outstanding rated securities of ATCMI are rated investment grade. Applicants state that they will notify the Commission within five (5) business days of becoming aware of any downgrade in the securities of any registered holding company in the Alliant system and that the notice shall include a statement of whether the downgrade will affect Applicants' access to capital markets.[6] For purposes of this condition, a security will be considered rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. Applicants request that the Commission reserve jurisdiction over the issuance by them of any securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

Applicants also state that any convertible or equity-linked security they issue will be convertible into, or linked, only to securities that ATC LLC and ATCMI are otherwise authorized to issue, by rule or Commission order, and the amount of the securities will be counted against the authorized limits for securities obtained by this request.

B. The Proposed Transactions

Applicants request, in addition to the transactions described specifically below, that they be authorized to undertake transactions to extend the terms of, or replace, refund or refinance existing obligations, as well as the issuance of new obligations in exchange for existing obligations, subject to the limits, terms and conditions that will be contained in the proposed authorization, during the Authorization Period.[7]

B.1. Short- and Long-Term Debt Securities

Applicants request that they be authorized to issue long- and short-term debt securities in an aggregate amount of up to $1.6 billion at any one time outstanding during the Authorization Period. Specifically, Applicants request that ATC LLC be authorized to issue unsecured short-term debt and that it include institutional borrowings, commercial paper and privately placed notes and that ATC LLC be authorized to sell commercial paper or privately placed notes (''commercial paper''), from time to time, in established commercial paper markets.[8] Applicants also ask that ATC LLC be permitted to, without counting against the proposed limit, maintain back up lines of credit in connection with one or more commercial paper programs.[9]

Applicants request that ATC LLC be authorized to issue secured or unsecured long-term debt securities, including notes or debentures under one or more indentures, or long-term indebtedness under agreements with banks or other institutional lenders, directly or indirectly. In addition, Applicants request that ATC LLC be authorized to issue long-term debt that is convertible or exchangeable into forms of equity or indebtedness, or into other securities or assets.[10]

B.2. Equity Interests

Applicants also request authority, for ATC LLC, to issue Member Interests [11] and, for ATCMI, to issue Class A and B Shares in an aggregate amount of up to of $1.4 billion at any one time outstanding during the Authorization Period. Applicants request, in addition,

[6] Applicants note that the 30% common equity requirement and other financial conditions applicable to the Alliant system generally are contained in *Alliant Energy Corp., et al.*, Holding Co. Act Release No. 27930 (Dec. 28, 2004). *See also* note 4 above.

[7] *See* note 1 above. Applicants were authorized, generally, to engage in the following transactions through June 30, 2005: (i) ATC LLC, to issue debt securities in an aggregate amount not to exceed $710 million at any one time outstanding, *provided that* the aggregate amount of short-term debt issued not exceed $200 million; (ii) ATC LLC, to issue Member Interests and, ATCMI, to issue equity interests and preferred securities in an aggregate amount of $500 million at any one time outstanding, *provided that* the aggregate amount of Member Interests and Class A and Class B shares outstanding at any one time not exceed $393 million plus the value at that time of the Member Interests and Class A and Class B Shares outstanding as of the date of the 2004 Omnibus Financing Order; (iii) ATC LLC and ATCMI, to provide guarantees and other credit support in an aggregate amount not to exceed $125 million outstanding at any one time; (iv) ATC LLC and ATCMI, to enter into various interest rate hedging transactions; (v) ATC LLC and ATCMI, to undertake transactions to extend the terms of, or replace, refund or refinance, existing obligations, as well as the issuance of new obligations in exchange for existing obligations; and (vii) by order dated April 11, 2005, ATC LLC, $100 million in additional long-term financing authority, to issue debt securities in an aggregate amount not to exceed $810 million at any one time outstanding, *provided that* the aggregate amount of short-term debt issued not exceed $200 million at any one time outstanding.

[8] Applicants state that the commercial paper may be sold at a discount or bear interest at a rate per annum prevailing at the date of issuance for commercial paper of a similarly situated company.

[9] Applicants propose that the credit lines will not be counted against the financing limit, that they may be utilized to obtain letters of credit or may be borrowed against, from time to time, as they deem appropriate or necessary.

[10] Applicants state that specific terms of any borrowings will be determined by ATCMI at the time of issuance and will comply in all regards with the general parameters set forth in above.

[11] Applicants request that Member Interests be permitted in the form of member interests, preferred member interests or convertible member interests and that ATC LLC be permitted to issue Member Interests in exchange for cash or transfer of transmission facilities to ATC LLC by current or future members or to purchase facilities from members or others.

that ATCMI be authorized to issue, to each new member of ATC LLC, Class A Shares in an amount that is proportional to that member's interest in ATC LLC.[12] ATCMI also seeks authority to issue preferred stock or other types of preferred securities (including convertible preferred securities).[13]

B.3. Guarantees

Applicants request authorization to enter into guarantees, obtain letters of credit, enter into expense agreements, or otherwise provide credit support, of the obligations of their affiliates or members in the ordinary course of business, in an amount not to exceed $200 million outstanding at any one time during the Authorization Period.[14] Applicants state, as an example, guarantees may be given, for generation or distribution interconnections, to bolster third party financing for equipment that Applicants would ultimately own under an interconnection agreement or for distribution customers for purchase and installation of equipment attaching to the distribution system that would enhance operation of the transmission grid. Applicants also state that they would not make any upstream guarantees to Alliant or its subsidiary companies.

B.4. Interest Rate Hedging Transactions

Applicants also seek authority to enter into interest rate hedging transactions with respect to existing indebtedness (''Interest Rate Hedges''),[15] subject to certain limitations and restrictions, in order to reduce or manage interest rate cost. Applicants state that Interest Rate Hedges will only be entered into with counterparties whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's Investors Service, or Fitch (''Approved Counterparties''). Applicants state that the transactions will be for fixed periods and stated notional amounts and that fees, commissions and other amounts payable to the counterparty or exchange, as applicable (excluding, however, the swap or option payments). in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Applicants also seek authority to enter into interest rate hedging transactions with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Applicants state that Anticipatory Hedges will only be entered into with Approved Counterparties and will be utilized to fix and/or limit the interest rate risk associated with any new issuance.[16]

Applicants state that they will comply with Statement of Financial Accounting Standard (''SFAS'') 133 (Accounting for Derivative Instruments and Hedging Activities) and SFAS 138 (Accounting for Certain Derivative Instruments and Certain Hedging Activities) or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board. Applicants also state that they will comply with existing and future financial disclosure requirements of the Financial Accounting Standards Board associated with hedging transactions and that these hedging transactions will qualify for hedge accounting treatment under U.S. GAAP. Applicants further state that they will not engage in speculative transactions; that all transactions in financial instruments and products will be matched to an underlying business requirement; and, that in no case will the notional principal amount of any hedging instrument exceed that of the underlying instrument and related interest rate exposure.

Exelon Corporation, et al. (70–10296)

Exelon Corporation, a Pennsylvania Corporation (''Exelon''), Exelon Ventures Company (''Ventures''), Exelon Enterprises Company, LLC (''Enterprises''), Exelon Generation Company, LLC (''Exelon Generation'') and Exelon Energy Delivery Company, LLC (''Delivery''), each located at 10 South Dearborn Street, 37th Floor, Chicago, Illinois 60603 filed an application-declaration (''Application'') under sections 6, 7, 9, 10, 11, 12, 13 32, 33 and 34 of the Act and rules 42, 43, 52, 53, 54, 58, 90 and 91 under the Act.

Exelon and its Subsidiaries (as defined below) seek authority to continue to undertake activities related to Exelon's otherwise permitted investments including in exempt wholesale generators (''EWGs''), foreign utility companies (''FUCOs''), exempt telecommunications companies (''ETCs''), investments permitted under rule 58 (''Rule 58 Subsidiaries'') and investments in businesses engaged in energy related activities (''Non-U.S. Energy Related Subsidiaries'') that, but for being conducted outside the United States, would constitute rule 58 exempt activities.[17]

Investments in EWGs, FUCOs, ETCs and Rule 58 Subsidiaries are permitted pursuant to the terms of the Act and rules 53 and 58. No authorization is

[12] Applicants anticipate that facilities purchased would be financed through the issuance of new debt and equity and that equity required for these purchases may be received from existing or new members.

[13] Applicants state that preferred stock or other types of preferred securities may be issued in one or more series with rights, preferences and priorities as may be designated in the instrument creating each series, as determined by ATCMI. In addition, the preferred securities may be redeemable or may be perpetual in duration. Applicants also state, among other things, that dividends or distributions on preferred securities will be made periodically and to the extent funds are legally available for such purpose, but may be made subject to terms which allow Applicants to defer dividend payments for specified periods, and that preferred securities may be convertible into forms of equity or debt, or into other securities or assets, with the dividend rate on any series of preferred securities not exceeding 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of that series of preferred securities at the time of issuance.

[14] Applicants state that certain of the guarantees may be for obligations not capable of exact quantification and that, in these cases, they will determine the exposure of the guarantee by appropriate means including estimations based on loss experience or projected potential payment amounts and in accordance with U.S. generally accepted accounting principles (''U.S. GAAP'') and/or sound financial practices and reevaluated periodically.

[15] Applicants state that the Interest Rate Hedges will involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations.

[16] Applicants state that Anticpatory Hedges will be entered into through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each, ''Forward Sale''), (ii) the purchase of put options on U.S. Treasury obligations (''Put Options Purchase''), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (''Zero Cost Collar''), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges.

[17] On December 20, 2004, Exelon announced a proposed merger with Public Service Enterprise Group Incorporated (''PSEG''). Exelon filed on March 15, 2005 for Commission approval of that transaction in File No. 70–10294. Contingent on the Commission's approval and the closing of the transaction, PSEG's only public utility company, Public Service Electric and Gas Company (''PSE&G'') will be considered a ''Utility Subsidiary'' for purposes of this Application. Each of PSEG's non-utility subsidiaries will constitute a Non-Utility Subsidiary. Permitted Non-Utility Investments will include those investments authorized to be retained in the Exelon/PSEG merger order, subject to any further orders of the Commission to the contrary. (''Utility Subsidiary'', ''Non-Utility Subsidiary'', and ''Permitted Non-Utility Investments'' are defined below.)

sought in the Application for investments in these entities in excess of what is authorized by statute or rule or existing Commission order applicable to Exelon. As described below, the Application seeks approval to continue to make investments in Non-U.S. Energy Related Subsidiaries through June 30, 2008 (''Authorization Period''). These permitted investments in EWGs, FUCOs, ETCs, Rule 58 Subsidiaries and (assuming continued Commission approval) Non-U.S. Energy Related Subsidiaries (whether existing on the date of the Application acquired after the date of the Application) are collectively referred to as ''Permitted Non-Utility Investments.'' [18]

Exelon has four operating public utility company subsidiaries (''Utility Subsidiaries''): [19]

- PECO Energy Company (''PECO''), a Pennsylvania corporation and a public utility company engaged (i) in the transmission, distribution and sale of electricity and (ii) in the purchase and sale of natural gas in Pennsylvania;
- Commonwealth Edison Company (''ComEd''), an Illinois corporation and a public utility company engaged in the transmission, distribution and sale of electricity in Illinois;
- Exelon Generation, a Pennsylvania limited liability company and a public utility company engaged in the generation and sale of electricity in Pennsylvania, Illinois and elsewhere and also engaged in electricity and energy commodities marketing and brokering activities and development and ownership of EWGs; and
- Commonwealth Edison Company of Indiana (''ComEd Indiana''), an Indiana corporation that owns certain transmission facilities in Indiana. ComEd Indiana has no retail customers and only provides wholesale transmission services.[20]

Exelon and its Subsidiaries request authority to engage, directly or through subsidiaries (''Subsidiaries'') [21] in the following general matters through the Authorization Period, all more specifically described below: (i) To expend $500 million directly or through Non-Utility Subsidiaries and Exelon Generation on preliminary development activities (''Development Activities'') and administrative and management activities (''Administrative Activities'') in each case relating to Permitted Non-Utility Investments, (ii) to invest directly or through Non-Utility Subsidiaries and Exelon Generation up to $500 million to construct and acquire energy assets (''Energy Assets'') that are incidental and related to the business of an electricity and energy commodities marketer and broker, (iii) to acquire directly or through Subsidiaries the securities of one or more corporations, trusts, partnerships, limited liability companies or entities (''Intermediate Subsidiaries'') which would be created and organized exclusively for the purpose of acquiring, holding, and/or financing or facilitating the acquisition of Permitted Non-Utility Investments, (iv) to undertake internal reorganizations of then existing and permitted Subsidiaries and businesses, for example by moving a Permitted Non Utility Subsidiary to be a subsidiary of a different parent, and (v) to engage though Non-Utility Subsidiaries and Exelon Generation in energy related activities that, but for being conducted outside the United States, would constitute rule 58 exempt activities. No authority is sought in the Application for additional financing authority.

In connection with existing and future Permitted Non-Utility Investments, Exelon requests authority to engage directly and through Non-Utility Subsidiaries and Exelon Generation in Development Activities and Administrative Activities associated with such investments. Intermediate Subsidiaries may also engage in Development Activities and Administrative Activities. Development Activities and Administrative Activities include preliminary activities designed to result in a Permitted Non-Utility Investment such as an EWG or FUCO; however, such preliminary activities may not qualify for such status until the project is more fully developed. Development Activities and Administrative Activities will be provided ''at cost'' in accordance with section 13(b) and rules 90 and 91 under the Act.

Development Activities will include due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection with those activities, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the securities of other companies. Development Activities will be designed to eventually result in a Permitted Non-Utility Investment.

Exelon proposes to expend directly or through Non-Utility Subsidiaries and Exelon Generation up to $500 million in the aggregate outstanding at any time during the Authorization Period on all such Development Activities.[22] Exelon proposes the continued use of a ''revolving fund'' concept for permitted Development Activities. To the extent a Subsidiary for which such amounts were expended for Development Activities becomes an EWG, FUCO, Rule 58 Subsidiary or Non-U.S. Energy Related Subsidiary, the amount so expended will cease to be Development Activities and then be considered as part of the ''aggregate investment'' in such entity and will then count against the limitation on such aggregate investment under rules 53 or 58, as modified by Commission order applicable to Exelon.

According to Exelon, the approval sought in the Application will not increase the authorized amount of aggregate investment in EWGs and FUCOs permitted in the Commission order dated April 1, 2004 (Holding Co.

[18] ''Permitted Non-Utility Investments'' also includes those Non-Utility Subsidiaries that Exelon currently owns, those approved for retention by Holding Co. Act Release No. 27256 (Oct. 19, 2000) at the time Exelon became a registered holding company and Non-Utility Subsidiaries acquired later.

[19] On April 1, 2004, the Commission issued an order authorizing among other things, de-registration of Exelon Generation and PECO Energy Power Company (PEPCO) under Section 5(d) of the Act. The order states that PEPCO, previously an electric utility company and a registered holding company, along with its public utility subsidiary Susquehanna Power Company and Exelon Generation's public utility subsidiary, Susquehanna Electric Company were converted into EWGs. As a result, Exelon Generation and PEPCO no longer have any public utility company subsidiaries as of March 22, 2004. See *Exelon Corporation, et al.*, Holding Co. Act Release No. 35–27830 (April 1, 2004).

[20] Exelon does not currently own any FUCOs. Exelon Generation may also invest in Rule 58 Subsidiaries and Non-U.S. Energy Related Subsidiaries.

[21] Exelon states that for purpose of the Application the term ''Subsidiaries'' shall also include other direct or indirect subsidiaries that Exelon may form or acquire after the date of the filing of the Application with the approval of the Commission, pursuant to the rule 58 exemption or pursuant to sections 32, 33, or 34 of the Act or, to the extent approved in an order in this docket, as Non-U.S. Energy Related Subsidiaries.

[22] Expenditures in EWGs, FUCOs, Rule 58 Subsidiaries and Non-U.S. Energy Related Subsidiaries which count against the ''aggregate investment'' limitation of rule 53 or rule 58, as modified by Commission orders applicable to Exelon, will not count against the $500 million limitation. Under section 34 of the Act, there is no limitation on the amount Exelon may invest in ETCs.

Act Release No. 27830) or increase the permitted aggregate investment authorized under rule 58.

Exelon requests authority to expend directly or through its Non-Utility Subsidiaries and Exelon Generation up to $500 million to construct or acquire Energy Assets that are incidental and related to its business as an electricity and energy commodities marketer and broker, or to acquire the securities of one or more existing or new companies substantially all of whose physical properties consist or will consist of Energy Assets; provided that the acquisition and ownership of such Energy Assets would not cause any Subsidiary to be or become an ''electric utility company'' or ''gas utility company,'' as defined in sections 2(a)(3) and 2(a)(4) of the Act. Energy Assets will not constitute additional investments in EWGs or FUCOs.

Exelon proposes to create and acquire directly or indirectly through Subsidiaries the securities of one or more Intermediate Subsidiaries. Intermediate Subsidiaries may be corporations, trusts, partnerships, limited liability companies or other entities. Intermediate Subsidiaries will be organized exclusively for the purpose of acquiring and holding the securities of, or financing or facilitating Exelon's investments in, other direct or indirect Permitted Non-Utility Investments. Intermediate Subsidiaries that are subsidiaries of Non-Utility Subsidiaries or Exelon Generation may also engage in Development Activities and Administrative Activities.

Exelon and its Subsidiaries state that there are several legal and business reasons for the use of Intermediate Subsidiaries in connection with making investments in Permitted Non-Utility Investments. For example, the formation and acquisition of limited purpose subsidiaries is often necessary or desirable to facilitate financing the acquisition and ownership of a FUCO, an EWG or another non-utility enterprise. Furthermore, the laws of some foreign countries may require that the bidder in a privatization program be organized in that country. In such cases, it would be necessary to form a foreign Non-Utility Subsidiary as the entity (or participant in the entity) that submits the bid or other proposal. In addition, the interposition of one or more Intermediate Subsidiaries may allow Exelon to defer the repatriation of foreign source income, or to take full advantage of favorable tax treaties among foreign countries, or otherwise to secure favorable U.S. and foreign tax treatment that would not otherwise be available. In particular, use of Intermediate Subsidiaries can achieve tax efficient corporate structures which will result in minimizing state or federal taxes for Exelon or its Subsidiaries.

Exelon and its Subsidiaries propose that an Intermediate Subsidiary may be organized, among other things: (1) In order to facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, ETC, or other non-utility company which, upon acquisition, would qualify as a Rule 58 Subsidiary or Non-U.S. Energy Related Subsidiary; (2) after the award of such a bid proposal, in order to facilitate closing on the purchase or financing of such acquired company; (3) at any time subsequent to the consummation of an acquisition of an interest in any such company in order, among other things, to effect an adjustment in the respective ownership interests in such business held by the Exelon System and non-affiliated investors; (4) to facilitate the sale of ownership interests in one or more acquired Permitted Non-Utility Investments; (5) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (6) as a part of tax planning in order to limit Exelon's exposure to U.S. and foreign taxes; (7) to further insulate Exelon and the Utility Subsidiaries from operational or other business risks that may be associated with investments in non-utility companies; or (8) for other lawful business purposes.

Exelon and its Subsidiaries further state that investments in Intermediate Subsidiaries may take the form of any combination of the following: (1) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of voting or non-voting equity interests; (2) capital contributions; (3) open account advances without interest; (4) loans; and (5) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries.

Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from Exelon's available funds. No authority is sought for additional financing authority.

To the extent that Exelon provides funds directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any EWG or FUCO or a Rule 58 Subsidiary or Non-U.S. Energy Related Subsidiary, the amount of such funds will be included in Exelon's ''aggregate investment'' in such entities, as calculated in accordance with rule 53 or rule 58, as applicable and as modified by Commission order applicable to Exelon.

The authority requested for Intermediate Subsidiaries is intended to allow for the corporate structuring alternatives outlined above and will not allow any increase in aggregate investment in EWGs, FUCOs, Rule 58 Subsidiaries, approved Non-U.S. Energy Related Subsidiaries or any other business subject to an investment limitation under the Act.

Exelon currently engages directly or through Subsidiaries in certain non-utility businesses. Exelon seeks authority to engage in internal corporate reorganizations to better organize its current and future Non-Utility Subsidiaries and investments.

Exelon and Subsidiaries request authority, to the extent needed, to sell or to cause any Subsidiary to sell or otherwise transfer (i) such businesses, (ii) the securities of current Subsidiaries engaged in some or all of these businesses or (iii) investments which do not involve a Subsidiary (*i.e.* less than 10% voting interest) to a different Subsidiary, and, to the extent approval is required, Exelon requests, on behalf of the Subsidiaries, authority to acquire the assets of such businesses, Subsidiaries or other then existing investment interests. Alternatively, transfers of such securities or assets may be affected by share exchanges, share distributions, dissolutions or dividends followed by contribution of such securities or assets to the receiving entity. In the future, Exelon may determine to transfer securities or the assets of Non-Utility Subsidiaries to other Subsidiaries as described in the preceding sentence. Exelon may also liquidate or dissolve Non-Utility Subsidiaries or merge a Non-Utility Subsidiary into any other Subsidiary.

According to Exelon and its Subsidiaries, such internal transactions would be undertaken in order to eliminate corporate complexities, to combine related business segments for staffing and management purposes, to eliminate administrative costs, to achieve tax savings, or for other ordinary and necessary business purposes. Exelon requests authority to engage in such transactions, to the extent that they are not exempt under the Act and rules under the Act, through the Authorization Period.

Exelon and its Subsidiaries state that the transactions proposed under this heading will not involve the sale or other disposition of any utility assets of the Utility Subsidiaries and will not involve any change in the corporate

ownership, or involve any restructuring of, the Utility Subsidiaries. The approval sought does not extend to the acquisitions of any new businesses or activities.

Exelon requests authority to acquire directly or indirectly Non-U.S. Energy Related Subsidiaries. Exelon believes the following list of energy related activities are substantially identical to activities that have been approved for other registered holding companies outside the United States. Approval is sought for Non-U.S. Energy Related Subsidiaries to engage in sales of the following goods and services outside the United States:

• *Energy Management Services.* Energy management services, including the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management, including energy and efficiency audits; meter data management, facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate) energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment and general advice on programs; the design, construction, installation, testing, sales, operation and maintenance of new and retrofit heating, ventilating, and air conditioning (''HVAC''), electrical and power systems, alarm, security, access control and warning systems, motors, pumps, lighting, water, water-purification and plumbing systems, building automation and temperature controls, installation and maintenance of refrigeration systems, building infrastructure wiring supporting voice, video, data and controls networks, environmental monitoring and control, ventilation system calibration and maintenance, piping and fire protection systems, and design, sale, engineering, installation, operation and maintenance of emergency or distributed power generation systems, and related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical systems.

• *Consulting Services.* Consulting services with respect to energy- and gas-related matters for associate and nonassociate companies, as well as for individuals. Such consulting services would include technical and consulting services involving technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation or centralized billing, bill disaggregation tools and bill inserts), risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, general management consulting including training activities, feasibility studies, and other similar related services.

• *Energy Marketing.* The brokering and marketing of electricity, natural gas and other energy commodities, as well as providing incidental related services, such as fuel management, storage and procurement.

Exelon and its Subsidiaries state that consistent with existing precedent, Exelon requests authority to conduct Energy Management Services and Consulting Services anywhere outside the United States. Also consistent with precedent, Exelon requests authority to conduct Energy Marketing activities in Canada and Mexico. Furthermore, Exelon requests that the Commission reserve jurisdiction over the conduct of Energy Marketing activities in any other country pending completion of the record.

The Southern Company, et al. (70–10293)

The Southern Company (''Southern''), a registered holding company, and its wholly owned public-utility company subsidiary Southern Power Company (''Southern Power''), both at 270 Peachtree Street, NW., Atlanta, GA 30303, have filed an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and rules 43, 44, 45 and 54 under the Act.

I. Background

By order dated December 27, 2000 (HCAR No. 27322, ''Prior Order''), the Commission authorized the formation of Southern Power. Southern Power is an electric utility company that constructs, owns and manages electric generation facilities and sells the output, under long-term contracts, to affiliated public-utility companies and unaffiliated wholesale purchasers. Accordingly, Southern Power is subject to regulation by the Federal Energy Regulatory Commission but is not regulated by any State commission. Currently, the securities issued by Southern Power are rated as follows: unsecured debt: rated Baa1 by Moody's, BBB+ by Standard & Poors (''S&P''), and BBB+ by Fitch; and commercial paper: rated P–2 by Moody's, A–2 by S&P, and F–2 by Fitch.

By the Prior Order, the Commission also authorized Southern to fund Southern Power in an aggregate amount not to exceed $1.7 million, to obtain independent financing in an aggregate amount not to exceed $2.5 billion, the proceeds of which would be used to, among other things, invest in exempt wholesale generators (''EWGs''). As discussed below, by the Application, Southern and Southern Power (collectively, ''Applicants'') request a modification and extension of Southern Power's financing authority.

II. Requests for Authority

As discussed below, Applicants seek authority for Southern to provide financial support to Southern Power, its public-utility company subsidiary, and for Southern Power to issue securities and enter into certain financial transactions on behalf of itself and its subsidiaries.

A. Support by Southern

Applicants request authority through June 30, 2007 (''Authorization Period'') for Southern to: (1) Purchase common stock and debt securities issued by Southern Power; (2) purchase from or contribute to Southern Power various equity interests; (3) issue guarantees to support securities and other obligations of Southern Power, and provision of performance guarantees (collectively, ''Southern Guarantees'') to or for the benefit of Southern Power. The proceeds from these financings, including the Southern Guarantees, would be used to finance Southern Power's operations, including its acquisition, construction and operation of power generating facilities and investment in energy-related companies. The aggregate amount of financing provided by Southern to Southern Power in connection with these transactions would not exceed $1.2 billion (''Southern Power Aggregate Financing Limit'').

The term of Southern's loans to Southern Power would not exceed seven years, and the interest on those loans would be designed to return to Southern its effective cost of capital.

Southern Guarantees may take the form of Southern agreeing to guarantee, to undertake reimbursement obligations, to assume liabilities or to assume other obligations with respect to, or to act as surety on, bonds, letters of credit, evidences of indebtedness, equity commitments, performance and other

obligations undertaken by Southern Power. The terms and conditions of the Southern Guarantees would be established through arms-length negotiations based upon current market conditions. All Southern Guarantees issued would be without recourse to any of Southern's other subsidiaries. In no event would the effective cost of capital on any Southern Guarantee of debt of Southern Power exceed 500 basis points over a U.S. Treasury security having a term and an amount equal to the guaranteed amount.

B. Southern Power Financings

1. Guarantees

Applicants request authority for Southern Power to provide guarantees and issue guarantees on behalf of its EWG and energy-related company subsidiaries (collectively, ''Exempt Subsidiaries''). Southern Power seeks the flexibility to hold its interests in and provide support for Exempt Subsidiaries indirectly. Therefore, Applicants also request authority: (1) For Southern Power to acquire interests in special-purpose subsidiaries (''Intermediate Companies'') organized to acquire and hold the securities of and finance the operation of Exempt Subsidiaries and engage in development activities; [23] and (2) for the Intermediate Companies to: (a) Issue and sell to nonaffiliates debt securities that would have the same terms as the Long-Term Debt, Short-Term Debt, Term Loan Notes and Commercial Paper proposed to be issued and sold by Southern Power (all described below); and (b) issue guarantees and enter into guarantee arrangements on behalf of Exempt Subsidiaries. The proposed debt securities to be issued by Intermediate Companies would be counted toward the Southern Power Aggregate Financing Limit. The total exposure of Southern Power and the Intermediate Companies under the guarantees and guarantee arrangements would not exceed $500 million at any one time (''Southern Power Guarantee Limit'').[24]

2. Other Securities

Further, Applicants request authority through the Authorization Period for Southern Power to obtain financing through and in connection with the issuance and sale of securities. These financings would be counted toward and would not exceed the Southern Power Aggregate Financing Limit.

a. Common Stock

Applicants request authority for Southern Power to issue and sell directly, and for Southern to acquire, shares of Southern Power's $0.01 par value capital stock (''Common Stock'') to Southern. Southern would not pay less than the par value of the Common Stock as determined by Southern Power's board of directors.

b. Preferred Securities

Applicants request authority for Southern Power to issue and sell preferred securities, directly or indirectly, to nonaffiliates. Southern Power may issue preferred securities indirectly through one or more special purpose financing subsidiaries (''Financing Subsidiaries''), and Applicants request authority for Southern Power to acquire Financing Subsidiaries for this purpose.

Preferred securities would be issued in one or more series with such rights, preferences and priorities as may be designated in the instrument creating each such series, as determined by the board of directors of Southern Power. Preferred securities would have maturities of more than one year. Dividends or distributions on preferred securities would be made periodically and to the extent funds are legally available for such purpose, but might be made subject to the terms that would allow the issuer to defer dividend payments for specified periods.

A Financing Subsidiary would lend, dividend or otherwise transfer to Southern Power, the proceeds of the preferred securities it issues, together with the equity contributed to the Financing Subsidiary. In turn, Southern Power would issue guarantees related to: (1) Payments of dividends or distributions on the preferred securities of any Financing Subsidiary if and to the extent that the Financing Subsidiary has funds legally available for this purpose; (2) payments to holders of the preferred securities of amounts due upon liquidation of the Financing Subsidiary or redemption of its preferred securities; and (3) certain additional amounts that may be payable in respect of the preferred securities (*e.g.*, trustee's fees and expenses). Applicants request authority for Southern Power to issue these guarantees, which would be counted against the Southern Power Aggregate Financing Limit.

c. Preferred Stock

Applicants request authority for Southern Power to issue and sell directly preferred stock or preference stock (collectively, ''Preferred Stock'') to nonaffiliates. Preferred Stock would have a specified par or stated value per share and, in accordance with applicable State law, would have such voting powers (if any), designations, preferences, rights and qualifications, limitations or restrictions as stated and expressed in the resolution or resolutions adopted by the board of directors of Southern Power.

d. Long-Term Debt

Applicants request authority for Southern Power to issue and sell notes with maturities of between one and fifty years (''Long-Term Debt''). Long-Term Debt would be issued and sold to both nonaffiliated investors and Southern. Applicants request authority for Southern to acquire Long-Term Debt. These notes might be either senior or subordinated obligations, might be convertible or exchangeable into preferred stock, might have the benefit of a sinking fund and might be insured by an insurance policy that guarantees payment of the principal and interest.

e. Other Debt Securities

Applicants request authority for Southern Power to issue and sell directly unsecured promissory notes with a term of one year or less (''Short-Term Debt''), unsecured promissory notes with terms of more than one year (''Term Loan Notes'') and commercial paper to nonaffiliated commercial lending institutions and/or to Southern. Correspondingly, Applicants also request authority for Southern to acquire Short-Term Debt, Term Loan Notes and Southern Power's commercial paper. Commercial paper would be issued in the form of promissory notes with varying maturities not to exceed one year.[25]

f. Revenue Bond Arrangements

Applicants request authority for Southern Power to enter into loan agreements (''Loan Agreements'') and installment sale agreements (''Installment Sale Agreements''). The Loan Agreements and/or Installment Sale Agreements would be entered into

[23] Development activities would include project due diligence and design review; market studies; site inspection; preparation of bid proposals, including, related postings of bid bonds, cash deposits or the like; application for requirement permits and/or regulatory approvals; acquisitions of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''host'' users, fuels suppliers and other project contractors; negotiation of financing commitments with lenders and equity co-investors; and other preliminary development activities as may be required in preparation for the acquisition or financing of a project.

[24] Those guarantees would not be counted against the Southern Power Aggregate Financing Limit.

[25] Maturities for these securities might be subject to extension to a final maturity not to exceed 390 days.

in connection with one or more counties or other appropriate public bodies or instrumentalities (collectively, ''Counties'') issuing revenue bonds (''Revenue Bonds''), the proceeds of which would be used to either finance the costs of acquiring, constructing and/or equipping new sewage and solid waste disposal facilities (''Projects'') at certain of Southern Power's generating plants or refinance the debt previously incurred to acquire, construct and/or equip Southern's plants with Projects.

Revenue Bonds would be sold by a County under arrangements with one or more purchasers, placement agents or underwriters. Southern Power may not be party to the purchase, placement or underwriting arrangements for the Revenue Bonds, but those such arrangements would provide that the terms of the Revenue Bonds and their sale by the County shall be satisfactory to Southern Power. The interest rate borne by the Revenue Bonds would be approved by the County, and would be either a fixed rate that may be converted to a rate that would fluctuate or a fluctuating rate that may be convertible to a fixed rate. The intent is that interest on the Revenue Bonds would generally be excludable from gross income for Federal income tax purposes, and Southern Power expects that, at the time of issuance, the interest rates on obligations, the interest on which is tax exempt, would be lower than the rates on similar obligations of comparable quality, interest on which is fully subject to Federal income taxation.

Under the Loan Agreement, the County would loan to Southern Power the proceeds of the sale of the County's Revenue Bonds, and Southern Power may issue a non-negotiable promissory note (''Note''). Applicants request authority for Southern Power to issue and sell Notes in connection with Loan Agreements. Under the Installment Sale Agreement, the County would undertake to purchase and sell the related Project to Southern Power. The installment sale structure may be used if required by applicable state law or if it affords transactional advantages to Southern Power.

Under either structure, the proceeds of the loan or purchase would be deposited with a trustee (''Trustee'') under an indenture agreement between the County and the Trustee (''Trust Indenture'') that provides for Revenue Bonds to be issued and secured. The Note, the Loan Agreement or the Installment Sale Agreement (as the case may be) would provide for payments to be made by Southern Power at times and in amounts that would correspond to the payments with respect to the principal of, premium, if any, and interest on the related Revenue Bonds whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise.

The Loan Agreement or the Installment Sale Agreement would provide for the assignment to the Trustee of the County's interest in, and of the monies receivable by the County under, the agreement or the Note. Both the Loan Agreement and the Installment Sale Agreement would obligate Southern Power to pay the fees and charges of the Trustee, and may allow Southern Power, at any time so long as it is not in default, prepay the amount due under the Loan Agreement or the Note, or the Installment Sale Agreement, in whole or in part, such payment to be sufficient to redeem or purchase outstanding Revenue Bonds in the manner and to the extent provided in the Trust Indenture.

The Trust Indenture would provide that the Revenue Bonds may be redeemable on or after a specified date, in whole or in part at Southern Power's option, and may require the payment of a premium at a specified percentage of the principal amount, which may decline annually. The Trust Indenture would also provide that the Revenue Bonds would be redeemable in whole, at Southern Power's option, at the principal amount thereof plus accrued interest (but without premium) in certain other cases of undue burdens or excessive liabilities imposed with respect to the related Project, its destruction or damage beyond practicable or desirable repairability or condemnation or taking by eminent domain, or if operation of the related facility is enjoined and Southern Power determines to discontinue operation of it. The Revenue Bonds would mature not more than 40 years from the first day of the month in which they are initially issued and, if it is deemed advisable for marketability purposes, may be entitled to the benefit of a mandatory redemption sinking fund calculated to retire a portion of the aggregate principal amount of the Revenue Bonds prior to maturity.

The Trust Indenture may give the holders of the Revenue Bonds the right, during such time as the Revenue Bonds bear interest at a fluctuating rate or otherwise, to require that the Revenue Bonds be repurchased from time to time and arrangements be made for the remarketing of the Revenue Bonds through a remarketing agent. Southern Power also may be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to mandatory redemption, at any time if the interest thereon is determined to be subject to federal income tax. The purchase price payable by or on behalf of Southern Power in respect of Revenue Bonds tendered for purchase at the option of the holders thereof would not exceed 100% of the principal amount thereof, plus accrued interest to the purchase date.

In the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, and Southern Power may be required to indemnify the bondholders against any other additions to interest, penalties and additions to tax.

To secure a better credit rating, Southern Power may cause an irrevocable letter of credit or other credit facility (''Letter of Credit'') of a bank or other financial institution (''Bank'') to be delivered to the Trustee.[26] The Letter of Credit would oblige the Bank to pay to the Trustee, upon request, up to an amount necessary in order to pay principal of and accrued interest on the Revenue Bonds when due. Under a separate agreement with the Bank, Southern Power would agree to pay to the Bank all amounts that would be drawn under the Letter of Credit, as well as certain fees and expenses. In the event that the Letter of Credit is delivered to the Trustee, Southern Power may also convey to the County a subordinated security interest in the Project or other property of Southern Power as further security for Southern Power's obligations under the Agreement and the Note, and the subordinated security interest would be assigned by the County to the Trustee.

As an alternative to, or in conjunction with, securing its obligations under the Agreement and Note as above described, and to obtain a ''AAA'' rating for the Revenue Bonds by one or more nationally recognized securities rating services, Southern Power may cause an insurance company to issue a policy of insurance guaranteeing the payment when due of the principal of and interest on such series of the Revenue Bonds. The insurance policy would extend for the term of the covered Revenue Bonds and would be non-cancelable by the insurance company for any reason. Southern Power's payment of the premium with respect to the insurance policy could be in various forms, including a non-refundable, one-time insurance premium paid at the time the policies are issued, and/or an

[26] Delivery of the Letter of Credit would be designed to obtain for the Revenue Bonds a credit rating equivalent to the Bank's.

additional interest percentage to be paid to the insurer in correlation with regular interest payments. In addition, Southern Power may be obligated to make payments of certain specified amounts into separate escrow funds and to increase the amounts on deposit in such funds under certain circumstances. The amount of each escrow fund would be payable to the insurance company as indemnity for any amounts paid pursuant to the related insurance policy in respect of principal of or interest on the related Revenue Bonds.

The effective cost of capital to Southern Power on any series of the Revenue Bonds would not exceed competitive market rates available at the time of issuance of securities having the same or reasonably similar terms and conditions issued by companies of reasonably comparable credit quality; provided that in no event would the effective cost of capital exceed 200 basis points over U.S. Treasury securities having comparable maturities.

The premium (if any) payable upon the redemption of any Revenue Bonds at the option of Southern Power would not exceed the greater of: (1) 5% of the principal amount of the Revenue Bonds so to be redeemed; or (2) a percentage of such principal amount equal to the rate of interest per annum borne by such Revenue Bonds. Any Letter of Credit issued as security for the payment of Revenue Bonds would be issued pursuant to a reimbursement agreement between Southern Power and the financial institution issuing the Letter of Credit (''Reimbursement Agreement''). Under the Reimbursement Agreement, Southern Power would agree to pay or cause to be paid to the financial institution, on each date that any amount is drawn under such institution's Letter of Credit, an amount equal to the amount of the drawing, either by cash or by a borrowing from the institution under the Reimbursement Agreement. Those borrowings may have a term of up to 10 years and would bear interest at the financial institution's prevailing rate offered to corporate borrowers of similar quality which would not exceed: (1) The London Interbank Offered Rate plus up to 3%; (2) the financial institution's certificate of deposit rate plus up to 2¾%; or (3) a rate not to exceed the prime rate plus 1%, to be established by agreement with the financial institution prior to the borrowing.

C. Financing Parameters

The following general terms would be applicable, as appropriate, to the proposed financing activities.

1. Effective Cost of Money

The effective cost of capital on Long-Term Debt, preferred stock, preferred securities, Short-term and Term Loan Notes and Commercial Paper would not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality. In no event would the effective cost of capital: (1) On any series of Long-Term Debt and any Term Loan Note with a maturity of greater than one year exceed 500 basis points over a U.S. treasury security having a remaining term equal to the term of such security; (2) on any series of Short-Term Debt or Term Loan Note with maturity of one year or less or Commercial Paper exceed 300 basis points over the London Interbank Offered Rate for maturities of less than one year; and (3) on any series of Preferred Stock or Preferred Securities exceed 500 basis points over a U.S. Treasury security having a remaining term equal to the term of such series.

2. Issuance Expenses

The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of Long-Term Debt and Short-term and Term Loan Notes would not exceed 6% of the principal or total amount of the securities being issued. For preferred stock and preferred securities those expenses would not exceed 6% of the principal or total amount of the securities being issued. No commission or fee would be payable in connection with the issuance and sale of Commercial Paper, except for a commission, payable to the dealer, not to exceed one-eighth of one percent per annum in respect of Commercial Paper sold through the dealer as principal.

3. Common Equity Ratio

At all times during the Authorization Period, Southern and Southern Power represent that they would each maintain a common equity ratio of at least thirty percent of its consolidated capitalization as reflected in its most recent Form 10–K or Form 10–Q filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date.[27]

[27] Consolidated capitalization is defined to include, where applicable, all common-stock equity (comprised of common stock, additional paid-in capital, retained earnings, treasury stock and/or other comprehensive income or loss), preferred stock, preferred securities, equity-linked securities, long-term debt, short-term debt, current maturities and/or minority interests.

4. Investment Grade Ratings

Southern and Southern Power further represent that no guarantees or securities, other than Commercial Paper or short-term bank debt (with maturity of one year or less), would be issued in reliance upon the authorization granted by the Commission in connection with this application, unless upon original issuance: (1) The security to be issued, if rated, is rated investment grade; and (2) all outstanding securities of Applicants that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the 1934 Act. Applicants also request that the Commission reserve jurisdiction over the issuance of any guarantees or securities that do not satisfy these conditions.

Pepco Holdings, Inc. et al (70–10286)

Pepco Holdings, Inc. (''PHI''), 701 Ninth Street, NW., Washington, DC 20068, a registered public utility holding company, PHI's direct and indirect electric and gas public utility subsidiaries: Potomac Electric Power Company (''Pepco''), 701 Ninth Street, NW., Washington, DC 20068, Atlantic City Electric Company (''ACE'') and Delmarva Power and Light Company (''DPL''), 800 King Street, Wilmington, DE 19899; PHI's registered public utility holding company subsidiary, Conectiv, 800 King Street, Wilmington, DE 19899; PHI's direct and indirect nonutility subsidiary holding companies Potomac Capital Investment Corporation (''PCIC''), 701 Ninth Street, NW., Washington, DC 20068, Pepco Energy Services, Inc. (''PES'') 1300 North 17th Street, Suite 1600, Arlington, VA 22209, PHI Service Company (''PHISCo'') and Conectiv Energy Holding Company (''Conectiv Holding''), 800 King Street, Wilmington, DE 19899 and PHI's other direct and indirect nonutility subsidiaries[28] (''Nonutility Subsidiaries,'' and together, ''Applicants'') have filed an application-declaration (''Application'') with the Commission under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(f) and 13 of the Act and rules 43, 45, 46, 54, 90 and 91 under the Act.

[28] See S.E.C. File No. 70–10286 for a complete list of the companies listed as ''Applicants'' to this transaction.

I. Background

On August 1, 2002, Pepco and Conectiv were involved in merger transactions that resulted in the formation of PHI (''Merger''). Conectiv was a registered holding company under the Act prior to the Merger and continues as such. By order dated July 31, 2002 (HCAR No. 27557) (''Financing Order''), the Commission authorized PHI and certain of its subsidiaries, among other things, to perform financing activities through the period ending June 30, 2005.

In this Application Applicants request authorization to engage in various transactions described below through June 30, 2008 (''Authorization Period'').

II. Description of the Parties

A. PHI

The principal direct subsidiaries of PHI are:

1. Pepco, a public utility company engaged in the transmission and distribution of electricity in Washington, DC and major portions of Prince George's and Montgomery counties in suburban Maryland;
2. PCIC, a company which manages a portfolio of financial investments, primarily energy leveraged leases;
3. PES, a competitive energy business providing non-regulated generation, marketing and supply of electricity and gas and related energy management services and
4. PHISCo, a service company established in accordance with section 13(b) of the Act and
5. Conectiv, a registered holding company under the Act.

The principal direct subsidiaries of Conectiv are:

- ACE, a public utility company engaged in the generation, transmission and distribution of electricity in southern New Jersey;
- DPL, a public utility company engaged in the transmission and distribution of electricity in Delaware and portions of Maryland and Virginia and the distribution of gas in northern Delaware and
- Conectiv Energy Holding Company, an intermediate holding company that holds interests in nonutilities involved in energy and related projects (including exempt projects) or that engage in energy trading activities.

Pepco, ACE and DPL are referred to as the ''Utility Subsidiaries.'' PHI subsidiaries, other than the Utility Subsidiaries, are referred to as the ''Nonutility Subsidiaries.'' The Utility Subsidiaries and the Nonutility Subsidiaries are collectively referred to as the ''Subsidiaries.''

III. Use of Proceeds

The proceeds from the sale of securities will be used for general corporate purposes, including the financing, in part, of the capital expenditures and working capital requirements of PHI and the Subsidiaries, for the acquisition, retirement or redemption of securities previously issued by PHI or the Subsidiaries, for investments in companies organized in accordance with rule 58 under the Act (''Rule 58 Companies''), exempt wholesale generators (''EWGs''), foreign utility companies (''FUCOs''), exempt telecommunications companies (''ETCs'') and for other lawful purposes.

Proceeds of any borrowings by the Nonutility Subsidiaries may be used by each Nonutility Subsidiary: (a) For the interim financing of its construction and capital expenditure programs, (b) for its working capital needs, (c) for the repayment, redemption or refinancing of its debt and equity, (d) to meet unexpected contingencies, payment and timing differences, and cash requirements and (e) to otherwise finance its own business and for other lawful general corporate purposes. The use of proceeds from the financings would be limited to use in the operations of the respective businesses in which Subsidiaries are already authorized to engage.

IV. Financing Parameters

Applicants request authorization to engage in certain financing transactions during the Authorization Period. All securities issued by PHI and the Subsidiaries will be subject to the financing parameters (''Financing Parameters'') below.

A. Effective Cost of Money

Applicants state that the effective cost of capital on long-term debt, short-term debt, preferred securities and equity-linked securities will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable quality; provided that in no event will the effective cost of capital on (a) any long-term debt security exceed 500 basis points over comparable term U.S. Treasury securities (''Treasury Securities'') or (b) any short-term debt security exceed 300 basis points over the comparable London Interbank Offered Rate (''LIBOR''). The dividend and distribution rate on any series of preferred securities or equity-linked securities will not exceed at the time of issuance 700 basis points over a Treasury Security.

B. Maturity of Debt and Final Redemption on Preferred Securities

The maturity of long-term debt securities will not exceed 50 years. Preferred securities and equity-linked securities will be redeemed no later than 50 years after issuance except for preferred securities that are perpetual in duration.

C. Issuance Expenses

The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security under this Application (not including any original issue discount) will not exceed the greater of: (a) 5% of the principal or total amount of the securities being issued or (b) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

D. Financial Condition

PHI states that PHI, Conectiv and the Utility Subsidiaries are financially sound and each has investment-grade ratings from major national rating agencies. PHI and Conectiv commit that each will maintain a common equity ratio (common equity divided by consolidated capitalization (''Common Equity Ratio'')) during the Authorization Period of at least 30%.[29] Further, Pepco and DPL each commits that it will maintain a Common Equity Ratio of at least 30% and at least investment-grade senior unsecured and senior secured debt ratings by at least one nationally recognized rating agency.

Applicants state that below are the Common Equity Ratios for PHI, Conectiv and the Utility Subsidiaries as of December 31, 2004:

[29] Applicants state that consolidated capitalization includes, where applicable, all common stock equity (comprised of common stock, additional paid in capital, retained earnings, accumulated other comprehensive income or loss, and/or treasury stock), minority interests, preferred securities, equity-linked securities, long-term debt, short-term debt and current maturities.

	Debt (percent)	Preferred stock (percent)	Common equity (percent)
PHI	62.8	0.6	6.6
Pepco	56.0	1.2	42.8
DPL	52.1	1.7	46.2
ACE [30]	66.9	0.4	32.7
Conectiv	60.1	0.6	39.3

Applicants state that the following are the long-term unsecured debt ratings for PHI, Conectiv and the Utility Subsidiaries as of April 30, 2005:

Company	Moody's	Standard & Poor's	Fitch
PHI	Baa2	BBB	BBB
Conectiv	Baa2	BBB	BBB+
Pepco	Baa1	BBB	A−
ACE	Baa1	BBB	BBB+
DPL	Baa1	BBB	A−

PHI and Conectiv commit that each will maintain during the Authorization Period at least an investment-grade corporate or senior unsecured debt rating by at least one nationally recognized rating agency.

PHI and the Utility Subsidiaries state that they will not issue any guarantees or other securities, other than common stock, member interests or securities issued for the purpose of funding Money Pool operations, unless: (a) The securities, if rated, are rated at least investment grade, (b) all outstanding securities of the issuer that are rated, are rated investment grade and (c) all securities of PHI that are rated, are rated investment grade. For purposes of this provision, a security will be deemed to be rated investment grade if it is rated investment grade by at least one nationally recognized rating agency (as that term is used in paragraphs (c)(2)(vi)(E), (f) and H of Rule 15c3–1 under the Securities Exchange Act of 1934, as amended) (''Investment Grade Condition''). PHI and the Utility Subsidiaries further request that the Commission reserve jurisdiction over the issuance of any securities which do not comply with the Investment Grade Condition.

V. PHI Financing

PHI seeks authorization to issue equity and debt securities aggregating not more than $6 billion (''PHI Financing Limit'') at any one time issued and outstanding during the Authorization Period. These securities could include, but would not necessarily be limited to, common stock, preferred securities, options, warrants, purchase contracts, units (consisting of one or more purchase contracts, warrants, debt securities, shares of preferred securities, shares of common stock or any combination of such securities), long-term debt, short-term debt (including commercial paper), subordinated debt, bank borrowings, securities with call or put options and securities convertible into any of these securities.[31]

A. Common Stock

PHI seeks authorization to issue and sell common stock during the Authorization Period. Common stock financings may be executed under underwriting agreements of a type generally standard in the industry. Public distributions may be under private negotiation with underwriters, dealers or agents as discussed below or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All common stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets. Underwriters may resell common stock from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. If common stock is being sold in an underwritten offering, PHI may grant the underwriters thereof a ''green shoe'' option permitting the shares to be offered solely for the purpose of covering over-allotments.

PHI further requests authorization to issue and sell from time to time equity-linked securities, including, but not limited to, contracts obligating holders to purchase from PHI and/or PHI to sell to the holders, a number of shares specified directly or by formula at an aggregate offering price either fixed at the time the stock purchase contracts (''Stock Purchase Contracts'') are issued or determined by reference to a specific formula set forth in the Stock Purchase Contracts. The Stock Purchase Contracts may be issued separately or as part of units consisting of a stock purchase contract and debt and/or preferred securities of PHI and/or debt securities of nonaffiliates, including Treasury Securities, securing holders' obligations to purchase the common stock of PHI under the Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations in a specified manner.

PHI also seeks authorization to issue common stock or equity linked securities in public or privately negotiated transactions as consideration for the equity securities or assets of other companies, provided that the acquisition of any equity securities or assets has been authorized by the Commission or is exempt under the Act or the rules thereunder. For purposes of calculating compliance with the PHI

[30] By order dated October 28, 2002 (HCAR No. 27588), ACE is required to maintain a Common Equity Ratio of not less than 28% through December 31, 2005. After this date, Applicants state that ACE will maintain a Common Equity Ratio of at least 30% during the Authorization Period. ACE commits that it will maintain at least investment grade senior unsecured and senior secured debt ratings by at least one nationally recognized rating agency.

[31] Applicants state that any convertible or equity-linked securities would be convertible into or linked only to securities that PHI is otherwise authorized to issue directly or indirectly through a financing entity on behalf of PHI.

Financing Limit, common stock issued in negotiated transactions would be valued based upon the negotiated agreement between the buyer and the seller.

PHI proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or by some other method that complies with applicable law and Commission interpretations then in effect, shares of PHI common stock under PHI's dividend reinvestment plan, certain incentive compensation plans and other employee benefit plans currently existing or that may be adopted in the future in an amount not to exceed 20 million shares during the Authorization Period (''Common Stock Plan Limit''). PHI common stock issued under the Common Stock Plan Limit will not be included in the calculation of the PHI Financing Limit.

B. Preferred Securities

PHI may issue and sell preferred securities from time to time during the Authorization Period. Preferred securities of any series (a) will have a specified par or stated value or liquidation value per security, (b) will carry a right to periodic cash dividends and/or other distributions, subject among other things, to funds being legally available, (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the par or stated liquidation value, (d) may be convertible or exchangeable into common stock of PHI and (e) may bear other further rights, including voting, preemptive or other rights, and other terms and conditions, as set forth in the applicable certificate of designation, purchase agreement and/or similar instruments governing the issuance and sale of the series of preferred securities.

The liquidation preference, dividend or distribution rates, redemption provisions, voting rights, conversion or exchange rights, and other terms and conditions of a particular series of preferred securities, as well as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding and reflected in the applicable certificate of designation, purchase agreement or underwriting agreement, and other relevant instruments setting forth the terms.

C. Long-Term Debt

Applicants request authority for PHI to issue long-term debt securities including notes, medium-term notes, or debentures, under one or more indentures or long-term indebtedness under agreements with banks or other institutional lenders. Long-term debt issued by PHI will be unsecured.

Any long-term debt security would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking-fund terms and other terms and conditions as PHI may determine at the time of issuance. Any long-term debt (a) may be convertible into any other authorized securities of PHI, (b) will have maturities ranging from one to 50 years, (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (d) may be entitled to mandatory or optional sinking-fund provisions, (e) may provide for reset of the coupon under a remarketing arrangement, (f) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event, (g) may be called from existing investors by a third party and (h) may be entitled to the benefit of financial or other covenants.

Specific terms of any borrowings, such as maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if any, with respect to the long-term securities of a particular series, will be determined by PHI at the time of issuance and will comply in all regards with the Financing Parameters. Associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

D. Short-Term Debt

PHI seeks authority to issue short-term debt during the Authorization Period to refund short-term debt, refund maturing long-term debt, and for general corporate purposes, working capital requirements and temporary financing of Subsidiary capital expenditures until long-term financing can be obtained.

Types of short-term debt securities will include borrowings under one or more revolving credit facilities or bank loans, commercial paper, short-term notes and bid notes. Specific terms of any short-term borrowings will be determined by PHI at the time of issuance and will comply in all regards with the parameters for financing authorization set forth in the Financing Parameters. The maturity of any short-term debt issued will not exceed 364 days or, if the notional maturity is greater than 364 days, the debt security will include put options at appropriate points in time to cause the security to be accounted for as a current liability under United States generally accepted accounting principles (''GAAP'').

PHI may sell commercial paper, from time to time, in established domestic or European commercial paper markets. Commercial paper would be sold directly to investors or sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. Applicants expect that the dealers acquiring commercial paper from PHI will reoffer this paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

PHI may engage in other types of short-term financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance. Applicants state that any additional short-term financings will comply in all regards with the Financing Parameters.

E. Guarantees

PHI requests authority to enter into guarantees to third parties, obtain letters of credit, enter into support or expense agreements or liquidity support agreements or otherwise provide credit support with respect to the obligations of the Subsidiaries as may be appropriate to carry on in the ordinary course of their respective businesses in an aggregate amount not to exceed the $3.5 billion during the Authorization Period (''PHI Guarantee Limit''). Included in this amount are guarantees previously entered into by PHI and on behalf of the Subsidiaries to the extent they remain outstanding during the Authorization Period. Excluded from the PHI Guarantee Limit are obligations exempt under rule 45. Applicants state that the issuance of any guarantees will be subject to the limitations of rule 53(c) or rule 58(a)(1), as applicable.

A portion of the guarantees proposed to be issued by PHI may be in connection with the business of Conectiv Energy Supply, Inc. (''CESI''), PES and PES's subsidiaries. CESI conducts power marketing and trading operations. PES and its subsidiaries provide energy efficiency contracting, central plant and other equipment

construction, operation and maintenance as well as conducting gas and electric marketing. PHI provides credit support in connection with the trading positions of CESI and PES entered into in the ordinary course of CESI's and PES's energy marketing and trading businesses. In addition, PHI provides credit support for certain obligations of PES and its subsidiaries entered into in the ordinary course of their energy contracting business. The provision of parent guarantees by holding companies to affiliates in the generation, power marketing and energy contracting business is standard business practice. The portion of the PHI Guarantee Limit to be used on behalf of the trading activities of CESI and PES will be no more than half of the PHI Guarantee Limit at any time during the Authorization Period. A portion of the guarantees will be for intercompany obligations. PHI will guarantee all deposits in the Money Pool.

Certain of the guarantees may be in support of obligations that are not capable of exact quantification. In such cases, PHI will determine the exposure under a guarantee for purposes of measuring compliance with the PHI Guarantee Limit by appropriate means, including estimation of exposure based on loss experience or potential payment amounts. PHI states that these estimates will be made in accordance with GAAP if appropriate and this estimation will be reevaluated periodically.

PHI may charge each Subsidiary a fee for any guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guarantee for the period of time the guarantee remains outstanding.

F. Interest Rate Risk Management

PHI requests authority to enter into, perform, purchase and sell financial instruments intended to reduce or manage the volatility of interest rates with respect to then existing or simultaneously created indebtedness, including interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements. Hedges may also include the issuance of structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or agency (*e.g.*, Federal National Mortgage Association) obligations or LIBOR based swap instruments (collectively, ''Hedge Instruments''). PHI would employ Hedge Instruments as a means of prudently managing the risk associated with any of its outstanding debt by, in effect, synthetically: (a) Converting variable-rate debt to fixed-rate debt, (b) converting fixed-rate debt to variable-rate debt, (c) limiting the impact of changes in interest rates resulting from variable-rate debt and (d) providing an option to enter into interest rate swap transactions in future periods for planned issuances of debt securities. In no case will the notional principal amount of any Hedge Instrument exceed that of the underlying debt instrument and related interest rate exposure. Thus, PHI will not engage in leveraged or speculative transactions. The underlying interest rate indices will closely correspond to the underlying interest rate indices of PHI's debt to which the Hedge Instruments relates. PHI will only enter into agreements with counterparties whose senior debt ratings, as published by any one nationally recognized rating agency, are investment grade (''Approved Counterparties'').

In addition, PHI requests authorization to enter into interest rate Hedge Instruments with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through: (a) A forward sale of exchange-traded Hedge Instruments (''Forward Sale''), (b) the purchase of put options on Hedge Instruments (''Put Options Purchase''), (c) a Put Options Purchase in combination with the sale of call options on Hedge Instruments (''Zero Cost Collar''), (d) transactions involving the purchase or sale, including short sales, of Hedge Instruments or (e) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, structured notes, caps and collars, appropriate for the Anticipatory Hedges.

Hedge Instruments may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. PHI will determine the optimal structure of each Hedge instrument transaction at the time of execution.

VI. Utility Subsidiary Financing

Applicants state that the District of Columbia Public Service Commission (''DC Commission'') regulates the issuance of long-term debt and equity securities for Pepco.[32] The New Jersey Board of Public Utilities (''NJBPU'') regulates issuance of short-term debt, long-term debt and equity securities for ACE. For DPL, the Delaware Public Service Commission (''DPSC'') regulates the issuance of long-term debt and equity securities and the issuance of short-term debt, long-term debt and equity securities is regulated by the VSCC.[33]

A. Short-Term Debt

Pepco and DPL request authority to have outstanding short-term debt securities in amounts not to exceed $500 million and $275 million for Pepco and DPL, respectively, at any point in time during the Authorization Period. Pepco and DPL request authority to issue the same types of unsecured short-term debt securities under the same terms as requested for PHI above. In addition, Pepco and DPL may issue secured short-term debt securities. Pepco and DPL anticipate that the collateral for secured short-term debt securities would be limited to short-term assets such as the respective issuer's inventory and/or accounts receivable. Pepco and DPL may, without counting against the limit set forth above, maintain back-up lines of credit. Any outstanding short-term debt issued by Pepco or DPL will be included in the calculation of the PHI Financing Limit. Pepco and DPL also request authorization to participate in the Money Pool as more fully described below.

B. Long-Term Debt Securities and Preferred Securities

Authority is requested for Pepco to issue an aggregate of up to $1.1 billion of long-term debt securities and preferred securities during the Authorization Period. Pepco requests authority to issue long-term debt

[32] Pepco is also regulated by the Virginia State Corporation Commission (''VSCC'') but the VSCC does not have jurisdiction over its securities issuances.

[33] Pepco currently has authorization from the DC Commission to issue up to $1.1 billion of long-term debt and equity securities through May 16, 2006, with $525 million in remaining authority outstanding. DPL currently has authorization from the VSCC to issue up to $275 million in short-term debt through March 31, 2006 and up to $150 million long-term debt and equity securities through December 31, 2006. DPL currently has authorization from the DPSC to issue up to $150 million long-term debt and equity securities through December 31, 2006. ACE currently has NJBPU authorization to issue up to $250 million of short-term debt through January 1, 2006. ACE currently has a pending request before the NJBPU to issue up to $105 million of long-term debt securities through December 31, 2006.

securities and preferred securities under the same terms as requested for PHI above except that Pepco may issue secured as well as unsecured debt securities. Any long-term debt or preferred securities issued by Pepco will be included in the calculation of the PHI Financing Limit.

C. Guarantees

To the extent not exempt under rule 45(b) and rule 52(b), Applicants request authority for the Utility Subsidiaries to enter into guarantees (''Utility Guarantees'') during the Authorization Period in the same manner as set forth above for PHI in section V.E above. The Utility Guarantees will be included in the calculation of the PHI Guarantee Limit. The issuance of any Utility Guarantees will be subject to the limitations of rule 53(c) or rule 58(a)(1), as applicable.

Certain of the Utility Guarantees may be in support of obligations that are not capable of exact quantification. In these cases, PHI will determine the exposure under a guarantee for purposes of measuring compliance with the PHI Guarantee Limit by appropriate means including estimation of exposure based on loss experience or potential payment amounts. PHI states that these estimates will be made in accordance with GAAP, if appropriate and that this estimation will be reevaluated periodically.

The Utility Subsidiaries may charge associate companies a fee for each guarantee provided on their behalf determined in the same manner as specified above for guarantees issued by PHI in section V.E above.

D. Interest Rate Risk Management

To the extent not exempt under rule 52, the Utility Subsidiaries request authority to enter into Hedge Instruments subject to the limitations and requirements applicable to PHI described in section V.F above.

VII. Nonutility Subsidiary Financings

A. Loans

In the limited circumstances where a Nonutility Subsidiary making a borrowing is not wholly owned, directly or indirectly, by PHI, Applicants request authority for PHI, Conectiv or a Nonutility Subsidiary, as the case may be, to make loans to Subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If these loans are made to a Nonutility Subsidiary, the Nonutility Subsidiary will not provide any services to any associate Nonutility Subsidiary except to a wholly or partially owned subsidiary that meets one of the following conditions: (a) A FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States, (b) an EWG that sells electricity at market-based rates that have been approved by the FERC, provided that the purchaser of such electricity is not an associate public utility company, (c) a QF within the meaning of PURPA, that sells electricity exclusively (i) at rates negotiated at arm's-length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, and/or (ii) to an electric utility company (other than an associate utility company) at the purchaser's avoided cost as determined in accordance with FERC's regulations under PURPA, (d) a domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of such electricity is not an associate public utility company, or (e) a direct or indirect Rule 58 Subsidiary of PHI or any other nonutility company that (i) is partially owned by PHI, provided that the ultimate recipient of the services is not an associate public utility company, or (ii) is engaged solely in the business of developing, owning, operating, and/or providing services to Nonutility Subsidiaries described in clauses (a) through (e) immediately above, or (iii) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

B. Guarantees

The Nonutility Subsidiaries request authority to provide to other Nonutility Subsidiaries guarantees and other forms of credit support (''Nonutility Subsidiary Guarantees'') Nonutility Subsidiary Guarantees would be issued subject to the limitations and requirements applicable to PHI as set forth in section V.E, above. The Nonutility Subsidiary Guarantees will be included in the calculation of the PHI Guarantee Limit. The issuance of any Nonutility Subsidiary Guarantees will be subject to the limitations of rule 53(c) or rule 58(a)(1), as applicable. The Nonutility Subsidiary providing the credit support may charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as specified above in section V.E. above for guarantees issued by PHI.

VIII. Authorization and Operation of the PHI System Money Pool

PHI and the Subsidiaries hereby request authorization to continue operation of the Money Pool, and the Subsidiaries, to the extent not exempted by rule 52, also request authorization to make unsecured short-term borrowings from the Money Pool, to contribute surplus funds to the Money Pool and to lend and extend credit to (and acquire promissory notes from) one another through the Money Pool. PHI requests authorization to contribute surplus funds and to lend and extend credit to the Money Pool. Applicants state that EWGs, FUCOs and ETCs will not be eligible to participate in the Money Pool.

PHI and the Subsidiaries believe that the cost of the proposed borrowings through the Money Pool will generally be more favorable to the borrowing participants than the comparable cost of external short-term borrowings, and the yield to the participants contributing available funds to the Money Pool will generally be higher than the typical yield on short-term investments.

Under the terms of the Money Pool, short-term funds would be available from the following sources for short-term loans to the Subsidiaries from time to time: (a) Surplus funds in the treasuries of Money Pool participants other than PHI, (b) surplus funds in the treasury of PHI ((a) and (b) comprise ''Internal Funds'') and (c) proceeds from the issuance of short-term debt securities by Money Pool participants or by PHI for loan to the Money Pool (''External Funds''). Funds would be made available from such sources in such order as PHISCo, the administrator of the Money Pool, may determine would result in a lower cost of borrowing, consistent with the individual borrowing needs and financial standing of the companies providing funds to the pool. The determination of whether a Money Pool participant at any time has surplus funds to lend to the Money Pool or shall lend funds to the Money Pool would be made by the participant's chief financial officer or treasurer, or by a designee thereof, on the basis of cash flow projections and other relevant factors, in the participant's sole discretion.

No party would be required to effect a borrowing through the Money Pool if it is determined that it could (and had authority to) effect a borrowing at lower cost directly from other lenders. No loans through the Money Pool would be made to, and no borrowings through the Money Pool would be made by, PHI. In situations in which limited funds are

available in the Money Pool for loans, Applicants state that the Utility Subsidiaries would have first priority for these funds.

The cost of compensating balances, if any, and fees paid to banks to maintain credit lines and accounts by Money Pool participants lending External Funds to the Money Pool would initially be paid by the participant maintaining the line. A portion of the costs, or all of the costs in the event a Money Pool participant establishes a line of credit solely for purposes of lending any External Funds obtained thereby into the Money Pool, would be retroactively allocated every month to the companies borrowing the External Funds through the Money Pool in proportion to their respective daily outstanding borrowings of the External Funds.

If only Internal Funds make up the funds available in the Money Pool, the interest rate applicable and payable to or by Subsidiaries for all loans of the Internal Funds will be the rates for high-grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in The Wall Street Journal.

If only External Funds comprise the funds available in the Money Pool, the interest rate applicable to loans of the External Funds would be equal to the lending company's weighted average of the cost for the External Funds (or, if more than one Money Pool participant had made available External Funds on that day, the applicable interest rate would be a composite rate equal to the weighted average of the cost incurred by the respective Money Pool participants for the External Funds).

In cases where both Internal Funds and External Funds are concurrently borrowed through the Money Pool, the rate applicable to all loans comprised of the ''blended'' funds would be a composite rate equal to the weighted average of the cost of all the External Funds.

Applicants state that funds not required by the Money Pool to make loans (with the exception of funds required to satisfy the Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including: (a) Interest-bearing accounts with banks, (b) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements, (c) obligations issued or guaranteed by any state or political subdivision thereof, provided that such obligations are rated not less than ''A'' by a nationally recognized rating agency, (d) commercial paper rated not less than ''A–1'' or ''P–1'' or their equivalent by a nationally recognized rating agency, (e) money market mutual funds, (f) bank certificates of deposit, (g) Eurodollar funds and (h) such other investments as are permitted by section 9(c) of the Act and rule 40 thereunder.

Applicants state that the interest income earned on investments in the Money Pool would be allocated among the participants in the Money Pool in accordance with the weighted average proportion each participant's contribution of funds bears to the total amount of funds in the Money Pool. Each Subsidiary receiving a loan through the Money Pool would be required to repay the principal amount of the loan, together with all interest accrued thereon, on demand and in any event not later than one year after the date of the loan. All loans made through the Money Pool may be prepaid by the borrower without premium or penalty.

Applicants propose that Pepco and DPL may have up to $500 million and $275 million, respectively, borrowed at any one time from the Money Pool. Amounts borrowed by Pepco and DPL from the Money Pool would count against the short-term borrowing authority for Pepco and DPL referred to in section VII.A., above.

Applicants state that the operation of the Money Pool, including record keeping and coordination of loans, will be handled by PHISCO, or its successor, under the authority of the appropriate officers of the participating companies and that the Money Pool will be administered on an ''at cost'' basis.

IX. Intrasystem Financing

Applicants request that, to the extent that any intrasystem loans or extensions of credit are not exempt under rule 45(b) or rule 52, as applicable, the company making the loan or extending credit may charge interest at the same effective rate of interest as the daily weighted average effective rate of commercial paper, revolving credit and/or other short-term borrowings of the company, including an allocated share of commitment fees and related expenses. If no borrowings are outstanding, then Applicants propose that the interest rate shall be the rates for high-grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in The Wall Street Journal. In the limited circumstances where the Nonutility Subsidiary effecting the borrowing is not wholly owned by PHI, Conectiv or a Nonutility Subsidiary, directly or indirectly, Applicants request authority for PHI, Conectiv or a Nonutility Subsidiary to make loans to subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If these loans are made to a Nonutility Subsidiary, Applicants commit that the Nonutility Subsidiary will not provide any services to any associate Nonutility Subsidiary except a company that meets one of the conditions for rendering of services on a basis other than at cost as described in section XVI below. In the event any these loans are made, PHI will include in the next certificate filed under rule 24 substantially the same information as required on Form U–6B–2 with respect to the transaction and that any securities issued under this paragraph will comply in all regards with the Financing Parameters. PHI, Conectiv and the Nonutility Subsidiaries request authorization to engage in intrasystem financings with each other and for the Nonutility Subsidiaries to engage in intrasystem financings among themselves, in an aggregate amount not to exceed $1.0 billion outstanding at any time during the Authorization Period.

PHI states that it will comply with the requirements of rule 45(c) regarding tax allocations except as otherwise approved by the Commission to alter the requirements.

X. Financing Entities

PHI and the Subsidiaries seek authorization to organize new corporations, trusts, partnerships or other entities (''Financing Entities'') that will facilitate financings by issuing short-term debt, long-term debt, preferred securities, equity securities, or other securities to third parties and transfer the proceeds of these financings to PHI or their respective parent Subsidiaries. To the extent not exempt under rule 52, the Financing Entities also request authorization to issue these securities to third parties. In connection with this method of financing, PHI and the Subsidiaries may: (a) Issue debentures or other evidences of indebtedness to Financing Entities in return for the proceeds of the financing, (b) acquire voting interests or equity securities issued by the Financing Entities to establish ownership of the Financing Entities (the equity portion of the entity generally being created through a capital contribution or the purchase of equity securities, ranging from one to three percent of the capitalization of the Financing Entities) and (c) guarantee a Financing Entity's obligations in connection with a financing transaction. Any amounts issued by Financing Entities to a third party under this authorization will be included in the PHI Financing Limit. However, the underlying intrasystem

mirror debt and parent guarantee will not be so included.[34]

PHI and the Subsidiaries also request authorization to enter into support or expense agreements (''Expense Agreements'') with Financing Entities to pay the expenses of any Financing Entity. In cases where it is necessary or desirable to ensure legal separation for purposes of isolating a Financing Entity from its parent or another subsidiary for bankruptcy purposes, the ratings agencies require that any Expense Agreement whereby the parent or Financing Entity provides services related to the Financing Entity be at a price, not to exceed a market price, consistent with similar services for parties with comparable credit quality and terms entered into by other companies so that a successor service provider could assume the duties of the parent or Financing Entity in the event of the bankruptcy of the parent or Financing Entity Subsidiary without interruption or an increase of fees. Therefore, PHI seeks approval under section 13(b) of the Act and rules 87 and 90 to provide the services described in this paragraph at a charge not to exceed a market price but only for so long as the Expense Agreement established by the Financing Entity financing subsidiary is in place.

XI. Changes in Capital Stock of Wholly Owned Subsidiaries

Applicants state that the portion of an individual Subsidiary's aggregate financing to be effected through the sale of stock to PHI or other immediate parent company during the Authorization Period under rule 52 and/or under an order issued under this Application cannot be ascertained at this time. It may happen that the proposed sale of capital securities (*i.e.*, common stock or preferred securities) may in some cases exceed the then-authorized capital stock of the Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value. As needed to accommodate these proposed transactions and to provide for future issues, Applicants request authority to change the terms of any wholly owned Subsidiary's authorized capital stock capitalization or other equity interests by an amount deemed appropriate by PHI or other intermediate parent company. The requested authorization is limited to PHI's wholly owned Subsidiaries and will not affect the aggregate limits or other conditions contained within this Application. A Subsidiary would be able to change the par value, or change between par value and no-par stock, without additional Commission approval. This action by a Utility Subsidiary would be subject to, and would only be taken upon, the receipt of any necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business.

XII. Investments in EWGs and FUCOs

As of December 31, 2004, PHI states that it's aggregate investment in EWGs and FUCOs as defined in rule 53(a)(1) was $3,030.9 million. In the Financing Order, the Commission authorized PHI to invest up to 100% of PHI's retained earnings plus $3.5 billion in EWGs and FUCOs. As of December 31, 2004, PHI's retained earnings were $863.7 million, making PHI's maximum investment in EWGs and FUCOs equal to $4,363.7 million. PHI now requests authorization to invest in EWGs and FUCOs up to $4.5 billion (''PHI Exempt Project Limit'') during the Authorization Period.

XIII. Payment of Dividends by Nonutility Subsidiaries Out of Capital or Unearned Surplus

Applicants propose that Nonutility Subsidiaries be permitted to pay dividends, from time to time through the Authorization Period, out of capital and unearned surplus, to the extent permitted under applicable corporate law and state and national law applicable in the jurisdiction where each company is organized, and any applicable financing covenants and, in addition, will not declare or pay any dividend out of capital or unearned surplus unless it: (a) Has received excess cash as a result of the sale of some or all of its assets, (b) has engaged in a restructuring or reorganization, and/or (c) is returning capital to an associate company.

XIV. Intermediate Subsidiaries

PHI proposes to acquire, directly or indirectly, the securities of one or more entities (''Intermediate Subsidiaries''), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs, FUCOs, Rule 58 Subsidiaries, ETCs or other non-exempt nonutility subsidiaries (as authorized in this proceeding or in a separate proceeding), provided that Intermediate Subsidiaries may also engage in administrative activities (''Administrative Activities'') and development activities (''Development Activities''), as these terms are defined below, relating to those subsidiaries.

Administrative Activities include ongoing personnel, accounting, engineering, legal, financial and other support activities necessary to manage PHI's investments in nonutility subsidiaries. Development Activities will be limited to due diligence and design review, market studies, preliminary engineering, site inspection, preparation of bid proposals, including, in connection therewith, posting of bid bonds, application for required permits and/or regulatory approvals, acquisitions of site options and options on other necessary rights, negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms and other project contractors, negotiation of financing commitments with lenders and other third-party investors, and other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interest in new businesses.

An Intermediate Subsidiary, among other things, may be organized: (a) To facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, Rule 58 Subsidiary, ETC or other nonutility subsidiary, (b) to facilitate closing on the purchase or financing of the acquired company after the awarding of a bid, (c) at any time subsequent to the consummation of an acquisition of an interest in the company to, among other things, effect an adjustment in the respective ownership interests in the business held by PHI and nonaffiliated investors, (d) to facilitate the sale of ownership interests in one or more acquired nonutility companies, (e) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals, (f) as a part of tax planning in order to limit PHI's exposure to taxes, (g) to further insulate PHI and the Utility Subsidiaries from operational or other business risks that may be associated with investments in nonutility companies, or (h) for other lawful purposes.

Applicants state that investments in Intermediate Subsidiaries may take the form of any combination of the following: (a) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests, (b) capital contributions, (c)

[34] Specifically excluded from this limitation is the issuance of up to $1.108 billion of securitization securities by Atlantic City Electric Transition Funding LLC (''ACETF''). The Commission has reserved jurisdiction over this issuance by ACETF by order dated November 19, 2003 (HCAR No. 27765).

open account advances with or without interest, (d) loans, and (e) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from: (a) Financings authorized in this proceeding, (b) any appropriate future debt or equity securities issuance authorization obtained by PHI from the Commission, and (c) other available cash resources, including proceeds of securities sales by Nonutility Subsidiaries under rule 52. To the extent that PHI provides funds or guarantees directly or indirectly to an Intermediate Subsidiary that are used for the purpose of making an investment in any EWG, FUCO or Rule 58 Subsidiary, Applicants state that the amount of funds or guarantees will be included in PHI's ''aggregate investment'' in these entities, as calculated in accordance with rule 53 or rule 58, as applicable.

PHI requests authorization to make expenditures on Development Activities, as defined above, in an aggregate amount up to $200 million. PHI proposes a ''revolving fund'' concept for permitted expenditures on Development Activities. Thus, to the extent a Nonutility Subsidiary in respect of which Development Activities were made subsequently becomes an EWG, FUCO or qualifies as an ''energy-related company'' under rule 58, the amount so expended will cease to be considered an expenditure for Development Activities, but will instead be considered as part of the ''aggregate investment'' in the entity under rule 53 or rule 58, as applicable.

XV. Nonutility Reorganizations

PHI requests authorization to consolidate or otherwise reorganize all or any part of its direct or indirect ownership interests in Nonutility Subsidiaries, and the activities and functions related to these investments. To effect any consolidation or other reorganization, PHI may wish to merge or contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary (including a newly formed Intermediate Subsidiary) or sell (or cause a Nonutility Subsidiary to sell) the equity securities or all or part of the assets of one Nonutility Subsidiary to another one. To the extent that these transactions are not otherwise exempt under the Act or the rules thereunder, PHI hereby requests authorization under the Act to consolidate or otherwise reorganize under one or more direct or indirect Intermediate Subsidiaries, PHI's ownership in existing and future Nonutility Subsidiaries. Applicants state that transactions may take the form of a Nonutility Subsidiary selling, contributing or transferring the equity securities of a subsidiary or all or part of the subsidiary's assets as a dividend to an Intermediate Subsidiary or to another Nonutility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of the subsidiary, either by purchase or by receipt of a dividend. The purchasing Nonutility Subsidiary in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable laws and accounting requirements.[35]

XVI. Exemption of Certain Transactions From At-Cost Requirements

PHI requests authority for the Nonutility Subsidiaries to provide, consistent with recent Commission orders, certain services in the ordinary course of their business to each other, in certain circumstances described below, including but not limited to cost or fair market prices, and they request an exemption under section 13(b) from the ''at cost requirement'' of rules 90 and 91 to the extent that a price other than ''cost'' is charged. Any services provided by the Nonutility Subsidiaries to the Utility Subsidiaries will continue to be provided at ''cost'' consistent with rules 90 and 91. A Nonutility Subsidiary will not provide services at other than cost to any other Nonutility Subsidiary that, in turn, provides the services, directly or indirectly, to any other associate company that is not a Nonutility Subsidiary, except under the requirements of the Commission's rules and regulations under section 13(b) or an exemption from those rules and regulations obtained under a separate filing.

Accordingly, PHI requests authority for the Nonutility Subsidiaries to provide services to each other at other than cost in any case where the Nonutility Subsidiary receiving the services is: (a) A FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States, (b) an EWG that sells electricity at market-based rates that have been approved by the FERC, provided that the purchaser of such electricity is not an associate public utility company, (c) a QF within the meaning of PURPA, that sells electricity exclusively (i) at rates negotiated at arm's-length to one or more industrial or commercial customers purchasing electricity for their own use and not for resale, and/or (ii) to an electric utility company (other than an associate utility company) at the purchaser's avoided cost as determined in accordance with FERC's regulations under PURPA, (d) a domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not an associate public utility company, or (e) a direct or indirect Rule 58 Subsidiary of PHI or any other nonutility company that (i) is partially owned by PHI, provided that the ultimate recipient of the services is not an associate public utility company, or (ii) is engaged solely in the business of developing, owning, operating, and/or providing services to Nonutility Subsidiaries described in clauses (a) through (e) immediately above, or (iii) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

XVII. Authorization To Engage in Energy-Related Activities Outside of the United States

PHI, on behalf of any current or future Nonutility Subsidiaries, requests authority for Nonutility Subsidiaries to engage in certain ''energy-related'' activities outside the United States during the Authorization Period.

Applicants state that activities may include:

1. The brokering of electricity, natural gas and other energy commodities (''Energy Marketing''),

2. Energy management services (''Energy Management Services''), including the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand side management, including energy and efficiency audits; facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate), energy conservation equipment; design, implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design

[35] PHI states that in the event that proxy solicitations are necessary with respect to internal corporate reorganizations, PHI will seek the necessary Commission approvals under sections 6(a)(2) and 12(e) of the Act through the appropriate filing of a declaration.

and specification of energy consuming equipment and general advice on programs; the design, construction, installation, testing, sales and maintenance of new and retrofit heating, ventilating and air conditioning, electrical and power systems, alarm and warning systems, and related structures, in connection with energy-related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control or mitigate adverse effects of power disturbances on a customer's electrical systems, and

3. Engineering, consulting and other technical support services (''Consulting Services'') with respect to energy-related businesses, as well as for individuals. Consulting Services would include technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation billing and bill disaggregation tools), risk management services, communications systems, information systems/data processing, system planning, finance, feasibility studies, and other similar services.

Applicants request that the Commission: (a) Authorize Nonutility Subsidiaries to engage in Energy Marketing activities in Canada and Mexico and reserve jurisdiction over Energy Marketing Services anywhere outside of Canada and Mexico pending completion of the record in this proceeding, (b) authorize Nonutility Subsidiaries to provide Energy Management Services and Consulting Services anywhere outside the United States and (c) reserve jurisdiction over other activities of Nonutility Subsidiaries outside the United States pending completion of the record.

The Southern Company, et al. (70–10186)

The Southern Company (''Southern''), a registered holding company under the Act, and Southern Company Holdings, Inc. (''Holdings''), each of 270 Peachtree Street, NW., Atlanta, Georgia, 30303; Georgia Power Company (''Georgia Power''), a public utility, Southern Company Services, Inc. (''SCS''), and Southern Company Energy Solutions, LLC, each located at 241 Ralph McGill Boulevard, NE., Atlanta, Georgia, 30308 and each a wholly-owned subsidiary of Southern; Gulf Power Company (''Gulf Power''), One Energy Place, Pensacola, Florida, 32520 and a wholly-owned public utility subsidiary of Southern; Mississippi Power Company (''Mississippi Power''), 2992 West Beach Blvd., Gulfport, Mississippi, 39501 and a wholly-owned public utility subsidiary of Southern; Savannah Electric and Power Company (''Savannah Power''), 600 East Bay Street, Savannah, Georgia, 31401 and a wholly-owned public utility subsidiary of Southern; Alabama Power Company (''Alabama Power''), 600 North 18th Street, Birmingham, Alabama, 35291 and a wholly-owned public utility subsidiary of Southern; Southern Company Capital Funding, Inc. (''Capital Funding''), 1403 Foulk Road, Suite 102, Wilmington, Delaware, 19803 and a wholly-owned subsidiary of Southern; Southern Communications Services, Inc., 5555 Glenridge Connector, Suite 500, Atlanta, Georgia, 30342 and a wholly-owned subsidiary of Southern; Southern Nuclear Operating Company, Inc., 40 Inverness Center Parkway, Birmingham, Alabama, 35242 and a wholly-owned subsidiary of Southern; and Southern Power Company (''Southern Power'') and Southern Electric Generating Company (''SEGCO''), each of 600 North 18th Street, Birmingham, Alabama, 35291 and each a wholly-owned public utility subsidiary of Southern [36] (collectively, ''Applicants''), have filed a post-effective amendment (''Amendment'') under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and rules 42, 45, 53 and 54 under the Act, to their previously filed application-declaration (''Declaration'').

By order dated June 30, 2004 (Holding Company Act Release No. 27867), as corrected by order dated July 23, 2004 (Holding Company Act Release No. 27867A) (collectively, ''Original Order''), the Commission authorized certain of the Applicants to engage in financing and related transactions through June 30, 2007 (''Authorization Period'').[37]

I. Requested Authority

In the post-effective amendment, Applicants request authorization, during the Authorization Period: (1) For the Applicants to enter into transactions to manage interest rate, credit and equity price risk with regard to the issuance of securities; (2) for Southern and Holdings to provide guarantees on behalf of, or for the benefit of, their subsidiaries in an aggregate amount not to exceed $1.5 billion at any time outstanding; (3) for Southern to acquire certain securities of certain public utility affiliates; (4) to amend the definition of Preferred Stock to include preference stock; and (5) for Southern and Holdings to acquire the securities of intermediate subsidiaries and subsidiaries authorized to engage in development and administrative activities with respect to certain businesses.

1. Financing Risk Management Devices

a. Interest Rate Hedges

To the extent not exempt under Rule 52 of the Act, Applicants request authorization to enter into interest rate hedging transactions with respect to existing indebtedness that has been previously authorized for issuance by any relevant regulatory agency (''Interest Rate Hedges'') in order to reduce or manage interest rate cost or risk. Interest Rate Hedges would only be entered into with counterparties (''Approved Counterparties'') whose senior debt ratings, or the senior debt ratings of any

[36] Southern owns the following public utilities: Alabama Power, Georgia Power, Gulf Power, Mississippi Power, Savannah Power, Southern Power Company and Southern Electric Generating Company.

[37] The Original Order authorized: (1) Southern to issue up to 35 million shares of its common stock; (2) Southern to issue unsecured notes to effect short-term, term loan and commercial paper borrowings in an aggregate principal amount not to exceed $3 billion at any time outstanding; (3) Southern to issue up to 85 million shares of its common stock to its dividend reinvestment plan, employee savings plan, employee stock ownership plan or other similar stock based plans adopted in the future (these shares are in addition to the common stock authorized in subparagraph 1, above); (4) the Applicants, except Capital Funding, SEGCO and Southern Power Company, to purchase Southern common stock to contribute to the employee stock ownership plan for the benefit of their employees; (5) Southern to provide from time-to-time guarantees on behalf or for the benefit of SCS in an aggregate principal amount not to exceed $330 million at any time outstanding; and (6) Southern and Capital Funding to issue and sell from time-to-time directly shares of their preferred stock and, directly or indirectly, preferred securities (including without limitation trust preferred securities) (''Preferred Securities''), equity-linked securities, and/or long-term debt, in an aggregate principal amount not to exceed $1.5 billion. Southern and Capital Funding may also to issue and sell Preferred Securities indirectly through one or more financing subsidiaries. Any securities issued by Capital Funding, or any Preferred Securities issued by a financing subsidiary, may be guaranteed by Southern. Any securities may be convertible into common stock of Southern, provided that the value of the common stock issuable upon conversion may not exceed $2 billion in the aggregate. The common stock issuable upon conversion is in addition to the common stock authorized to be issued by Southern in subparagraphs 1 and 3, above.

Additionally, Southern is authorized to issue up to a total of 71.7 million shares of common stock to several employee plans and an outside director plan. See Holding Company Act Release No. 27246 (October 11, 2000) (40 million shares to the Southern Company Performance Stock Plan through February 17, 2007); Holding Company Act Release No. 27416 (June 7, 2001) (30 million shares to the Southern Company Omnibus Incentive Compensation Plan through May 22, 2011); and Holding Company Act Release No. 27854 (June 4, 2004) (1.7 million shares to the Southern Company Outside Directors Stock Plan through May 26, 2014).

credit support providers who have guaranteed the obligations of the counterparty, as published by Standard & Poor's Corp., are equal to or greater than BBB, or an equivalent rating from Moody's Investor Service or Fitch Investor Service. In no case will the notional principal amount of any Interest Rate Hedge exceed the face value of the underlying debt instrument and related interest rate exposure. Because transactions will be entered into for a fixed or determinable period, the Applicants will not engage in speculative transactions. Interest rate hedges will involve the use of financial instruments and derivatives commonly used in today's capital markets, such as interest rate swaps, options, caps, collars, floors and structured notes (i.e., a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations. The transactions would be for fixed periods and stated notional amounts.

b. Anticipatory Hedges

To the extent not exempt under Rule 52, the Applicants request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings (''Anticipatory Hedges''). Such Anticipatory Hedges would only be entered into with Approved Counterparties and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (1) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a ''Forward Sale''); (2) the purchase of put options on U.S. Treasury obligations (''Put Options Purchase''); (3) a Put Options Purchase in combination with the sale of a call options on U.S. Treasury obligations (''Zero Cost Collar''); (4) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, structured notes, options, caps and collars appropriate for Anticipatory Hedges. Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade or the Chicago Mercantile Exchange, the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades'') or a combination of On-Exchange Trades and Off-Exchange Trades.

Each Applicant will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. An Applicant may decide to lock in interest rates and/or limit its exposure to interest rate increases. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the settlements arising from the financial instruments and derivatives, such as swap or option settlements) in connection with a hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Each Applicant represents that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under generally accepted accounting principles. Each Applicant will comply with Statement of Financial Accounting Standards (''SFAS'') 133 (''Accounting for Derivative Instruments and Hedging Activities), including any amendments to SFAS 133, or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board (''FASB''). The Interest Rate Hedges and Anticipatory Hedges will qualify for hedge accounting under the FASB standards in effect and determined at the date the hedges are entered into.

2. Guarantees

From time-to-time through the Authorization Period, Southern and Holdings request authority to enter into guarantees, enter into expense agreements or otherwise provide credit support with respect to the debt or other securities or obligations, whether for payment and/or performance, of any or all of the subsidiaries of Southern and Holdings (collectively, ''Guarantees''), as the case may be; provided that the total amount of Guarantees for Southern and Holdings at any time outstanding does not exceed an aggregate amount of $1.5 billion; and provided further that (1) the amount of any Guarantees in respect of obligations of any non-utility subsidiary shall also be subject to the limitations of rule 53(a)(1) and rule 58(a)(1), as applicable; and (2) that any Guarantee that is outstanding on the last day of the Authorization Period will expire or terminate in accordance with the stated terms of the Guarantee.[38]

In addition to providing direct parent guarantees, Southern and Holdings may also provide Guarantees in the form of formal credit enhancement agreements, including but not limited to ''keep well'' agreements and reimbursement undertakings under letters of credit. Guarantees may, in some cases, be provided to support obligations of subsidiaries that are not readily susceptible of exact quantification or that may be subject to varying quantification. In such cases, Southern or Holdings, as the case may be, will determine the exposure under the Guarantee for purposes of measuring compliance with the proposed limitation on Guarantees by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. If appropriate, estimates will be made in accordance with generally accepted accounting principles in the United States. The estimation will be reevaluated periodically.

Southern and Holdings may each charge a fee for each Guarantee provided by it that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the Guarantee for the period of time the Guarantee remains outstanding.

3. Acquisition of Securities of Certain Public Utility Affiliates

From time-to-time during the Authorization Period, Southern requests authority to acquire the common stock of Gulf Power Company in an aggregate amount not to exceed $420 million and the common stock of Mississippi Power Company in an aggregate amount not to exceed $300 million.[39]

[38] Pursuant to the Original Order, Southern currently has authority to provide from time-to-time guarantees on behalf of, or for the benefit of, SCS an aggregate principal amount not to exceed $330 million at any time outstanding and to provide guarantees on behalf of or for the benefit of Capital Funding. Southern proposes that the authorization requested in this Declaration would supersede and replace the authorization to provide guarantees to SCS contained in the Original Order, and be effective immediately upon the date of a Commission order granting this request. The authority to issue guarantees on behalf of, or for the benefit of, Capital Funding in the Original Order would not be superseded by any Commission order issued in regard to the present request.

Pursuant to Holding Company Act Release 27303 (December 15, 2000) (''Transfer Order'') Southern and Holdings are currently authorized to provide from time-to-time guarantees on behalf of their subsidiaries in an aggregate amount not to exceed $1.2 billion at any time outstanding and performance guarantees on behalf of their subsidiaries in an aggregate amount not to exceed $800 million at any time outstanding. Under this authorization, Southern and Holdings currently have, in the aggregate, approximately $57 million in guarantees outstanding. Southern and Holdings propose that the authorization sought in the Declaration would supersede and replace the authorization granted in the Transfer Order and be effective immediately upon the date of a Commission order granting this request.

[39] Southern currently has no authority from the Commission to acquire the common stock of Gulf Power Company or Mississippi Power Company.

4. Amend Definition of ''Preferred Stock''

Southern and Capital Funding desire to amend the definition of ''Preferred Stock'' set forth in the Original Order so that it includes the issuance of preference stock.

5. Acquisition of Securities of Intermediate Subsidiaries and Subsidiaries Authorized To Engage in Development and Administrative Activities With Respect to Exempt Businesses

In connection with existing and future exempt businesses authorized pursuant to rules 53 or 58 of the Act, including investments in energy-related companies, exempt wholesale generators (''EWGs'') or foreign utility companies (''FUCOs'') (collectively, ''Exempt Businesses''), Southern and Holdings will engage directly or through subsidiaries in preliminary development activities (''Development Activities'') and administrative and management activities (''Administrative Activities'') associated with the investments.[40] Development Activities will be limited to: due diligence and design review, market studies, preliminary engineering, site inspection, preparation of bid proposals (including posting of bid bonds), application for required permits and/or regulatory approvals, acquisition of site options and options on other necessary rights, negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors, negotiation of financing commitments with lenders and other third party investors, and other preliminary activities as may be required in connection with the Development Activities and Administrative Activities. Southern and Holdings request authority to acquire directly or indirectly the securities of one or more corporations, trusts, partnerships, limited liability companies or other entities (collectively, ''Intermediate Subsidiaries''), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of, or other interests in, one or more Exempt Businesses; provided that Intermediate Subsidiaries may also engage in Development Activities and Administrative Activities. To the extent that Southern or Holdings provide funds directly or indirectly to an Intermediate Subsidiary which are used for the purpose of making an investment in any Exempt Business, the amount of such funds will be included in Southern's or Holdings' ''aggregate investment'' in these entities, as calculated in accordance with rules 53 and 58, as applicable.

II. Financing Parameters

Applicants state that the proposed transactions will be subject to the terms and conditions set forth in the Original Order, as applicable, except that in no event will the effective cost of capital on any guarantee by Southern or Holdings of their subsidiaries (other than Capital Funding) exceed 500 basis points over a U.S. treasury having an amount equal to the guaranteed amount. In particular, Southern and each of its public utility subsidiaries will continue to comply with the requirement that at all times during the Authorization Period they must maintain a common equity ratio of at least thirty percent of their consolidated capitalization (common equity, preferred stock, long-term and short-term debt) as reflected in its most recent Form 10–K and Form 10–Q filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date, unless otherwise authorized.

Additionally, no guarantees or securities, other than common stock, commercial paper or short-term bank debt (with a maturity of one year or less) may be issued in reliance upon any authorization that may be granted by the Commission, unless upon original issuance (a) the security to be issued, if rated, is rated investment grade; (b) all outstanding securities of the issuer that are rated are rated investment grade; and (c) all outstanding securities of Southern that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E),(F), and (H) of Rule 15c3–1 under the Securities Exchange Act of 1934, as amended.

III. Financial Condition

Set forth below are the security ratings of those Applicants that have received them:

	S&P	Moody's	Fitch
Southern:			
unsecured debt	A–	A3	A
trust preferred securities	BBB+	A3	.....
preferred stock	.....	Baa1	.....
commercial paper	A–1	P–1	F–1
Alabama Power Company:			
unsecured debt	A	A2	A+
trust preferred securities	BBB+	A3	A
preferred stock	.....	Baa1	A
commercial paper	A–1	P–1	F–1
Georgia Power Company:			
unsecured debt	A	A2	A+
trust preferred securities	BBB+	A3	A
preferred stock	.....	Baa1	A
commercial paper	A–1	P–1	F–1
Gulf Power Company:			
unsecured debt	A	A2	A
trust preferred securities	BBB+	A3	A–
preferred stock	.....	Baa1	A–
commercial paper	A–1	P–1	F–1
Mississippi Power Company:			

[40] Under the Transfer Order, Southern currently has authority to organize one or more intermediate subsidiaries to make investments in Exempt Businesses and to spend up to $300 million on Development Activities. Southern proposes that the authorization sought in this Declaration would supersede and replace the authorization granted in the Transfer Order and be effective immediately upon the date of a Commission order regarding this request.

	S&P	Moody's	Fitch
unsecured debt	A	A1	AA –
trust preferred securities	BBB+	A2	A+
preferred stock	.....	A3	A+
commercial paper	A–1	P–1	F–1
Savannah Electric and Power Company, Inc.:			
unsecured debt	A	A2	
trust preferred stock	BBB+	A3	
preferred stock	.....	Baa1	.....
commercial paper	A–1	P–1	
Southern Power Company:			
unsecured debt	BBB+	Baa1	BBB+
commercial paper	A–2	P–2	.....
Southern Company Services:			
corporate credit rating	A		

Allegheny Energy, Inc., et al. (70–10278)

Allegheny Energy, Inc. (''Allegheny''), a registered holding company under the Act, West Penn Power Company (''West Penn''), a public-utility subsidiary of Allegheny, West Penn Funding Corporation (''WP Funding Corp.''), a wholly owned subsidiary of West Penn, West Penn Funding LLC (''WP Funding LLC''), a wholly owned limited liability company of WP Funding Corp., and Allegheny Energy Service Corporation (''AE Service Corp.''), a wholly owned subsidiary of Allegheny, all located at 800 Cabin Hill Drive, Greensburg, PA 15601 (together, ''Applicants''), have filed an application-declaration, as amended (''Application''), with the Commission under sections 6(a), 7, 9, 10, 12(b), 12(f) and 13(b) of the Act and rules 54, 90 and 91.

I. Summary of the Request

Applicants seek authorizations to issue up to $115 million in new transition bonds (''New Transition Bonds'') and for certain related financial transactions in connection with West Penn's financing and recovery of costs associated with Pennsylvania's electric-utility industry restructuring.[41] These proposed authorizations are related, and in addition, to a similar Commission authorization dated October 19, 1999, by which West Penn was permitted to engage in various transactions, including issuance of up to $600 million in transition bonds (''Existing Transition Bonds'').[42] Applicants request authority to engage in the following transactions, from time to time, through December 31, 2010, as applicable:

(i) For West Penn, (a) to utilize WP Funding or to form a new domestic subsidiary corporation (together, ''WP Funding''),[43] and (b) to transfer intangible transition property (''ITP'') and the associated intangible transition charges (''ITC'') revenue stream (both described below), to WP Funding as a capital contribution or as a sale in exchange for shares of WP Funding stock;

(ii) For WP Funding, (a) to acquire a new wholly owned limited liability company (''WPF LLC'')[44] and (b) to transfer ITP and the associated ITC revenue stream to WPF LLC in exchange for the net proceeds WPF LLC receives from its proposed sale of New Transition Bonds, described in subparagraph (iii) below;

(iii) For WPF LLC, (a) to issue New Transition Bonds in an amount of up to $115 million to investors, with a final maturity no later than December 31, 2010, and (b) to transfer, to WP Funding, the net proceeds from its sale of New Transition Bonds in exchange for ITP and the associated ITC revenue stream (which will secure the New Transition Bonds);

(iv) For WP Funding, to lend, to West Penn, the net proceeds from the sale of the New Transition Bonds it receives from WPF LLC;

(v) For West Penn, to issue a note of up to $115 million to WP Funding for the loan;

(vi) For West Penn, to pay Allegheny, dividends out of capital and unearned surplus, in the amount of the loan to West Penn, not to exceed $115 million (to facilitate Allegheny's commitment under an intercreditor agreement among Allegheny, Allegheny Energy Supply Company, LLC (''AE Supply'') and their respective lenders);[45]

(vii) For West Penn and WPF LLC, to enter into a servicing agreement by which West Penn will provide services, at a market rate, to WPF LLC for its ITC revenue stream, including (a) billing customers and making collections on behalf of WPF LLC, and (b) making certain filings with the PUC; and

(viii) For AE Service Corp., to enter into a service agreement with WP Funding and WPF LLC to provide corporate governance, bookkeeping and other related services.

II. Background

West Penn is incorporated in Pennsylvania, its entire service territory is located in the Commonwealth of Pennsylvania and it is subject to the regulation of the PUC. West Penn was authorized by the Commission in 1999 to securitize certain costs incurred in the electric-utility industry restructuring of the 1990's and is now seeking certain further authorization related to the same Commonwealth of Pennsylvania restructuring (requiring unbundling of electric services into separate generation, transmission and distribution services and competition in retail sales of electricity). The restructuring is administered by the PUC and was expected to cause some utilities in Pennsylvania to incur ''stranded'' or other ''transition'' costs, among other things. To reduce some of

[41] Applicants explain that, beginning in 1997, after enactment of the Pennsylvania Electricity Generation Customer Choice and Competition Act (66 Pa. C.S. Section 2801 *et seq.* (together with regulatory interpretations, ''Competition Act'')), Pennsylvania restructured its electricity industry, requiring the unbundling of electric services into separate generation, transmission and distribution services with open competition in the retail sale of electricity, implementing a program of retail competition in the electricity sector. Applicants state that the retail electric competition program now applies to all retail customers in the Commonwealth. Electric distribution services are regulated by the Pennsylvania Public Utility Commission (''PUC''), as they were before. Transmission services are regulated by the Federal Energy Regulatory Commission, as are wholesale rates for purchases and sales of electric power.

[42] *See* West Penn Power Co., Holding Co. Act Release No. 27091 (October 19, 1999).

[43] Applicants state that West Penn will issue the New Transition Bonds either through its existing subsidiary, WP Funding Corp., or a new subsidiary corporation. For convenience, however, WP Funding Corp. and any new subsidiary are referred to, together, as ''WP Funding'' and all requested authorizations for WP Funding refer both to West Penn Funding Corp. and any newly-formed corporation, unless specifically noted.

[44] Applicants state that, in the event New Transition Bonds are issued through WP Funding Corp., and not a newly-formed subsidiary corporation, the New Transition Bonds may be issued by WP Funding LLC, an existing subsidiary limited liability company, rather than a newly-formed limited liability company. For convenience, again (*see also* note 3 above), WP Funding LLC and a new limited liability company (whether a subsidiary of WP Funding Corp. or a newly-formed subsidiary of West Penn) are referred to, together, as ''WPF LLC'' and all requested authorizations for WPF LLC refer both to West Penn Funding LLC and any newly-formed limited liability company, unless specifically noted.

[45] *See also* Allegheny Energy, Inc., *et al.*, Holding Co. Act Release No. 27963 (April 29, 2005).

the cost impact, Pennsylvania's 1996 Competition Act permitted an electric-utility, under certain circumstances and during a transition period, to recover some stranded or transition costs related to restructuring.[46]

Applicants explain that the Competition Act provides that, subject to PUC approval and certain rate caps, these costs (after mitigation by the utility) may be recovered and collected by utilities from distribution customers through a ''competitive transition charge'' (''CTC'') and these costs also may be recovered through issuance of ''transition bonds.''[47] The Competition Act also requires a utility to retrieve these costs within nine years of enactment of the Competition Act (or an alternate period, as permitted by the PUC, upon good cause shown). Applicants state that the transition bond method of cost recovery may be, in certain circumstances, more expeditious and cost-effective for the utilities and ratepayers.

Applicants state that, in order for a utility to use transitions bonds, the statute requires the PUC to issue Qualified Rate Orders (''QROs'') permitting a utility to issue transition bonds and requires that a utility use proceeds of transition bonds principally to reduce qualified stranded costs and the utility's related capitalization. The Competition Act further provides that, to the extent the PUC declares a QRO (and the rates and other QRO-authorized charges) to be ''intangible transition property'' (*i.e.*, ITP), the utility (1) has ITP as collateral, to secure the transition bonds and (2) may impose, on its customers, non-bypassable ''intangible transition charges'' (*i.e.*, ITC), from which to repay the transition bonds.[48]

West Penn, in 1997, submitted its restructuring plan to the PUC and, in 1998, the PUC authorized West Penn to recover $670 million in transition costs by transition bonds, securitizing some of the cost recovery West Penn would be entitled to.[49] West Penn states that, although the PUC authorized the $670 million transition cost recovery, West Penn has not been able to recover its full value for a variety of reasons, as described below.

West Penn issued $600 million of Existing Transition Bonds through West Penn Funding LLC in 1999 upon receiving the PUC's authorization in 1998 and then the Commission's authorization, as noted above (less than the PUC's fully authorized amount of $670 million).[50] Applicants state that, in addition, as of November 30, 2004, West Penn has experienced a cumulative CTC under-recovery of approximately $83 million.[51]

On April 21, 2005, the PUC authorized securitization of up to an additional $115 million for unrecovered stranded costs that Allegheny is entitled to under the earlier PUC authorization. Applicants state that this amount, as of November 30, 2004, includes: (1) The cumulative under-recovered CTC amount (approximately $83 million); (2) the remaining stranded cost scheduled for recovery through the CTC during future periods (approximately $17 million); and (3) transaction costs and West Penn's share (25 percent) of interest-related savings from securitization.[52] They further state that the securitization process is intended to result in interest-related savings to the extent the interest rate payable on the transition bonds is lower than the interest rate authorized by the QRO for unrecovered CTC principal.[53] Applicants also state that they are unable to estimate the precise interest-related savings associated with the issuance of the New Transition Bonds, although they anticipate a material amount of savings for West Penn's customers.

Applicants state that the New Transition Bonds will be fully secured by West Penn's pledge of an irrevocable right to receive its customers' payments in amounts sufficient to service fully the New Transition Bonds.[54] Applicants

[46] Applicants state that Pennsylvania determined that the transition costs would be recoverable to the extent the PUC concludes the costs are just and reasonable. Transition costs identified are items such as regulatory assets, long-term purchased power commitments and other costs, including investment in generating plants, spent-fuel disposal, retirement costs and reorganization costs, among other things.

Pennsylvania's Competition Act required utilities to submit restructuring plans to the PUC, among other things, addressing certain prescribed time periods and including identified transition costs. In addition, the statute implemented utility rate caps to be in place during the transition cost collection period (with certain exceptions) and, for a significant portion of the period, total charges to customers would not be permitted to exceed rates in place as of December 31, 1996.

[47] Applicants state that the Competition Act also permits the transaction to be conducted through a subsidiary of a utility or a third-party assignee of a utility.

[48] Applicants state that ITCs are generally defined as amounts authorized by the PUC, under an irrevocable QRO, to be imposed on all customer bills, to recover the principal and interest on transition bonds, costs to cover credit enhancements, cost of retiring existing debt and equity, costs of defeasance, servicing fees and other related fees, taxes, costs and expenses (*i.e.*, ''qualified transition expenses'' or ''QTEs''). The ITCs are collected, through non-bypassable charges, by an electric-utility providing electric transmission and distribution services to a customer located in its service territory, regardless of whether that customer continues to purchase electricity from that electric-utility. The ITCs are a specified dollar amount billed on each customer bill (determined by applying certain rates per kilowatt hour of usage and, in some cases, per kilowatt of demand). In a QRO, the PUC may provide for periodic adjustments to ITC (''true-ups''). Once the PUC declares a QRO to be irrevocable, none of the utility, the PUC, the Commonwealth of Pennsylvania, nor any state instrumentality, has any right to modify the ITC (subject to the QRO and the Competition Act).

[49] The West Penn restructuring plan, filed with the PUC in August 1997, among other things, unbundled generation from transmission and distribution. The plan was contested, was the subject of hearings and, finally, resulted in a settlement approved by the PUC on November 19, 1998. The PUC also authorized the $670 million in stranded or transition costs to be recovered by a combination of stranded cost collection (subject to certain rate caps), lifting of generation caps from 2006 to 2008 and elimination of generation rate caps after December 31, 2008.

[50] *See* note 2 above. Applicants explain that, before issuance of the Existing Transition Bonds, West Penn had recovered approximately $37 million of its stranded costs from customers. The $600 million of Existing Transition Bonds recovered approximately $584 million of additional stranded cost recovery (and paid for approximately $16 million in recoverable issuance costs). They further explain that, thus, West Penn has recovered (or is in the process of recovering through the ITC) approximately $621 million of its $670 million in stranded costs (deferring recovery of the remaining $49 million in stranded costs). Of this deferred $49 million, which remains to be recovered, approximately $32 million is associated with periods prior to November 30, 2004 and $17 million is associated with future periods.

The Existing Transition Bonds were issued in four classes, two of which remain outstanding. The Existing Transition Bonds consisted of Class A–1, Class A–2, Class A–3 and Class A–4 in amounts of $74 million, $172 million, $198 million and $156 million, respectively (with Class A–3 and Class A–4 remaining outstanding with approximately $117 million and $156 million, respectively, as of December 31, 2004).

[51] Applicants state that the $83 million is comprised of the under-recovered stranded costs (approximately $32 million, noted above), associated interest (approximately $43 million), and West Penn's share of interest-related savings associated with the securitization (approximately $8 million).

[52] Applicants state that customers also have an interest-savings loss, since under the PUC's formula, the savings is shared between the utility and the ratepayer (25% and 75%, respectively).

[53] Applicants state that the Existing Transition Bonds were estimated to create approximately $46 million of interest-related savings. The customers' share of these savings is 75 percent (approximately $34.5 million) with West Penn retaining the remainder.

[54] Applicants state that neither the general credit of West Penn nor that of Allegheny will be provided for the New Transition Bonds and neither West Penn nor Allegheny, under any circumstances, will be called upon to meet New Transition Bonds payments. Applicants state that issuance of the New Transition Bonds will not adversely affect West Penn's cash flows. The proposed New Transition Bonds will be separately rated by credit rating agencies and are not expected to affect Allegheny's or West Penn's credit ratings. Applicants state that the credit rating agencies recognize that the New Transition Bonds will be serviced by ITC approved by the PUC and are independent of Allegheny's and West Penn's credit. The Existing Transition Bonds are rated AAA by Standard & Poor's and Fitch and Aaa by Moody's and Applicants anticipate that the New Transition Bonds will receive similar ratings. West Penn's current credit ratings for its unsecured

state, in addition, that savings from securitization will be shared between West Penn and its customers, with 75% of net savings to be passed on to its customers.

III. The Transactions

Applicants state that the purpose of West Penn's New Transition Bonds is to enable it to recover the remaining uncollected portion of its $670 million in Pennsylvania transition costs in a manner that they anticipate to be more expeditious and cost-effective for West Penn and for its customers than recovering these amounts through the standard billing and collection of CTC. Applicants propose to effect these transactions as described below.

1. Formation of New Subsidiaries and Transfer of ITP and Associated ITC Revenue Stream

West Penn requests authority to, either, (a) use West Penn Funding, the same wholly owned subsidiary it created in connection with the Existing Transition Bonds, or (b) instead, to form a new, wholly owned special purpose subsidiary for the transition cost securitization.[55] West Penn also seeks authority to transfer its ITP and associated ITC revenue stream to WP Funding.

WP Funding, in turn, requests authority to choose, in its discretion, to form a new, wholly owned limited liability company (WPF LLC) for the securitization of the New Transition Bonds. In addition, in turn, WP Funding also requests authority to transfer, to WPF LLC, the ITP and associated ITC revenue stream it may receive from West Penn, pursuant to a sale agreement, in exchange for the proceeds of the New Transition Bonds.[56]

2. Issuance of New Transition Bonds

Applicants request authority for WPF LLC to issue up to $115 million in New Transition Bonds. WPF LLC may issue the New Transition Bonds in the form of debt securities in one or more series and each such series may be issued in one or more classes. Different series may have different maturities and coupon rates and each series may have classes with different maturities and coupon rates. Overall, the characteristics of the New Transition Bonds will be substantially similar to bonds issued by similar issuers in similar contexts and the Existing Transition Bonds issued by WPF LLC pursuant to the previous Commission order.[57] Each series will be entitled to recover, through the ITC approved by the related QRO, QTEs based on a specified principal amount of New Transition Bonds for each series, including interest at the coupon rate or rates applicable to the series.[58] Applicants also request that they be permitted to consummate the securitization within 120 days of the order permitting this Application to become effective, rather than the 60 day period for provided under rule 24, to provide sufficient time for West Penn to complete the transactions.

Applicants state that the New Transition Bonds will provide that they must be repaid no later than December 31, 2010.[59]

West Penn also states that, at this time, it anticipates using the proceeds from the sale of ITP funded by the $115 million of New Transition Bonds to pay issuance and financing costs and, the remaining proceeds principally to reduce its transition or stranded costs by reducing its existing capitalization through one or more of the following: (a) Retirement of outstanding debt, (b) retirement and repurchase of preferred stock and (c) reduction of common shareholder equity through stock buy backs and/or payment of dividends.[60]

3. The Loan and the Payment of Dividends Related to the Loan

WP Funding also requests authority to lend West Penn up to $115 million (the proceeds from the sale of the ITP and associated ITC revenue stream) in exchange for West Penn's note in that amount. West Penn requests authority to issue a note of up to $115 million to WP Funding, at a market interest rate. Applicants state that the loan will have interest rates and maturities that are designed to provide a return to WP Funding of not less than WP Funding's effective cost of capital. Applicants state that West Penn's note to WP Funding will be subordinated to all outstanding West Penn debt.

Related to the loan, Applicants also request authority to make certain dividend payments out of capital or unearned surplus, stating that West Penn may be required to pay dividends out of capital or unearned surplus to Allegheny in an amount of the loan, not to exceed $115 million, due to the terms of an intercreditor agreement between Allegheny and AE Supply and their respective lenders.[61] Applicants state that the dividend authority is intended solely to enable Allegheny to comply with the terms of the intercreditor agreement. Applicants further state that any amounts paid to Allegheny by West Penn will be contributed back to West Penn immediately, regardless of circumstances.

4. Servicing Agreement

West Penn and WPF LLC also request authority to enter into a servicing agreement in which West Penn will agree to service WPF LLC's ITC revenue stream. West Penn will, among other things, (a) bill customers and make collections on behalf of WPF LLC, and (b) file with the PUC for adjustment to the ITC to achieve a level which allows for full recovery of QTEs in accordance with the amortization schedule for each series of Transition Bonds.[62]

Applicants state that the ITC charge may be set to provide for recovery of an excess amount over that needed to pay expected costs and debt service on the New Transition Bonds.[63] Applicants

debt are B+ from Standard & Poor's, Ba1 from Moody's, and BBB-from Fitch.

[55] For convenience, West Penn Funding Corporation and any new subsidiary, together, are referred to as ''WP Funding.'' *See* notes 3 and 4, above.

[56] *See also* section 2 (Issuance of New Transition Bonds) below. It is anticipated that the New Transition Bonds will be rated similarly to the Existing Transition Bonds, which are rated AAA by Standard & Poor's and Fitch and Aaa by Moody's, as noted before.

[57] *See* note 2 above.

[58] *See also* note 5 above.

[59] Applicants note that the final maturity date may vary as ITC is calculated by taking into account variables such as the anticipated level of charge-offs, delinquencies and usage, which may differ from the amounts actually incurred or achieved.

[60] Applicants also state that the specific actions West Penn will take to reduce its capitalization will depend, in large part, on the date proceeds from the sale of the New Transition Bonds become available, then prevailing market conditions and circumstances at that time, including (but not limited to) the overall financial circumstances of West Penn and other financial activities that may be in progress or planned.

[61] *See* Allegheny Energy, Inc., *et al.*, Holding Co. Act Release No. 27963 (April 29, 2005), note 5, above, and SEC File No. 70–10251. According to Applicants, this intercreditor agreement requires that, if either company or any of their subsidiaries issue debt or equity, then a percentage of the proceeds from the issuance, under certain circumstances, are to be paid as a dividend to Allegheny in the case where AE Supply (or one of its subsidiaries) is the issuer, or as a capital contribution to AE Supply if Allegheny (or one of its subsidiaries (other than AE Supply or its subsidiaries)) is the issuer. Consequently, should West Penn issue debt under certain circumstances specified in the intercreditor agreement, Allegheny must contribute a percentage of the proceeds temporarily to AE Supply. Applicants state that, to meet terms of the agreement, West Penn must pay dividends to Allegheny to provide Allegheny with sufficient funds to make the required contribution to AE Supply.

[62] *See also* note 5 above.

[63] Collections of this additional amount will be deposited into an ''overcollateralization subaccount'' to enhance the creditworthiness of the New Transition Bonds. The ITC charge will be collected from West Penn customers over the expected amortization period of the New Transition Bonds. The New Transition Bonds will have the benefits of accounts related to the New Transition Bonds themselves and it is expected that amounts in these accounts will be no less than the amounts

Continued

state that West Penn will service the ITCs and will remit monthly (or more frequently) all amounts collected from the ITCs to a collection account maintained by the indenture trustee for the benefit of the bondholders of the New Transition Bonds (''Collection Account'').[64] Under the terms of the servicing agreement, Applicants propose that West Penn will be entitled to compensation in the form of a service fee for its activities and reimbursement for certain of its expenses.[65]

As additional servicing compensation, West Penn also requests authority to retain all investment earnings on ITC collections from the time of collection until the time of remittance to the Collection Account. Amounts collected by West Penn for the ITC will be remitted monthly (or possibly more frequently if required by the rating agencies) to the Collection Account.

Applicants state that, to satisfy the rating agency requirements for a ''bankruptcy remote'' entity, the servicing fee must be an arm's-length fee that would be reasonable and sufficient for a third party performing similar services.[66] Applicants request authority to enter into the fee arrangements.

Applicants also request that West Penn be authorized to subcontract with other companies to carry out some of its servicing responsibilities, so long as the ratings of the Transition Bonds are neither reduced nor withdrawn.

5. Service Agreements With Allegheny Energy Service Corporation

WP Funding and WPF LLC request authority to enter into service agreements with AE Service Corp. Although WP Funding will have its own employees, Applicants propose that personnel employed by AE Service Corp. also provide services on an as-needed basis to WP Funding, as well as WPF LLC, under administrative service agreements (''Service Agreements'') to be entered into between WP Funding and AE Service Corp., and WPF LLC and AE Service Corp. The services will consist primarily of corporate housekeeping matters relating to WPF LLC and WP Funding, such as providing notices related to the Transition Bond documentation, consolidating corporate books and records into Allegheny's financial statements and overseeing corporate governance. Under the Service Agreements, WPF LLC and WP Funding will reimburse AE Service Corp. for the cost of services provided, computed in accordance with rules 90 and 91, as well as other applicable rules and regulations.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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required to achieve AAA (or equivalent) rating from the rating agencies.

[64] Quarterly or semiannually, WPF LLC will pay out of the Collection Account, among other things authorized by the QRO, the trustee fees, servicing fees, administrative costs, operating expenses, accrued but unpaid interest (except for interest accrued prior to the collection period for the related ITCs, which will be capitalized) and principal (to the extent scheduled) on the New Transition Bonds. Any remaining balance in the Collection Account will be used to restore the capital subaccount, fund and replenish the overcollateralization subaccount (to the extent scheduled) and then be added to a reserve subaccount. The ITC will be adjusted at least annually to ensure sufficient revenues, after application of amounts in the reserve subaccount, to cover all these expenses.

[65] Specific compensation details will be contained in the documentation applicable to each series.

[66] The rating agency requirement is meant to assure that the subsidiaries would be able to stand on their own and accordingly the fee must be sufficient to retain a third party servicer if for any reason West Penn could not continue to perform these services.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51778; File No. SR–BSE–2005–18]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 to Extend Until June 5, 2006, a Pilot Program for Listing Options on Selected Stocks Trading Below $20 at One-Point Intervals

June 2, 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 27, 2005, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities And Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the BSE. The BSE filed Amendment No. 1 to the proposal on June 1, 2005.[3] The BSE filed the proposal 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 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

The BSE proposes to amend Supplementary Material .02 to Chapter IV, Section 6, ''Series of Options Contracts Open for Trading,'' of the rules of the Boston Options Exchange (''BOX'') to extend until June 5, 2006, the 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 BSE's Web site (*http://www.bostonstock.com*), at the BSE'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 BSE 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 BSE 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[7] under the BOX Rules for an additional year, until June 5, 2006. The Pilot Program allows the Boston Options Exchange Regulation, LLC (''BOXR''), the wholly owned subsidiary of the BSE with the delegated regulatory authority

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As discussed in greater detail in note 13, *infra*, Amendment No. 1 states that the BSE will provide the Commission with a report assessing the operation of the $1 strikes pilot program in the event that the BSE seeks to extend, expand, or seek permanent approval of the pilot program.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The BSE 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] The BSE implemented the Pilot Program in February 2004 and extended it through June 5, 2005. *See* Securities Exchange Act Release Nos. 49292 (February 20, 2004), 69 FR 8993 (February 26, 2004) (notice of filing and immediate effectiveness of File No. SR–BSE–2004–01) (establishing the Pilot Program); and 49806 (June 4, 2004), 69 FR 32640 (June 10, 2004) (notice of filing and immediate effectiveness of File No. SR–BSE–2004–22) (extending the Pilot Program through June 5, 2005).

over BOX, to list options on a pilot basis on up to five selected underlying equities trading below $20 at $1 strike price intervals, as provided under the terms of the Pilot Program. The Pilot Program also allows BOX to list $1 strike prices on any equity option included in the $1 strike price pilot program of any other options exchange until June 5, 2005. The proposed rule change retains the text of Supplementary Material .02 to Section 6 of Chapter IV of the BOX Rules, as currently established on a pilot basis, and seeks to extend the operation of the Pilot Program for another year.

Chapter IV, Section 6 of the Box Rules establishes guidelines regarding the addition of options series for trading on BOX. Under the Pilot Program, to be eligible for selection into 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, BOX may list strike prices at $1 intervals from $3 to $20, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price on its primary market on the previous day. BOX also may list $1 strikes on any other options class designated by another options exchange that employs a similar pilot program under its rules. BOX may not list long-term option series (''LEAPS'' ®) at $1 strike price intervals for any class selected for the Pilot Program. BOX also is restricted from listing any series that would result in strike prices being $0.50 apart.

The Pilot Program initially was proposed in reaction to the general decrease in stock prices and the proliferation of stocks trading below $20, including some of the most widely held and actively traded equity securities listed on the New York Stock Exchange, the American Stock Exchange, and Nasdaq. The BSE notes that many of these stocks are still trading below $20, including, for example, Oracle, Micron Technology, EMC Corp, and Motorola.

When a stock underlying an option trades at a lower price, it requires a larger percentage gain in the price of the stock for an option to become in-the-money. For example, if a stock trades at $10, an investor that wants to purchase a slightly out-of-the-money call option would have to buy the $12.50 call. At these levels, the stock price would need to increase by 25% to reach in-the-money status. The BSE notes that a 25% or higher gain in the price of the underlying stock is especially large given the lessened degree of volatility that recently has accompanied many stocks and options. According to the BSE, listing additional strike prices on these classes has allowed BOX Participants to provide their customers with greater trading flexibility in achieving their investment strategies. In further support of this proposed rule change, the Exchange submitted to the Commission a Pilot Program Report, attached as Exhibit 3, offering detailed data from and analysis of the Pilot Program.

2. Statutory Basis

The Exchange believes that the data demonstrates that there is sufficient investor interest and demand to extend the Pilot Program for another year, without adversely affecting systems capacity. The proposed rule change is designed to provide investors with greater trading opportunities, and the flexibility and ability to more closely tailor their investment strategies and decisions to the movement of the underlying security. Accordingly, the Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The BSE 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

The BSE 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 BSE 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 BSE has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay to allow the Pilot Program to continue to operate without interruption.

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]

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For 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] In the event that the BSE proposes to: (1) extend the Pilot Program beyond June 5, 2006; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, the BSE will 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 BSE will 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 will cover the entire time the Pilot Program was in effect and will 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

Continued

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–BSE–2005–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–0609.

All submissions should refer to File No. SR–BSE–2005–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BSE–2005–18 and should be submitted on or before June 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

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intervals for the options the BSE selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the BSE'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 BSE addressed them; (6) any complaints that the BSE received during the operation of the Pilot Program and how the BSE addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. *See* Amendment No. 1, *supra* note 3.

[14] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers the proposal to have been filed on June 1, 2005, the date the BSE filed Amendment No. 1 to the proposal.

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51779; File No. SR–CBOE–2004–71]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto To Modify the Distribution of the DPM Participation Entitlement for Orders Specifying a Preferred DPM Under CBOE Rule 8.87

June 2, 2005.

I. Introduction

On November 10, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to modify the distribution of the Designated Primary Market-Maker (''DPM'') participation entitlement for orders specifying a certain DPM or e-DPM (''Preferred DPM'') under CBOE Rule 8.87. The proposed rule change was published for comment in the **Federal Register** on December 1, 2004.[3] The Commission received four comment letters on the proposal.[4] On January 13, 2005, the CBOE sent a response to the comment letters.[5]

On April 22, 2005, the CBOE filed Amendment No. 1 to the proposed rule change.[6] This order approves the proposed rule change and simultaneously provides notice of filing and grants accelerated approval of Amendment No. 1.

II. Description of the Proposed Rule Change

The CBOE proposes to modify the participation entitlement for orders designated to a Preferred DPM on a one-year pilot basis. Only a DPM or e-DPMs allocated a particular option class would be eligible for the ''preferred'' designation in such class, and the Preferred DPM participation entitlement would only be granted if the Preferred DPM were quoting at the National Best Bid or Offer (''NBBO'') at the time the order is received and executed electronically by the CBOE Hybrid System. In addition, the participation entitlement is based on the number of contracts remaining after public customer orders on the book have been filled. The proposed participation entitlement for the Preferred DPM is as follows:

- If the Preferred DPM is an e-DPM, and the DPM is also quoting at the NBBO, then ⅔ of the participation entitlement would be allocated to the Preferred DPM and the balance of the participation entitlement would be allocated to the DPM;
- If the Preferred DPM is an e-DPM, and the DPM is not quoting at the NBBO but one or more other e-DPMs are quoting at the NBBO, then ⅔ of the participation entitlement would be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50732 (November 23, 2004), 69 FR 69967.

[4] *See* letter from Michael J. Simon, General Counsel and Secretary, International Securities Exchange, Inc. (''ISE''), to Jonathan G. Katz, Secretary, Commission, dated December 31, 2004 (''ISE Letter''); letter from Michael J. Simon, General Counsel and Secretary, ISE, to Jonathan G. Katz, Secretary, Commission, dated January 13, 2005 (''ISE Letter #2''); letter from Kenneth R. Leibler, Chairman, Boston Options Exchange Regulation (''BOXR''), to Jonathan G. Katz, Secretary, Commission, dated January 19, 2004 (*sic*) (''BOXR Letter''); and letter from Matthew Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC (''Citadel''), to Jonathan G. Katz, Secretary, Commission, dated April 6, 2005 (''Citadel Letter'').

[5] *See* letter from Angelo Evangelou, Managing Senior Attorney, Legal Division, CBOE, to Jonathan G. Katz, Secretary, Commission, dated January 13, 2004 (''CBOE Letter'').

[6] Amendment No. 1 added language to the proposed rule text to clarify that if an e-DPM is the Preferred DPM for an order and the DPM is not quoting at the NBBO, any remainder of the participation entitlement that is not allocated to the Preferred DPM would be divided evenly among the remaining e-DPMs quoting at the NBBO.

allocated to the Preferred DPM and the balance of the participation entitlement would be divided equally between the other e-DPMs also quoting at the NBBO;[7]

• If the Preferred DPM is the DPM, and one or more e-DPMs are also quoting at the NBBO, then ⅔ of the participation entitlement would be allocated to the Preferred DPM and the balance of the participation entitlement would be divided equally between the e-DPMs quoting at the NBBO;

• If the Preferred DPM is not quoting at the NBBO, then the Preferred DPM participation entitlement would not apply and the ''regular'' participation entitlement set forth in subparagraph (b)(3) of CBOE Rule 8.87 would apply; and,

• If the DPM and e-DPMs (collectively ''DPM Complex'') are the only CBOE members quoting at the NBBO then the participation entitlement applicable to the Preferred DPM would be: 50% when there is one other member of the DPM Complex also quoting at the NBBO; 40% when there are two other members of the DPM Complex quoting at the NBBO; and, 30% when there are three or more members of the DPM Complex also quoting at the best bid/offer on the Exchange. No other members of the DPM Complex other than the Preferred DPM will receive a participation entitlement, but may participate on a trade pursuant to CBOE Rule 6.45A.

In no case would a DPM or e-DPM be allocated a total number of contracts greater than the number of contracts that the DPM or e-DPM is quoting.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, comment letters, and the CBOE's response and finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange[9] and, in particular, the requirements of Section 6(b)(5) of the Act.[10] Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission received four comment letters regarding the proposal, all of which opposed the proposal.[11] The commenters criticized the proposal because they believe it would allow a DPM or e-DPM a guarantee based solely on its relationships with order entry firms rather than on such DPM's or e-DPM's obligations. The commenters assert that the proposal would reward a DPM or e-DPM for its payment for order flow arrangements rather than the quality of its quotes, and therefore the proposal would have a negative impact on price competition.[12] Two commenters also believed that the proposal did not address the possibility of coordinated actions between a DPM and an order entry firm.[13]

The Commission has previously approved rules that guarantee CBOE DPMs and e-DPMs a proportion of each order when the DPM's or e-DPM's quote is equal to the NBBO.[14] The Commission has closely scrutinized exchange rule proposals to adopt or amend a specialist guarantee where the percentage of specialist participation would rise to a level that could have a material adverse impact on quote competition within a particular exchange.[15] Because the proposal would not increase the overall percentage of an order that is guaranteed to the DPM Complex, but instead would reallocate that guarantee, the Commission does not believe the proposal will negatively impact quote competition on the CBOE. Under the proposal, the remaining portion of each order will still be allocated based on the competitive bidding of market participants.

In addition, a Preferred DPM will have to be quoting at the NBBO at the time the order is received to capitalize on the guarantee. The Commission believes it is critical that the Preferred DPM cannot step up and match the NBBO after it receives an order, but must be publicly quoting at that price when the order is received. In this regard, the CBOE's proposal prohibits an order flow provider from notifying a DPM or e-DPM regarding its intention to submit a Directed Order so that such DPM or e-DPM could change its quotation to match the NBBO immediately prior to submission of the preferenced order, and then fade its quote. In response to commenters' concerns that its proposal failed to protect against coordinated actions between a DPM and an order entry firm, CBOE stated that its rules already provide the necessary protections against that type of conduct.[16] Furthermore, the CBOE represents that it will proactively conduct surveillance for, and enforce against, such violations.[17]

One commenter states that DPMs and e-DPMs currently receive participation entitlements based on their obligations to the market.[18] The commenter believes that the proposal, by allowing any directed market maker quoting at the NBBO to receive a guaranteed percentage of an order without in turn increasing such market maker's obligations to the market, would ''eliminate the incentive to be a specialist, thereby potentially leaving the obligations of the specialist to the market unfulfilled.''[19] The Commission does not believe that the proposal will result in the role of the specialist going unfulfilled, and notes that it recently approved an options exchange without specialists.[20] Moreover, specialists' obligations to the market have been reduced through other changes, including greater automation of functions previously handled manually by the specialist. While this proposal may reduce the incentive to be a specialist, the Commission does not believe that makes the proposal inconsistent with the Act. Finally, the Commission notes that DPMs and e-DPMs have greater quoting obligations than other CBOE market makers who cannot be Preferred DPMs. Specifically, DPMs must provide continuous two-sided market quotations for each class

[7] This paragraph was added to the proposed rule change pursuant to Amendment No. 1.

[8] 15 U.S.C. 78f.

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 4.

[12] *See, e.g.*, ISE Letter, *supra* note 4, at 1–2; BOXR Letter, *supra* note 4, at 1–3; and Citadel Letter, *supra* note 4, at 2.

[13] ISE Letter, *supra* note 4, at 5, and BOXR Letter, *supra* note 4, at 3.

[14] *See* Securities Exchange Act Release No. 43004 (June 30, 2000) 65 FR 43060 (July 12, 2000) (SR–CBOE–98–54); *see* Securities Exchange Act Release No. 50003 (July 12, 2004), 69 FR 43028, (July 19, 2004) (SR–CBOE–2004–24).

[15] *See* Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48788 (August 9, 2000).

[16] CBOE Letter, *supra* note 5, at 4 (''* * * CBOE Rule 4.18 expressly prohibits this sort of misuse of material, non-public information.'').

[17] *See* letter from Angelo Evangelou, Managing Senior Attorney, Legal Division, CBOE, to John Roeser, Assistant Director, Division of Market Regulation, Commission, dated May 27, 2005.

[18] A DPM must maintain continuous quotes in every series of its assigned options classes. E-DPMs are required to continuously quote in 90% of series of each options class to which they are assigned. Market makers other than DPMs and e-DPMs are required to continuously quote only 60% of series to which they are assigned.

[19] Citadel Letter, *supra* note 4, at 2.

[20] *See* Securities Exchange Act Release No. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (order approving trading rules for the Boston Options Exchange Facility).

and series allocated to it,[21] and e-DPMs must provide continuous two-sided market quotations in at least 90% of the series of each class allocated to it.[22] To receive an allocation under this rule filing, the Preferred DPM must be quoting at the NBBO for the size of the allocation received.

One commenter believes that the proposal is similar to facilitation guarantee programs and other directed order programs approved by the Commission.[23] However, unlike those programs, the commenter criticizes that the proposal does not include certain protections for customers, such as providing the opportunity for price improvement, or limiting the program to a minimum number of contracts.[24] This commenter did note, however, that the proposal would not ''remove additional order flow from the auction in order to 'reward' the preferred DPM. Rather, it is reallocating the specialist allocation among the DPMs when a member preferences one DPM.'' [25]

The Commission believes that the proposal is more akin to current participation entitlements, for DPMs and eDPMs, than the facilitation guarantee programs and other directed order programs cited by the commenter. As CBOE notes, unlike other programs, the Preferred DPM would not have an opportunity to ''preview'' an order to decide whether or not to trade with it.[26] Moreover, unlike exchange facilitation guarantee programs,[27] under the proposal, the preferred DPM would not be eligible for a participation entitlement unless it is publicly quoting at the NBBO at the time an order is received. Instead of changing its facilitation program rules, this proposal reallocates the current participation entitlement available for DPMs and eDPMs. The Commission believes this reallocation is consistent with the Act and will not affect the incentives of the trading crowd to compete aggressively for orders based on price.

The Commission emphasizes that approval of this proposal does not affect a broker-dealer's duty of best execution. A broker-dealer has a legal duty to seek to obtain best execution of customer orders, and any decision to preference a particular DPM or e-DPM must be consistent with this duty.[28] A broker-dealer's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated in SRO rules and, through judicial and Commission decisions, the antifraud provisions of the federal securities laws.[29]

The duty of best execution requires broker-dealers to execute customers' trades at the most favorable terms reasonably available under the circumstances, *i.e.*, at the best reasonably available price.[30] The duty of best execution requires broker-dealers to periodically assess the quality of competing markets to assure that order flow is directed to the markets providing the most beneficial terms for their customer orders.[31] Broker-dealers must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices.[32] In doing so, broker-dealers must take into account price improvement opportunities, and whether different markets may be more suitable for different types of orders or particular securities.[33]

The Commission notes that the proposed rule change would be implemented on a pilot basis for one year. During this time, the Commission intends to evaluate the impact of the proposal on the options markets to determine whether it would be beneficial to customers and to the options markets as a whole before approving any request for permanent approval of the pilot program.

For these reasons, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[34] and will not jeopardize market integrity or the incentive for market participants to post competitive quotes.[35]

IV. Accelerated Approval of Amendment No. 1

Pursuant to Section 19(b)(2) of the Act,[36] the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds

[21] *See* CBOE Rule 8.85(a)(i).

[22] *See* CBOE Rule 8.93(i).

[23] ISE Letter, *supra* note 4, at 4.

[24] *Id.* at 1–2.

[25] *Id.* at 4.

[26] CBOE Letter, *supra* note 5, at 2.

[27] *See* CBOE Rule 6.74(d); ISE Rule 716(d); Pacific Exchange, Inc. Rule 6.47(b); American Stock Exchange, Inc. Rule 950(d), Commentary .02(d); and Philadelphia Stock Exchange, Inc. Rule 1064, Commentary .02.

[28] *See, e.g., Newton* v. *Merrill, Lynch, Pierce, Fenner & Smith, Inc.,* 135 F.3d 266, 269–70, 274 (3d Cir.), *cert. denied*, 525 U.S. 811 (1998); *Certain Market Making Activities on Nasdaq,* Securities Exchange Act Release No. 40900 (January 11, 1999) (settled case) (citing *Sinclair* v. *SEC,* 444 F.2d 399 (2d Cir. 1971); *Arleen Hughes,* 27 SEC 629, 636 (1948), *aff'd sub nom. Hughes* v. *SEC,* 174 F.2d 969 (D.C. Cir. 1949)). *See also* Order Execution Obligations, Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Order Handling Rules Release'').

[29] Order Handling Rules Release, 61 FR at 48322. *See also Newton,* 135 F.3d at 270. Failure to satisfy the duty of best execution can constitute fraud because a broker-dealer, in agreeing to execute a customer's order, makes an implied representation that it will execute it in a manner that maximizes the customer's economic gain in the transaction. *See Newton,* 135 F.3d at 273 (''[T]he basis for the duty of best execution is the mutual understanding that the client is engaging in the trade—and retaining the services of the broker as his agent—solely for the purpose of maximizing his own economic benefit, and that the broker receives her compensation because she assists the client in reaching that goal.''); *Marc N. Geman,* Securities Exchange Act Release No. 43963 (February 14, 2001) (citing *Newton*, but concluding that respondent fulfilled his duty of best execution). *See also* Payment for Order Flow, Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006, 55009 (Nov. 2, 1994) (''Payment for Order Flow Final Rules''). If the broker-dealer intends not to act in a manner that maximizes the customer's benefit when he accepts the order and does not disclose this to the customer, the broker-dealer's implied representation is false. *See Newton,* 135 F.3d at 273–274.

[30] *Newton*, 135 F.3d at 270. *Newton* also noted certain factors relevant to best execution—order size, trading characteristics of the security, speed of execution, clearing costs, and the cost and difficulty of executing an order in a particular market. *Id.* at 270 n. 2 (citing Payment for Order Flow, Securities Exchange Act Release No. 33026 (October 6, 1993), 58 FR 52934, 52937–38 (October 13, 1993) (Proposed Rules)). *See In re E.F. Hutton & Co.* (''Manning''), Securities Exchange Act Release No. 25887 (July 6, 1988). *See also* Payment for Order Flow Final Rules, 59 FR at 55008–55009.

[31] Order Handling Rules Release, 61 FR at 48322–48333 (''In conducting the requisite evaluation of its internal order handling procedures, a broker-dealer must regularly and rigorously examine execution quality likely to be obtained from different markets or market makers trading a security.''). *See also Newton*, 135 F.3d at 271; Market 2000: An Examination of Current Equity Market Developments V–4 (SEC Division of Market Regulation January 1994) (''Without specific instructions from a customer, however, a broker-dealer should periodically assess the quality of competing markets to ensure that its order flow is directed to markets providing the most advantageous terms for the customer's order.''); Payment for Order Flow Final Rules, 59 FR at 55009.

[32] Order Handling Rules, 61 FR at 48323.

[33] Order Handling Rules, 61 FR at 48323. For example, in connection with orders that are to be executed at a market opening price, ''[b]roker-dealers are subject to a best execution duty in executing customer orders at the opening, and should take into account the alternative methods in determining how to obtain best execution for their customer orders.'' Disclosure of Order Execution and Routing Practices, Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414, 75422 (December 1, 2000) (adopting new Exchange Act Rules 11Ac1–5 and 11Ac1–6 and noting that alternative methods offered by some Nasdaq market centers for pre-open orders included the mid-point of the spread or at the bid or offer).

[34] 15 U.S.C. 78f(b)(5).

[35] Approval of this proposal is in no way an endorsement of payment for order flow by the Commission.

[36] 15 U.S.C. 78s(b)(2).

good cause for approving Amendment No. 1 to the proposal, prior to the 30th day after publishing notice of Amendment No. 1 in the **Federal Register**.

The Commission believes that it has received and fully considered meaningful comments with respect to the proposal, and that Amendment No. 1 does not raise any new regulatory issues that warrant further delay. In Amendment No. 1, the CBOE added language to the proposed rule text to clarify that if an e-DPM is the Preferred DPM for an order and the DPM is not also quoting at the NBBO, the remainder of the participation entitlement that is not allocated to the Preferred DPM is divided evenly among the remaining e-DPMs on the Exchange quote. The Commission believes that the addition of the clarifying language is appropriate to provide for foreseeable scenarios regarding allocation of the participation entitlement for a Preferred DPM.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–71 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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 publicly available. All submissions should refer to File Number SR–CBOE–2004–71 and should be submitted on or before June 29, 2005.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–CBOE–2004–71) be, and hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis, for a pilot period to expire on June 2, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2939 Filed 6–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51776; File No. SR–CHX–2005–11]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Rule Change Relating to Transactions in Certain Odd-Lot Orders

June 2, 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 6, 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 and II below, which Items have been prepared by the CHX. The Exchange has 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify that odd lot orders executed by CHX specialists shall be executed in accordance with CHX Article XX, Rule 37(a)(2), which governs execution of round lot orders by CHX specialists. The CHX has designated this proposal as non-controversial and has requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii) under the Act.[5] The text of the proposed rule change is below. Proposed new language is *italicized*.

* * * * *

Article XXXI

Odd Lots and Odd-Lot Dealers, Dual System

* * * * *

Rule 9.

* * * * *

Interpretations and Policies

.01 No change to text.

.02 Notwithstanding paragraph (b) of this Rule, if a CHX specialist is the registered odd-lot dealer for an issue, orders in such issue shall be executed in accordance with Article XX, Rule 37(a)(2).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[37] 15 U.S.C. 78s(b)(2).

[38] 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] 17 CFR 240.19b–4(f)(6)(iii).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Odd-lot orders (*i.e.,* orders of less than 100 shares) are traded on the CHX by registered odd-lot dealers, and are governed by Article XXXI of the CHX Rules. According to the CHX, in many cases, the registered odd-lot dealer for an issue is the specialist who has been assigned the issue by the CHX Committee on Specialist Assignment and Evaluation. In other cases, the registered odd-lot dealer is a member firm that operates as an odd-lot execution service.

CHX Article XXXI, Rule 9 governs the execution prices that are due odd-lot orders. The CHX states that this rule obligates an odd-lot dealer to execute an odd-lot order at the ''adjusted BBO,'' which is predicated on the national best bid or offer but excludes certain quotations, including 100-share quotations of other market centers. According to the CHX, in cases where a CHX specialist is the registered odd-lot dealer, however, the Exchange's systems execute odd-lot orders at the national best bid or offer (which most often is superior to the adjusted BBO), so that the execution price of the odd-lot orders will be consistent with the execution price of round-lot orders. The Exchange believes that this consistency is appropriate and benefits investors.

To codify the Exchange's interpretation, and to preclude any inconsistency between a specialist's pricing of odd-lot orders and round lot orders, the proposed rule change would add an Interpretation and Policy providing that, for issues where a CHX specialist is the registered odd-lot dealer, the provisions of CHX Article XX, Rule 37(a)(2), *i.e.,* the Exchange's ''Best Rule,'' would govern the execution price due an odd-lot order. The Exchange believes that this interpretation would help avoid customer confusion.

The proposed rule change would also permit CHX specialists to elect to act as agent for odd-lot orders, in accordance with CHX Article XX, Rule 37(a)(2), to obtain the best available price in the national marketplace.[6] According to the Exchange, many CHX specialists utilize remote pricing facilities, which take into account current market information, to help them price such orders.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[7] in general, and with Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder[10] because the proposal: (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 prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the CHX has given the Commission 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.

CHX satisfied the five-day pre-filing requirement. In addition, CHX has requested that the Commission waive 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 such waiver will ensure consistency in specialist pricing of odd-lot orders and round lot orders. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[11] 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.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2005–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2005–11. 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

[6] The Exchange states that CHX systems do not currently permit CHX specialists to act as agent for odd-lot orders—the systems simply execute such orders automatically against the CHX specialist as principal, priced at the NBBO. The CHX believes that modification of its systems to permit agency execution of odd-lot orders is amply warranted because it is consistent with the execution rules applicable to round-lot orders.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

Room. Copies of the filing also will be available for inspection and copying at the principal office 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–2005–11 and should be submitted on or before June 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2936 Filed 6–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51775; File No. SR–ISE–2005–24]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

June 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 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, II, and III below, which items have been prepared by the ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to extend two fee waivers. The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE states that the purpose of this proposed rule change is to amend the ISE's Schedule of Fees to extend two fee waivers. First, the ISE's current waivers on certain customer transaction fees are set to expire on June 30, 2005.[5] According to the ISE, in order for it to remain competitive in the market place, the ISE is proposing to extend these waivers for an additional year, through June 30, 2006. Second, the ISE is proposing to extend a fee waiver regarding its CLICK terminal, which is the front-end order-entry terminal the ISE provides to its members. Currently, the ISE waives software license and maintenance fees, as well as API/Session fees (based on member log-ins), for an ISE member's second and subsequent CLICK terminals. This waiver also is scheduled to expire on June 30, 2005. The ISE believes that this waiver program encourages firms to install and use multiple CLICKs, and therefore it proposes to extend this waiver for an additional year.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, in that it will permit the Exchange to maintain an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the ISE states that this proposed rule change would extend current waivers, thus effectively maintaining low fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Commission notes that the ISE's Schedule of Fees provides for, among other things: (1) Execution Fees on certain customer orders (other than options on certain indices listed in the ISE's Schedule of Fees) of $0.05 per contract/side per transaction, and (2) Comparison Fees of $0.03 per contract/side per transaction. The Execution Fees are currently waived except for transactions in options on certain indices listed in the ISE's Schedule of Fees. The Commission further notes that the Comparison Fee applies to P Orders and P/A Orders for a pilot period expiring on July 31, 2005, and is subject to a fee waiver for Public Customer Orders except for transactions in options on certain indices listed in the ISE's Schedule of Fees. *See* ISE Rule 100(32) (defining ''Public Customer'' as a person who is not a broker or dealer in securities); and ISE Rule 1900(10) (for a definition of P Orders and P/A Orders).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 19b–4(f)(2).

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–2005–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549–0609.

All submissions should refer to File Number SR–ISE–2005–24. 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 Commissions Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–24 and should be submitted by June 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2937 Filed 6–7–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51745; File No. SR–NSCC–2005–04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change To Establish a Confirmation and Matching Service for Over-the-Counter U.S. Equity Options Transactions

May 26, 2005.

I. Introduction

On April 29, 2005, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change File No. SR–NSCC–2005–04 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on May 10, 2005.[2] The comment period ended on May 25, 2005. No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

II. Description

NSCC is permanently adding Addendum M to its Rules and Procedures to establish a confirmation and matching service for over-the-counter (''OTC'') U.S. equity options transactions. The service is called the Equity Options Service.[3]

Currently, confirmation of trade details among dealers and the dealers' buy-side customers in the OTC equity options market is supported largely by faxes and telephone communications. It is widely acknowledged by the industry that this current operational infrastructure, which depends upon nonstandardized, manual processing, results in excessive processing costs, delays, and errors. The industry is seeking to reduce the attendant operational risks associated with OTC equity options processing by automating and standardizing the trade confirmation process for OTC equity options.

In response to similar conditions prevailing in the credit default swaps industry, The Depository Trust & Clearing Corporation (''DTCC''), the corporate parent of NSCC, created a subsidiary, DTCC Deriv/SERV LLC (''Deriv/SERV''), in 2003. Deriv/SERV currently offers a confirmation and matching service for OTC credit default swaps transactions and the associated cash flows. This service is now used by approximately 75 entities, which includes all of the largest OTC credit default swaps dealers.

Deriv/SERV has developed a confirmation and matching service for OTC equity options transactions and the associated cash flows (''Deriv/SERV Equity Options Service''). The Deriv/SERV Equity Options Service provides for confirmation and matching either between two OTC equity options dealers or between an OTC equity options dealer and its buy-side customer. Where either the buyer or the seller of an OTC equity option is a U.S. person and the OTC equity option is issued by a U.S. issuer (''U.S. Equity Option Transaction''), NSCC provides confirmation and matching services through its Equity Options Service to Deriv/SERV pursuant to a service agreement between NSCC and Deriv/SERV (''Service Agreement'').[4] In connection with the NSCC Equity Options Service, Deriv/SERV has become a Data Services Only Member of NSCC.[5]

The Deriv/SERV Equity Options Service is operated pursuant to the operating procedures of Deriv/SERV (''Deriv/SERV Operating Procedures''). U.S. Equity Option Transactions are also subject to Addendum M of NSCC's Rules and Procedures. Therefore, each user of the Deriv/SERV Equity Options Service enters into an agreement with Deriv/SERV obligating the user to abide by the terms of the Deriv/SERV Operating Procedures and obligating them to abide by Addendum M for any U.S. Equity Option Transactions. Pursuant to the Service Agreement, NSCC has the right to require Deriv/SERV to cause Deriv/SERV's users to abide by the terms of Addendum M. In addition, pursuant to the Service Agreement, NSCC and Deriv/SERV have agreed that should the Commission request that NSCC provide to the Commission any information relating to

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 51649 (May 3, 2005), 70 FR 24666.

[3] The Commission approved NSCC's Equity Options Service on a temporary basis through May 31, 2005, so that NSCC could evaluate the operations of the service and report its findings to the Commission. Securities Exchange Act Release No. 50652 (November 17, 2004), 69 FR 67377. NSCC staff has communicated its findings to Commission staff during various meetings and conversations.

[4] DTC has represented that the continued processing of Deriv/SERV's transactions will not be a strain on the capacity of DTC's systems. The host computer and other automated facilities associated with the NSCC Equity Options Service are provided by DTC pursuant to service agreements between NSCC and DTCC and between DTCC and DTC.

[5] NSCC Rules and Procedures, Rule 31.

the NSCC Equity Options Service, Deriv/SERV will provide any such information in its possession to NSCC so that NSCC may provide such information to the Commission.

NSCC is responsible neither for the content of the messages transmitted through the NSCC Equity Options Service nor for any errors, omissions, or delays that may occur relating to the NSCC Equity Options Service in the absence of gross negligence on NSCC's part. Both the Service Agreement and the Deriv/SERV Operating Procedures provide that NSCC has no liability in connection with the NSCC Equity Options Service in the absence of gross negligence on NSCC's part. The NSCC Equity Options Service does not involve netting or money settlement through the facilities of NSCC, and it is a nonguaranteed service of NSCC.[6]

Deriv/SERV will charge its users fees in connection with the Deriv/SERV Equity Options Service and pursuant to the Service Agreement will make payments to NSCC for the services that NSCC provides. NSCC will file proposed rule changes under Section 19(b) of the Act for fees that NSCC charges to Deriv/SERV for the NSCC Equity Options Service and for any changes made by NSCC to the Equity Options Service.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[7] The Commission finds the proposed rule change to be consistent with Section 17A(b)(3)(F) of the Act because the NSCC Equity Options Service should provide for the prompt and accurate clearance and settlement of U.S. OTC equity option transactions by facilitating the transmission of automated, standardized information on a centralized communications platform. This should reduce processing errors, delays, and risks that are typically associated with manual processes.

NSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing because the Commission's current approval of NSCC's Equity Options Service expires May 31, 2005.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2005–04) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2932 Filed 6–7–05; 8:45 am]

BILLING CODE 8010–01–P

[6] The NSCC Equity Options Service is a nonguaranteed service limited to the matching and communication of information and does not involve settlement of securities transactions or funds through the facilities of NSCC. In its Matching Release, the Commission concluded that matching (*i.e.*, the ''comparison of data respecting the terms of settlement of securities transactions'') constitutes a clearing agency function within the meaning of Section 3(a)(23)(A) of the Exchange Act. Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 [File No. S7–10–98].

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51747; File No. SR–NYSE–2005–26]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Extend the Closing Time of Crossing Session II and to Amend its Crossing Sessions III and IV to Eliminate the Share Size Restriction and the Process by Which an Order is Executed if There is No Execution Prior to 4 p.m.

May 26, 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 8, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to 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 NYSE. On May 19, 2005, NYSE 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 NYSE proposes to amend its Off-Hours Trading Facility (''OHTF'')—Crossing Sessions II, III, and IV, in particular. The Exchange proposes to extend the closing time of Crossing Session II from 6:15 p.m. to 6:30 p.m. The NYSE also proposes to amend rules governing Crossing Sessions III and IV to eliminate the 10,000 share size restriction and the process by which an order is executed if there is no execution prior to 4 p.m. The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange's OHTF consists of four sessions. Crossing Session I permits the execution, at the Exchange's closing price, of single-stock, single-sided closing price orders and crosses of single-stock, closing price buy and sell orders. Crossing Session II provides an opportunity for members and member organizations to cross program trading orders in NYSE-listed securities on the Exchange between 4 p.m. and 6:15 p.m., based on the aggregate price of the program. Matched buy and sell orders for a minimum of 15 NYSE-listed stocks that have a minimum dollar value of $1 million may be transmitted to the Exchange for execution in Crossing Session II. These orders are transmitted via the Exchange's Electronic Filing Platform, detailing the total number of stocks, total number of shares, and total dollar value.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made clarifying changes to the Purpose section of the filing.

Crossing Session III allows for the execution on the NYSE of ''guaranteed price coupled orders,'' whereby member organizations could fill the unfilled balance of a customer order at a price which was guaranteed to the customer prior to the close of the Exchange's 9:30 a.m. to 4 p.m. trading session. Crossing Session IV is a facility whereby member organizations may fill the unfilled balance of a customer's order at a price such that the overall order is filled at a price that is no worse than the volume weighted average price (''VWAP'') for the subject security on that trading day. The member organization is required to document its VWAP agreement with the customer and the basis upon which the VWAP price would be determined. Crossing Sessions III and IV were approved by the Commission as pilot programs (the ''Pilots'') in SR–NYSE–2002–40.[4] The Pilots are currently approved until February 1, 2006.[5]

The Exchange proposes to make the following amendments to Crossing Sessions II, III, and IV.

Crossing Session II

The Exchange proposes to expand the hours of operation of Crossing Session II from 6:15 p.m. to 6:30 p.m. each day that the Exchange is open for its regular 9:30 a.m. to 4 p.m. trading session.[6] Expanding the time of operation of Crossing Session II is intended to enhance the usefulness and practicality of Crossing Session II by making it available to member organizations for a greater time period and to make it consistent with the closing time of Crossing Sessions III and IV. Orders in both Crossing Sessions III and IV can be entered beginning at 4 p.m. and must be completed by 6:30 p.m.

Exchange Rule 51 provides for the operation of Off-Hours Trading ''during such hours as the Exchange may from time to time specify.'' Should the Commission approve the proposed rule change, the Exchange will alert its membership and other market participants of the new operating hours for Crossing Session II.

Crossing Sessions III and IV

Exchange Rule 907 (iii) states that a guaranteed price coupled order or an order to be executed at the VWAP is for the portion of the customer's order that could not be executed prior to 4 p.m., but in any event must be at least 10,000 shares. The Exchange is proposing to eliminate the 10,000 share size restriction in Exchange Rule 907 (iii) for both types of orders in Crossing Sessions III and IV, in order to increase the availability of Crossing Sessions III and IV to member organizations. In addition, the Exchange is proposing to amend the rule to provide that if there is no execution prior to 4 p.m, the entire order would be eligible for execution in the crossing session, rather than just the portion of the customer's order that could not be executed prior to 4 p.m.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–26 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–NYSE–2005–26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–26 and should be submitted on or before June 29, 2005.

[4] *See* Securities Exchange Act Release No. 48857 (December 1, 2003), 68 FR 68440 (December 8, 2003).

[5] *See* Securities Exchange Act Release No. 51091 (January 28, 2005), 70 FR 6484 (February 7, 2005) (SR–NYSE–2005–01).

[6] *See* Securities Exchange Act Release No. 46547 (September 25, 2002), 67 FR 61706 (October 1, 2002) (SR–NYSE–2002–38) (expanding hours of operation of Crossing Session from 5:15 p.m. to 6:15 p.m.).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2933 Filed 6–7–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51777; File No. SR–NYSE–2004–49]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 3 Thereto Relating to Procedures for Companies That Fail To File Annual Reports in a Timely Manner

June 2, 2005.

I. Introduction

On August 19, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change codifying existing procedures followed where companies fail to satisfy the Commission's filing requirements for annual reports on Forms 10–K, 10–KSB, 20–F, 40–F, or N–CSR in a timely manner. The proposed rule change was published for public comment in the **Federal Register** on October 1, 2004.[3] The Exchange filed Amendments No. 1[4] and 2[5] on October 29, 2004 and November 29, 2004, respectively. On December 21, 2004, the Exchange filed Amendment No. 3 to the proposed rule change.[6] Amendment No. 3 was published for public comment in the **Federal Register** on January 14, 2005.[7] The Commission received two comment letters regarding the proposed rule change.[8] On March 1, 2005, the Exchange submitted a response to the comments.[9] This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

The Exchange is proposing to codify existing procedures followed where companies fail to satisfy the Commission's filing requirements for annual reports on Forms 10–K, 10–KSB, 20–F, 40–F, or N–CSR in a timely manner. The proposed rule change would apply with full effect to companies that are already late in filing their annual report on Form 10–K, 20–F, 40–F, or N–CSR with the SEC as of the date that the Commission approves this rule filing.[10] Specifically, a company that fails to file its annual report with the Commission in a timely manner would be subject to the following procedures under new Paragraph 802.01E of the Listed Company Manual:

Under Paragraph 802.01E, once the Exchange identifies that a company has failed to file a timely periodic annual report with the Commission by the later of (a) the date that the annual report was required to be filed with the Commission by the applicable form or (b) if a Form 12b–25 was timely filed with the Commission, the extended filing due date for the annual report, the Exchange would notify the company in writing of its status. The later of these two dates would be referred to as the ''Filing Due Date.''

Within five days of receipt of this notification, the company would be required to (a) contact the Exchange to discuss the status of the annual report filing, and (b) if it has not already done so, issue a press release disclosing the status of the filing. If the company failed to issue this press release in a timely manner, the Exchange would itself issue a press release stating that the company has failed to timely file its annual report with the Commission.

During the nine-month period from the Filing Due Date, the Exchange would monitor the company and the status of the filing, including through contact with the company, until the annual report is filed. Under the procedure, if the company failed to file the annual report within nine months from the Filing Due Date, the Exchange would be permitted, in its sole discretion, to allow the company's securities to be traded for up to an additional three-month trading period depending on the company's specific circumstances. If the Exchange determined that an additional trading period of up to three months is not appropriate, suspension and delisting procedures would commence in accordance with the procedures set out in Paragraph 804.00 of the Listed Company Manual.[11] The new rule specifically states that a company would not be eligible to follow the procedures outlined in Paragraphs 802.02 and 802.03 with respect to this criteria.[12]

In determining whether an additional trading period of up to three-months is appropriate, the rule specifically states that the Exchange would consider the likelihood that the filing could be made during the additional period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the Commission and any other regulatory body. The new procedures also state that the Exchange strongly encourages companies to provide ongoing disclosure on the status of the annual report filing to the market through press releases, and that the Exchange will take the frequency and detail of such information into account in determining whether an additional three-month trading period is appropriate. If the Exchange determined that an additional, up to three-month trading period was appropriate and the company failed to file its periodic annual report by the end of the additional period, suspension and delisting procedures would commence in accordance with the procedures set out in Paragraph 804.00 of the Listed Company Manual.[13]

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 50452 (September 27, 2004), 69 FR 58987.

[4] See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 28, 2004 (''Amendment No. 1'').

[5] Amendment No. 2 replaced and superseded Amendment No. 1. On December 21, 2004, the Exchange withdrew Amendment No. 2.

[6] Amendment No. 3 clarified that the proposed rule change would apply to companies that are already late in filing their annual reports as of the date that the Commission approves the proposed rule change.

[7] Securities Exchange Act Release No. 50982 (January 6, 2005), 70 FR 2686. Amendment No. 3 clarified that the proposed rule change would apply to companies that are already late in filing their annual reports as of the date that the Commission approves the proposed rule change.

[8] *See* letters from James J. Angel, Associate Professor of Finance, McDonough School of Business, Georgetown University (''Angel''), to Jonathan G. Katz, Secretary, Commission (''Angel Letter''), and Edward S. Knight, Executive Vice President and General Counsel, The Nasdaq Stock Market, Inc. (''Nasdaq''), to Jonathan G. Katz, Secretary, Commission, dated February 4, 2005 (''Nasdaq Letter'').

[9] *See* letter from Mary Yaeger, Assistant Secretary, NYSE, to Sharon Lawson, Division of Market Regulation, Commission, dated March 1, 2005.

[10] *See* Amendment No. 3, *supra* note 6.

[11] Paragraph 804 sets forth the procedures the Exchange follows when it determines a security should be delisted, and the issuer's right of review of such decisions.

[12] Paragraphs 802.02 and 802.03 provide generally, among other things, that when a listed company is not in compliance with the Exchange's continued listing criteria, the Exchange notifies the company of its status and the company is given the opportunity to provide a plan advising the Exchange of the definitive action the company intends to take that would bring it into conformity with continued listing standards.

[13] *See also supra* notes 11 and 12. In such a case, the procedures of Paragraphs 802.02 and 802.03 would not be available, as discussed above.

The Commission notes that new Paragraph 802.01E permits the Exchange to suspend trading immediately and commence delisting procedures for a late annual report filer in accordance with Paragraph 804. Specifically, the new rule states that if, at any time, the Exchange deemed it necessary or appropriate in the public interest or for the protection of investors, trading in any security could be suspended immediately, and, in accordance with the procedures set out in Paragraph 804.00, application made to the Commission to delist the security.

III. Comments

The Commission received a total of two comment letters: the Nasdaq Letter and the Angel Letter,[14] and a response from the NYSE.[15] Angel stated that the proposal seemed reasonable overall, but that the NYSE should place an indicator on the ticker symbol of companies that are late in making required filings with the SEC. The Angel Letter also noted that Nasdaq puts an ''E'' on the end of a ticker symbol of companies late in required Commission filings and that the same identifier should be seen on NYSE late filers. Angel also recommended expanding the scope of the proposal to companies that are late in filing their quarterly reports, noting that this is just as important, if not more so, than late filers of annual reports.

Nasdaq stated that the proposal does not ''go nearly far enough to protect investors.'' Nasdaq also stated that it does ''not believe that a market should offer what is essentially a blanket nine months filing extension to delinquent issuers'' and that ''the NYSE should be required to adopt a more reasonable timeframe to respond to annual report filing delinquencies.'' In support of this, Nasdaq notes that the issuer's financial statements would be at least a year old at the end of NYSE's nine month period. In addition, Nasdaq stated that quarterly reports are an important element of information which is available to investors and that without current financials, it is impossible for a marketplace to determine whether a listed issuer complies with continued listing standards. Further, Nasdaq noted that its own procedures cover late annual and interim reports and if an issuer fails to timely file required reports it is promptly notified it will be delisted unless it appeals.[16]

In response to these comments, the NYSE stated that it agrees that investors should be provided with timely notice of companies that fail to file annual reports on time.[17] The NYSE further stated that ''since July 2004, the Exchange has monitored and disseminated transparent information on companies that fail to satisfy the Commission's requirement to file their annual financials in a timely manner.'' The NYSE further stated that it ''appends an '.LF' indicator in the financial status field of the company's ticker symbol and distributes that information via the low speed ticker and through [its] data stream to market vendors.'' The Exchange also stated that it keeps an updated list of companies that are late in their filings on its website, and notes the late filing status on the company's data page on its Web site. In response to Angel's and Nasdaq's recommendation of identifying and expanding the scope of the proposal to companies that are late in filing their quarterly reports, the NYSE stated that it is currently involved in conversations with the Commission regarding the identification of companies that have failed to timely file quarterly reports. The NYSE also noted that to the extent a company files an overdue annual report, the NYSE will not remove the .LF indicator or the company's late filing status on its website until such time as all outstanding interim reports are up to date. In response to Nasdaq's comment that the proposal would give a blanket nine month extension to delinquent issuers, the NYSE stated that, during the nine month period, it is in frequent contact with the company and can suspend trading and delist the company at any point during this nine month period should it determine that it is not appropriate to allow the company's securities to continue to trade. The NYSE further noted in support of its proposal that, as of the date of its letter, only six companies were delinquent in filing their annual report and that some of these companies were restating their financials in response to, or in conjunction with, an SEC investigation.

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[18] which requires an Exchange to have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[19]

The Commission believes that the proposed rule change provides a reasonable first step for dealing with companies that fail to file annual reports on time. The Commission notes that if a company fails to file its annual report within the timeframes set forth in the proposed rule change, the Exchange would commence suspension and delisting procedures under Paragraph 804 of the Listed Company Manual. The Commission also notes that at any time during the 9 or 12 month period, as applicable, the Exchange may suspend trading and delist the company where it believes it is appropriate to do so in the public interest or for the protection of investors. The Commission believes that this should help to prevent an undue amount of time from passing without the company's audited financial statements being provided to the marketplace. In addition, since the NYSE is constantly monitoring the late filing issuers during the 9 or 12 month period, the NYSE has stated that it will, and the Commission expects the NYSE to, quickly suspend trading and commence delisting proceedings against any issuer during the 9 month period should it become necessary to do so based on the facts of the particular situation.[20] The Commission believes, however, that the NYSE should consider shortening the timeframes within which a company must file annual reports before being delisted, as well as extending such requirements to issuers that are late in filing their quarterly reports with the Commission.

In addition, the Commission notes that the Exchange appends an ''.LF'' indicator in the financial status field of the company's ticker symbol, distributes that information via the low speed ticker and through its data stream to market vendors, and keeps an updated list of companies that are late in their

[14] *See supra* note 8.

[15] *See supra* note 9.

[16] Nasdaq further stated that appeal hearings with respect to filing delinquencies are scheduled on an expedited basis and generally occur within three weeks.

[17] *Id.*

[18] 15 U.S.C. 78f(b)(5).

[19] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] If a company that is late in filing its annual report appeals any decision to suspend trading, the NYSE has stated that the company's securities would not be permitted to trade on the exchange during the appeal process. *See* NYSE Letter *supra* note 8; *see also* e-mail from Annemarie Tierney, Office of General Counsel, NYSE, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission (April 14, 2005).

filings on its website. The NYSE also has stated that it actively encourages vendors and subscribers to display this indicator. The Commission believes that these measures should provide notice to the investing public that an issuer is late in filing its annual report with the Commission.[21]

The Commission also notes that to the extent a late annual report filer files an overdue report, the NYSE has indicated it will not remove the indicator or the company's name from the late filer posting on its website until all outstanding quarterly reports have been submitted. While this is helpful to the public to ensure that investors are aware of the information available on a particular issuer, the Commission believes the NYSE should consider developing systems that identify all late filers of quarterly reports, irrespective of whether the annual report is also late. The Commission will continue to work with the NYSE in this area.

As noted above, Amendment No. 3 clarifies that the proposed rule change would apply to companies that are already late in filing their annual reports as of the date that the Commission approves the proposed rule change. The Commission notes that this amendment was published for notice and comment and that no comments were received addressing this issue. The Commission believes that applying the proposal to companies that are already late in filing their annual reports as of the date that the Commission approves the proposed rule change should help to ensure that such companies do not remain late filers for an extended time period past the 9 or 12 month period allowed under new Paragraph 802.01E of the Listed Company Manual, thereby benefiting the public interest.

In summary, the Commission believes that the procedures being approved herein will provide clarity to both issuers and investors on the delisting procedures applicable to late annual report filers and will help to ensure that delisting procedures are commenced no later than 12 months after the date the annual report was due. Further, the Commission continues to encourage the NYSE to further refine its policies to address late quarterly reports and other related matters.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NYSE–2004–49), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2938 Filed 6–7–05; 8:45 am]

BILLING CODE 8010–01–P

[21] The Commission urges the NYSE to continue to encourage data vendors and subscribers to display the indicator.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–322]

WTO Dispute Settlement Proceeding Regarding Measures Relating to Zeroing and Sunset Reviews Involving Certain Products From Japan

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that, at the request of the Government of Japan, a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement'') is reviewing various measures relating to antidumping duty orders on certain products from Japan. Japan alleges that determinations made by U.S. authorities concerning this product, and certain related matters, are inconsistent with Articles 1, 2, 3, 5, 9, 11, and 18 of the Agreement on Implementation of Article VI of the General Agreements on Tariffs and Trade 1994 (''AD Agreement''), Article VI of the General Agreement on Tariffs and Trade 1994 (''GATT 1994''), and Article XVI:4 of the WTO Agreement. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before June 27, 2005, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0520@ustr.gov*, with ''Japan Zeroing & Sunset'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Baltzan, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that a dispute settlement panel has been established pursuant to the WTO Dispute Settlement Understanding (''DSU''). The panel will hold its meetings in Geneva, Switzerland.

Major Issues Raised by Japan

With respect to the measures at issue, Japan's panel request refers to the following:

- The imposition of anti-dumping duties on Certain Cut-to-Length Carbon Quality Steel Plate products from Japan (64 FR 73215, 13 December 1999);
- The imposition of anti-dumping duties on Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan (66 FR 15078, 15 March 2001);
- The imposition of anti-dumping duties on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan (65 FR 11767, 6 March 2000);
- The imposition of anti-dumping duties on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan (66 FR 15078, 15 March 2001);
- The imposition of anti-dumping duties on Ball Bearings and Parts Thereof from Japan (65 FR 49219, 11 August 2000);
- The imposition of anti-dumping duties on Cylindrical Roller Bearings and Parts Thereof from Japan (65 FR 49219, 11 August 2000);
- The imposition of anti-dumping duties on Spherical Plain Bearings and Parts Thereof from Japan (65 FR 49219, 11 August 2000);
- The imposition of anti-dumping duties on Ball Bearings and Parts Thereof from Japan (66 FR 36551, 12 July 2001);
- The imposition of anti-dumping duties on Cylindrical Roller Bearings and Parts Thereof from Japan (66 FR 36551, 12 July 2001);
- The imposition of anti-dumping duties on Spherical Plain Bearings and Parts Thereof from Japan (66 FR 36551, 12 July 2001);
- The imposition of anti-dumping duties on Ball Bearings and Parts Thereof from Japan (67 FR 55780, 30

August 2002, as amended by 67 FR 63608, 15 October 2002);

• The imposition of anti-dumping duties on Ball Bearings and Parts Thereof from Japan (69 FR 55574, 15 September 2004);

• The Final Results of the USDOC in the Expedited Sunset Review of Antifriction Bearings from Japan (64 FR 60275, 4 November 1999), and the Determination of the USITC in Certain Bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom, Investigations Nos. AA–1921–143, 731–TA–341, 731–TA–343–345, 731–TA–391–397, and 731–TA–399 (Review);

• Final Results of the USDOC in the Full Sunset Review of Corrosion-Resistant Carbon Steel Flat Products from Japan (65 FR 47380, 2 August 2000), and the Determination of the USITC in Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom, Investigations Nos. AA–1921–197, 701–TA–231, 319–320, 322, 325–328, 340, 342, and 348–350, and 731–TA–573–576, 578, 582–587, 604, 607–608, 612, and 614–618 (Review).

• The Tariff Act of 1930, as amended, in particular, sections 731, 751, 752, 771(7), 771(35)(A), 771(35)(B) and 777A(d);

• The Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 (1994);

• The implementing regulations of the USDOC, 19 CFR section 351;

• The USDOC Import Administration's Antidumping Manual (1997 edition), including the AD Margin Calculation computer program(s) to which it refers.

With respect to the claims of WTO-inconsistency, Japan's panel request refers to the following:

• In original investigations, periodic reviews, new shipper reviews, sunset reviews and changed circumstances reviews where the redetermination of margins of dumping occurs, USDOC artificially inflates the dumping margins by ''zeroing'';

• In injury investigations, USITC determinations based on ''zeroing'' are WTO-inconsistent;

• In sunset reviews, USDOC and USITC determinations based on ''zeroing'' are WTO-inconsistent;

• In changed circumstances reviews, determinations based on ''zeroing'' are WTO-inconsistent.

Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *FR0520@ustr.gov*, with ''Japan Sunset & Zeroing'' in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically, to the electronic mail address listed above. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of each page of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–322, Japan Sunset & Zeroing Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 05–11372 Filed 6–7–05; 8:45 am]

BILLING CODE 3110–W5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.783–1A, Fuselage Doors and Hatches

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular 25.783–1A, ''Fuselage Doors and Hatches.'' The advisory circular provides guidance for showing compliance with revisions to the design standards for fuselage doors and hatches recently adopted by Amendment 25–114 on May 3, 2004 (69 FR 24496).

DATES: AC 25.783–1A was issued by the FAA Transport Airplane Directorate in Renton, Washington, on April 25, 2005.

How to Obtain Copies: You can download a copy of Advisory Circular 25.783–1A from the Internet at *http://www.airweb.faa.gov/rgl*. A paper copy will be available in approximately 6–8 weeks from the U.S. Department of Transportation, Subsequent Distribution Office, M–30, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20795.

FOR FURTHER INFORMATION CONTACT: Jan Thor, FAA Standardization Branch, ANM–113, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2127; e-mail *jan.thor@faa.gov*

Issued in Renton, Washington, on April 25, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11323 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Record of Decision for the Environmental Impact Statement, Los Angeles International Airport, Los Angeles, Los Angeles County, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for record of decision.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that it has published a Record of Decision (ROD) for the Environmental Impact Statement (EIS) that evaluated proposed Master Plan improvements at Los Angeles International Airport (LAX), Los Angeles, Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, AICP, Regional Environmental Protection Specialist, AWP–611, Airports Division, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, Los Angeles, California 90009–2007, Telephone: (310) 725–3615.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has completed and is publishing its Record of Decision for improvements identified in the Master Plan for Los Angeles International Airport (LAX). FAA had published its Final Environmental Impact Statement (EIS) for these Master Plan improvements and a Final General Conformity Determination on January 13, 2005. The Final EIS was prepared by the FAA pursuant to the National Environmental Policy Act of 1969 and assessed the potential impact of the Master Plan's four development alternatives (Alternatives A, B, C, and D), as well as the No Action Alternative where no improvements at the airport would be made. The FAA accepted comments on the Final EIS and these comments along with FAA responses are included in Appendix B to the ROD.

In the Final EIS, the FAA identified Alternative D as the preferred alternative in meeting the purpose and need for improvements at the airport. Under Alternative D, the two of the four runways would be shifted to improve runway and taxiway separation. The terminal complex will be reconfigured to enhance safety and security, and accommodate the future mix of forecast aircraft. Extensive changes will be made to the existing Central Terminal Area including relocation of the existing passenger curb front to a new Ground Transportation Center, to be developed east of the airport. Alternative D also includes construction of a new Intermodal Transportation Center, consolidated rental car facility and an automated people mover system connecting the airport's main facilities. Alternative D, as approved, includes all of the aviation and airport support improvements described in the Final EIS, including, but not limited to those identified above. However, FAA has taken no action on a non-aviation related collateral development project proposed under Alternative D known as LAX Northside.

Copies of the ROD are available for public review at the following locations during normal business hours:

U.S. Department of Transportation, Federal Aviation Administration, Western-Pacific Region, Office of the Airports Division, 15000 Aviation Boulevard, Hawthorne, California 90261

U.S. Department of Transportation, Federal Aviation Administration, National Headquarters, Community and Environmental Needs Division, 800 Independence Avenue, SW., Washington, DC 20591.

Administrative Offices of Los Angeles World Airports, One World Way, Los Angeles, California.

Copies of the ROD is also available at the following libraries:

County of Orange Public Library Admin. Headquarters, 1501 E. Saint Andrew Place, Santa Ana, CA 92701

County of Riverside Public Library, 3581 Mission Inn Avenue, Riverside, CA 92501

County of San Bernardino, 104 W. Fourth Street, San Bernardino, CA 92415

County of Ventura Public Library, 651 East Main Street, Ventura, CA 93001

City of Los Angeles Central Library, 630 W. Fifth Street, Los Angeles, CA 90071

Arroyo Seco Regional Branch Library, 6145 N. Figueroa Street, Los Angeles, CA 90042

Eagle Rock Library, 5027 Caspar Avenue, Los Angeles, CA 90041

Exposition Park Library, 3665 S. Vermont Avenue, Los Angeles, CA 90007

Frances Howard Goldwyn Library, 1623 N. Ivar Avenue, Hollywood, CA 90028

San Pedro Regional Branch Library, 931 S. Gaffey Street, San Pedro, CA 90731

Mar Vista Branch Library, 12006 Venice Blvd., Los Angeles, CA 90066

Mid-Valley Regional Branch Library, 16244 Nordhoff Street, North Hills, CA 91343

North Hollywood Regional Library, 5211 Tujunga Avenue, North Hollywood, CA 91601

Venice Abbott Kinney Library, 501 South Venice Blvd. Venice, CA 90291

Westchester Branch Library, 7114 W. Manchester Avenue, Los Angeles, CA 90045

West L.A. Regional Branch Library, 11360 Santa Monica Blvd., Los Angeles, CA 90025

West Valley Regional Branch Library, 19036 Vanowen Street, Reseda, CA 91335

Compton Library, 240 W. Compton Blvd., Compton, CA 90220

Carson Regional Library, 151 E. Carson Street, Carson, CA 90745

Claremont Library, 208 N. Harvard Avenue, Claremont, CA 91711

Culver City Library, 4975 Overland Avenue, Culver City, CA 90230

El Monte Library, 3224 Tyler Avenue, El Monte, CA 91731

El Segundo Public Library, 111 W. Mariposa Avenue, El Segundo, CA 90245

Hacienda Heights Library, 16010 La Monde Street, Hacienda Heights, CA 91745

Hawthorne Library, 12700 Grevillea Avenue, Hawthorne, CA 90250

Hermosa Beach Library, 550 Pier Avenue, Hermosa Beach, CA 90254

Inglewood Library, 101 W. Manchester Blvd., Inglewood, CA 90301

Lancaster Library, 601 West Lancaster Blvd., Lancaster, CA 93534

Lennox Library, 4359 Lennox Blvd., Lennox, CA 90304

Lomita Library, 24200 Narbonne Avenue, Lomita, CA 90717

Beverly Hills Library, Reference Desk, 444 N. Rexford Drive, Beverly Hills, CA 90210

Helen Miller Bailey Library, 1301 Avenida Cesar Chavez, Monterey Park, CA 91754

Gardena Main Library, 1731 W. Gardena Blvd., Gardena, CA 90247

Huntington Park Library, 6518 Miles Avenue, Huntington Park, CA 90255

Lawndale Library, 14615 Burin Avenue, Lawndale, CA 90260

Malibu Library, 23519 West Civic Center Way, Malibu, CA 90265

Manhattan Beach Library, 1320 Highland Avenue, Manhattan Beach, CA 90266

Lloyd Taber Marina Del Rey Library, 4533 Admiralty Way, Marina Del Rey, CA 90292

Montebello Library, 1550 West Beverly Blvd., Montebello, CA 90640
Mt. San Antonio College Library, 1100 N. Grand Avenue, Walnut, CA 91789
Palmdale Library, 700 E. Palmdale Blvd., Palmdale, CA 93550
Redondo Beach Library, 303 N. Pacific Coast Highway, Redondo Beach, CA 90277
San Dimas Library, 145 North Walnut Avenue, San Dimas, CA 91773
Santa Monica Library, 1324 Fifth Street, Santa Monica, CA 90401
Torrance Civic Center Library, 3301 Torrance Blvd., Torrance, CA 90503
View Park Library, 3854 West 54th Street, Los Angeles, CA 90043
West Hollywood Library, 715 N. San Vicente Blvd., West Hollywood, CA 90069
Willowbrook Library, 11838 Wilmington Avenue, Los Angeles, CA 90059
Wiseburn Library, 5335 West 135th Street, Hawthorne, CA 90250
Woodcrest Library, 1340 West 106th Street, Los Angeles, CA 90044
UCLA Young Research Library, 280 E. Charles Young Drive, Los Angeles, CA 90095

The ROD may also be viewed at FAA's Web site: *http://www.faa.gov/arp/awp/index.cfm?nav=awp* and the Los Angeles World Airports Web site: *http://www.laxmasterplan.org*.

Questions may be directed to the individual above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on May 20, 2005.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 05–11330 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–30]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 28, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2005–21288] by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

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

FOR FURTHER INFORMATION CONTACT: Kenna Sinclair (425) 227–1556, Transport Airplane Directorate, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SE., Renton, WA 98055–4056; or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 31, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2005–21288.

Petitioner: Israel Aircraft Industries Ltd.

Section of 14 CFR Affected: 14 CFR 25.857(e), 25.785(j), and 25.1447(c)(1).

Description of Relief Sought: To allow carriage of eight non-crewmembers (commonly referred to as supernumeraries) on the upper deck of Boeing Model 747–400 Special Freighter (SF) airplanes, to allow use of portable oxygen bottles in lieu of self-presenting oxygen masks, and regulatory relief from certain hand hold requirements.

[FR Doc. 05–11334 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[DOT Docket No. FMCSA–2005–21338]

Hours of Service of Drivers; Xora, Inc. Application for an Exemption From the Design Requirements for Automatic On-Board Recording Devices (AOBRs)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on Xora, Inc.'s (Xora) application for an exemption from the requirement that AOBRs for monitoring drivers' hours of service be integrally synchronized with the specific operations of the vehicle on which it is installed. Xora, a software development company, working in conjunction with Nextel Communications, a wireless communications service provider, has developed an hours of service (HOS) OBR software application for use with Global Positioning System (GPS)—enabled wireless telephones and its computer system to document drivers' hours of service. Xora's system performs all of the functions required of AOBRs currently allowed by FMCSA's regulations with the exception of the requirement for integral synchronization with specific operations of the commercial motor vehicle on which it is installed. Xora believes the use of their hours-of-service monitoring system by motor carriers would achieve a level of safety equivalent to what would be provided by AOBRs which are integrally synchronized with specific operations of the CMV.

DATES: Comments must be received on or before July 8, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2005–21338 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.

• Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

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

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

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading for further information.

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

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Schultz, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, MC–PSD, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide FMCSA with authority to grant exemptions from its safety regulations. On August 20, 2004, FMCSA published a Final Rule (69 FR 51589) implementing section 4007 (63 FR 67600). Under the rule FMCSA must publish a notice of each exemption application in the **Federal Register** (49 CFR part 381). FMCSA must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

FMCSA must then examine the safety analyses and the public comments and determine whether the exemption would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation (49 CFR 381.305). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption, and the regulatory provision or provisions from which an exemption is being granted. The notice must also specify the effective period of the exemption (up to two years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Xora's Application for an Exemption

Xora requested an exemption from the requirement that AOBRs be integrally synchronized with specific operations of the vehicle on which they are installed. Section 395.15 of the Federal Motor Carrier Safety Regulations (49 CFR 395.15) allows the use of AOBRs, as defined in 395.2, instead of handwritten records of duty status required by 395.8. Section 395.2 defines AOBR as follows:

> *Automatic on-board recording device* means an electric, electronic, electromechanical, or mechanical device capable of recording driver's duty status information accurately and automatically, as required by 49 CFR Part 395.15. The device must be integrally synchronized with specific operation of the commercial motor vehicle in which it is installed. At a minimum, the device must record engine use, road speeds, miles driven, the date and time of day.

Xora requested the exemption to enable its motor carrier clients to use its HOS management system as an alternative to AOBRs that are integrally synchronized with specific vehicle operations. A copy of the exemption application is in the docket for this notice.

Xora believes its Global Positioning System (GPS)—enabled, handheld HOS monitoring system provides several advantages when compared to handwritten records of duty status and AOBRs that are integrally synchronized with functions of the vehicle. The advantages are:

(1) Low cost;

(2) Real-time system for alerting drivers and managers about HOS limits and violations;

(3) Complete driver HOS history stored and available for review and audit;

(4) Enhanced HOS management reports;

(5) Tamper resistance;

(6) Ease of law enforcement review;

(7) Familiar wireless telephone handset, ease of training;

(8) Multi-purpose handset, voice, message, data, multi-media;

(9) Safety (driver may communicate in and away from the vehicle);

(10) Inexpensive mounting option;

(11) Ease of transfer from one vehicle to another;

(12) Ease of integration (allows for enhanced dispatch and logistics, including HOS availability);

(13) All activity digitally stored, secured and time stamped; and

(14) Ease of repair and replacement.

Xora requested that motor carriers covered by the exemption be allowed to use a GPS-enabled wireless telephone which can record vehicle speed, detect small changes in motion and identify stop/start events. The system can change the driver's duty status based upon GPS readings. Xora's system calculates vehicle speed and distance traveled based upon GPS satellite data. Xora believes this approach would result in an accurate recording of HOS and monitoring of drivers' duty status. The interval for signals between the GPS-enabled telephone and the satellite may be adjusted to once every minute to ensure accurate estimates of vehicle speed and distance traveled. The capability of the GPS-enabled wireless telephone would eliminate the necessity of having the unit tethered to the engine.

Xora argues that denial of the exemption would cause the motor carrier industry to lose an opportunity to replace handwritten records of duty status with a low cost alternative. Without this special consideration, the Xora system and other GPS-enabled handset-based HOS monitoring systems will not be able to enter the market in the foreseeable future. Xora believes the time taken for a regulatory change would result in vendors losing enthusiasm for the potential market. The company estimates that the total number of drivers operating under the terms of the exemption would be ''upwards of ten thousand after the first year.'' In addition, many motor carriers currently make extensive use of wireless telephone service and technology for basic communications, scheduling, and logistics. These motor carrier operations

would have the ability to consolidate costs into one system that provides the features and benefits of wireless telephones and a paperless means of complying with the requirement to accurately document drivers' hours of service.

Xora believes its system offers enhanced safety because it allows for a much more accurate compilation of drivers' on-duty time, driving time, driving distance and total hours, than handwritten records of duty status. The system is easily accessible for Federal and State roadside inspectors to review. The system maintains the required records in the GPS-enabled handset, and records are also maintained at the motor carrier's principle place of business. The system also provides a warning for drivers as they approach the applicable HOS limits.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on Xora's application for exemption from 49 CFR 395.15. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: May 27, 2005.

Annette M. Sandberg,

Administrator.

[FR Doc. 05–11333 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Illinois Railway Museum (Waiver Petition Docket Number FRA–2005–21271)

The Illinois Railway Museum (IRYM) seeks a waiver of compliance from the Steam Locomotive Inspection and Maintenance Standards (49 CFR 230.17(a)) for steam locomotive number IRYM 428, which requires ''Before any steam locomotive is initially put in service or brought out of retirement, and after every 1472 service days or 15 years, whichever is earlier, an individual competent to conduct the inspection shall inspect the entire boiler. In the case of a new locomotive or a locomotive being brought out of retirement, the initial 15 year period shall begin on the day that the locomotive is placed in service or 365 calendar days after the first flue tube is installed in the locomotive, whichever comes first. This 1472 service day inspection shall include all annual, and 5th annual, inspection requirements, as well as any items required by the steam locomotive owner and/or operator or the FRA inspector. At this time, the locomotive owner and/or operator shall complete, update and verify the locomotive specification card (FRA Form No. 4), to reflect the condition of the boiler at the time of this inspection. See appendices A and B of this part.'' IRYM request states that they installed the first tube in the subject locomotive boiler in October 1999, and since that time, the locomotive has been stored in a heated shop. The boiler has not been fired but was hydrostatically tested three times. If granted, the date the waiver is granted or the first day the locomotive is fired, whichever occurs first, would be the date the locomotive enters service and the 1472 service/15-year inspection requirements begin.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2005–21271) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on June 2, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–11414 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Union Pacific Railroad Company (Docket Number FRA–2005–21179)

The Union Pacific Railroad Company (UP) seeks a waiver of compliance with the Locomotive Safety Standards, 49 CFR 229.49(a)(1), as it pertains to the requirement that main reservoirs be equipped with ''a safety valve that shall prevent an accumulation of pressure of more than 15 pounds per square inch above the maximum working air pressure fixed by the chief mechanical officer of the carrier operating the locomotive'' and the *Brake System Safety Standards,* 49 CFR 232.103(o)(2), as it pertains minimum differential

between brake pipe and main reservoir pressure, a minimum of 15 psi. UP seeks to set the main reservoir safety valve at 150 psi and the maximum working air pressure (brake pipe) at 125 psi.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2005–21179) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on June 2, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–11413 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2005–21382]

Notice of Request for a New Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve a new collection: 49 U.S.C. Section 3037 Job Access and Reverse Commute Programs.

DATES: Comments must be submitted before August 8, 2005.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory D. Brown, Office of Program Management, (202) 366–2053.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

49 U.S.C. Section 3037 Job Access and Reverse Commute Programs

Background: 49 U.S.C. Section 3037 Job Access and Reverse Commute (JARC) Program authorizes the Secretary of Transportation to make grants to State and local governments and public transportation authorities to transport welfare recipients and other low-income individuals to and from jobs and activities related to employment. Grant recipients are required to make information available to the public and to publish a program of projects for affected citizens to comment on the proposed program and performance of the grant recipients at public hearings. Notices of hearings must include a brief description of the proposed project and must be published in a newspaper circulated in the affected area. FTA uses the information to determine eligibility for funding and to monitor the grantees' progress in implementing and completing project activities. FTA also collects grantee performance information annually. A web-based contractor, who collects the grantee information electronically and develops JARC information tables as needed, performs this information collection activity. The information submitted ensures FTA's compliance with applicable federal laws and OMB Circular A–102.

Respondents: State & local government, private non-profit organizations and public transportation authorities.

Estimated Annual Burden on Respondents: 251 hours for each respondent.

Estimated Total Annual Burden: 78,609 hours.

Frequency: Annual.

Issued: June 2, 2005.

Ann Linnertz,

Deputy Associate Administrator for Administration.

[FR Doc. 05–11319 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2005–21380]

Title XI Remedies

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice and request for comments on New Title XI Remedies.

SUMMARY: In response to the 2004 Follow-Up Audit of the Title XI Loan Guarantee Program conducted by the Inspector General of the Department of Transportation, the Maritime Administration (MARAD) committed to include certain new remedies as part of the documentation for loan guarantees issued under Title XI of the Merchant Marine Act of 1936, as amended (Act). This notice sets out the remedies which MARAD has developed to fulfill its commitment to the Department's Office of Inspector General (OIG). MARAD is requesting public comments from parties who may wish to express their views on the proposed changes or who wish to suggest alternatives to the draft language developed by MARAD.

DATES: MARAD will consider comments received not later than July 8, 2005.

FOR FURTHER INFORMATION CONTACT: Richard Lorr, Esq., Maritime Administration, telephone: (202) 366–

5882, fax (202) 366–3511, or e-mail *Richard.Lorr@marad.dot.gov.*

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number MARAD–2005–21380] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 7th St., SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this action. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: In response to the 2004 Follow-Up Audit of the Title XI Loan Guarantee Program conducted by the Inspector General of the Department of Transportation, the Maritime Administration (MARAD) committed to include certain new remedies as part of the documentation for loan guarantees issued under Title XI of the Merchant Marine Act of 1936, as amended (Act). This notice sets out the remedies which MARAD has developed to fulfill its commitment to the Department's Office of Inspector General. MARAD intends that these new remedies will provide intermediate remedies by which MARAD can achieve compliance with Title XI agreements without the requirement that MARAD, on behalf of the United States Government, must first advance payment to obligees under MARAD's guarantee. These new remedies will apply to any new Title XI transaction and the renegotiation of existing transactions where appropriate.

The proposed changes are designed to: (1) Clarify that MARAD may exercise a full range of creditor remedies immediately upon the occurrence of a default under the Security Agreement typically executed by a Title XI obligor in favor of MARAD, whether or not MARAD has paid under the Title XI guarantee or has assumed the underlying debt; (2) ensure that MARAD is authorized to take immediate steps to protect its interests fully if a Title XI company fails to make its Reserve Fund deposits or any other payment required by the Title XI documentation or fails to take any other action required by the Security Agreement for the benefit of MARAD; and (3) require the owners of closely held Title XI companies who receive funds paid in derogation of a Title XI company's covenants and obligations under the Title XI documents to be financially responsible and legally liable for the repayment of such funds, and require that board members and other key officials of publicly held Title XI companies be financially responsible and legally liable for the repayment of improperly disbursed funds if such persons have caused the publicly held Title XI company to violate its covenant and obligations under the Title XI documents.

For example, MARAD has experienced a limited number of cases of improper distributions. The remedial changes would require that if an owner, at any tier, of a closely held company receives a distribution from the company at a time when such distributions are not allowed pursuant to the company's Title XI agreements with MARAD, the owner would be required to pay back such distribution to the company. If, on the other hand, the company were a publicly traded entity, the new remedial changes would require the board member, officer or controlling shareholder to reimburse the company for the improper payments caused by its actions, instead of requiring a potentially large number of innocent shareholders to return the funds. In either case, MARAD's new remedies would create an environment of accountability which should produce better compliance by Title XI companies in meeting their obligations under the Title XI documents.

In addition, this notice also sets out changes to MARAD's Reserve Fund and Financial Agreement as it relates to distributions by certain closely held entities to their owners for income tax liability which the Federal Tax Code places on the owner and not on the business entity, such as the income tax treatment of Subchapter S corporations, limited liability companies, and other entities enjoying the benefits of pass-through taxation under the Federal Tax Code. Although MARAD's implementation of these changes was instituted as a part of its own review of the effectiveness of this aspect of the Title XI program, and was not prompted by any of the OIG audits, MARAD is also requesting public comment about these new tax provisions.

No Federal statute, regulation or agency administrative practice requires MARAD to make any formal announcement prior to implementing changes to its Title XI closing documentation. Typically, MARAD negotiates any changes from its standard form Title XI documentation with the individual Title XI applicants, on a case-by-case basis. However, in this case, MARAD has determined it would be interested in receiving public comments from parties who may wish to express their views on the proposed changes or who wish to suggest alternatives to the draft language developed by MARAD. Until MARAD has fully considered the comments proposed in response to this Notice, MARAD will continue to negotiate Title XI closing agreements on a case-by-case basis, incorporating the proposed new remedies as appropriate. The draft language for the remedial changes is set forth below. Proposed amendments and other highlighted text are in *italics* and new sections are noted in headings.

New Remedies and Defaults

1. Amendments to Section 6.04 of the Security Agreement

Amend Section 6.04(a) to read as follows: Section 6.04. Remedies After Default. (a) *In the event of a Default, the Secretary* shall have the right to take the Vessels without legal process wherever the same may be (and the Shipowner or other Person in possession shall forthwith surrender possession of the Vessels to the Secretary upon demand) and hold, lay up, lease, charter, operate, or otherwise use the Vessels for such time and upon such terms as the Secretary may reasonably deem to be in the Secretary's best interest, accounting only for the net profits, if any, arising from the use of the Vessels, and charging against all receipts from the use of the Vessels, all reasonable charges and expenses relating to such Vessel's use.

Amend Sections 6.04(b)(1) and (2) to read as follows:

(b) *In the event of a Default, the Secretary shall also have the right to:*

(1) Exercise all the rights and remedies in foreclosure and otherwise given to mortgagees by Chapter 313;

(2) Bring suit at law, in equity or in admiralty to recover judgment for any and all amounts due *or to enforce any right* under the Secretary's Note, this Security Agreement, *the Mortgage, the Depository Agreement, and the Financial Agreement* to collect the same out of any and all of Shipowner's property, whether or not the same is subject to the lien of the Mortgage, and in connection therewith, obtain a decree ordering the sale of any Vessel in accordance with paragraph (b)(4) of this Section;

2. Amendments to Section 6.02 of the Security Agreement, the Secretary's Note and the Guaranteed Obligation To Conform to the Amendment of Section 6.04 of the Security Agreement

Amend Section 6.02 to read as follows: Section 6.02. Acceleration of Maturity of the Secretary's Note. The Secretary may, by giving written notice to the Shipowner, declare the principal of the Secretary's Note and interest accrued thereon to be immediately due and payable, at any time after the Secretary *determines that a Default has occurred and is continuing under the terms of this Security Agreement.* Thereupon, the principal of and interest on the Secretary's Note, shall become immediately due and payable, together with interest at the same rates specified in the Secretary's Note.

Amendment to the last paragraph of the Secretary's Note: ''The unpaid balance of the principal of this Secretary's Note and the interest may be declared or may become immediately due and payable by declaration of the Secretary *at any time after the Secretary determines that a Default has occurred and is continuing under the terms of the Security Agreement.* Thereupon, the unpaid balance of the principal of and the interest on this Secretary's Note shall become due and payable, together with interest thereon at the Obligation rate plus *two* percent.''

Amendment to the sentence appearing in the third to last paragraph of the guaranteed obligation: ''So long as the Guarantee is in effect, *the Obligees shall have* no recourse against the Shipowner.''

3. Amendments to Section 8(b) of the Reserve Fund and Financial Agreement

Section 8(b). Supplemental Covenants. *If a Default has occurred and is continuing under the Security Agreement or this Agreement or* unless, after giving effect to such transaction or transactions, during any fiscal year of the Company, (i) the Company's Working Capital is not equal to at least one dollar, (ii) the Company's Long-Term Debt is more than two times the Company's Net Worth, and (iii) the Company's Net Worth is less than the amount specified in Attachment A hereto, the Company shall not, without the Secretary's prior written consent:

Amend Section 8(b)(5) to read as follows: (5) Make any investments in the securities of any Related Party *or make any payments whatsoever to a Related Party, except for (i) distributions permitted by Section 8(b)(3) above or (ii) salary paid in the ordinary course of business for services;*

4. New Sections 8(c), 8(d) and 8(e) of the Reserve Fund and Financial Agreement

Section 8(c). Closely Held Entities. In the event the Secretary determines that the Company, if its stock is not publicly traded, has paid any amounts to any Shareholder in violation of any of the covenants contained in this Agreement, the Secretary may, in the manner set forth below, require such Shareholder to repay the Company such amounts it has received in derogation of the Company's obligations hereunder, and the Shareholders, by their signatures below, agree to repay the Company in full any such amounts they may so receive, with interest at the Obligation rate plus 2%, accruing from the date of receipt to the date of payment. Upon receipt of a written notice from the Secretary, the Shareholders shall promptly pay any amounts that are due under this Subsection 8(c) directly to the Secretary and the Secretary shall deposit said sums into the Deposit Fund, as property of the Company and security of the Secretary. The Shareholders hereby waive any rights they may have against the Company for indemnification, contribution or reimbursement with respect to the amounts herein required to be repaid to the Company. The Shareholders acknowledge and agree that the Secretary shall have the right to maintain a civil action to collect the sums due hereunder in the United States District Court for the District of Columbia and they further agree that service of process on the Company will be deemed service of process on each of them.

Section 8(d). Publicly Held Entities. (1) In the event the Secretary determines that the Company, if its stock is publicly traded, has paid any amounts in violation of any of the covenants contained in this Agreement, the Secretary may require Key Officials to repay the Company such amounts if they (or their delegees or appointees) have authorized or otherwise have permitted payments by the Company in derogation of the Company's obligations hereunder, and the Key Officials, by their signatures below, agree (i) to repay the Company in full any such sums they permitted to be paid, with interest at the Obligation rate plus 2%, accruing from the date of receipt to the date of payment and (ii) to be bound by the provisions of Subsection 8(e) below; provided, however, that Key Officials shall not be liable hereunder if the Company, no more than 5 business days prior to making such a payment, delivers to the Secretary (a) the certificate of an independent certified public accountant stating that the Company's action will not be in violation of Section 8 of this Agreement, and (b) a certificate from the Key Official that the Company's action will not violate Section 8 of this Agreement, both of which certificates must be in form and substance satisfactory to the Secretary.

(2) Upon receipt of a written notice from the Secretary, the Key Officials shall promptly pay any amounts that are due under this Subsection 8(d) directly to the Secretary and the Secretary shall deposit said sums into the Deposit Fund, as property of the Company and security of the Secretary. The Key Officials hereby waive any rights they may have against the Company for indemnification, contribution or reimbursement with respect to the amounts herein required to be repaid to the Company. The Key Officials acknowledge and agree that the Secretary shall have the right to maintain a civil action to collect the sums due hereunder in the United States District Court for the District of Columbia and they further agree that service of process on the Company will be deemed service of process on each of them.

Section 8(e). Shipowner agrees that no Person may be appointed as a Successor Key Official until that Person has agreed to be bound by the provisions of Subsection 8(d) hereof. Failure to provide the Secretary with an original signed agreement, in form and substance satisfactory to the Secretary, of a Successor Key Official to be bound under Subsection 8(d) prior to that Person's appointment, or prior to that Person's commencing the duties of that position, shall make the Key Officials who appointed the Successor Key Official, or allowed the Successor Key Official to commence those duties,

liable for the actions of the Successor Key Official under Subsection 8(d).

5. New Definitions in Schedule X To Conform to New Sections 8(c), 8(d), 8(e) Above and 8(f) in Paragraph 12 Below

''Shareholders'' shall mean (i) any Person who directly or indirectly possesses an ownership interest in the Company, including, but not limited to, equity holders, members, and partners, and (ii) any Person who is a Related Party of the Company which has received or could receive, directly or indirectly, any dividends, capital distributions, or any other payments, including payments of any sums owed for services rendered by the Person or Related Party during any period in which the Company is in Default of its obligations under the Security Agreement or the Financial Agreement.

''Key Officials'' shall mean any Chairman of the Board of Directors, Member of the Board of Directors, Chief Executive Officer, Chief Financial Officer, Treasurer, Secretary, President, Vice-President or other Member or Officer of the Company. Key Officials shall include any Shareholder who has an ownership interest in the Company of five percent or greater.

''Person'' or ''Persons'' means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, unincorporated organization, *other entity,* government, or any agency or political subdivision thereof.

''Successor Key Official'' shall mean any Person who takes on the responsibilities or title of a Key Official who has resigned, been separated or otherwise is no longer carrying out the duties previously assigned to that Key Official.

6. Amendment to Section 2.10 of the Security Agreement

Section 2.10. Performance of Shipowner's Agreements by the Secretary. (a) If the Shipowner shall fail to perform any of its agreements hereunder or under the Mortgage *or the Financial Agreement,* the Secretary may, in its discretion, at any time during the continuance of an event which by itself, with the passage of time, or the giving of notice, would constitute a Default, perform all acts and make all necessary expenditures to remedy such failure. Notwithstanding the foregoing, the Secretary shall not be obligated to (and shall not be liable for the failure to) perform such acts and make such expenditures. All funds advanced and expenses and damages incurred by the Secretary relating to such compliance shall constitute a debt due from the Shipowner to the Secretary and shall be secured hereunder and under the Mortgage prior to the Secretary's Note and shall be repaid by the Shipowner upon demand, together with *interest at the Obligation rate plus 2%.*

(b). Impermissible Payments. If the Shipowner Defaults on the Financial Agreement by making any payments in violation of Section 8 of the Financial Agreement or by failing to make a Reserve Fund deposit in violation of Section 2 of the Financial Agreement, such sums shall constitute a debt owed by the Shipowner to the Secretary, and shall be secured hereunder and under the Mortgage prior to the Secretary's Note and shall be repaid by the Shipowner upon demand, together with interest at the Obligation rate plus 2%. The Secretary, in its sole discretion, may decide to hold any monies paid by the Shipowner hereunder as additional security, or to set off said monies against the Secretary's Note, or to use said monies for the payment of the Shipowner's Title XI debt service or for meeting its operating expenses.

7. Amendment to Section 6.05 of the Security Agreement To Conform to the Changes in Section 2.10 of the Security Agreement

Amend Section 6.05(a)(1) to read as follows: (1) To the payment of all *advances, reasonable* charges by the Secretary, *and any debt owed by the Shipowner to the Secretary which this Agreement states is entitled to be paid prior to the Secretary's Note;*

8. New Section 16 of the Financial Agreement To Supplement Section 2.10 of the Security Agreement

Section 16. If the Company shall fail to perform punctually and fully any of its agreements hereunder, including but not limited to providing the Secretary with any audited or unaudited financial statements, reports, certifications or calculations required hereunder to be provided by the Company to the Secretary, the Secretary may, in its discretion, perform all acts and make all necessary expenditures to remedy such failure. Notwithstanding the foregoing, the Secretary shall not be obligated to (and shall not be liable for the failure to) perform such acts and make such expenditures, including, but not limited to, the hiring of accounting professionals to review the books and records of the Company to the satisfaction of the Secretary, and the Company hereby agrees to disclose all and any pertinent information determined to be necessary for the conduct of such a review by the Secretary or its consultants. All funds advanced and expenses and damages incurred by the Secretary relating to such compliance shall constitute a debt due from the Company to the Secretary and shall be secured hereunder and under the Mortgage prior to the Secretary's Note and shall be repaid by the Company upon demand, together with interest at the Obligation rate plus 2%.

9. New Definition of Default in Financial Agreement

Section 17. Default. The Company shall be in default of this Agreement upon the failure or omission of the Company to observe any covenant, term or provision herein; provided, however, that a failure to satisfy the financial covenants set forth in Subsection 8(b)(i) through (iii) hereof shall not constitute a Default hereunder.

10. Amendment of Section 2.06(b) of the Security Agreement Relating to Destruction or Loss of Business Records

Amend Section 2.06(b) to read as follows:

(b) maintain *all business and financial* records *for a period of at least six years following the termination of the Guarantee, including, without limitation,* records of all amounts paid or obligated to be paid by or for the account of the Shipowner for each Vessel's construction;

11. Amendment to Section 6.01 of the Security Agreement Relating to Defaults

Amend Section 6.01(b)(1) to read as follows:

(b) The following shall constitute and each is herein called a ''Security Default:''

(1) Default by the Shipowner in the due and punctual observance and performance of any provision in Sections 2.01(b), 2.02(b) and (i), 2.03, 2.04, 2.09, *2.10 (as it relates to a failure to pay a debt due on demand under Section 2.10),* 2.11, 2.12, 2.14, 8.01 and 8.02;

Amend Section 6.01(b)(4) to read as follows:

(4) The Shipowner, *or any guarantors of the Shipowner's performance under the Secretary's Note, the Security Agreement, Mortgage, the Financial Agreement, or the Depository Agreement or related document,* shall become insolvent or bankrupt or shall cease paying or providing for the payment of debts generally, or the Shipowner *or any guarantor* shall be dissolved or shall, by a court of competent jurisdiction, be adjudged a bankrupt, or shall make a general assignment for the benefit of its creditors, or shall lose its charter by forfeiture or otherwise; or a petition for

reorganization of the Shipowner *or any guarantor* under the Bankruptcy Code shall be filed by the Shipowner *or by any guarantor, or such petition be filed by creditors and the same shall be approved by such a court of competent jurisdiction;* or a reorganization of the Shipowner *or any guarantor* under said Code shall be approved by a court, whether proposed by a creditor, a stockholder or any other Person whomsoever; or a receiver or receivers of any kind whatsoever, whether appointed in admiralty, bankruptcy, common law or equity proceedings, shall be appointed, by a decree of a court of competent jurisdiction, with respect to any Vessel, or all or substantially all of the Shipowner's *or any guarantor's* property, and such decree shall have continued unstayed, on appeal or otherwise, and in effect for a period of 60 days;

12. New Section 8(f) of the Reserve Fund and Financial Agreement

(f) Distributions for the Payment of Taxes. Provided that the Company is not then in Default under the Security Agreement and continues to retain its status as a Subchapter S Corporation, limited liability company, or other entity which enjoys the benefits of pass-through taxation under the Internal Revenue Code (collectively, a ''Pass-Through Entity''), the Company may distribute to its Shareholders, for the purpose of assisting them in their efforts to pay their estimated and final federal income taxes with respect to the current or immediately preceding fiscal year (or any prior fiscal year under audit) of Company operations, funds sufficient to cover the aggregate federal income taxes owed by the Company's Shareholders desiring a distribution in respect of the net income earned by the Company, to be calculated in the following manner:

(1) In the case of year-end final tax returns:

(A) Each Shareholder desiring a distribution for federal income taxes shall calculate its federal income tax return (the Return) based on all of the Shareholder's deductions, credits and other adjustments, *including,* but not limited to, all of the Shareholder's allocable share of the Company's net income and other tax attributes. The Return shall be the income tax return that the Shareholder actually files with the Internal Revenue Service (IRS). The Shareholder shall also calculate its federal income tax return (the Pro Forma Return) based on all of the Shareholder's deductions, credits and other adjustments, *excluding* all of the Shareholder's allocable share of the Company's net income and other tax attributes;

(B) The Shareholder shall subtract the Pro Forma Return from the Return and certify, in writing, to MARAD and the Company, the difference as the amount of federal income tax for which the Shareholder is liable with respect to the Shareholder's ownership interest in the Company (the Amount Due) and shall attach a copy of IRS Form K–1 to the certification. The certification required by this subsection may be based on advice from the Shareholder's accountant or other tax advisor. The sum of each requesting Shareholder's Amount Due with respect to a particular fiscal year of the Company shall be referred to as the Total Amount Due for such fiscal year; and

(C) The Company may distribute to its Shareholders, with respect to each fiscal year, an amount not to exceed the Total Amount Due for such fiscal year in a manner consistent with the Company's continued retention of its status as a Subchapter S Corporation or other Pass-Through Entity.

(2) In the case of quarterly estimated tax payments:

(A) Each Shareholder desiring a distribution for the payment of quarterly estimated federal income taxes shall calculate its estimated quarterly federal income tax payment then due to be paid based on all of the Shareholder's estimated deductions, credits and other adjustments, *including* but not limited to all of the Shareholder's allocable share of the Company's net income and other tax attributes (Estimated Tax) and shall also calculate its estimate of what the quarterly estimated federal income tax payment would be based on all of the Shareholder's estimated deductions, credits and other adjustments, *excluding* all of the Shareholder's allocable share of the Company's net income and other tax attributes (Pro Forma Estimated Tax);

(B) The Shareholder shall subtract the Pro Forma Estimated Tax from the Estimated Tax and certify, in writing, to MARAD and the Company, the difference as the amount of estimated federal income tax for which the Shareholder is liable with respect to the Shareholder's ownership interest in the Company (the Estimated Amount Due), and shall attach a copy of the relevant IRS Estimated Tax Worksheet. The sum of each requesting Shareholder's Estimated Amount Due for any given fiscal quarter of the Company shall be referred to as the Total Estimated Amount Due for that fiscal quarter; and

(C) With respect to each fiscal quarter, the Company may distribute to its Shareholders an aggregate amount not to exceed the Total Estimated Amount Due for such fiscal quarter in a manner consistent with the Company's continued retention of its status as a Subchapter S Corporation or other Pass-Through Entity.

(3) If the total amount distributed for estimated and final income taxes with respect to any fiscal year of the Company exceeds the Total Amount Due for that fiscal year, no further distributions shall be allowed under this Section 8(f) until all the Shareholders shall have remitted to the Company their proportional share of the excessive distribution.

(4) To the extent a Shareholder is required by law to pay state and local taxes in lieu of the Company's paying those taxes, distributions may be made by the Company to its Shareholders in the same manner, and subject to the same restrictions, as distributions with respect to federal income taxes are permitted hereunder.

(5) No distributions may be accomplished under this Section 8(f) prior to the receipt by MARAD of all the certifications required of Shareholders herein. Upon the request of MARAD in writing, a Shareholder shall provide MARAD such additional information (including, but not limited to, copies of the Shareholder's relevant income tax returns as filed with the Internal Revenue Service) as MARAD may reasonably request (which information MARAD shall hold in confidence pursuant to 5 U.S.C. 552(b)(4) and subject to 18 U.S.C. 1905) to determine the validity of the Shareholder's certification. Upon the failure of any Shareholder to provide MARAD with such additional information (including the aforementioned income tax returns) within 30 days of a written request from MARAD, no further distributions shall be allowed under this Section 8(f) above for final or estimated taxes until the requested information has been provided to MARAD.

(Authority: 49 CFR 1.66)

By Order of the Maritime Administrator.

Dated: June 2, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–11316 Filed 6–7–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34706]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF) has agreed to grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's lines between milepost 343.5, near Ricker, TX, and milepost 455.6, near Tecific, TX, a distance of approximately 112.1 miles.

The transaction was scheduled to be consummated on May 26, 2005, and the temporary rights will expire on or before August 16, 2005. The purpose of the temporary rights is to facilitate the performance of maintenance work on UP lines.

As a condition to this exemption, any employees affected by the acquisition of the temporary rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34706, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: May 25, 2005.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–11157 Filed 6–7–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34703]

Illinois Central Railroad Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant certain trackage rights to Illinois Central Railroad Company (IC) over UP's line of railroad extending from milepost AH38.5 at Joliet, IL, to milepost AH39.43 near South Joliet, IL, a distance of approximately 0.93 miles.[1]

The transaction was scheduled to be consummated on or after the May 26, 2005 effective date of the exemption.

The purpose of the trackage rights is to convert an existing 1987 Agreement between the parties granting IC operating rights over the line to trackage rights, so that IC will pay UP a trackage rights fee and UP will assume all costs of maintenance of the line.[2]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34703 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Michael J. Baron, Jr., Counsel for Illinois Central Railroad Company, CN, 17641 S. Ashland Avenue, Homewood, IL 60430.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 2, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–11282 Filed 6–7–05; 8:45 am]

BILLING CODE 4915–01–P

[1] The trackage rights agreement was concurrently filed under seal, along with a motion for protective order. A protective order was served in this proceeding on June 2, 2005.

[2] Under the existing 1987 Agreement, IC and UP share maintenance and other costs.

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collection; Comment Request; Correction

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments; correction.

SUMMARY: On May 19, 2005, TTB published a notice in the **Federal Register** inviting comments on an information collection related to marks on wine containers. In that notice, we inadvertently included a second information collection related to the certification of proper cellar treatment for imported natural wine. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION: On May 19, 2005, TTB published a notice in the **Federal Register** entitled ''Proposed Information Collection; Comment Request'' (70 FR 28982) inviting comments on two information collections—the first titled ''Marks on Wine Containers'' (OMB No. 1513–0092) and the second titled ''Certification of Proper Cellar Treatment for Imported Natural Wine'' (OMB No. 1513–0119). We inadvertently included the second information collection related to the certification of imported wine in that notice.

We will, in the near future, publish a temporary rule and request for comment regarding the certification of proper cellar treatment for imported natural wine. This temporary rule will include a request for comments on the information collection related to the certification requirement for imported wine brought into the United States after December 31, 2004. This certification requirement was imposed by section 2002 of the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 109–429).

Therefore, in the **Federal Register** of May 19, 2005, on page 28983, in the second column, remove the text from the beginning of the sixth full paragraph (''*Title:* Certification of Proper Cellar Treatment for Imported Natural Wine.'') to the end of the fourteenth paragraph (''*Estimated Total Annual Burden Hours:* 5,000.'').

Dated: June 1, 2005.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 05–11342 Filed 6–7–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Savings and Loan Holding Company Registration Statement—H–(b)10

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before August 8, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Judi McCormick, Director, Consumer Protection and Specialty Programs, (202) 906–5636, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Savings and Loan Holding Company Registration Statement—H–(b)10.

OMB Number: 1550–0020.

Form Number: H–(b)10.

Regulation requirement: 12 CFR 584.1.

Description: This information collection is used to determine a savings and loan holding company's adherence to the statutes, regulations, and conditions of approval to acquire an insured institution and whether any of the holding company's activities would be injurious to the operation of the subsidiary savings association.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 126.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 8 hours.

Estimated Total Burden: 1,008 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: June 2, 2005.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Acting Director.

[FR Doc. 05–11317 Filed 6–7–05; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 70, No. 109

Wednesday, June 8, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7833]

Draft Programmatic Environmental Impact Statement for Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions

Correction

In notice document 05–10972 beginning on page 31487 in the issue of Wednesday, June 1, 2005, make the following correction:

On page 31487, in the second column, the docket line should read as set forth above.

[FR Doc. C5–10972 Filed 6–7–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
June 8, 2005

Part II

Department of Labor

Office of Workers' Compensation Programs

20 CFR Parts 1 and 30

Performance of Functions; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act; Interim Rule

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 1 and 30

RIN 1215–AB51

Performance of Functions; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: This document contains the interim final regulations governing the administration of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act) by the Department of Labor (Department or DOL). Part B of the Act provides uniform lump-sum payments and medical benefits to covered employees and, where applicable, to survivors of such employees, of the Department of Energy (DOE), its predecessor agencies and certain of its vendors, contractors and subcontractors. Part B of the Act also provides smaller uniform lump-sum payments and medical benefits to individuals found eligible by the Department of Justice (DOJ) for benefits under section 5 of the Radiation Exposure Compensation Act (RECA) and, where applicable, to their survivors. Part E of the Act provides variable lump-sum payments (based on a worker's permanent impairment and/or years of established wage-loss) and medical benefits for covered DOE contractor employees and, where applicable, provides variable lump-sum payments to survivors of such employees (based on a worker's death due to a covered illness and any years of established wage-loss). Part E of the Act also provides these same payments and benefits to uranium miners, millers and ore transporters covered by section 5 of the RECA and, where applicable, to survivors of such employees. The Office of Workers' Compensation Programs (OWCP) administers the adjudication of claims and the payment of benefits under EEOICPA, with the Department of Health and Human Services (HHS) estimating the amounts of radiation received by employees alleged to have sustained cancer as a result of such exposure and establishing guidelines to be followed by OWCP in determining whether such cancers are at least as likely as not related to employment. Both DOE and DOJ are responsible for notifying potential claimants and for submitting evidence necessary for OWCP's adjudication of claims under EEOICPA.

DATES: *Effective Date:* This interim final rule is effective on June 8, 2005.

Applicability date: This interim final rule applies to all claims filed on or after June 8, 2005. This rule also applies to any claims that are pending before OWCP on June 8, 2005.

Compliance Date: Affected parties do not have to comply with the new information collection requirements in §§ 30.102, 30.231, 30.232, 30.806, 30.905 and 30.907 until DOL publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control number will notify the public that OMB has approved the new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It should be noted that OMB approval of the new information collection requirements will be a revision to the currently approved collection in OMB Control No. 1215–0197.

Comments: The Department invites comments on the interim final rule from interested parties. Comments on the interim final rule must be received by August 8, 2005. Written comments on the new information collection requirements in this rule must be received by July 8, 2005.

ADDRESSES: You may submit comments on the interim final rule, identified by Regulatory Information Number (RIN) 1215–AB51, by any ONE of the following methods:

Federal e-Rulemaking Portal: The Internet address to submit comments on the rule is *http://www.regulations.gov.* Follow the Web site instructions for submitting comments.

E-mail: Comments on the rule may be submitted by e-mail to *OWCP–DEEOIC–REG–1215–AB51@dol.gov.* You must include "RIN 1215–AB51" in the subject line of the e-mail containing your comments.

Mail: Submit written comments to Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW., Washington, DC 20210. Because of security measures, mail directed to Washington, DC is sometimes delayed. We will only consider comments postmarked by the U.S. Postal Service or other delivery service on or before the deadline for comments.

Instructions: All comments must include the RIN 1215-AB51 for this rulemaking. Receipt of any comments, whether by mail, Internet, or e-mail, will not be acknowledged. Because DOL continues to experience delays in receiving postal mail in the Washington, DC area, commenters are encouraged to submit any comments by mail early.

Comments on the interim final rule will be available for public inspection during normal business hours at the address listed above for mailed comments. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this interim final rule may be obtained in alternative formats (*e.g.*, large print, audiotape or disk) upon request. To schedule an appointment to review the comments and/or to obtain the interim final rule in an alternative format, contact OWCP at 202–693–0031 (this is not a toll-free number).

Written comments on the new information collection requirements described in this interim final rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: 202–693–0031 (this is not a toll-free number).

Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq.*, was originally enacted on October 30, 2000. The initial version of EEOICPA established a compensation program (known as Part B of the Act) to provide a uniform lump-sum payment of $150,000 and medical benefits as compensation to covered employees who had sustained designated illnesses due to their exposure to radiation, beryllium, or silica while in the performance of duty for DOE and certain of its vendors,

contractors and subcontractors. Part B of the Act also provided for payment of compensation to certain survivors of these covered employees, and for payment of a smaller uniform lump-sum ($50,000) to individuals (who would also receive medical benefits), or their survivors, who were determined to be eligible for compensation under section 5 of the Radiation Exposure Compensation Act (RECA), 42 U.S.C. 2210 note, by DOJ. Primary responsibility for the administration of Part B of the Act was assigned to DOL by Executive Order 13179 (''Providing Compensation to America's Nuclear Weapons Workers'') of December 7, 2000 (65 FR 77487). On May 25, 2001, the Department issued interim final regulations (66 FR 28948) governing its administration of Part B of the Act, commenced administration of Part B of the Act on July 31, 2001, and issued final regulations on December 26, 2002 (67 FR 78874) that went into effect on February 24, 2003.

The initial version of EEOICPA also created a second program (known as Part D of the Act) that required DOE to establish a system by which DOE contractor employees (and their eligible survivors) could seek assistance from DOE in obtaining state workers' compensation benefits if a Physicians Panel determined that the employee in question had sustained a covered illness as a result of work-related exposure to a toxic substance at a DOE facility. A positive panel finding that was accepted by DOE required DOE, to the extent permitted by law, to order its contractor not to contest the claim for state workers' compensation benefits. However, Congress amended EEOICPA in Subtitle E of Title XXXI of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, 118 Stat. 1811, 2178 (October 28, 2004), by abolishing Part D of the Act and creating a new Part E (codified at 42 U.S.C. 7385s through 7385s-15) that it assigned to DOL for administration. Part E establishes a new system of variable federal payments for DOE contractor employees, uranium workers covered by section 5 of RECA, and eligible survivors of such employees. Congress also amended several of the other provisions contained in EEOICPA that applied to Part B and specified that DOL was to prescribe regulations implementing the amendments to EEOICPA and commence administration of Part E within 210 days of its enactment.

II. Administrative Procedure Act Issues

Section 7385s–10(e) of EEOICPA clearly directs the Secretary of Labor to ''prescribe regulations necessary for the administration of [Part E] * * * not later than 210 days after the date'' the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 was enacted, and further authorizes the Secretary to ''prescribe interim final regulations necessary to meet'' this 210-day deadline. The Department believes that this grant of authority to the Secretary to prescribe interim final regulations by May 26, 2005 contemplates displacement of Administrative Procedure Act (APA) notice and comment procedures and allows the publication of interim final regulations as an initial matter.

Therefore, the Department believes that the ''good cause'' exception to APA notice and comment rulemaking applies to this rule. Under that exception, pre-adoption procedures are not required ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). DOL cannot fully adjudicate claims under Part E of EEOICPA until these regulations are promulgated. The steps necessary for the usual notice and comment under the APA could not be completed in time for the Department of Labor to commence administration of Part E by the deadline of May 26, 2005: approval of the notice of proposed rulemaking by the Secretary and OMB; publication in the **Federal Register**; receipt of, consideration of, and response to comments submitted by interested parties; modification of the proposed rules, if appropriate; final approval by the Secretary; clearance by OMB; and publication in the **Federal Register**. Accordingly, the Department believes that under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice and comment rulemaking procedures because issuance of proposed rules would be impracticable and contrary to the public interest.

While notice and comment rulemaking is being waived, the Department is interested in comments and advice regarding changes that should be made to these interim regulations. The Department will carefully consider all comments on the regulations contained in this interim final rule received on or before August 8, 2005, and will publish the final regulations with any necessary changes.

Under the APA, substantive rules generally cannot take effect until 30 days after the rule is published in the **Federal Register**. However, section 553(d)(3) of the APA states that agencies may waive this 30-day requirement for ''good cause'' and establish an earlier effective date. As explained above, the Department believes that there is ''good cause'' for waiver of the APA requirement for notice and comment rulemaking because it would be both impractical and contrary to the public interest for the Department to fulfill that requirement. Similarly, the Department believes that the ''good cause'' exception to the 30-day effective date requirement for substantive rules in the APA applies to this rule, because observing this requirement would be both impractical and contrary to the public interest. As noted above, DOL will not be able to fully adjudicate claims under Part E of EEOICPA until the regulations in this rule are in effect. Since Congress has directed DOL to commence administration of Part E no later than May 26, 2005 in section 7385s–10(f)(1) of EEOICPA, the Department believes that ''good cause'' exists for waiver of the usual 30-day effective date requirement for substantive rules and for this rule to become effective immediately upon the date of its publication in the **Federal Register**.

III. Overview of Regulatory Changes

Congress, in enacting Part B of EEOICPA, created a program to ensure an efficient, uniform, and adequate compensation system for certain employees of DOE, its vendors, contractors, and subcontractors, who contracted beryllium-, silica-, and radiation-related health conditions as a result of their employment in the development of nuclear weapons. When it amended EEOICPA to create Part E, Congress established a second program in an effort to also ensure an equally efficient, uniform, and adequate compensation system for DOE contractor employees and RECA section 5 workers who contracted illnesses due to their exposures to toxic substances as a result of employment at a DOE facility or a RECA section 5 facility, as appropriate. These regulations describe the processes that OWCP will use so that employees, and, when applicable, their survivors, will receive the benefits provided by Part B and Part E of EEOICPA in the efficient and uniform manner intended by Congress. The following discussion describes the many significant changes to the regulations that currently appear as 20 CFR parts 1 and 30, but does not include any discussion of corrections of typographical errors, or minor wording changes and clarifications that do not affect the substance of the existing regulations.

20 CFR Part 1

This part is the same as current part 1 (§§ 1.1 through 1.6), with the exception of the authority citation, and is reprinted in full for the ease of the reader. The authority citation has been updated to reflect that Congress assigned responsibility for administration of the new Part E of EEOICPA established by Public Law 108–375 to DOL.

20 CFR Part 30

Subpart A—General Provisions

This subpart is substantially the same as the current subpart A (§§ 30.0 through 30.17). The amended subpart adds material describing the expanded responsibilities of DOL under EEOICPA, as well as definitions necessary for administration of Part E of the Act.

Introduction

Section 30.0 now describes, in general terms, the types of compensation available under both Parts B and E of EEOICPA, the persons to whom this compensation may be paid, and the differing eligibility requirements that apply to claimants under Part B and Part E. Section 30.2 has been updated to briefly describe how the tasks involved in administering Part B and Part E of EEOICPA have been assigned, both within DOL and among the Secretaries of Labor, Health and Human Services, and Energy, and the Attorney General, following the amendments enacted on October 28, 2004, while § 30.3 summarizes how the existing and new regulations in this part are organized by subject area.

Definitions

Amended § 30.5 compiles the definitions for the principal terms used in this part and is substantially unchanged from the existing section. It includes terms specifically defined in EEOICPA that, for the convenience of the user of this part, are repeated in this section. The Department seeks comments on all of the definitions provided in § 30.5, including, in particular, those addressed in the following paragraphs.

Section 3168 of Public Law 108–375 amended the prior statutory definition of *atomic weapons employee* at 42 U.S.C. 7384l(3) to add employees who did not work during the period their employer had a contract with DOE and were instead only employed during a period of residual radioactive contamination as determined by the National Institute for Occupational Safety and Health (NIOSH). Thus, the regulatory definition of this term in § 30.5(c) has been modified to reflect this amendment.

The § 30.5(p) definition of *covered Part E employee* is intended to serve as a shorthand term and refers to both DOE contractor employees (defined in section 7385s(1) of the Act) and RECA section 5 uranium workers (defined in section 7385s–5(b)(3) of the Act) who have been determined by OWCP to have contracted covered illnesses through an exposure to toxic substances at a DOE facility or a RECA section 5 facility, as appropriate. In order to make it consistent with (and also distinguish it from) § 30.5(p), the definition of *covered employee* in existing § 30.5(p) has been amended to read as *covered Part B employee* and has been moved to amended § 30.5(q).

In order to allow readers of this rule to readily distinguish between the illnesses that are compensable under Parts B and E, this section also includes regulatory definitions of *covered illness* in amended § 30.5(r) and *occupational illness* in amended § 30.5(bb). While neither of these terms is altered in any fashion in this rule, they are both defined in this section to highlight the need to differentiate between an occupational illness that is compensable under Part B of the Act, and a covered illness that is compensable under Part E.

The Department defines *Department of Energy facility* in § 30.5(v) by repeating the definition found in section 7384l(12) of the Act. As noted in amended § 30.5(x)(2), DOL adopts the list of facilities established by the Department of Energy that is in effect on the date of publication of this Interim Final Rule (69 FR 51825). DOL will periodically update this list as it deems appropriate in its sole discretion by publishing a revised list of covered facilities in the **Federal Register**. Determinations of the Director that a facility is a *Department of Energy facility* is solely for the purpose of administering the EEOICPA.

As noted above, Public Law 108–375 abolished Part D of the Act and, at the same time, established a new Part E that maintained the former Part D's focus on covered illnesses of employees who were exposed to a ''toxic substance'' at a DOE facility. Because section 7385s–4(c) of EEOICPA requires DOL to use the causation standard from DOE's former Part D regulations when it determines if an employee has sustained a covered illness due to exposure to a toxic substance at a DOE facility, § 30.5(ii) sets out the same definition for *toxic substance* that originally appeared in DOE's regulations for former Part D at 10 CFR 852.2 for use under Part E. As DOE explicitly indicated when it published its final regulations on August 14, 2002 (67 FR 52843), noise is not considered to be a ''toxic substance'' for purposes of the compensation program.

Information in Program Records

Existing § 30.11 describes how all records relating to claims for benefits filed under the Act are covered by the Privacy Act and are described in a system of records entitled DOL/ESA–49. This system of records is maintained by and under the control of OWCP. All records relating to a claim obtained by OWCP from the claimant or any other source are maintained by OWCP in a case record. A claimant may obtain, without charge, one complete copy of the records in the case record. This will allow a claimant to obtain a copy of any medical, employment, exposure or other evidence that might be of use to a physician of the claimant's choosing in providing medical evidence to OWCP necessary to establish a claimant's entitlement to benefits available under the Act. Should OWCP obtain further records after furnishing a free copy of a case record to a claimant, the claimant can obtain one copy of those further records, without charge, by requesting them from OWCP.

Subpart B—Filing Claims; Evidence and Burden of Proof; Special Procedures for Certain Cancer Claims

This subpart is substantially similar to the current subpart B, which describes the early steps in OWCP's claims adjudication process and includes a general description of the evidence an employee or survivor must submit to meet his or her burden of proof under Parts B and E of the Act. As explained in § 30.111, the claimant bears the burden of proving by a preponderance of the evidence the existence of each and every criterion necessary to establish eligibility under any claim category in Part B or Part E. It also explains the special procedures used in the adjudication of claims for radiogenic cancer under Parts B and E that do not involve members of the Special Exposure Cohort.

Filing Claims for Benefits Under Part B and Part E of EEOICPA

Current §§ 30.100, 30.101 and 30.102 (renumbered as § 30.103 in this rule) have been revised to accommodate the addition of Part E claims to the existing claims adjudication process. Sections 30.100 and 30.101 now include new language that a claim for benefits under Part E, including a claim originally filed with DOE as a claim for assistance under former Part D (which was

repealed on October 28, 2004), will not be considered to be ''filed'' earlier than October 30, 2000. Also, the language in these same two sections that employees or survivors can choose to file a claim for benefits for only certain potentially compensable conditions and forgo filing for a condition for which a payment has been received that would necessitate an offset of EEOICPA benefits is new, although it describes the current policy of OWCP. New § 30.102 describes how covered Part E employees who have previously been awarded impairment or wage-loss benefits under Part E of the Act can file claims for additional periods of wage-loss and/or an increased percentage of permanent impairment.

Verification of Alleged Employment

Current § 30.106, which describes DOE's employment verification responsibilities in the context of claims of survivors, is consolidated into § 30.105 in this rule, which now describes these responsibilities in the context of both survivors' and employees' claims. New § 30.106 sets out the current practice of OWCP and DOE of arranging for other entities to provide OWCP with information needed to verify alleged employment, when necessary.

Evidence and Burden of Proof

Existing § 30.111 describes how a claimant bears the burden of proving by a preponderance of the evidence the existence of each and every criterion necessary to establish eligibility under any compensable claim category. OWCP collects a variety of evidence that will assist a claimant in meeting his or her burden of proof. In addition to employment verification information obtained by OWCP, discussed above, in the course of developing a case OWCP obtains from DOE and its contractors and subcontractors and other sources a variety of medical, environmental, exposure and other information relevant to individual employees or the facilities in general.

When a claims examiner reviews a submission by a claimant and determines that the medical evidence is insufficient to meet the claimant's burden of proof, the claimant can be referred to one or more physicians with appropriate expertise for an opinion on any issue or issues relevant to adjudication of the claim. When OWCP makes these referrals, the physician will be asked relevant questions and provided with a Statement of Accepted Facts prepared by OWCP and all relevant records from the case file. Alternatively, and in the case of a claim by a survivor, a Statement of Accepted Facts prepared by OWCP and all relevant records can be forwarded to one or more physicians for their review without the necessity of an examination. Thus, in a case where the claimant is unable to provide sufficient medical evidence from a physician with the necessary expertise, OWCP can, at its expense, obtain the opinion of a physician with the appropriate expertise.

Special Procedures for Certain Radiogenic Cancer Claims

Section 30.115, which explains the special procedures used in the early adjudication of claims for radiogenic cancers that do not seek Part B benefits under the Special Exposure Cohort provisions, has been modified slightly to include new language stating that except for Part B claims previously accepted under section 7384u of the Act, all claims seeking benefits under Part E for radiogenic cancers will be forwarded to HHS for dose reconstruction.

Subpart C—Eligibility Criteria

This subpart is substantially the same as current subpart C (§§ 30.200 through 30.226), with a number of small changes in language to reflect the new responsibilities of DOL under EEOICPA that have resulted from the enactment of Part E. In addition to these small changes (and other changes to reflect existing administrative practices), subpart C has been amended to include the substantive changes discussed below.

Eligibility Criteria for Claims Relating to Radiogenic Cancer Under Parts B and E

Current § 30.210 sets forth the criteria for eligibility for claims relating to radiogenic cancer under Part B of EEOICPA; these criteria are quite specific and reflect Part B's focus on a narrowly defined list of occupational illnesses. The criteria for claims relating to radiogenic cancer under Part E of EEOICPA differ (due to differences between Parts B and E) from the more specific eligibility criteria for radiogenic cancer claims under Part B and describe a particular subset of the broad range of covered illnesses that may be compensated under Part E. However, both Part B and Part E provide coverage for radiogenic cancer. Therefore, current § 30.210 has been designated as subsection (a) of amended § 30.210, and new subsection (b) sets forth the statutory eligibility criteria for claims relating to radiogenic cancer under new Part E. Under Part E, a claim for radiogenic cancer will be compensable if it is ''at least as likely as not'' that the cancer is due to an employee's work-related exposure to radiation; thus, using the ''probability of causation'' (PoC) guidelines established by HHS, this type of claim will be compensable if the probability of causation is 50% or higher.

Current § 30.213, which describes how OWCP makes a finding whether a radiogenic cancer claimed under Part B was sustained in the performance of duty under section 7384n of the Act, has been modified slightly to more fully describe OWCP's required use of HHS's regulatory PoC guidelines in its adjudication of those questions. OWCP has also decided to utilize the same HHS PoC guidelines to determine whether exposure to radiation at a DOE facility or a RECA section 5 facility was at least as likely as not a significant factor in causing or contributing to a cancer for the purposes of Part E.

The radioepidemiological tables upon which the PoC guidelines are based were originally developed in response to a 1983 congressional directive in the Orphan Drug Act (Pub. L. 97–414, 42 U.S.C. 241 note), which required HHS to ''devise and publish radioepidemiological tables that estimate the likelihood that persons who have or have had any of the radiation-developed cancers and who have received specific doses prior to the onset of such disease developed cancer as a result of such doses.'' Congress required determinations whether radiogenic cancers were to be considered sustained in the performance of duty for the purposes of Part B to be based upon those tables in section 7384n(c) of EEOICPA.

OWCP has decided to use those same HHS regulatory PoC guidelines in its adjudication of claims for radiogenic cancer under Part E for several reasons. First, it recognizes that while it is not practical to legislate specific mechanisms to determine causation for the numerous medical conditions that exposure to tens of thousands of toxic substances at covered facilities could potentially cause, Congress has acknowledged that use of HHS's PoC guidelines is an appropriate mechanism to determine whether a cancer was at least as likely as not caused by work-related radiation exposure. In view of the lack of a scientific basis for attributing any particular case of cancer to any cause, the epidemiological approach taken by Congress in Part B, and now to be utilized by OWCP for Part E, is more likely to result in a scientifically valid and consistent determination process than merely attempting to reach a determination

based on opinions likely to contain a substantial speculative component. Thus, the requirement in amended § 30.213 that OWCP use HHS's PoC guidelines to adjudicate claims for radiogenic cancer under Part E is both appropriate and rational.

This conclusion finds further support in the *Report of the NCI–CDC Working Group to Revise the 1985 NIH Radioepidemiological Tables* (September 2003), which found that the PoC model was a viable method to adjudicate claims for radiation-related instances of cancer that appropriately summarized ''the likelihood that prior radiation exposure might be causally related to cancer occurrence.'' Use of the PoC guidelines for claims under both Part B and Part E will allow OWCP to adjudicate the entitlement of radiogenic cancers that are potentially compensable under Part B and Part E in a uniform manner. Any process for determining coverage of claims for radiogenic cancers that would yield inconsistent results as to whether that cancer is covered under Parts B and E is unlikely to be understood or accepted by claimants and other stakeholders.

The determination by OWCP to utilize the HHS PoC guidelines will only apply to a determination whether a cancer was contracted solely through exposure to radiation at a DOE facility or a RECA section 5 facility, as appropriate. The HHS PoC guidelines will not be used to determine if a cancer claimed under Part E was contracted through exposure to radiation combined with exposure to one or more other toxic substances because the risk models that were used by HHS to develop the PoC guidelines for cancer at 42 CFR part 81 only address radiation exposure. When it issued those regulations on May 2, 2002 (67 FR 22297–22298), HHS expressly noted that ''[n]one of the risk models explicitly accounts for exposure to other occupational, environmental, or dietary carcinogens. Models accounting for these factors have not been developed and may not be possible to develop based on existing research.''

Thus, when a claim for cancer under Part E cannot be accepted based on exposure to radiation alone, because the PoC was found to be less than 50%, the claimant will be given an opportunity to establish that the cancer was caused by a combination of exposure to radiation and exposure to one or more other toxic substances. OWCP will adjudicate those claims for cancer allegedly due to exposures to radiation combined with exposure to one or more other toxic substances using the eligibility criteria for other covered illnesses in new §§ 30.230 through 30.232 discussed below.

Eligibility Criteria for Other Claims Under Part E

New § 30.230 sets forth the criteria established by section 7385s–4 of EEOICPA that OWCP uses to determine if an employee contracted a covered illness. In addition, this new section also states that these criteria are satisfied by showing that the covered illness at issue was accepted in a prior claim under Part B of EEOICPA or section 5 of RECA, or that the Secretary of Energy under the former Part D accepted a Physicians Panel positive determination regarding the existence of the covered illness prior to the effective date of this rule. Section 30.230(d)(2) is included for the purpose of informing claimants of the kinds of information that OWCP will consider in determining whether it is ''at least as likely as not'' that exposure to a toxic substance at a Department of Energy facility or at a RECA section 5 facility, as appropriate, was a significant factor in aggravating, contributing to, or causing the illness. OWCP will make that determination after carefully weighing all of the evidence supplied by the claimant or obtained by OWCP from other sources.

Two of the elements that a claimant must establish before OWCP can determine that an employee contracted a covered illness are that the employee was employed at either a DOE facility or a RECA section 5 facility, and that he or she was exposed to a toxic substance at work. New § 30.231 describes how to prove employment at either a DOE facility or a RECA section 5 facility, as well as how to prove that the employee was exposed to a toxic substance while so employed.

New § 30.232 sets forth how a claimant can prove that the employee was diagnosed with a covered illness, or has sustained an injury, illness, impairment or disease as a consequence of a covered illness. This section describes the type of medical information, releases, and work histories that must be submitted to enable OWCP to make this finding. The section also makes it clear that the claimant may present other evidence deemed necessary by OWCP to establish the diagnosis or prove the existence of an injury, illness, impairment or disease.

Subpart D—Adjudicatory Process

This subpart is substantially the same as current subpart D (§§ 30.300 through 30.320), with a number of small changes in language to emphasize that this subpart only applies when OWCP adjudicates claims for entitlement under the Act; certain other decisions are made using other administrative processes (such as those used to resolve medical billing disputes). In addition to these small changes, subpart D has been amended to include new § 30.301, which implements new section 7384w in Part B of the Act, providing that an OWCP district office claims examiner and/or a Final Adjudication Branch (FAB) reviewer may, in the exercise of their discretion, issue subpoenas for persons and documents when adjudicating a Part B claim. A subpoena will be issued at the request of a claimant only by a FAB reviewer in connection with FAB's adjudication process for Part B claims. Section 30.301 also sets forth the methods for requesting issuance of the subpoenas.

Section 30.302 is also new and contains information about the fees and costs payable to lay and expert witnesses who are subpoenaed by OWCP. The section explains who is responsible for making the payment to the witness, and the factors that will govern this determination. New § 30.303 is intended to clarify the duties of both DOE and/or DOE contractors to provide information or documents in response to a request from OWCP under Part E of EEOICPA.

Hearings and Final Decisions on Claims

Section 30.317 has been rewritten to better describe the FAB's discretion to return a claim to the district office for the issuance of a new recommended decision before issuing a final decision. This new language is being added so the regulations reflect OWCP's current administrative practice and is not intended to change the substance of the current regulation. Similar minor edits of a non-substantive nature were made to § 30.318(a) and (b). Section 30.318(c) is new and is being added to more fully explain OWCP's existing policy regarding objections to the PoC methodology established by HHS regulations, and to OWCP's application of that methodology. Section 30.319(c), regarding requests for reconsideration of FAB decisions, has been revised to describe current procedures for reviewing these requests, granting or denying them, and determining the effective date of a resulting new final decision. This revision reflects current OWCP practice with no substantive changes intended.

Subpart E—Medical and Related Benefits

This subpart is substantially the same as current subpart E (§§ 30.400 through 30.422), since only minor modifications

were necessary in order to accommodate the addition of approved claims under Part E of EEOICPA to OWCP's existing processes for providing authorized medical benefits and treatment. No changes were made to the sections that describe the processes OWCP uses to refer employees for directed medical examinations, which will also occur in the adjudication of claims under Part E.

Subpart F—Survivors; Payments and Offsets; Overpayments

The overall organization of this subpart is substantially the same as the current subpart F (§§ 30.500 through 30.513), other than the slight modifications that were necessary throughout the subpart to accommodate the addition of approved claims under Part E of EEOICPA to OWCP's existing claims payment processes. The amended subpart also contains regulatory language implementing OWCP's newly granted statutory authority to waive the required recovery of such benefits.

Survivors

The amended versions of §§ 30.500 through 30.502 now identify those persons who may be potentially eligible to receive monetary compensation under Part B and/or Part E, based on their relationship to a deceased covered Part B employee or a deceased covered Part E employee. These sections also highlight the differences in the order of precedence that OWCP must use to determine which eligible surviving beneficiary or beneficiaries to pay under Parts B and E of EEOICPA.

Section 30.500(a)(2) contains the statutory definition of a ''child'' and also includes the more restrictive statutory criteria that an individual must satisfy to be a ''covered'' child under Part E. These criteria for Part E of the Act include the same statutory definition of a ''child'' used in Part B of the Act, as well as specific age, educational or self-sufficiency criteria that must be met as of the date of the deceased Part E employee's death. As amended by this rule, § 30.501 still describes the order of precedence among survivors under EEOICPA; the order of precedence that OWCP must use under Part B now appears without substantive change as § 30.501(a), while new § 30.501(b) describes the order of precedence for Part E survivor claims. It should be noted that survivors who are either grandparents, grandchildren or parents of a deceased Part E employee are not considered eligible surviving beneficiaries of that individual under Part E. Also, the comparable alternative order of precedence provisions in § 30.501(a)(6) for Part B and § 30.501(b)(3) for Part E, which describe those statutorily mandated instances when a surviving spouse must share a lump-sum payment with minor children of the deceased employee, are not triggered under the exact same circumstances—§ 30.501(a)(6) requires that the child of the deceased Part B employee be a minor at the time benefits are paid by OWCP, while § 30.501(b)(3) only requires that the child of the deceased Part E employee satisfy the additional criteria for a ''covered'' child (as described above) as of the time of the death of the employee, not also at the time of payment of benefits by OWCP.

Payments and Offsets

Amended §§ 30.505 through 30.507 and newly added § 30.509 set out the rules for the payment of monetary compensation to claimants under EEOICPA for both Part B and Part E. Although the process for paying claims under both parts of the Act is similar, there are some differences that are reflected in these amended sections. New § 30.505(d) describes the maximum aggregate compensation that is payable under Part E (exclusive of medical benefits), as set forth in 42 U.S.C. 7385s–12. The statute limits the aggregate compensation (other than medical benefits) that OWCP may pay under Part E to all claimants for each individual whose illness or death serves as a basis for compensation or benefits under Part E to a total of $250,000. This is the only reading of the statutory language that is consistent with the statutory requirement that the computation of both impairment benefits and wage-loss benefits under § 7385s–2 be based upon impairment or wage-loss that is ''the result of any covered illness.'' This reading is also consistent with congressional intent, as reflected in the Conference Report for Public Law 108–375, which states that the ''maximum aggregate benefit available under [Part] E of EEOICPA is $250,000.'' *See* H.R. Conf. Rep. No. 108–767, at 894 (2004).

Newly added § 30.509 describes the option that certain claimants under Part E have to choose between receiving the benefits payable to them as a survivor, and the benefits that would have been payable to the deceased covered Part E employee if he or she were still living at the time of payment. This option is contained in 42 U.S.C. 7385s–1(2)(B), and new § 30.509 notes that claimants will only have the opportunity to make this choice in certain limited circumstances. First, a survivor of a covered Part E employee may choose to exercise this option only if the employee died after filing his or her Part E claim (or a claim under former Part D), but prior to receiving any compensation under the Act. In addition, the covered Part E employee's death must have been solely caused by a non-covered illness or illnesses for this option to be available to the survivor. If both of these requirements are met, it is likely that a survivor would choose to receive the benefits that the deceased covered Part E employee would have received since, in that situation, no survivor benefits would be payable for the death. Section 30.509(c) points out, however, that since impairment determinations can only be made in conformance with subpart J of these regulations, and therefore can only be made if the case record contains rationalized medical evidence that is sufficiently detailed to meet the pertinent requirements of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA's *Guides*), OWCP will not make an impairment determination for a deceased covered Part E employee if the medical evidence in the case record does not satisfy those requirements.

Overpayments

Amended §§ 30.510 through 30.512 are substantially the same as the current versions of these sections and continue to describe how OWCP identifies overpayments, notifies individuals that they were overpaid, and together with new §§ 30.513 through 30.520, considers requests by individuals to waive recovery of such overpayments under the new statutory authority granted DOL by Congress in section 7385j–2 of EEOICPA.

New § 30.513 sets out the initial requirement in 42 U.S.C. 7385j–2(b) that only those individuals who were ''without fault'' in the creation of an overpayment of EEOICPA benefits may request waiver of recovery of the overpayment. If the individual satisfies this threshold requirement, new § 30.514 describes the two statutory criteria, also found in section 7385j–2(b), that OWCP will use to evaluate the individual's request for waiver. Waiver of recovery may be granted by OWCP if either: (1) Recovery of the overpayment would defeat the purpose of the EEOICPA; or (2) recovery of the overpayment would be against equity and good conscience. These two criteria are discussed in greater detail in new §§ 30.516 and 30.517, respectively, which set out the general parameters that OWCP will observe when it decides if a request for waiver satisfies either of the two statutory criteria. New § 30.515 also notes that OWCP will not automatically find the individual to be

''without fault'' in the creation of an overpayment simply because OWCP erred in making the payment. Any such error on OWCP's part cannot vitiate the statutory criteria for eligibility to any benefits payable out of the fund established by Congress in section 7384e(d) of the Act.

To enable OWCP to consider requests for waiver of recovery of overpayments, and to set a reasonable schedule for repayment of the overpayment if waiver is denied, new § 30.518 notes that OWCP may require the recipient of an overpayment of compensation to submit pertinent information relating to his or her income, expenses and assets. This same section also notes that a failure to submit this requested information within 30 days of the request from OWCP will result in the denial of any request for waiver of recovery, and that no further requests for waiver will be considered until the requested information is provided to OWCP. New § 30.519 notes that after considering any such evidence or argument submitted in support of a waiver request, OWCP will issue a final decision on the matter of the overpayment, and that the adjudicatory processes described in subpart D will not be used to issue these particular decisions. Since a decision whether to waive recovery of an overpayment is not a decision on an individual's underlying entitlement under the Act and is similar to certain other decisions that OWCP issues (like decisions on medical billing disputes) without using the adjudicatory processes described in subpart D, any such decision will be issued by the OWCP district office with jurisdiction over the claim.

Existing § 30.513 has been modified and now appears as new § 30.520 in this rule. As the former § 30.513 did, this new section notes the statutory authority, independent from EEOICPA, that OWCP has to recover overpayments of EEOICPA benefits. It also notes OWCP's new authority, derived from 42 U.S.C. 7385j–2(a), to recover an overpayment of EEOICPA benefits by decreasing any later benefit payments to which the overpaid individual is entitled.

Subpart G—Special Provisions

This subpart is substantially the same as current subpart G (§§ 30.600 through 30.620), other than the slight modifications that were necessary in order to accommodate the addition of claims under Part E of the Act to the existing regulations governing third party liability, and some minor clarifications of the regulations describing the effect of tort suits against beryllium vendors and atomic weapons employers on claims under Part B of the Act. This subpart also contains a fuller regulatory description of the restrictions on representative fees in sections 7385g and 7385s–9 of EEOICPA, as well as several new sections that describe how OWCP will ''coordinate'' its payment of Part E benefits with benefits received under a state workers' compensation system for the same covered illness or illnesses.

Representation

While §§ 30.600, 30.601 and 30.602 remain substantially the same as in the current rule, § 30.603 has been amended to better describe the fees that may be collected by a representative who assists with an EEOICPA claim. This section also identifies DOJ as the executive branch department with the authority for prosecuting violations of the fee-for-service limitations in the Act. Lastly, amended § 30.603 clarifies the statement in existing § 30.603 that the fee limitations do not apply to representative services rendered in connection with a petition filed with a U.S. District Court or any subsequent appeal.

Coordination of Part E Benefits With State Workers' Compensation Benefits

Section 7385s–11 of EEOICPA requires that Part E benefits be coordinated with state workers' compensation benefits. This reduces the possibility of claimants receiving duplicate payments for the same covered illness. While this provision appears to create tension between it and section 7385 of EEOICPA (now applicable to both Parts B and E), which excludes workers' compensation benefits from the general offset required by that section, OWCP is implementing the provisions of section 7385s–11 in order to effectuate all of the provisions of the recent amendments. Section 7385s–11 provides specific authority to coordinate Part E benefits and amounts received under state workers' compensation laws. OWCP views the more specific authority in that section as taking precedence over the general exclusion in section 7385, because failing to do so would, in effect, negate the enactment of section 7385s–11. New §§ 30.625, 30.626 and 30.627 thus briefly describe how OWCP may coordinate benefits payable under Part E with certain payments the claimant receives under a state workers' compensation program for the same covered illness. Section 30.625 generally discusses what ''coordination of benefits'' means for purposes of administering Part E. Section 30.626 discusses how OWCP will perform this required coordination of benefits, including how it will calculate the amount of any coordination. Section 30.627 indicates that OWCP has sole authority to waive the coordination of benefits, in accordance with the explicit terms of section 7385s–11(b) of the Act, and discusses circumstances that might warrant such a waiver.

Subpart H—Information for Medical Providers

This subpart is substantially the same as current subpart H (§§ 30.700 through 30.726), modified slightly throughout to reflect current forms and billing terminology, and also to accommodate minor changes to OWCP's medical bill processing system. It also contains one change of a substantive nature in § 30.722, which is one of the sections that describes the process OWCP uses to exclude medical providers from participation in the EEOICPA program. The substance of current § 30.722 now appears as subsection (b) of amended § 30.722, and a new subsection (a) has been added to permit medical providers to request subpoenas upon a showing of good cause in exclusion proceedings that involve medical services provided under Part B of EEOICPA. Subpoenas are now available under those particular circumstances, pursuant to the authority granted by new section 7384w in Part B of EEOICPA.

Subpart I—Wage-Loss Determinations Under Part E

Subpart I is new and sets forth the procedures that OWCP uses to determine whether a covered Part E employee sustained wage-loss as a result of contracting a covered illness, and the amount of any such wage-loss that is compensable under Part E of EEOICPA to covered Part E employees, and survivors of deceased covered Part E employees.

General Provisions

Section 30.800 indicates that pursuant to section 7385s–2(a)(2) of EEOICPA, years of wage-loss occurring up to and including the calendar year that a covered Part E employee reaches ''normal retirement age'' may be compensable under Part E. This section further notes that in making these determinations, OWCP is required to make findings regarding the ''average annual wage'' of the covered Part E employee prior to contracting a covered illness, the percentage of such average annual wage the covered Part E employee earned during the alleged subsequent calendar years of wage-loss, and whether the wage-loss during the

years in question was due to the covered illness.

Certain terms used in determining compensation based on wage-loss are defined in the statute or these regulations, and are compiled in § 30.801. *Average annual wage* refers to the baseline wage against which OWCP will measure a subsequent calendar-year wage earned by a covered Part E employee, and is defined in § 30.801(a) the same way that the term is defined in section 7385s–2(a)(2)(A)(ii) of EEOICPA. Given the specific language used in that section of the Act, OWCP will determine that the average annual wage of a covered Part E employee is $0 if he or she was retired during the 12 quarters immediately preceding the quarter during which he or she first experienced wage-loss due to exposure to a toxic substance at a DOE facility or RECA section 5 facility, as appropriate. Section 30.801(b) defines *normal retirement age* as the age at which an employee may receive an unreduced Social Security retirement benefit, which is the same way this statutory term is described in section 7385s–2(a)(2)(A)(iii). That age varies (by date of birth) and is set by section 216(l) of the Social Security Act, 42 U.S.C. 416(l). Because OWCP will make its determinations under this subpart using quarterly periods, many of the regulatory terms used in subpart I refer to quarters of years rather than months. Section 30.801(c) thus defines *quarter* as the three-month period January through March, April through June, July through September, or October through December. Section 30.801(d) indicates that a *quarter during which the employee was unemployed* means any quarter during which the covered Part E employee had $700 (in constant 2005 dollars) or less in wages, unless the quarter is one during which the employee was retired. However, claimants have the opportunity to submit probative factual evidence that the employee was actually unemployed during a time period other than a quarter as defined in § 30.801(c). If probative evidence of unemployment using a time period other than a quarter is submitted, OWCP will decide if, in the sole exercise of its discretion, it should modify its finding regarding the average annual wage of the covered Part E employee.

Finally, § 30.801(e) defines a *year of wage-loss* as a calendar year in which the employee's earnings were less than what OWCP found to be his or her average annual wage, after such earnings have been adjusted by the Consumer Price Index for All Urban Consumers (CPI–U), as established by the Bureau of Labor Statistics, to reflect their value in the year in which the employee first experienced wage-loss due to exposure to a toxic substance at a facility covered by the program. As an example of how this wage adjustment will be made, assume that a covered Part E employee's average annual wage is found to be $50,000 (averaging his wages for the twelve quarters from the last quarter of 1984 through the third quarter of 1987), and that for the calendar year 1987 (the year in which he first experienced wage-loss due to a covered illness during the fourth quarter) the CPI–U is 100. If the employee's subsequent wages in calendar year 1988 did not rise because medical restrictions due to his covered illness forced him to transfer to a lower paying position that paid $45,000 in 1987 and $50,000 in 1988, and the CPI–U for 1988 was 105, OWCP will adjust the employee's 1988 earnings to reflect their value in 1987 by performing the following calculation: $50,000 (in 1988 dollars) ÷1.05 = $47,619 (in 1987 dollars). In that instance, OWCP would conclude that the covered Part E employee had sustained a *year of wage-loss* in 1988 as defined by § 30.801(e) because he earned less in adjusted dollars in 1988 than his average annual wage determined by § 30.801(a), despite the fact that his earnings in 1988 equaled his average annual wage.

Evidence of Wage-Loss

Section 30.805 describes the factual evidence of earnings that OWCP will rely upon to determine the average annual wage of a covered Part E employee, and the duration and extent of such employee's compensable wage-loss. In some situations, OWCP may rely upon earnings information that has been reported to the Social Security Administration, but may also rely upon additional earnings information submitted by or requested from a claimant as described below in connection with § 30.806. Subsection (b) of § 30.805 also indicates that in addition to factual evidence of a covered Part E employee's earnings, the claimant must submit rationalized medical evidence that is of sufficient probative value to establish, to the satisfaction of OWCP, that the period of wage-loss at issue is causally related to the covered Part E employee's covered illness. These two types of evidence are necessary to establish compensable wage-loss under the explicit language of section 7385s–2(a)(2)(A)(iii) of EEOICPA.

As noted in the preceding paragraph, § 30.806 provides claimants with the opportunity to submit factual evidence of earnings from another source that, if it is found by OWCP to be both authentic and acceptable as evidence that was produced in the ordinary course of business due to the covered Part E employee's employment, may be used to support an assertion of a different average annual wage for the covered Part E employee, or a greater duration or extent of wage-loss, than the evidence described in § 30.805(a) would support. If OWCP receives this evidence from a claimant, § 30.806 indicates that OWCP will consider it when it determines, in the exercise of its discretion, the average annual wage and/or wage-loss of the covered Part E employee in accordance with §§ 30.811 and 30.812.

Determinations of Average Annual Wage and Percentages of Loss

After it receives the factual and medical evidence described in §§ 30.805 and 30.806, OWCP will calculate the average annual wage of a covered Part E employee pursuant to the method described in § 30.810. In general, that section notes that OWCP will add up the covered Part E employee's earnings during the 12 quarters prior to the quarter in which the employee first experienced wage-loss due to a covered illness, excluding any quarters during which the employee was unemployed (unless the claimant has submitted sufficient earnings information from a different source), divide that figure by the number of quarters during which the employee was not unemployed, and multiply the result by four to derive his or her average annual wage.

Subsections (a) and (b) of § 30.811 indicate that OWCP will then compare the average annual wage of a covered Part E employee with his or her earnings in later calendar years (after adjusting those earnings in accordance with § 30.801(e)) to ascertain the calendar years during which the employee experienced wage-loss. Subsections (c) and (d) of § 30.811 then provide that OWCP will aggregate the number of calendar years of wage-loss in which the employee's adjusted earnings did not exceed 50 percent of his or her average annual wage, and the number of calendar years of wage-loss in which those earnings exceeded 50 percent but not more than 75 percent of such average annual wage, and will pay the employee $15,000 or $10,000 per calendar year, respectively.

Section 30.812 explains that a covered Part E employee who has been previously awarded compensation for wage-loss may file claims for additional calendar years of wage-loss subsequent to any calendar years for which he or she has already been paid

compensation. Consistent with the statute, this section provides that no compensation for wage-loss will be payable for any calendar year of wage-loss beyond the calendar year in which the employee reached his or her normal retirement age set forth in section 216(l) of the Social Security Act, 42 U.S.C. 416(l).

Special Rules for Certain Survivor Claims Under Part E

Section 30.815 contains the special rules that apply to survivor claims involving wage-loss under Part E of EEOICPA. Subsection (a) indicates that for each calendar year after the calendar year in which a covered Part E employee died, through and including the calendar year in which the employee would have reached his or her normal retirement age, OWCP will presume that the employee earned wages that did not exceed 50 percent of his or her average annual wage. Subsection (b) indicates that except as provided in § 30.815(a), OWCP will calculate the wage-loss of a deceased covered Part E employee in accordance with the provisions of §§ 30.800 through 30.811. Finally, subsection (c) of § 30.815 describes how OWCP will determine if the eligible surviving beneficiary(s) of a deceased covered Part E employee is entitled to receive additional compensation in the amount of either $25,000 or $50,000 based on either ten or 20 aggregate calendar years of wage-loss experienced by the employee, as provided by section 7385s–3(a)(2) or (3) of the Act.

Subpart J—Impairment Benefits Under Part E

This new subpart sets forth the procedures that OWCP uses to determine if a covered Part E employee is entitled to compensation under Part E based on impairment that is the result of a covered illness. It includes provisions describing how OWCP determines the extent of an employee's impairment that is attributable to a covered illness, the submission of medical evidence of impairment, what OWCP considers to be a ratable permanent impairment in certain defined situations, and the potential eligibility of covered Part E employees for additional impairment benefits following an award of impairment benefits by OWCP.

General Provisions

Section 30.900 describes the criteria, set forth in sections 7385s, 7385s–2, 7385s–4 and 7385s–5 of EEOICPA, that an employee must satisfy to qualify for an impairment award under Part E: (1) That he or she is a covered Part E employee found to have contracted a covered illness through exposure to a toxic substance at a DOE facility or RECA section 5 facility, as appropriate; and (2) that he or she has been found by OWCP to have an impairment that is the result of the accepted covered illness.

Section 30.901 describes the general process that OWCP uses, based on section 7385s–2 of the Act, to determine if a covered Part E employee's claim for an alleged impairment attributable to a covered illness is compensable. Subsection (a) indicates that OWCP will consider medical reports from physicians that include opinions regarding the extent of whole person impairment of all organs and body functions compromised by a covered illness, and the extent of such impairment attributable to the employee's covered illness. Subsection (b) provides that OWCP will determine the employee's minimum impairment rating in accordance with the AMA's Guides, based on medical reports from physicians trained to perform these impairment evaluations, and subsection (c) of § 30.901 notes that OWCP will specify criteria that physicians must meet to perform impairment evaluations. Those criteria, which will include certification by a relevant medical board and other objective factors necessary to qualify a physician to perform an impairment evaluation under Part E, will be available to claimants, physicians and members of the public on OWCP's website. Finally, subsection (d) of § 30.901 provides that if one or more percentage points of the minimum impairment rating are found by OWCP to be the result of a covered illness, the employee is entitled to an award based on those percentage points. Section 30.902 describes the formula that OWCP uses to calculate impairment awards, from section 7385s–2(a)(1) of the Act.

Medical Evidence of Impairment

There are two ways that OWCP can obtain an impairment evaluation of a covered Part E employee that is sufficient to permit OWCP to adjudicate impairment benefits. Section 30.905(a) indicates that OWCP can ask the employee to undergo an impairment evaluation performed by a physician who meets the criteria OWCP has identified. Alternatively, subsection (b) of § 30.905 provides that an employee can obtain an impairment evaluation at his or her own initiative and submit it to OWCP for consideration, but notes that OWCP will only deem it appropriate to consider if it satisfies three criteria indicative of probative value: (1) It was performed by a physician who meets the criteria identified by OWCP relating to the covered illness or illnesses in question; (2) it was performed no more than one year prior to the date it was received by OWCP; and (3) it also conforms to all other applicable requirements set out in the regulations in this part.

OWCP will pay for impairment evaluations, except in certain defined circumstances, as indicated in § 30.906. That section also notes that while OWCP will only pay for one impairment evaluation obtained by an employee, it may direct the employee to undergo additional evaluations at its expense if such evaluations are warranted in its discretion.

Section 30.907 describes how the district office evaluates the evidence of impairment in the case record. Subsection (a) notes that the employee may submit arguments and/or additional medical evidence of impairment to challenge an impairment evaluation in the case file at any time before the district office issues a recommended decision on the claim. However, subsection (a) also states that the district office will not consider an additional impairment evaluation, even if it differs from the impairment evaluation provided under §§ 30.905 or 30.906, if the report fails to conform to the criteria listed in § 30.905(b).

Section 30.907(b) notes that in those situations where the district office obtains an additional impairment evaluation of a covered Part E employee that differs from the impairment evaluation that was provided under §§ 30.905 or 30.906, the district office will base the recommended decision on the alleged impairment on the impairment evaluation it considers to have the greatest probative value, including any obtained through a directed examination deemed necessary under §§ 30.410 or 30.411. Section 30.908 addresses the FAB's evaluation of the evidence of impairment in the case record. Consistent with § 30.907(a), which describes how the district office considers medical evidence of impairment, § 30.908(a) notes that if a claimant submits an additional impairment evaluation to the FAB that differs from the impairment evaluation relied upon by the district office, the FAB will not consider the additional impairment evaluation if it fails to satisfy the criteria listed in § 30.905(b). Subsection (b) provides that the claimant has the burden of proving that the additional impairment evaluation submitted is more probative than the evaluation relied upon by the district

office. Subsection (c) of § 30.908 indicates that if a claimant submits an additional impairment evaluation that differs from the impairment evaluation relied upon by the district office, the FAB will review all relevant evidence of impairment in the case record and base its final decision regarding impairment on the evidence it considers most probative.

Ratable Medical Impairments

The Conference Report for Public Law 108–375 suggests that for those impairments for which the AMA's *Guides* do not provide a method to assign a numerical percentage, the Department should devise another method to determine the amount of an impairment award to a covered Part E employee. *See* H.R. Conf. Rep. No. 108–767, at 893 (2004). The language of section 7385s–2(b), however, requires that a minimum impairment rating be determined in accordance with the AMA's *Guides*. In view of the inconsistency between that statutory language and the Conference Report, and the absence of any accepted system for calculating numerical impairment ratings for impairments that the AMA's *Guides* do not provide a method for calculating, OWCP is not doing so in this rulemaking. Thus, § 30.901(a) indicates that an impairment that cannot be assessed quantitatively as a percentage using the AMA's *Guides* will not be included in the impairment award. As an example of when this will occur, subsection (b) of § 30.910 specifically notes that a mental impairment that does not originate from a documented physical dysfunction of the nervous system, and thus cannot be assigned a numerical percentage using the AMA's *Guides*, will not be included in the minimum impairment rating.

Section 30.911(a) is derived from the AMA's *Guides* and indicates that only those impairments that are considered permanent are ''ratable.'' Subsection (a) provides that an impairment resulting from a covered illness will be included in the minimum impairment rating of the covered Part E employee only if OWCP finds that it has reached maximum medical improvement, meaning that the impairment is well-stabilized and thus unlikely to change substantially, with or without additional medical treatment. Subsection (b) of § 30.911, however, indicates that notwithstanding § 30.911(a), if OWCP finds that an employee's covered illness is in the terminal stages based on medical evidence contained in the case record, it will include an impairment that results from such covered illness in the minimum impairment rating of the employee, even if the impairment has not reached maximum medical improvement. OWCP has determined that in such situations, it is not likely that an impairment will undergo any significant improvement, and that the interest of awarding impairment benefits promptly to such employees outweighs the possibility that on occasion, an employee might receive compensation for an impairment resulting from a covered illness in the terminal stages that unexpectedly improves significantly.

Section 30.912 notes that a covered Part E employee who has previously been awarded impairment benefits by OWCP may file a claim for additional impairment benefits based on an increase in the minimum impairment rating attributable to the covered illness or illnesses from the impairment rating that formed the basis for the previous award of such benefits by OWCP. However, this section indicates that OWCP will only adjudicate claims for an increased rating that are filed at least two years from the date of the last award of impairment benefits, since to do otherwise would lead to obvious administrative inefficiencies. However, this waiting period will not apply to a claim for additional impairment that is based on an allegation that the employee contracted a new covered illness.

IV. Paperwork Reduction Act

This interim final rule contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). The information collection requirements set out in §§ 30.401, 30.404, 30.420, 30.421, 30.512, 30.518, 30.700, 30.701 and 30.702 of this rule, which relate to information required to be submitted by claimants and medical providers in connection with processing of bills, and overpaid individuals in connection with overpayments of EEOICPA benefits, were both submitted to and approved by OMB under the PRA, and the currently approved collections in OMB Control Nos. 1215–0054 (expires June 30, 2007), 1215–0055 (expires November 30, 2006), 1215–0137 (expires March 31, 2007), 1215–0144 (expires November 30, 2006), 1215–0176 (expires January 31, 2007), 1215–0193 (expires March 31, 2007) and 1215–0194 (expires March 31, 2007) will be revised to include new respondents added by this rule. The information collection requirements in this first group were not affected by any of the substantive changes that have been made in this rule.

The information collection requirements in §§ 30.100, 30.101, 30.103, 30.111, 30.112, 30.113, 30.114, 30.206, 30.207, 30.212, 30.213, 30.214, 30.215, 30.221, 30.222, 30.226, 30.415, 30.416, 30.417, 30.505 and 30.620 of this rule were also previously submitted to and approved by OMB under the PRA, and were assigned OMB Control No. 1215–0197 (expires August 31, 2007). The information collection requirements in this second group were also not affected by any of the substantive changes that have been made in this rule. However, this rule revises the currently approved collection in OMB Control No. 1215–0197 by adding six new information collection requirements, and also by incorporating the existing requirements in the currently approved collection in OMB Control No. 1215–0199 (expires January 31, 2006); this revision of a currently approved collection will be submitted to OMB for review under the PRA on the date of publication of this rule. The new information collection requirements in this rule are in §§ 30.102, 30.231, 30.232, 30.806, 30.905 and 30.907, and relate to information required to be submitted by either claimants or physicians as part of the EEOICPA claims adjudication process. While the information collection requirements in § 30.106 relating to information to be submitted by current and former DOE contractors and subcontractors, atomic weapons employers, beryllium vendors and other entities in possession of employment data for claimants are not new, they appear for the first time in this rule and will be incorporated into OMB Control No. 1215–0197 in this revision. The Department is proposing to create one new form to implement one of the new collections (see section A below). The remaining new and incorporated collections will be implemented without any specific form, or with a form currently in use in OMB Control No. 1215–0197 (see sections B through I below).

A. Claim for Additional Wage-Loss/Impairment: Form EE–10 (§ 30.102)

Summary: Covered Part E employees who have previously been awarded benefits for wage-loss and/or impairment by OWCP may file claims for additional wage-loss and/or impairment benefits, if they experience another calendar year of wage-loss or an increase in their minimum impairment rating. Claims filed using Form EE–10 must be supported by sufficient factual and/or medical evidence to establish that the claimant is entitled to the benefits at issue, either factual evidence of another calendar year of compensable wage-loss or medical evidence of an

increased minimum impairment rating due to a covered illness or illnesses. All claimants filing Form EE–10 are required to swear or affirm that the information provided on that form is true, and are obligated to inform OWCP of any subsequent changes to that information.

Need: A Form EE–10 claiming for additional wage-loss and/or impairment benefits is necessary to initiate OWCP's adjudication process for these additional claims filed by covered Part E employees.

Respondents and proposed frequency of response: It is estimated that 1,877 respondents annually will file one Form EE–10.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form EE–10 is estimated to take an average of five minutes per respondent for a total annual burden of 156 hours.

B. Alternate Employment Verification Response (§ 30.106)

Summary: Employees and/or survivors claiming benefits under the EEOICPA must establish, among other things, an employment history that includes at least one period of covered employment. To do so, claimants submit either a Form EE–3 listing periods of alleged covered employment, or a Form EE–4 containing basic employment information in situations where specific employment information is not available. If DOE is unable to verify the alleged employment history after reviewing records in its possession, but the alleged history identifies: (1) a beryllium vendor or DOE contractor or subcontractor that has been required by DOE to respond pursuant to 42 U.S.C. 7384v(c); or (2) some other entity in possession of pertinent employment data that has voluntarily agreed to respond, OWCP will ask the beryllium vendor, DOE contractor or subcontractor, or other entity to review data in its files regarding the employee and indicate if that data substantiates any periods of alleged covered employment listed on Form EE–3 or EE–4. This requirement is currently approved in OMB Control No. 1215–0199, and is being incorporated into this revision to an existing collection of information.

Need: A documented history of covered employment is one of the elements that must be met to establish entitlement to benefits under the EEOICPA.

Respondents and proposed frequency of response: It is estimated that 100 respondents annually will submit this collection of information a total of 20 times.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each collection of this information is estimated to take an average of 30 minutes per response for a total annual burden of 1,000 hours.

C. Employment History: Form EE–3 (§ 30.231)

Summary: Employees and/or survivors claiming benefits under Part E of EEOICPA must establish, among other things, an employment history that includes at least one period of covered employment. Form EE–3 has been devised to elicit the basic factual information necessary to enable OWCP to make this particular finding of fact. In Form EE–3, the respondent (the employee or survivor) is asked to provide information with respect to his or her identity and contact information, the employee's identity, and the employee's complete employment history that includes dates of employment, the name and location of employers, position titles and descriptions of work performed, and information regarding any dosimetry badges worn. All respondents will be required to swear or affirm that the information provided on the Form EE–3 is true. Further, the employment history provided on Form EE–3 will be provided to DOE for verification.

Need: Documentation of a history of covered employment is one of the elements that must be met to establish entitlement to benefits under Part E of EEOICPA.

Respondents and proposed frequency of response: It is estimated that 8,176 Part E respondents annually will file one Form EE–3.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form EE–3 is estimated to take an average of 1 hour per response for a total added annual burden of 8,176 hours.

D. Employment History Affidavit: Form EE–4 (§ 30.231)

Summary: As noted in section C above, employees and/or survivors claiming benefits under Part E of EEOICPA must establish, among other things, an employment history that includes at least one period of covered employment. In situations where the use of Form EE–3 may not be practicable (*e.g.*, due to a lack of available information), Form EE–4 may be used as an alternate method to provide OWCP with a basic employment history by affidavit. In Form EE–4, the respondent (someone other than the employee or survivor) is asked to provide information as to his or her identity and relationship to the employee, the employee's identity, and the employee's employment history that includes dates of employment, name and location of employers, descriptions of work performed, and an explanation of the basis for the employment history provided. All respondents will be required to swear or affirm that the factual information provided on the Form EE–4 is true. Further, the employment history provided on Form EE–4 will be provided to DOE or other entities for verification.

Need: Documentation of a history of covered employment is one of the elements that must be met to establish entitlement to benefits under Part E of EEOICPA.

Respondents and proposed frequency of response: It is estimated that 2,044 Part E respondents annually will file one Form EE–4.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each Form EE–4 is estimated to take an average of 30 minutes per response for a total added annual burden of 1,022 hours.

E. Medical Requirements: Form EE–7 (§ 30.232(a) and (b))

Summary: Employees and/or survivors claiming benefits under Part E of EEOICPA (except for those who have received an award under section 5 of RECA) must establish, among other things, that the employee sustained a covered illness. Form EE–7 has been devised to elicit the type of medical and occupational evidence (prepared by medical providers) needed to enable OWCP to make this particular finding of fact. Claimants may also be required to submit additional medical and occupational evidence (prepared by medical providers) as necessary. Form EE–7 describes the general requirements for medical evidence submitted in support of a claim for a covered illness under Part E of EEOICPA.

Need: Documentation of a covered illness is one of the elements that must be met to establish entitlement to benefits under Part E of EEOICPA.

Respondents and proposed frequency of response: It is estimated that 8,176 Part E respondents annually will file one response to Form EE–7.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the

data needed, and complete and review each collection of this information is estimated to take an average of 15 minutes per response for a total added annual burden of 2,044 hours.

F. Supplemental Medical Evidence (§ 30.232(c))

Summary: Employees and/or survivors claiming that an injury, illness, impairment or disability was sustained as a consequence of a covered illness under Part E must submit a narrative medical report from a physician that shows a causal relationship between the claimed consequential injury, illness, impairment or disability and the covered illness. A standardized form or format will not be used to request submission of this information, which will be collected on an as-needed basis.

Need: Medical evidence of causal relationship is necessary to establish entitlement to benefits for a consequential injury, illness, impairment or disability under EEOICPA.

Respondents and proposed frequency of response: It is estimated that 1,500 Part E respondents annually will submit this collection of information once.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each collection of this information is estimated to take an average of 15 minutes per response for a total added annual burden of 375 hours.

G. Alternative Wage-Loss Evidence (§ 30.806)

Summary: OWCP may use wage data from the Social Security Administration and/or other third parties to make findings regarding the average annual wage and the nature and extent of compensable wage-loss of a covered Part E employee. If a claimant disagrees with the use of that data to make these findings, he or she may voluntarily submit records that were produced in the ordinary course of business due to the employee's employment and try to persuade OWCP that Social Security Administration or other wage data should not be used to make the findings in question. A standardized form or format will not be used to collect this information, which will vary widely among respondents and occur only occasionally.

Need: OWCP must have alternative wage-loss evidence of sufficient probative value before it can calculate benefits payable for wage-loss experienced by a covered Part E employee.

Respondents and proposed frequency of response: It is estimated that 800 respondents annually will submit this collection of information once.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each collection of this information is estimated to take an average of 30 minutes per response for a total annual burden of 400 hours.

H. Medical Evidence of Impairment (§ 30.905)

Summary: OWCP must obtain contemporaneous medical evidence from a physician experienced in evaluating permanent impairment before it can determine the impairment rating of a covered Part E employee. If the medical evidence that is already in the case record does not meet these criteria when this stage in the claims adjudication process is reached, OWCP will inform the claimant of this deficiency and request that he submit medical evidence sufficient for it to determine his overall impairment rating, and the number of percentage points of his rating that are attributable to his covered illness or illnesses. Since requests for an impairment evaluation will necessarily be illness-specific, a standardized form or format cannot be used to request this information.

Need: An impairment evaluation that meets OWCP's criteria must be in the case record before OWCP can determine the number of percentage points that are payable.

Respondents and proposed frequency of response: It is estimated that 1,453 respondents annually will submit this collection of information once.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each collection of this information is estimated to take an average of 15 minutes per response for a total annual burden of 363 hours.

I. Additional Medical Evidence of Impairment (§ 30.907)

Summary: After the district office receives an impairment evaluation that meets its criteria for compensating covered Part E employees, but before it issues a recommended decision on a claimant's impairment rating, the claimant may, on his own initiative and at his own cost, obtain additional medical impairment evidence supporting a higher rating and submit it to the district office for its consideration if it too meets the same criteria. A standardized form or format cannot be used to request this particular type of information because the impairment evaluation that it seeks to rebut will necessarily be specific to a particular employee.

Need: Claimants may wish to submit additional impairment evidence that shows a higher rating before OWCP determines the number of compensable percentage points that are payable.

Respondents and proposed frequency of response: It is estimated that 218 respondents annually will submit this collection of information once.

Estimated total annual burden: The time required to review instructions, search existing data sources, gather the data needed, and complete and review each collection of this information is estimated to take an average of 15 minutes per response for a total annual burden of 55 hours.

J. Total Annual Burden and Request for Comments

Total public burden: The information collection requirements being either added to or incorporated into OMB Control No. 1215–0197 (described above in sections A through I) have a total public burden hour estimate of 13,591. Using the latest National average hourly earnings $15.95 (from the Bureau of Labor Statistics), the total added annual public cost for these information collection requirements is estimated to be $216,776. There are no recordkeeping or collection costs associated with Form EE–10. Because the information requested by the collections described in sections B through I is kept as a usual and customary business practice, there is no additional recordkeeping or collection cost associated with those collections. The only operation and maintenance cost will be for postage and mailing. An estimated 50% of the EE–10 forms will involve postage and mailing costs; the remainder will be received directly by DOL personnel or contractors. The EE–3 form always accompanies the initial claim form filed, therefore no additional postage or mailing is required. An estimated annual total of 17,130 mailed responses to these information collection requirements, at $0.37 (for postage) + $0.03 (for an envelope) per response, would be $6,852.

Request for comments: The public is invited to provide comments on the above-noted revision to the currently approved collection in OMB Control No. 1215–0197 so that the Department may:

(1) Evaluate whether the proposed collections of information are 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 estimates of the burdens of the collections of information, including the validity of the methodology and assumptions used;

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

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

Send comments regarding this burden estimate, or any other aspect of this revision to the currently approved collection in OMB Control No. 1215–0197, including suggestions for reducing this burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards Administration, Washington, DC 20503 no later than July 8, 2005.

V. Statutory Authority

Section 7384d of EEOICPA provides general statutory authority, which E.O. 13179 allocates to the Secretary, to prescribe rules and regulations necessary for administration of Part B of the Act. Section 7385s–10 provides the Secretary with the general statutory authority to administer Part E of the Act. Sections 7384t, 7384u and 7385s–8 provide the specific authority regarding medical treatment and care, including authority to determine the appropriateness of charges. The Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*), authorizes imposition of interest charges and collection of debts by withholding funds due the debtor.

VI. Executive Order 12866

This rule is being treated as a ''significant regulatory action,'' within the meaning of E.O. 12866, because it is ''economically significant'' as defined by section 3(f)(1) of that Order. The payment of the benefits provided for by EEOICPA through the program administered pursuant to this regulatory action has an annual effect on the economy of $100 million or more. However, this rule does not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, as defined by section 3(f)(1) of E.O. 12866. This rule is also a ''significant regulatory action'' because it meets the criteria of section 3(f)(4) of that Order in that it raises novel or legal policy issues arising out of the legal mandate established by EEOICPA. The Department of Labor has also concluded that this rule constitutes a ''major rule,'' as that term is defined in the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(2)), because of the effect on the economy noted above.

Based on the factors and assumptions set forth below, DOL's estimate of the aggregate cost of benefits and administrative expenses of this regulatory action implementing Part B and Part E of EEOICPA is, in millions of dollars:

	FY2005	FY2006	FY2007	FY2008	FY2009
Admin	$90	$156	$102	$77	$63
Benefits	1,025	760	593	468	424

The Department's estimate of the benefits to be paid pursuant to EEOICPA and of the administrative costs of providing those benefits is based on program experience to date, data collected from other federal agencies, assumptions about the incidence of cancer, covered beryllium disease, chronic silicosis and other covered illnesses in the claimant population, life expectancy tables, dose reconstruction acceptance rates, Physician Panel acceptances under the former Part D of the Act, the anticipated distribution of benefit amounts, and its experience in estimating administrative and medical costs of workers' compensation programs.

For Part B benefits, estimates for cancer claims are based in part on figures provided by DOE concerning the number of DOE and DOE contractor employees (estimated by DOE to be approximately 654,000 since 1942), known cancer incidence rates in the general population obtained from the National Cancer Institute (the lifetime risk of being diagnosed with cancer is 45.67% for men and 38.09% for women for all body locations [1]), and the proportion of these claims likely to be accepted by OWCP. These benefit estimates include anticipated medical costs of $1,500 per year for 90% of the covered Part B employees, and $125,000 per year for the remaining 10% because they are undergoing intensive in-hospital medical treatment.

Part B benefit estimates for beryllium exposure are based on known incidence rates, known numbers of claimants with beryllium diseases, exposed population estimates (approximately 45,000 beryllium vendor employees, and several hundred thousand additional employees at DOE facilities), and medical costs of $3,000 per year for beryllium sensitivity, $4,000 per year for mild chronic beryllium disease, and $9,000 per year for severe chronic beryllium disease. Benefit estimates for chronic silicosis are based on figures obtained from DOE relating to the number of exposed employees (approximately 15,000 miners were employed digging tunnels in either Nevada or Alaska related to nuclear testing) and the expected incidence of chronic silicosis, and medical costs of $4,000 per year for mild chronic silicosis, and $9,000 per year for severe chronic silicosis. Benefit estimates for claims that require receipt of an award pursuant to section 5 of RECA are based on figures for the number of claims provided by DOJ, and $4,800 per year in medical costs.

Part E benefit estimates for covered Part E employees are based on the proportion of overlap between Part B and Part E claims (95% of Part E claimants also have filed a Part B claim), the historical dose reconstruction approval rate (since the inception of Part B, OWCP has accepted 23% of the 5,658 non-SEC cancer cases adjudicated to date), the historical Physician Panel approval rate under the former Part D (35%) and the number of Special Exposure Cohort claims approved by OWCP. The benefit amounts (which are not uniform as is the case in Part B awards) are calculated based on an estimated distribution of claims with varying degrees of compensable impairment and wage-loss. Additional Part E benefits for individuals who are considered to be eligible RECA section

[1] From Table I–14, *Lifetime Risk (Percent) of Being Diagnosed with Cancer by Site, Race and Sex,* in the SEER Cancer Statistics Review 1975–2000, published by the National Cancer Institute.

5 uranium workers are computed based upon the number of such claims received to date and the expected number of such claims in the future.

Administrative cost estimates were developed based upon OWCP's experience to date in administering Part B and the other workers' compensation programs that fall within its area of administrative responsibility, using calculations of the number of incoming claims and forecasting the necessary full-time equivalents and other resources that are necessary to efficiently administer the program.

No more extensive economic impact analysis of this rule is necessary because this regulatory action only addresses the transfer of funds from the federal government to individuals who qualify under EEOICPA and to providers of medical services in that program. This regulatory action has no affect on the functioning of the economy and private markets, on the health and safety of the general population, or on the natural environment. In addition, because this rule implements a statutory mandate, there are no feasible alternatives to this regulatory action. Finally, to the extent that policy choices have been made in interpreting statutory terms, those choices have no significant impact on the cost of this regulatory action. Such policy choices may affect who will be entitled to receive benefits (such as covered Part E employees with unratable impairments due to a covered illness), but will not have a significant impact on the number of eligible Part B or E beneficiaries or the level of benefits to which they are entitled.

OMB has reviewed the rule for consistency with the President's priorities and the principles set forth in E.O. 12866.

VII. Small Business Regulatory Enforcement Fairness Act

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report to Congress promulgation of this Interim Final Rule on the date of its publication in the **Federal Register**. The report will state that DOL has concluded that this rule is a ''major rule'' because it will likely result in an annual effect on the economy of $100 million or more.

VIII. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of federal regulatory actions on state, local, and tribal governments, and the private sector, ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this rule does not include any federal mandate that may result in increased annual expenditures in excess of $100 million by state, local or tribal governments in the aggregate, or by the private sector.

IX. Regulatory Flexibility Act

The Department believes that this rule will have ''no significant economic impact upon a substantial number of small entities'' within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The provisions of this rule that apply cost-control measures to payments for medical expenses are the only ones that could have a monetary effect on small businesses, and have been in effect since OWCP began administration of Part B of EEOICPA on July 31, 2001. The economic effect of these cost-control measures will not be significant for a substantial number of those businesses who will now participate in the program under Part E of EEOICPA, however, because no one business bills a significant amount to OWCP for EEOICPA-related services, and the monetary effect on bills that are submitted, while a worthwhile savings for the Government in the aggregate, will not be significant for any individual business affected.

The cost-control provisions are: (1) A set schedule of maximum allowable fees for professional medical services; (2) A set schedule for payment of pharmacy bills; and (3) a prospective payment system for hospital inpatient services. The methodologies used for the first two of these provisions were explained in the text of the preamble to the earlier regulatory actions that implemented EEOICPA in 2001 (66 FR 28948) and 2002 (67 FR 78874), which essentially adopted payment systems that are prevalent in the industry. Their adoption for use in connection with OWCP's administration of Part E of the Act will therefore result in continued efficiencies for the Government and providers. The Government will benefit because OWCP did not develop new cost containment measures for Part E claims, but rather adopted existing and well-recognized measures that were already in place. The providers benefit because submitting a bill and receiving a payment will be almost the same as submitting it to Medicare, a program with which they are already familiar and have existing systems in place for billing—they will not have to incur unnecessary administrative costs to learn a new process because the EEOICPA bill process for Part E claims will be identical to the bill process that applies to Part B claims, and will not be readily distinguishable from the Medicare billing process. Similarly, pharmacies are familiar with billing through clearing houses and having their charges subject to limits by private insurance carriers. By adopting private sector uniform billing requirements and a familiar cost control methodology, OWCP has not altered the billing environment with which pharmacies are already familiar. The methods chosen, therefore, represent systems familiar to the providers. The third of these three provisions will not have an effect on a substantial number of ''small entities'' under Small Business Administration (SBA) standards, since most hospitals providing services for medical conditions covered by EEOICPA will have annual receipts that exceed the set maximum.

The implementation of these cost-control methods will have no significant effect on any single medical professional or pharmacy since they are already used by Medicare, CHAMPUS, and the Departments of Labor and Veterans Affairs, among Government entities, and by private insurance carriers. In actual terms, the amount by which these provider bills might be reduced will not have a significant impact on any one small entity since these charges are currently being processed by other payers applying similar cost-control provisions. The costs to providers whose charges may be reduced also will be relatively small because EEOICPA bills simply will not represent a large share of any single provider's total business. Since the small universe of potential claimants is spread across the United States and this bill processing system will cover only those employees who have sustained an occupational illness or a covered illness and required medical treatment on or after October 30, 2000, the number of bills submitted by any one small entity which may be subject to these provisions is likely to be very small. Therefore, the ''cost'' of this rule to any one pharmacy or medical professional will be negligible. On the other hand, OWCP will see substantial aggregate cost savings that will benefit both OWCP (by strengthening the integrity of the program) and the taxpayers to whom the costs of the program are eventually charged.

The Assistant Secretary for Employment Standards has certified to the Chief Counsel for Advocacy of the SBA that this rule will not have a significant impact on a substantial number of small entities. The factual basis for this certification has been

provided above. Accordingly, no regulatory impact analysis is required.

X. Executive Order 12988 (Civil Justice Reform)

This rule has been drafted and reviewed in accordance with E.O. 12988 and will not unduly burden the federal court system. While Part B of EEOICPA does not provide any specific procedures that claimants under that Part must follow in order to seek review of decisions on their claims, Part E specifies that claimants under that Part have 60 days to file petitions for review of decisions on their claims in the United States district courts, and mandates the use of an ''arbitrary and capricious'' standard of review. It is reasonably likely that some EEOICPA claimants will seek review of adverse decisions in United States district courts pursuant to the APA (for claims under Part B of EEOICPA) or the EEOICPA itself (for claims under Part E). This rule should help minimize the burden placed on the courts by litigation seeking to challenge decisions under EEOICPA by providing claimants with an opportunity to seek administrative review of adverse decisions prior to resorting to the court system, and by providing a clear legal standard for affected conduct. The rule has been reviewed carefully to eliminate drafting errors and ambiguities.

XI. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with E.O. 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

XII. Executive Order 13045 (Protection of Children From Environmental, Health Risks and Safety Risks)

In accordance with E.O. 13045, the Department has evaluated the environmental health and safety effects of this rule on children, and has determined that it will have no effect on children.

XIII. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with E.O. 13211, the Department has evaluated the effects of this rule on energy supply, distribution or use, and has determined that it is not likely to have a significant adverse effect on them.

XIV. Submission to Congress and the General Accountability Office

In accordance with the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act, the Department will submit to each House of the Congress and to the Comptroller General a report regarding the issuance of this interim final rule on the date of its publication in the **Federal Register**. The report will note that this rule constitutes a ''major rule'' as defined by 5 U.S.C. 804(2).

Under the Congressional Review Act, major rules generally cannot take effect until 60 days after the rule is published in the **Federal Register**. However, section 808(2) of the Congressional Review Act states that agencies may waive this 60-day requirement for ''good cause'' and establish an earlier effective date. As explained above, the Department believes that there is ''good cause'' for waiver of the APA requirement for notice and comment rulemaking because it would be both impractical and contrary to the public interest for the Department to fulfill that requirement. Similarly, the Department believes that the ''good cause'' exception to the 60-day effective date requirement for major rules in the Congressional Review Act applies to this rule, because observing this requirement would be both impractical and contrary to the public interest. As noted above, DOL will not be able to fully adjudicate claims under Part E of EEOICPA until the regulations in this rule are in effect. Since Congress has directed DOL to commence administration of Part E no later than May 26, 2005 in section 7385–10(f)(1) of EEOICPA, DOL believes that ''good cause'' exists for waiver of the usual 60-day effective date requirement for all ''major'' rules, and for this rule to become effective immediately upon the date of its publication in the **Federal Register**.

XV. Catalog of Federal Domestic Assistance Number

This program is not listed in the Catalog of Federal Domestic Assistance.

List of Subjects

20 CFR Part 1

Administrative practice and procedure, Claims, Government employees, Labor, Workers' compensation.

20 CFR Part 30

Administrative practice and procedure, Cancer, Chemicals, Claims, Kidney diseases, Leukemia, Lung diseases, Miners, Radioactive materials, Tort claims, Underground mining, Uranium, Workers' compensation.

Text of the Rule

■ For the reasons set forth in the preamble, 20 CFR Chapter 1 is amended as follows:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

■ 1. Part 1 is revised to read as follows:

PART 1—PERFORMANCE OF FUNCTIONS UNDER THIS CHAPTER

Sec.

1.1 Under what authority was the Office of Workers' Compensation Programs established?
1.2 What functions are assigned to OWCP?
1.3 What rules are contained in this chapter?
1.4 Where are other rules concerning OWCP functions found?
1.5 When was the former Bureau of Employees' Compensation abolished?
1.6 How were many of OWCP's current functions administered in the past?

Authority: 5 U.S.C. 301, 8145 and 8149 (Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949–1953 Comp., p. 1004, 64 Stat. 1263); 42 U.S.C. 7384d and 7385s–10; Executive Order 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321; Secretary of Labor's Order No. 13–71, 36 FR 8155; Employment Standards Order No. 2–74, 39 FR 34722.

§ 1.1 Under what authority was the Office of Workers' Compensation Programs established?

The Assistant Secretary of Labor for Employment Standards, by authority vested in him by the Secretary of Labor in Secretary's Order No. 13–71, 36 FR 8755, established in the Employment Standards Administration an Office of Workers' Compensation Programs (OWCP) by Employment Standards Order No. 2–74, 39 FR 34722. The Assistant Secretary subsequently designated as the head thereof a Director who, under the general supervision of the Assistant Secretary, administers the programs assigned to OWCP by the Assistant Secretary.

§ 1.2 What functions are assigned to OWCP?

The Assistant Secretary of Labor for Employment Standards has delegated authority and assigned responsibility to the Director of OWCP for the Department of Labor's programs under the following statutes:

(a) The Federal Employees' Compensation Act, as amended and extended (5 U.S.C. 8101 *et seq.*), except 5 U.S.C. 8149 as it pertains to the Employees' Compensation Appeals Board.

(b) The War Hazards Compensation Act (42 U.S.C. 1701 *et seq.*).

(c) The War Claims Act (50 U.S.C. App. 2003).

(d) The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (42 U.S.C. 7384 *et seq.*), except activities, pursuant to Executive Order 13179 (''Providing Compensation to America's Nuclear Weapons Workers'') of December 7, 2000, assigned to the Secretary of Health and Human Services, the Secretary of Energy and the Attorney General.

(e) The Longshore and Harbor Workers' Compensation Act, as amended and extended (33 U.S.C. 901 *et seq.*), except: 33 U.S.C. 919(d) with respect to administrative law judges in the Office of Administrative Law Judges; 33 U.S.C. 921(b) as it pertains to the Benefits Review Board; and activities, pursuant to 33 U.S.C. 941, assigned to the Assistant Secretary of Labor for Occupational Safety and Health.

(f) The Black Lung Benefits Act, as amended (30 U.S.C. 901 *et seq.*).

§ 1.3 What rules are contained in this chapter?

The rules in this chapter are those governing the OWCP functions under the Federal Employees' Compensation Act, the War Hazards Compensation Act, the War Claims Act and the Energy Employees Occupational Illness Compensation Program Act of 2000.

§ 1.4 Where are other rules concerning OWCP functions found?

(a) The rules of the OWCP governing its functions under the Longshore and Harbor Workers' Compensation Act and its extensions are set forth in subchapter A of chapter VI of this title.

(b) The rules of the OWCP governing its functions under the Black Lung Benefits Act program are set forth in subchapter B of chapter VI of this title.

(c) The rules and regulations of the Employees' Compensation Appeals Board are set forth in chapter IV of this title.

(d) The rules and regulations of the Benefits Review Board are set forth in chapter VII of this title.

§ 1.5 When was the former Bureau of Employees' Compensation abolished?

By Secretary of Labor's Order issued September 23, 1974, 39 FR 34723, issued concurrently with Employment Standards Order 2–74, 39 FR 34722, the Secretary revoked the prior Secretary's Order No. 18–67, 32 FR 12979, which had delegated authority and assigned responsibility for the various workers' compensation programs enumerated in § 1.2, except the Black Lung Benefits Program and the Energy Employees Occupational Illness Compensation Program not then in existence, to the Director of the former Bureau of Employees' Compensation.

§ 1.6 How were many of OWCP's current functions administered in the past?

(a) Administration of the Federal Employees' Compensation Act and the Longshore and Harbor Workers' Compensation Act was initially vested in an independent establishment known as the U.S. Employees' Compensation Commission. By Reorganization Plan No. 2 of 1946 (3 CFR, 1943–1949 Comp., p. 1064; 60 Stat. 1095, effective July 16, 1946), the Commission was abolished and its functions were transferred to the Federal Security Agency to be performed by a newly created Bureau of Employees' Compensation within such Agency. By Reorganization Plan No. 19 of 1950 (15 FR 3178, 3 CFR, 1949–1954 Comp., page 1010, 64 Stat. 1271), said Bureau was transferred to the Department of Labor (DOL), and the authority formerly vested in the Administrator, Federal Security Agency, was vested in the Secretary of Labor. By Reorganization Plan No. 6 of 1950 (15 FR 3174, 3 CFR, 1949–1953 Comp., page 1004, 64 Stat. 1263), the Secretary of Labor was authorized to make from time to time such provisions as he shall deem appropriate, authorizing the performance of any of his functions by any other officer, agency, or employee of the DOL.

(b) In 1972, two separate organizational units were established within the Bureau: an Office of Workmen's Compensation Programs (37 FR 20533) and an Office of Federal Employees' Compensation (37 FR 22979). In 1974, these two units were abolished and one organizational unit, the Office of Workers' Compensation Programs, was established in lieu of the Bureau of Employees' Compensation (39 FR 34722).

■ 2. Subchapter C consisting of Part 30 is revised to read as follows:

SUBCHAPTER C—ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000

PART 30—CLAIMS FOR COMPENSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000, AS AMENDED

Subpart A—General Provisions

Introduction

Sec.
30.0 What are the provisions of the EEOICPA, in general?
30.1 What rules govern the administration of the EEOICPA and this chapter?
30.2 In general, how have the tasks associated with the administration of the EEOICPA claims process been assigned?
30.3 What do these regulations contain?

Definitions

30.5 What are the definitions used in this part?

Information in Program Records

30.10 Are all OWCP records relating to claims filed under the EEOICPA considered confidential?
30.11 Who maintains custody and control of claim records?
30.12 What process is used by a person who wants to obtain copies of or amend EEOICPA claim records?

Rights and Penalties

30.15 May EEOICPA benefits be assigned, transferred or garnished?
30.16 What penalties may be imposed in connection with a claim under the Act?
30.17 Is a beneficiary who defrauds the government in connection with a claim for EEOICPA benefits still entitled to those benefits?

Subpart B—Filing Claims; Evidence and Burden of Proof; Special Procedures for Certain Cancer Claims

Filing Claims for Benefits Under EEOICPA

30.100 In general, how does an employee file an initial claim for benefits?
30.101 In general, how is a survivor's claim filed?
30.102 In general, how does an employee file a claim for additional impairment or wage-loss under Part E of EEOICPA?
30.103 How does a claimant make sure that OWCP has the evidence necessary to process the claim?

Verification of Alleged Employment

30.105 What must DOE do after an employee or survivor files a claim?
30.106 Can OWCP request employment verification from other sources?

Evidence and Burden of Proof

30.110 Who is entitled to compensation under the Act?
30.111 What is the claimant's responsibility with respect to burden of proof, production of documents, presumptions, and affidavits?
30.112 What kind of evidence is needed to establish covered employment and how will that evidence be evaluated?
30.113 What are the requirements for written medical documentation, contemporaneous records, and other records or documents?
30.114 What kind of evidence is needed to establish a covered medical condition and how will that evidence be evaluated?

Special Procedures for Certain Radiogenic Cancer Claims

30.115 For those radiogenic cancer claims that do not seek benefits under Part B of the Act pursuant to the Special Exposure

Cohort provisions, what will OWCP do once it determines that an employee contracted cancer?

Subpart C—Eligibility Criteria

General Provisions

30.200 What is the scope of this subpart?

Eligibility Criteria for Claims Relating to Covered Beryllium Illness Under Part B of EEOICPA

30.205 What are the criteria for eligibility for benefits relating to beryllium illnesses covered under Part B of EEOICPA?
30.206 How does a claimant prove that the employee was a ''covered beryllium employee'' exposed to beryllium dust, particles or vapor in the performance of duty?
30.207 How does a claimant prove a diagnosis of a beryllium disease covered under Part B?

Eligibility Criteria for Claims Relating to Radiogenic Cancer Under Parts B and E of EEOICPA

30.210 What are the criteria for eligibility for benefits relating to radiogenic cancer?
30.211 How does a claimant establish that the employee has or had contracted cancer?
30.212 How does a claimant establish that the employee contracted cancer after beginning employment at a DOE facility, an atomic weapons employer facility or a RECA section 5 facility?
30.213 How does a claimant establish that the radiogenic cancer was at least as likely as not related to employment at the DOE facility, the atomic weapons employer facility, or the RECA section 5 facility?
30.214 How does a claimant establish that the employee is a member of the Special Exposure Cohort?
30.215 How does a claimant establish that the employee has sustained an injury, illness, impairment or disease as a consequence of a diagnosed cancer?

Eligibility Criteria for Claims Relating to Chronic Silicosis Under Part B of EEOICPA

30.220 What are the criteria for eligibility for benefits relating to chronic silicosis?
30.221 How does a claimant prove exposure to silica in the performance of duty?
30.222 How does a claimant establish that the employee has been diagnosed with chronic silicosis or has sustained a consequential injury, illness, impairment or disease?

Eligibility Criteria for Certain Uranium Employees Under Part B of EEOICPA

30.225 What are the criteria for eligibility for benefits under Part B of EEOICPA for certain uranium employees?
30.226 How does a claimant establish that a covered uranium employee has sustained a consequential injury, illness, impairment or disease?

Eligibility Criteria for Other Claims Under Part E of EEOICPA

30.230 What are the criteria necessary to establish that an employee contracted a covered illness under Part E of EEOICPA?
30.231 How does a claimant prove employment-related exposure to a toxic substance at a DOE facility or a RECA section 5 facility?
30.232 How does a claimant establish that the employee has been diagnosed with a covered illness, or sustained an injury, illness, impairment or disease as a consequence of a covered illness?

Subpart D—Adjudicatory Process

30.300 What process will OWCP use to decide claims for entitlement and to provide for administrative review of those decisions?
30.301 May subpoenas be issued for witnesses and documents in connection with a claim under Part B of EEOICPA?
30.302 Who pays the costs associated with subpoenas?
30.303 What information may OWCP request in connection with a claim under Part E of EEOICPA?

Recommended Decisions on Claims

30.305 How does OWCP determine entitlement to EEOICPA compensation?
30.306 What does the recommended decision contain?
30.307 To whom is the recommended decision sent?

Hearings and Final Decisions on Claims

30.310 What must the claimant do if he or she objects to the recommended decision or wants to request a hearing?
30.311 What happens if the claimant does not object to the recommended decision or request a hearing within 60 days?
30.312 What will the FAB do if the claimant objects to the recommended decision but does not request a hearing?
30.313 How is a review of the written record conducted?
30.314 How is a hearing conducted?
30.315 May a claimant postpone a hearing?
30.316 How does the FAB issue a final decision on a claim?
30.317 Can the FAB request a further response from the claimant or return a claim to the district office?
30.318 Can the FAB consider objections to HHS's reconstruction of a radiation dose or to the guidelines OWCP uses to determine if a claimed cancer was at least as likely as not related to employment?
30.319 May a claimant request reconsideration of a final decision of the FAB?

Reopening Claims

30.320 Can a claim be reopened after the FAB has issued a final decision?

Subpart E—Medical and Related Benefits

Medical Treatment and Related Issues

30.400 What are the basic rules for obtaining medical treatment?
30.401 What are the special rules for the services of chiropractors?
30.402 What are the special rules for the services of clinical psychologists?
30.403 Will OWCP pay for the services of an attendant?
30.404 Will OWCP pay for transportation to obtain medical treatment?
30.405 After selecting a treating physician, may an employee choose to be treated by another physician instead?
30.406 Are there any exceptions to these procedures for obtaining medical care?

Directed Medical Examinations

30.410 Can OWCP require an employee to be examined by another physician?
30.411 What happens if the opinion of the physician selected by OWCP differs from the opinion of the physician selected by the employee?
30.412 Who pays for second opinion and referee examinations?

Medical Reports

30.415 What are the requirements for medical reports?
30.416 How and when should medical reports be submitted?
30.417 What additional medical information may OWCP require to support continuing payment of benefits?

Medical Bills

30.420 How should medical bills and reimbursement requests be submitted?
30.421 What are the time frames for submitting bills and reimbursement requests?
30.422 If an employee is only partially reimbursed for a medical expense, must the provider refund the balance of the amount paid to the employee?

Subpart F—Survivors; Payments and Offsets; Overpayments

Survivors

30.500 What special statutory definitions apply to survivors under EEOICPA?
30.501 What order of precedence will OWCP use to determine which survivors are entitled to receive compensation under EEOICPA?
30.502 When is entitlement for survivors determined for purposes of EEOICPA?

Payment of Claims and Offset for Certain Payments

30.505 What procedures will OWCP follow before it pays any compensation?
30.506 To whom and in what manner will OWCP pay compensation?
30.507 What compensation will be provided to covered Part B employees who only establish beryllium sensitivity under Part B of EEOICPA?
30.508 What is beryllium sensitivity monitoring?
30.509 Under what circumstances may a survivor claiming under Part E of the Act choose to receive the benefits that would otherwise be payable to a covered Part E employee who is deceased?

Overpayments

30.510 How does OWCP notify an individual of a payment made on a claim?
30.511 What is an ''overpayment'' for purposes of EEOICPA?
30.512 What does OWCP do when an overpayment is identified?

30.513 Under what circumstances may OWCP waive recovery of an overpayment?
30.514 If OWCP finds that the recipient of an overpayment was not at fault, what criteria are used to decide whether to waive recovery of it?
30.515 Is a recipient responsible for an overpayment that resulted from an error made by OWCP?
30.516 Under what circumstances would recovery of an overpayment defeat the purpose of the Act?
30.517 Under what circumstances would recovery of an overpayment be against equity and good conscience?
30.518 Can OWCP require the recipient of the overpayment to submit additional financial information?
30.519 How does OWCP communicate its final decision concerning recovery of an overpayment?
30.520 How are overpayments collected?

Subpart G—Special Provisions

Representation

30.600 May a claimant designate a representative?
30.601 Who may serve as a representative?
30.602 Who is responsible for paying the representative's fee?
30.603 Are there any limitations on what the representative may charge the claimant for his or her services?

Third Party Liability

30.605 What rights does the United States have upon payment of compensation under EEOICPA?
30.606 Under what circumstances must a recovery of money or other property in connection with an illness for which benefits are payable under EEOICPA be reported to OWCP?
30.607 How is a structured settlement (that is, a settlement providing for receipt of funds over a specified period of time) treated for purposes of reporting the recovery?
30.608 How does the United States calculate the amount to which it is subrogated?
30.609 Is a settlement or judgment received as a result of allegations of medical malpractice in treating an illness covered by EEOICPA a recovery that must be reported to OWCP?
30.610 Are payments to a covered Part B employee, a covered Part E employee or an eligible surviving beneficiary as a result of an insurance policy which the employee or eligible surviving beneficiary has purchased a recovery that must be reported to OWCP?
30.611 If a settlement or judgment is received for more than one medical condition, can the amount paid on a single EEOICPA claim be attributed to different conditions for purposes of calculating the amount to which the United States is subrogated?

Effect of Tort Suits Against Beryllium Vendors and Atomic Weapons Employers

30.615 What type of tort suits filed against beryllium vendors or atomic weapons employers may disqualify certain claimants from receiving benefits under Part B of EEOICPA?
30.616 What happens if this type of tort suit was filed prior to October 30, 2000?
30.617 What happens if this type of tort suit was filed during the period from October 30, 2000 through December 28, 2001?
30.618 What happens if this type of tort suit was filed after December 28, 2001?
30.619 Do all the parties to this type of tort suit have to take these actions?
30.620 How will OWCP ascertain whether a claimant filed this type of tort suit and if he or she has been disqualified from receiving any benefits under Part B of EEOICPA?

Coordination of Part E Benefits With State Workers' Compensation Benefits

30.625 What does ''coordination of benefits'' mean under Part E of EEOICPA?
30.626 How will OWCP coordinate compensation payable under Part E of EEOICPA with benefits from state workers' compensation programs?
30.627 Under what circumstances will OWCP waive the statutory requirement to coordinate these benefits?

Subpart H—Information for Medical Providers

Medical Records and Bills

30.700 What kind of medical records must providers keep?
30.701 How are medical bills to be submitted?
30.702 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?
30.703 What are the time limitations on OWCP's payment of bills?

Medical Fee Schedule

30.705 What services are covered by the OWCP fee schedule?
30.706 How are the maximum fees defined?
30.707 How are payments for particular services calculated?
30.708 Does the fee schedule apply to every kind of procedure?
30.709 How are payments for medicinal drugs determined?
30.710 How are payments for inpatient medical services determined?
30.711 When and how are fees reduced?
30.712 If OWCP reduces a fee, may a provider request reconsideration of the reduction?
30.713 If OWCP reduces a fee, may a provider bill the employee for the balance?

Exclusion of Providers

30.715 What are the grounds for excluding a provider for payment under this part?
30.716 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?
30.717 When are OWCP's exclusion procedures initiated?
30.718 How is a provider notified of OWCP's intent to exclude him or her?
30.719 What requirements must the provider's reply and OWCP's decision meet?
30.720 How can an excluded provider request a hearing?
30.721 How are hearings assigned and scheduled?
30.722 How are subpoenas or advisory opinions obtained?
30.723 How will the administrative law judge conduct the hearing and issue the recommended decision?
30.724 How can a party request review by OWCP of the administrative law judge's recommended decision?
30.725 What are the effects of non-automatic exclusion?
30.726 How can an excluded provider be reinstated?

Subpart I—Wage-Loss Determinations Under Part E of EEOICPA

General Provisions

30.800 What types of wage-loss are compensable under Part E of EEOICPA?
30.801 What special definitions does OWCP use in connection with Part E wage-loss determinations?

Evidence of Wage-Loss

30.805 What evidence does OWCP use to determine a covered Part E employee's average annual wage and whether he or she experienced compensable wage-loss under Part E of EEOICPA?
30.806 May a claimant submit factual evidence in support of a different determination of average annual wage and/or wage-loss than that found by OWCP?

Determinations of Average Annual Wage and Percentages of Loss

30.810 How will OWCP calculate the average annual wage of a covered Part E employee?
30.811 How will OWCP calculate the duration and extent of a covered Part E employee's initial period of compensable wage-loss?
30.812 May a covered Part E employee claim for subsequent periods of compensable wage-loss?

Special Rules for Certain Survivor Claims Under Part E of EEOICPA

30.815 Are there special rules that OWCP will use to determine the extent of a deceased covered Part E employee's compensable wage-loss?

Subpart J—Impairment Benefits Under Part E of EEOICPA

General Provisions

30.900 Who can receive impairment benefits under Part E of EEOICPA?
30.901 How does OWCP determine the extent of an employee's impairment that is due to a covered illness contracted through exposure to a toxic substance at a DOE facility or a RECA section 5 facility, as appropriate?
30.902 How will OWCP calculate the amount of the award of impairment benefits that is payable under Part E?

Medical Evidence of Impairment

30.905 How may an impairment evaluation be obtained?
30.906 Who will pay for an impairment evaluation?
30.907 Can an impairment evaluation obtained by OWCP be challenged prior to issuance of the recommended decision?
30.908 How will the FAB evaluate new medical evidence submitted to challenge the impairment determination in the recommended decision?

Ratable Medical Impairments

30.910 Will an impairment that cannot be assigned a numerical percentage using the AMA's *Guides* be included in the impairment rating?
30.911 Does maximum medical improvement always have to be reached for an impairment to be included in the impairment rating?
30.912 Can a covered Part E employee receive benefits for additional impairment following an award of such benefits by OWCP?

Authority: 5 U.S.C. 301; 31 U.S.C. 3716 and 3717; 42 U.S.C. 7384d, 7384t, 7384u and 7385s–10; Executive Order 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321; Secretary of Labor's Order No. 4–2001, 66 FR 29656.

Subpart A—General Provisions

Introduction

§ 30.0 What are the provisions of the EEOICPA, in general?

Part B of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA or Act), 42 U.S.C. 7384 *et seq.*, provides for the payment of compensation benefits to covered Part B employees and, where applicable, survivors of such employees, of the United States Department of Energy (DOE), its predecessor agencies and certain of its contractors and subcontractors. Part B also provides for the payment of supplemental compensation benefits to other covered Part B employees who have already been found eligible for benefits under section 5 of the Radiation Exposure Compensation Act, as amended (RECA), 42 U.S.C. 2210 note, and where applicable, survivors of such persons. Part E of the Act provides for the payment of compensation benefits to covered Part E employees and, where applicable, survivors of such employees. The regulations in this part describe the rules governing filing, processing, and paying claims for benefits under both Part B and Part E of EEOICPA.

(a) Part B of EEOICPA provides for the payment of either lump-sum monetary compensation for the disability of a covered Part B employee due to an occupational illness or for monitoring for beryllium sensitivity, as well as for medical and related benefits for such illness. Part B also provides for the payment of monetary compensation for the disability of a covered Part B employee to specified survivors if the employee is deceased at the time of payment.

(b) Part E of EEOICPA provides for the payment of monetary compensation for the established wage-loss and/or impairment of a covered Part E employee due to a covered illness, and for medical and related benefits for such covered illness. Part E also provides for the payment of monetary compensation for the death (and established wage-loss, where applicable) of a covered Part E employee to specified survivors if the covered Part E employee is deceased at the time of payment.

(c) All types of benefits and conditions of eligibility listed in this section are subject to the provisions of EEOICPA and this part.

§ 30.1 What rules govern the administration of the EEOICPA and this chapter?

In accordance with EEOICPA, Executive Order 13179 and Secretary's Order No. 4–2001, the primary responsibility for administering the Act, except for those activities assigned to the Secretary of Health and Human Services, the Secretary of Energy and the Attorney General, has been delegated to the Assistant Secretary of Labor for Employment Standards. The Assistant Secretary, in turn, has delegated the responsibility for administering the Act to the Director of the Office of Workers' Compensation Programs (OWCP). Except as otherwise provided by law, the Director of OWCP and his or her designees have the exclusive authority to administer, interpret and enforce the provisions of the Act.

§ 30.2 In general, how have the tasks associated with the administration of the EEOICPA claims process been assigned?

(a) In E.O. 13179, the President assigned the tasks associated with administration of the EEOICPA claims process among the Secretaries of Labor, Health and Human Services and Energy, and the Attorney General. In light of the fact that the Secretary of Labor has been assigned primary responsibility for administering the EEOICPA, almost the entire claims process is within the exclusive control of OWCP. This means that all claimants file their claims with OWCP, and OWCP is responsible for granting or denying compensation under the Act (*see* §§ 30.100 through 30.102). OWCP also provides assistance to claimants and potential claimants by providing information regarding eligibility and other program requirements, including information on completing claim forms and the types and availability of medical testing and diagnostic services related to occupational illnesses under Part B of the Act and covered illnesses under Part E of the Act. In addition, OWCP provides an administrative review process for claimants who disagree with its recommended and final adverse decisions on claims of entitlement (*see* §§ 30.300 through 30.320).

(b) However, HHS has exclusive control of the portion of the claims process under which it provides reconstructed doses for certain radiogenic cancer claims (*see* § 30.115). HHS also has exclusive control of the process for designating classes of employees to be added to the Special Exposure Cohort under Part B of the Act, and has promulgated regulations governing that process at 42 CFR part 83. Finally, HHS has promulgated regulations at 42 CFR part 81 that set out guidelines that OWCP follows when it assesses the compensability of an employee's radiogenic cancer (*see* § 30.213). DOE and DOJ must, among other things, notify potential claimants and submit evidence that OWCP deems necessary for its adjudication of claims under EEOICPA (*see* §§ 30.105, 30.112, 30.206, 30.212 and 30.221).

§ 30.3 What do these regulations contain?

This part 30 sets forth the regulations governing administration of all claims that are filed with OWCP, except to the extent specified in certain provisions. Its provisions are intended to assist persons seeking benefits under EEOICPA, as well as personnel in the various federal agencies and DOL who process claims filed under EEOICPA or who perform administrative functions with respect to EEOICPA. The various subparts of this part contain the following:

(a) Subpart A: The general statutory and administrative framework for processing claims under both Parts B and E of EEOICPA. It contains a statement of purpose and scope, together with definitions of terms, information regarding the disclosure of OWCP records, and a description of rights and penalties involving EEOICPA claims, including convictions for fraud.

(b) Subpart B: The rules for filing claims for entitlement under EEOICPA. It also addresses general standards regarding necessary evidence and the burden of proof, descriptions of basic forms and special procedures for certain cancer claims.

(c) Subpart C: The eligibility criteria for occupational illnesses and covered illnesses compensable under Parts B and E of EEOICPA.

(d) Subpart D: The rules governing the adjudication process leading to recommended and final decisions on claims for entitlement filed under Parts B and E of EEOICPA. It also describes the hearing and reopening processes.

(e) Subpart E: The rules governing medical care, second opinion and referee medical examinations directed by OWCP as part of its adjudication of entitlement, and medical reports and records in general. It also addresses the kinds of medical treatment that may be authorized and how medical bills are paid.

(f) Subpart F: The rules relating to the payment of monetary compensation available under Parts B and E of EEOICPA. It includes provisions on medical monitoring for beryllium sensitivity, on the identification, processing and recovery of overpayments of compensation, and on the maximum aggregate amount of compensation payable under Part E.

(g) Subpart G: The rules concerning the representation of claimants in connection with the administrative adjudication of claims before OWCP, subrogation of the United States, the effect of tort suits against beryllium vendors and atomic weapons employers, and the coordination of benefits under Part E of EEOICPA with state workers' compensation benefits for the same covered illness.

(h) Subpart H: Information for medical providers. It includes rules for medical reports, medical bills, and the OWCP medical fee schedule, as well as the provisions for exclusion of medical providers.

(i) Subpart I: The rules relating to the adjudication of alleged periods of wage-loss of covered Part E employees. It also includes provisions on the use by OWCP of Social Security Administration earnings information and certain medical evidence to establish compensable wage-loss.

(j) Subpart J: The rules relating to the adjudication of alleged impairment due to the exposure of covered Part E employees to toxic substances. It includes provisions relating to the medical evaluation of ratable impairments, the rating of progressive conditions, apportionment, and qualifications of physicians.

Definitions

§ 30.5 What are the definitions used in this part?

(a) *Act* or *EEOICPA* means the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (42 U.S.C. 7384 *et seq.*).

(b) *Atomic weapon* means any device utilizing atomic energy, exclusive of the means for transporting or propelling the device (where such means is a separable and divisible part of the device), the principle purpose of which is for use as, or for development of, a weapon, a weapon prototype, or a weapon test device.

(c) *Atomic weapons employee* means:

(1) An individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; or

(2)(i) An individual employed at a facility that the National Institute for Occupational Safety and Health reported had a potential for significant residual contamination outside of the period described in paragraph (c)(1) of this section;

(ii) By the atomic weapons employer that owned the facility referred to in paragraph (c)(2)(i) of this section, or a subsequent owner or operator of such facility; and

(iii) During a period reported by the National Institute for Occupational Safety and Health (NIOSH), in its report dated October 2003 and titled ''Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities,'' or any update to that report, to have a potential for significant residual radioactive contamination.

(d) *Atomic weapons employer* means any entity, other than the United States, that:

(1) Processed or produced, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; and

(2) Is designated by the Secretary of Energy as an atomic weapons employer for purposes of the compensation program.

(e) *Atomic weapons employer facility* means any facility, owned by an atomic weapons employer, that:

(1) Is or was used to process or produce, for use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining or milling; and

(2) Is designated as such in the list periodically published in the **Federal Register** by DOE.

(f) *Attorney General* means the Attorney General of the United States or the United States Department of Justice (DOJ).

(g) *Benefit* or *Compensation* means the money the Department pays to or on behalf of either a covered Part B employee under Part B, or a covered Part E employee under Part E, from the Energy Employees Occupational Illness Compensation Fund. However, the term ''compensation'' used in section 7385f(b) of EEOICPA (restricting entitlement to only one payment of compensation under Part B) means only the payments specified in section 7384s(a)(1) and in section 7384u(a). Except as used in section 7385f(b), these two terms also include any other amounts paid out of the Fund for such things as medical treatment, monitoring, examinations, services, appliances and supplies as well as for transportation and expenses incident to the securing of such medical treatment, monitoring, examinations, services, appliances, and supplies.

(h) *Beryllium sensitization or sensitivity* means that the individual has an abnormal beryllium lymphocyte proliferation test (LPT) performed on either blood or lung lavage cells.

(i) *Beryllium vendor* means the specific corporations and named predecessor corporations listed in section 7384l(6) of the Act and any of the facilities designated as such in the list periodically published in the **Federal Register** by DOE.

(j) *Chronic silicosis* means a non-malignant lung disease if:

(1) The initial occupational exposure to silica dust preceded the onset of silicosis by at least 10 years; and

(2) A written diagnosis of silicosis is made by a medical doctor and is accompanied by:

(i) A chest radiograph, interpreted by an individual certified by the National Institute for Occupational Safety and Health as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher; or

(ii) Results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or

(iii) Lung biopsy findings consistent with silicosis.

(k) *Claim* means a written assertion to OWCP of an individual's entitlement to benefits under EEOICPA, submitted in a manner authorized by this part.

(l) *Claimant* means the individual who is alleged to satisfy the criteria for compensation under the Act.

(m) *Compensation fund* or *fund* means the fund established on the books of the Treasury for payment of benefits and compensation under the Act.

(n) *Contemporaneous record* means any document created at or around the time of the event that is recorded in the document.

(o) *Covered beryllium illness* means any of the following:

(1) Beryllium sensitivity as established by an abnormal LPT performed on either blood or lung lavage cells.

(2) Established chronic beryllium disease (*see* § 30.207(c)).

(3) Any injury, illness, impairment, or disability sustained as a consequence of a covered beryllium illness referred to in paragraphs (o)(1) or (2) of this section.

(p) *Covered Part E employee* means, under Part E of the Act, a Department of Energy contractor employee or a RECA section 5 uranium worker who has been determined by OWCP to have contracted a covered illness (*see* paragraph (r) of this section) through exposure at a Department of Energy facility or a RECA section 5 facility, as appropriate.

(q) *Covered Part B employee* means, under Part B of the Act, a covered beryllium employee (*see* § 30.205), a covered employee with cancer (*see* § 30.210(a)), a covered employee with chronic silicosis (*see* § 30.220), or a covered uranium employee (*see* paragraph (s) of this section).

(r) *Covered illness* means, under Part E of the Act relating to exposures at a DOE facility or a RECA section 5 facility, an illness or death resulting from exposure to a toxic substance.

(s) *Covered uranium employee* means, under Part B of the Act, an individual who has been determined by DOJ to be entitled to an award under section 5 of the RECA, whether or not the individual was the employee or the deceased employee's survivor.

(t) *Current or former employee as defined in 5 U.S.C. 8101(1)* as used in § 30.205(a)(1) means an individual who fits within one of the following listed groups:

(1) A civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(2) An individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(3) An individual, other than an independent contractor or individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(4) An individual appointed to a position on the office staff of a former President; or

(5) An individual selected and serving as a Federal petit or grand juror.

(u) *Department* means the United States Department of Labor (DOL).

(v) *Department of Energy* or *DOE* includes the predecessor agencies of the DOE, including the Manhattan Engineering District.

(w) *Department of Energy contractor employee* means any of the following:

(1) An individual who is or was in residence at a DOE facility as a researcher for one or more periods aggregating at least 24 months.

(2) An individual who is or was employed at a DOE facility by:

(i) An entity that contracted with the DOE to provide management and operating, management and integration, or environmental remediation at the facility; or

(ii) A contractor or subcontractor that provided services, including construction and maintenance, at the facility.

(x)(1) *Department of Energy facility* means, as determined by the Director of OWCP, any building, structure, or premise, including the grounds upon which such building, structure, or premise is located:

(i) In which operations are, or have been, conducted by, or on behalf of, the DOE (except for buildings, structures, premises, grounds, or operations covered by E.O. 12344, dated February 1, 1982, pertaining to the Naval Nuclear Propulsion Program); and

(ii) With regard to which the DOE has or had:

(A) A proprietary interest; or

(B) Entered into a contract with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services.

(2) DOL hereby adopts the list of facilities established by the Department of Energy that is in effect on the date of the publication of this Interim Final Rule. DOL will periodically update this list as it deems appropriate in its sole discretion by publishing a revised list of covered facilities in the **Federal Register**.

(y) *Disability* means, for purposes of determining entitlement to payment of Part B benefits under section 7384s(a)(1) of the Act, having been determined by OWCP to have or have had established chronic beryllium disease, cancer, or chronic silicosis.

(z) *Eligible surviving beneficiary* means any individual who is entitled under sections 7384s(e), 7384u(e), or 7385s–3(c) and (d) of the Act to receive a payment on behalf of a deceased covered Part B employee or a deceased covered Part E employee.

(aa) *Employee* means either a current or former employee.

(bb) *Occupational illness* means, under Part B of the Act, a covered beryllium illness, cancer sustained in the performance of duty as defined in § 30.210(a), specified cancer, chronic silicosis, or an illness for which DOJ has awarded compensation under section 5 of RECA.

(cc) *OWCP* means the Office of Workers' Compensation Programs, United States Department of Labor. One of the four divisions of OWCP is the Division of Energy Employees Occupational Illness Compensation.

(dd) *Physician* includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law. The term ''physician'' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.

(ee) *Qualified physician* means any physician who has not been excluded under the provisions of subpart H of this part. Except as otherwise provided by regulation, a qualified physician shall be deemed to be designated or approved by OWCP.

(ff) *Specified cancer* (as defined in section 4(b)(2) of RECA and in the EEOICPA) means:

(1) Leukemia (other than chronic lymphocytic leukemia) provided that the onset of the disease was at least 2 years after first exposure;

(2) Lung cancer (other than in situ lung cancer that is discovered during or after a post-mortem exam);

(3) Bone cancer;

(4) Renal cancers; or

(5) The following diseases, provided onset was at least 5 years after first exposure:

(i) Multiple myeloma;

(ii) Lymphomas (other than Hodgkin's disease); and

(iii) Primary cancer of the:

(A) Thyroid;

(B) Male or female breast;

(C) Esophagus;

(D) Stomach;

(E) Pharynx;

(F) Small intestine;

(G) Pancreas;

(H) Bile ducts;
(I) Gall bladder;
(J) Salivary gland;
(K) Urinary bladder;
(L) Brain;
(M) Colon;
(N) Ovary; or
(O) Liver (except if cirrhosis or hepatitis B is indicated).

(6) The specified diseases designated in this section mean the physiological condition or conditions that are recognized by the National Cancer Institute under those names or nomenclature, or under any previously accepted or commonly used names or nomenclature.

(gg) *Survivor* means:

(1) For claims under Part B of the Act, and subject to paragraph (gg)(3) of this section, a surviving spouse, child, parent, grandchild and grandparent of a deceased covered Part B employee.

(2) For claims under Part E of the Act, and subject to paragraph (gg)(3) of this section, a surviving spouse and child of a deceased covered Part E employee.

(3) Those individuals listed in paragraphs (gg)(1) and (gg)(2) of this section do not include any individuals not living as of the time OWCP makes a lump-sum payment or payments to an eligible surviving beneficiary or beneficiaries.

(hh) *Time of injury* means:

(1) In regard to a claim arising out of exposure to beryllium or silica, the last date on which a covered Part B employee was exposed to such substance in the performance of duty in accordance with sections 7384n(a) or 7384r(c) of the Act; or

(2) In regard to a claim arising out of exposure to radiation under Part B, the last date on which a covered Part B employee was exposed to radiation in the performance of duty in accordance with section 7384n(b) of the Act or, in the case of a member of the Special Exposure Cohort, the last date on which the member of the Special Exposure Cohort was employed at the Department of Energy facility or the atomic weapons employer facility at which the member was exposed to radiation; or

(3) In regard to a claim arising out of exposure to a toxic substance, the last date on which a covered Part E employee was employed at the Department of Energy facility or RECA section 5 facility, as appropriate, at which the exposure took place.

(ii) *Toxic substance* means any material that has the potential to cause illness or death because of its radioactive, chemical, or biological nature.

(jj) *Workday* means a single workshift whether or not it occurred on more than one calendar day.

Information in Program Records

§ 30.10 Are all OWCP records relating to claims filed under the EEOICPA considered confidential?

All OWCP records relating to claims for benefits under the EEOICPA are considered confidential and may not be released, inspected, copied or otherwise disclosed except as provided in the Freedom of Information Act and the Privacy Act of 1974.

§ 30.11 Who maintains custody and control of claim records?

All OWCP records relating to claims for benefits filed under the Act are covered by the Privacy Act system of records entitled DOL/ESA–49 (Office of Workers' Compensation Programs, Energy Employees Occupational Illness Compensation Program Act File). This system of records is maintained by and under the control of OWCP, and, as such, all records covered by DOL/ESA–49 are official records of OWCP. The protection, release, inspection and copying of records covered by DOL/ESA–49 shall be accomplished in accordance with the rules, guidelines and provisions of this part, as well as those contained in 29 CFR parts 70 and 71, and with the notice of the system of records and routine uses published in the **Federal Register**. All questions relating to access, disclosure, and/or amendment of claims records maintained by OWCP are to be resolved in accordance with this section.

§ 30.12 What process is used by a person who wants to obtain copies of or amend EEOICPA claim records?

(a) A claimant seeking copies of his or her official EEOICPA file should address a request to the District Director of the OWCP district office having custody of the file.

(b) Any request to amend a record covered by DOL/ESA–49 should be directed to the district office having custody of the official file.

(c) Any administrative appeal taken from a denial issued by OWCP under this section shall be filed with the Solicitor of Labor in accordance with 29 CFR 71.7 and 71.9.

Rights and Penalties

§ 30.15 May EEOICPA benefits be assigned, transferred or garnished?

(a) Pursuant to section 7385f(a) of the Act, no claim for EEOICPA benefits may be assigned or transferred.

(b) Provisions of the Social Security Act (42 U.S.C. 659) and regulations issued by the Office of Personnel Management at 5 CFR part 581 permit the garnishment of payments of EEOICPA monetary benefits to collect overdue alimony and child support. A request to garnish a payment for either of these purposes should be submitted to the district office that is handling the EEOICPA claim, and must be accompanied by a copy of the pertinent state agency or court order.

§ 30.16 What penalties may be imposed in connection with a claim under the Act?

(a) Other statutory provisions make it a crime to file a false or fraudulent claim or statement with the federal government in connection with a claim under the Act. Included among these provisions is 18 U.S.C. 1001. Enforcement of criminal provisions that may apply to claims under the Act is within the jurisdiction of the Department of Justice.

(b) In addition, administrative proceedings may be initiated under the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801 *et seq.*, to impose civil penalties and assessments against persons or entities who make, submit or present, or cause to be made, submitted or presented, false, fictitious or fraudulent claims or written statements to OWCP in connection with a claim under EEOICPA. The Department's regulations implementing PFCRA are found at 29 CFR part 22.

§ 30.17 Is a beneficiary who defrauds the government in connection with a claim for EEOICPA benefits still entitled to those benefits?

When a beneficiary either pleads guilty to or is found guilty on either Federal or State criminal charges of defrauding the federal or a state government in connection with a claim for benefits under the Act or any other federal or state workers' compensation law, the beneficiary forfeits (effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial) any entitlement to any further benefits for any injury, illness or death covered by this part for which the time of injury was on or before the date of such guilty plea or verdict. Any subsequent change in or recurrence of the beneficiary's medical condition does not affect termination of entitlement under this section.

Subpart B—Filing Claims; Evidence and Burden of Proof; Special Procedures for Certain Cancer Claims

Filing Claims for Benefits Under EEOICPA

§ 30.100 In general, how does an employee file an initial claim for benefits?

(a) To claim benefits under EEOICPA, an employee must file a claim in writing. Form EE–1 should be used for

this purpose, but any written communication that requests benefits under EEOICPA will be considered a claim. It will, however, be necessary for an employee to submit a Form EE–1 for OWCP to fully develop the claim. Copies of Form EE–1 may be obtained from OWCP or on the Internet at *www.dol.gov/esa/regs/ compliance/ owcp/eeoicp/main.htm.* The employee's claim must be filed with OWCP, but another person may do so on the employee's behalf.

(b) The employee may choose, at his or her own option, to file for benefits for only certain conditions that are potentially compensable under the Act (*e.g.*, the employee may not want to claim for an occupational illness or a covered illness for which a payment has been received that would necessitate an offset of EEOICPA benefits under the provisions of § 30.505(b)). The employee may withdraw his or her claim by so requesting in writing to OWCP at any time before OWCP determines his or her eligibility for benefits.

(c) Except as provided in paragraph (d) of this section, a claim is considered to be ''filed'' on the date that the employee mails his or her claim to OWCP, as determined by postmark, or on the date that the claim is received by OWCP, whichever is the earliest determinable date. However, in no event will a claim under Part B of EEOICPA be considered to be ''filed'' earlier than July 31, 2001, nor will a claim under Part E of EEOICPA be considered to be ''filed'' earlier than October 30, 2000.

(1) The employee, or the person filing the claim on behalf of the employee, shall affirm that the information provided on the Form EE–1 is true, and must inform OWCP of any subsequent changes to that information.

(2) Except for a covered uranium employee filing a claim under Part B of the Act, the employee is responsible for submitting with his or her claim, or arranging for the submission of, medical evidence to OWCP that establishes that he or she sustained an occupational illness and/or a covered illness. This required medical evidence is described in § 30.114 and does not refer to mere recitations of symptoms the employee experienced that the employee believes indicate that he or she sustained an occupational illness or a covered illness.

(d) For those claims under Part E of EEOICPA that were originally filed with DOE as claims for assistance under former section 7385o of EEOICPA (which was repealed on October 28, 2004), a claim is considered to be ''filed'' on the date that the employee mailed his or her claim to DOE, as determined by postmark, or on the date that the claim was received by DOE, whichever is the earliest determinable date. However, in no event will a claim referred to in this paragraph be considered to be ''filed'' earlier than October 30, 2000.

§ 30.101 In general, how is a survivor's claim filed?

(a) A survivor of an employee who sustained an occupational illness or a covered illness must file a claim for compensation in writing. Form EE–2 should be used for this purpose, but any written communication that requests survivor benefits under the Act will be considered a claim. It will, however, be necessary for a survivor to submit a Form EE–2 for OWCP to fully develop the claim. Copies of Form EE–2 may be obtained from OWCP or on the Internet at *www.dol.gov/esa/regs/compliance/ owcp/eeoicp/main.htm.* The survivor's claim must be filed with OWCP, but another person may do so on the survivor's behalf. Although only one survivor needs to file a claim under this section to initiate the development process, OWCP will distribute any monetary benefits payable on the claim among all eligible surviving beneficiaries who have filed claims with OWCP.

(b) A survivor may choose, at his or her own option, to file for benefits for only certain conditions that are potentially compensable under the Act (*e.g.*, the survivor may not want to claim for an occupational illness or a covered illness for which a payment has been received that would necessitate an offset of EEOICPA benefits under the provisions of § 30.505(b)). The survivor may withdraw his or her claim by so requesting in writing to OWCP at any time before OWCP determines his or her eligibility for benefits.

(c) A survivor must be alive to receive any payment under the EEOICPA; there is no vested right to such payment.

(d) Except as provided in paragraph (e) of this section, a survivor's claim is considered to be ''filed'' on the date that the survivor mails his or her claim to OWCP, as determined by postmark, or the date that the claim is received by OWCP, whichever is the earliest determinable date. However, in no event will a survivor's claim under Part B of the Act be considered to be ''filed'' earlier than July 31, 2001, nor will a survivor's claim under Part E of the Act be considered to be ''filed'' earlier than October 30, 2000.

(1) The survivor, or the person filing the claim on behalf of the survivor, shall affirm that the information provided on the Form EE–2 is true, and must inform OWCP of any subsequent changes to that information.

(2) Except for the survivor of a covered uranium employee claiming under Part B of the Act, the survivor is responsible for submitting, or arranging for the submission of, evidence to OWCP that establishes that the employee upon whom the survivor's claim is based was eligible for such benefits, including medical evidence that establishes that the employee sustained an occupational illness or a covered illness. This required medical evidence is described in § 30.114 and does not refer to mere recitations by the survivor of symptoms the employee experienced that the survivor believes indicate that the employee sustained an occupational illness or a covered illness.

(e) For those claims under Part E of EEOICPA that were originally filed with DOE as claims for assistance under former section 7385o of EEOICPA (which was repealed on October 28, 2004), a claim is considered to be ''filed'' on the date that the survivor mailed his or her claim to DOE, as determined by postmark, or on the date that the claim was received by DOE, whichever is the earliest determinable date. However, in no event will a claim referred to in this paragraph be considered to be ''filed'' earlier than October 30, 2000.

(f) A spouse or a child of a deceased DOE contractor employee or RECA section 5 uranium worker, who is not a covered spouse or covered child under Part E, may submit a written request to OWCP for a determination of whether that deceased DOE contractor employee or RECA section 5 uranium worker contracted a covered illness under section 7385s-4(d) of EEOICPA.

(1) Any such request submitted pursuant to paragraph (f) of this section will not be considered a survivor's claim for benefits under Part E of the Act.

(2) As part of its consideration of any request submitted pursuant to paragraph (f) of this section, OWCP will apply the eligibility criteria in §§ 30.230 and 30.231. However, the adjudicatory procedures contained in subpart D of this part will not apply to OWCP's consideration of such a request, and OWCP's response to the request will not constitute a final agency decision on entitlement to any benefits under EEOICPA.

§ 30.102 In general, how does an employee file a claim for additional impairment or wage-loss under Part E of EEOICPA?

(a) An employee previously awarded impairment benefits by OWCP may file a claim for additional impairment

benefits. Such claim must be based on an increase in the employee's minimum impairment rating attributable to the covered illness or illnesses from the impairment rating that formed the basis for the last award of such benefits by OWCP. OWCP will only adjudicate claims for such an increased rating that are filed at least two years from the date of the last award of impairment benefits. However, OWCP will not wait two years before it will adjudicate a claim for additional impairment that is based on an allegation that the employee sustained a new covered illness.

(b) An employee previously awarded wage-loss benefits by OWCP may be eligible for additional wage-loss benefits for periods of wage-loss that were not addressed in a prior claim only if the employee had not reached his or her Social Security retirement age at the time of the prior award. OWCP will adjudicate claims filed on a yearly basis in connection with each succeeding calendar year for which qualifying wage-loss under Part E is alleged, as well as claims that aggregate calendar years for which qualifying wage-loss is alleged.

(c) Employees should use Form EE–10 to claim for additional impairment or wage-loss benefits under Part E of EEOICPA.

(1) The employee, or the person filing the claim on behalf of the employee, shall affirm that the information provided on Form EE–10 is true, and must inform OWCP of any subsequent changes to that information.

(2) The employee is responsible for submitting with any claim filed under this section, or arranging for the submission of, factual and medical evidence establishing that he or she experienced another calendar year of qualifying wage-loss, and/or medical evidence establishing that he or she has an increased minimum impairment rating, as appropriate.

§ 30.103 How does a claimant make sure that OWCP has the evidence necessary to process the claim?

(a) Claims and certain required submissions should be made on forms prescribed by OWCP. Persons submitting forms shall not modify these forms or use substitute forms.

Form No.	Title
(1) EE–1 ..	Claim for Benefits Under the Energy Employees Occupational Illness Compensation Program Act.
(2) EE–2 ..	Claim for Survivor Benefits Under the Energy Employees Occupational Illness Compensation Program Act.
(3) EE–3 ..	Employment History for a Claim Under the Energy Employees Occupational Illness Compensation Program Act.
(4) EE–4 ..	Employment History Affidavit for a Claim Under the Energy Employees Occupational Illness Compensation Program Act.

(b) Copies of the forms listed in this section are available for public inspection at the Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. They may also be obtained from OWCP district offices and on the Internet at *http://www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.htm.*

Verification of Alleged Employment

§ 30.105 What must DOE do after an employee or survivor files a claim?

(a) After it receives a claim for benefits described in §§ 30.100 or 30.101, OWCP may request that DOE verify the employment history provided by the claimant. Upon receipt of such a request, DOE will complete Form EE–5 as soon as possible and transmit the completed form to OWCP. On this form, DOE will certify either that it concurs with the employment history provided by the claimant, that it disagrees with such history, or that it can neither concur nor disagree after making a reasonable search of its records and also making a reasonable effort to locate pertinent records not already in its possession.

(b) Claims for additional impairment or wage-loss benefits under Part E of the Act described in § 30.102 will not require any verification of employment by DOE, since OWCP will have made any required findings on this particular issue when it adjudicated the employee's initial claim for benefits.

§ 30.106 Can OWCP request employment verification from other sources?

(a) For most claims filed under EEOICPA, DOE has access to sufficient factual information to enable it to fulfill its obligations described in § 30.105(a). However, in instances where it lacks such information, DOE may arrange for other entities to provide OWCP with the information necessary to verify an employment history submitted as part of a claim. These other entities may consist of either current or former DOE contractors and subcontractors, atomic weapons employers, beryllium vendors, or other entities with access to relevant employment information.

(b) On its own initiative, OWCP may also arrange for entities other than DOE to perform the employment verification duties described in § 30.105(a).

Evidence and Burden of Proof

§ 30.110 Who is entitled to compensation under the Act?

(a) Under Part B of EEOICPA, compensation is payable to the following covered Part B employees, or their survivors:

(1) A ''covered beryllium employee'' (as described in § 30.205(a)) with a covered beryllium illness (as defined in § 30.5(o)) who was exposed to beryllium in the performance of duty (in accordance with § 30.206).

(2) A ''covered Part B employee with cancer'' (as described in § 30.210(a)).

(3) A ''covered Part B employee with chronic silicosis'' (as described in § 30.220).

(4) A ''covered uranium employee'' (as defined in § 30.5(s)).

(b) Under Part E of EEOICPA, compensation is payable to a ''covered Part E employee'' (as defined in § 30.5(p)), or his or her survivors.

(c) Any claim that does not meet all of the criteria for at least one of these categories, as set forth in the regulations in this part, must be denied.

(d) All claims for benefits under the Act must comply with the claims procedures and requirements set forth in subpart B of this part before any payment can be made from the Fund.

§ 30.111 What is the claimant's responsibility with respect to burden of proof, production of documents, presumptions, and affidavits?

(a) Except where otherwise provided in the Act and these regulations, the claimant bears the burden of proving by a preponderance of the evidence the existence of each and every criterion necessary to establish eligibility under any compensable claim category set forth in § 30.110. Proof by a preponderance of the evidence means that it is more likely than not that the proposition to be proved is true. Subject to the exceptions expressly provided in the Act and the regulations in this part, the claimant also bears the burden of providing to OWCP all written medical documentation, contemporaneous records, or other records and documents necessary to establish any and all criteria for benefits set forth in these regulations.

(b) In the event that the claim lacks required information or supporting documentation, OWCP will notify the claimant of the deficiencies and provide him or her an opportunity for correction of the deficiencies.

(c) Written affidavits or declarations, subject to penalty for perjury, by the employee, survivor or any other person, will be accepted as evidence of employment history and survivor relationship for purposes of establishing eligibility and may be relied on in determining whether a claim meets the requirements of the Act for benefits if, and only if, such person attests that due diligence was used to obtain records in support of the claim, but that no records exist.

(d) A claimant will not be entitled to any presumption otherwise provided for in these regulations if substantial evidence exists that rebuts the existence of the fact that is the subject of the presumption. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. When such evidence exists, the claimant shall be notified and afforded the opportunity to submit additional written medical documentation or records.

§ 30.112 What kind of evidence is needed to establish covered employment and how will that evidence be evaluated?

(a) Evidence of covered employment may include: Employment records; pay stubs; tax returns; Social Security records; and written affidavits or declarations, subject to penalty of perjury, by the employee, survivor or any other person. However, no one document is required to establish covered employment and a claimant is not required to submit all of the evidence listed above. A claimant may submit other evidence not listed above to establish covered employment. To be acceptable as evidence, all documents and records must be legible. OWCP will accept photocopies, certified copies, and original documents and records.

(b) Pursuant to § 30.105, DOE shall certify that it concurs with the employment information provided by the claimant, that it disagrees with the information provided by the claimant, or, after a reasonable search of its records and a reasonable effort to locate pertinent records not already in its possession, it can neither concur nor disagree with the information provided by the claimant.

(1) If DOE certifies that it concurs with the employment information provided by the claimant, then the criterion for covered employment will be established.

(2) If DOE certifies that it disagrees with the information provided by the claimant or that after a reasonable search of its records and a reasonable effort to locate pertinent records not already in its possession it can neither concur nor disagree with the information provided by the claimant, OWCP will evaluate the evidence submitted by the claimant to determine whether the claimant has established covered employment by a preponderance of the evidence. OWCP may request additional evidence from the claimant to demonstrate that the claimant has met the criterion for covered employment. Nothing in this section shall be construed to limit OWCP's ability to require additional documentation.

(3) If the only evidence of covered employment is a self-serving affidavit and DOE either disagrees with the assertion of covered employment or cannot concur or disagree with the assertion of covered employment, then OWCP may reject the claim based upon a lack of evidence of covered employment.

§ 30.113 What are the requirements for written medical documentation, contemporaneous records, and other records or documents?

(a) All written medical documentation, contemporaneous records, and other records or documents submitted by an employee or his or her survivor to prove any criteria provided for in these regulations must be legible. OWCP will accept photocopies, certified copies, and original documents and records.

(b) To establish eligibility, the employee or his or her survivor may be required to provide, where appropriate, additional contemporaneous records to the extent they exist or an authorization to release additional contemporaneous records or a statement by the custodian(s) of the record(s) certifying that the requested record(s) no longer exist. Nothing in this section shall be construed to limit OWCP's ability to require additional documentation.

(c) If a claimant submits a certified statement, by a person with knowledge of the facts, that the medical records containing a diagnosis and date of diagnosis of a covered medical condition no longer exist, then OWCP may consider other evidence to establish a diagnosis and date of diagnosis of a covered medical condition. However, if the certified statement is a self-serving document, OWCP may reject the claim based upon a lack of evidence of a covered medical condition.

§ 30.114 What kind of evidence is needed to establish a covered medical condition and how will that evidence be evaluated?

(a) Evidence of a covered medical condition may include: a physician's report, laboratory reports, hospital records, death certificates, x-rays, magnetic resonance images or reports, computer axial tomography or other imaging reports, lymphocyte proliferation testings, beryllium patch tests, pulmonary function or exercise testing results, pathology reports including biopsy results and other medical records. A claimant is not required to submit all of the evidence listed in this paragraph. A claimant may submit other evidence that is not listed in this paragraph to establish a covered medical condition. Nothing in this section shall be construed to limit OWCP's ability to require additional documentation.

(b) The medical evidence submitted will be used to establish the diagnosis and the date of diagnosis of the covered medical condition.

(1) For covered beryllium illnesses, additional medical evidence, as set forth in § 30.207, is required to establish a beryllium illness.

(2) For chronic silicosis, additional medical evidence, as set forth in § 30.222, is required to establish chronic silicosis.

(3) For consequential injuries, illnesses, impairments or diseases, the claimant must also submit a physician's fully rationalized medical report showing a causal relationship between the resulting injury, illness, impairment or disease and the covered medical condition.

(c) OWCP will evaluate the medical evidence in accordance with recognized and accepted diagnostic criteria used by physicians to determine whether the claimant has established the medical condition for which compensation is sought in accordance with the requirements of the Act.

Special Procedures for Certain Radiogenic Cancer Claims

§ 30.115 For those radiogenic cancer claims that do not seek benefits under Part B of the Act pursuant to the Special Exposure Cohort provisions, what will OWCP do once it determines that an employee contracted cancer?

(a) Other than claims for a non-radiogenic cancer listed by HHS at 42 CFR 81.30, or claims seeking benefits under Part E of the Act that have previously been accepted under section 7384u of the Act, or claims previously accepted under Part B pursuant to the Special Exposure Cohort provisions, OWCP will forward the claim package (including, but not limited to, Forms EE–1, EE–2, EE–3, EE–4 and EE–5, as appropriate) to HHS for dose reconstruction. At that point in time, development of the claim by OWCP may be suspended.

(1) This package will include OWCP's initial findings in regard to the diagnosis and date of diagnosis of the employee, as well as any employment history compiled by OWCP (including information such as dates and locations worked, and job titles). The package, however, will not constitute either a recommended or final decision by OWCP on the claim.

(2) HHS will then reconstruct the radiation dose of the employee, after such further development of the employment history as it may deem necessary, and provide OWCP, DOE and the claimant with the final dose reconstruction report. The final dose reconstruction record will be delivered to OWCP with the final dose reconstruction report and to the claimant upon request.

(b) Following its receipt of the reconstructed dose from HHS, OWCP will resume its adjudication of the cancer claim and consider whether the claimant has met the eligibility criteria set forth in subpart C of this part. However, during the period before it receives a reconstructed dose from HHS, OWCP may continue to develop other aspects of a claim, to the extent that it deems such development to be appropriate.

Subpart C—Eligibility Criteria

General Provisions

§ 30.200 What is the scope of this subpart?

The regulations in this subpart describe the criteria for eligibility for benefits for claims under Part B of EEOICPA relating to covered beryllium illness under sections 7384l, 7384n, 7384s and 7384t of the Act; for cancer under sections 7384l, 7384n, 7384q and 7384t of the Act; for chronic silicosis under sections 7384l, 7384r, 7384s and 7384t of the Act; and for claims relating to covered uranium employees under sections 7384t and 7384u of the Act. These regulations also describe the criteria for eligibility for benefits for claims under Part E of EEOICPA relating to covered illnesses under sections 7385s–4 and 7385s–5 of the Act. This subpart describes the type and extent of evidence that will be necessary to establish the criteria for eligibility for compensation for these illnesses.

Eligibility Criteria for Claims Relating to Covered Beryllium Illness Under Part B of EEOICPA

§ 30.205 What are the criteria for eligibility for benefits relating to beryllium illnesses covered under Part B of EEOICPA?

To establish eligibility for benefits under this section, the claimant must establish the criteria set forth in both paragraphs (a) and (b) of this section:

(a) The employee is a covered beryllium employee only if the criteria in paragraphs (a)(1) and (a)(3) of this section, or (a)(2) and (a)(3) of this section, are established:

(1) The employee is a ''current or former employee as defined in 5 U.S.C. 8101(1)'' (see § 30.5(t) of this part) who may have been exposed to beryllium at a DOE facility or at a facility owned, operated, or occupied by a beryllium vendor; or

(2) The employee is a current or former civilian employee of:

(i) Any entity that contracted with the DOE to provide management and operation, management and integration, or environmental remediation of a DOE facility; or

(ii) Any contractor or subcontractor that provided services, including construction and maintenance, at such a facility; or

(iii) A beryllium vendor, or of a contractor or subcontractor of a beryllium vendor, during a period when the vendor was engaged in activities related to the production or processing of beryllium for sale to, or use by, the DOE, including periods during which environmental remediation of a vendor's facility was undertaken pursuant to a contract between the vendor and DOE; and

(3) The civilian employee was exposed to beryllium in the performance of duty by establishing that he or she was, during a period when beryllium dust, particles, or vapor may have been present at such a facility:

(i) Employed at a DOE facility (as defined in § 30.5(x) of this part); or

(ii) Present at a DOE facility, or at a facility owned, operated, or occupied by a beryllium vendor, because of his or her employment by the United States, a beryllium vendor, a contractor or subcontractor of a beryllium vendor, or a contractor or subcontractor of the DOE. Under this paragraph, exposure to beryllium in the performance of duty can be established whether or not the beryllium that may have been present at such facility was produced or processed for sale to, or use by, DOE.

(b) The employee has one of the following:

(1) Beryllium sensitivity as established by an abnormal beryllium LPT performed on either blood or lung lavage cells.

(2) Established chronic beryllium disease.

(3) Any injury, illness, impairment, or disability sustained as a consequence of the conditions specified in paragraphs (b)(1) and (2) of this section.

§ 30.206 How does a claimant prove that the employee was a ''covered beryllium employee'' exposed to beryllium dust, particles or vapor in the performance of duty?

(a) Proof of employment at or physical presence at a DOE facility, or a facility owned, operated, or occupied by a beryllium vendor, because of employment by the United States, a beryllium vendor, or a contractor or subcontractor of a beryllium vendor during a period when beryllium dust, particles, or vapor may have been present at such a facility, may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was employed or present at a covered facility and the time period of such employment or presence.

(b) If the evidence shows that exposure occurred while the employee was employed or present at a facility during a time frame that is outside the relevant time frame indicated for that facility by DOE, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant time frame for that facility.

(c) If the evidence shows that exposure occurred while the employee was employed or present at a facility that would have to be designated by DOE as a beryllium vendor under section 7384m of the Act to be a covered facility, and that the facility has not been so designated, OWCP will deny the claim on the ground that the facility is not a covered facility.

(d) Records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created by any vendor, processor, or producer of beryllium or related products designated as a beryllium vendor by the

DOE in accordance with section 7384m of the Act.

(3) Records or documents created as a by product of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

§ 30.207 How does a claimant prove a diagnosis of a beryllium disease covered under Part B?

(a) Written medical documentation is required in all cases to prove that the employee developed a covered beryllium illness. Proof that the employee developed a covered beryllium illness must be made by using the procedures outlined in paragraphs (b), (c), or (d) of this section.

(b) Beryllium sensitivity or sensitization is established with an abnormal LPT performed on either blood or lung lavage cells.

(c) Chronic beryllium disease is established in the following manner:

(1) For diagnoses on or after January 1, 1993, beryllium sensitivity (as established in accordance with paragraph (b) of this section), together with lung pathology consistent with chronic beryllium disease, including the following:

(i) A lung biopsy showing granulomas or a lymphocytic process consistent with chronic beryllium disease;

(ii) A computerized axial tomography scan showing changes consistent with chronic beryllium disease; or

(iii) Pulmonary function or exercise testing showing pulmonary deficits consistent with chronic beryllium disease.

(2) For diagnoses before January 1, 1993, the presence of the following:

(i) Occupational or environmental history, or epidemiologic evidence of beryllium exposure; and

(ii) Any three of the following criteria:

(A) Characteristic chest radiographic (or computed tomography (CT)) abnormalities.

(B) Restrictive or obstructive lung physiology testing or diffusing lung capacity defect.

(C) Lung pathology consistent with chronic beryllium disease.

(D) Clinical course consistent with a chronic respiratory disorder.

(E) Immunologic tests showing beryllium sensitivity (skin patch test or beryllium blood test preferred).

(d) An injury, illness, impairment or disability sustained as a consequence of beryllium sensitivity or established chronic beryllium disease must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disability and the beryllium sensitivity or established chronic beryllium disease. Neither the fact that the injury, illness, impairment or disability manifests itself after a diagnosis of beryllium sensitivity or established chronic beryllium disease, nor the belief of the claimant that the injury, illness, impairment or disability was caused by the beryllium sensitivity or established chronic beryllium disease, is sufficient in itself to prove a causal relationship.

Eligibility Criteria for Claims Relating to Radiogenic Cancer Under Parts B and E of EEOICPA

§ 30.210 What are the criteria for eligibility for benefits relating to radiogenic cancer?

(a) To establish eligibility for benefits for radiogenic cancer under Part B of EEOICPA, an employee or his or her survivor must show that:

(1) The employee has been diagnosed with one of the forms of cancer specified in § 30.5(ff) of this part; and

(i) Is a member of the Special Exposure Cohort (as described in § 30.214(a) of this subpart) who, as a civilian DOE employee or civilian DOE contractor employee, contracted the specified cancer after beginning employment at a DOE facility; or

(ii) Is a member of the Special Exposure Cohort (as described in § 30.214(a) of this subpart) who, as a civilian atomic weapons employee, contracted the specified cancer after beginning employment at an atomic weapons employer facility (as defined in § 30.5(e)); or

(2) The employee has been diagnosed with cancer; and

(i)(A) Is/was a civilian DOE employee who contracted that cancer after beginning employment at a DOE facility; or

(B) Is/was a civilian DOE contractor employee who contracted that cancer after beginning employment at a DOE facility; or

(C) Is/was a civilian atomic weapons employee who contracted that cancer after beginning employment at an atomic weapons employer facility; and

(ii) The cancer was at least as likely as not related to the employment at the DOE facility or atomic weapons employer facility; or

(3) The employee has been diagnosed with an injury, illness, impairment or disease that arose as a consequence of the accepted cancer.

(b)(1) To establish eligibility for benefits for radiogenic cancer under Part E of EEOICPA, an employee or his or her survivor must show that:

(i) The employee has been diagnosed with cancer; and

(A) Is/was a civilian DOE contractor employee or a civilian RECA section 5 uranium worker who contracted that cancer after beginning employment at a DOE facility or a RECA section 5 facility; and

(B) The cancer was at least as likely as not related to exposure to a toxic substance of a radioactive nature at a DOE facility or a RECA section 5 facility; and

(C) It is at least as likely as not that the exposure to such toxic substance(s) was related to employment at a DOE facility or a RECA section 5 facility; or

(ii) The employee has been diagnosed with an injury, illness, impairment or disease that arose as a consequence of the accepted cancer.

(2) Eligibility for benefits for radiogenic cancer under Part E in a claim that has previously been accepted under Part B pursuant to the Special Exposure Cohort provisions is described in § 30.230(a).

§ 30.211 How does a claimant establish that the employee has or had contracted cancer?

A claimant establishes that the employee has or had contracted a specified cancer (as defined in § 30.5(ff)) or other cancer with medical evidence that sets forth an explicit diagnosis of cancer and the date on which that diagnosis was first made.

§ 30.212 How does a claimant establish that the employee contracted cancer after beginning employment at a DOE facility, an atomic weapons employer facility or a RECA section 5 facility?

(a) Proof of employment by the DOE or a DOE contractor at a DOE facility, or by an atomic weapons employer at an atomic weapons employer facility, or at a RECA section 5 facility, may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and the time period(s) of such employment.

(b)(1) Except as provided in paragraph (b)(2) of this section, if the evidence shows that exposure occurred while the employee was employed at a facility during a time frame that is outside the relevant period indicated for that facility by DOE, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant period for that facility.

(2) OWCP may choose not to request that DOE provide additional information on an atomic weapons employer facility that NIOSH reported had a potential for significant residual

radiation contamination in its report dated October 2003 and titled ''Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities,'' or any update to that report, if the evidence referred to in paragraph (a) of this section establishes that the employee was employed at that facility during a period when NIOSH reported that it had a potential for significant residual radiation contamination.

(c) If the evidence shows that exposure occurred while the employee was employed by an employer that would have to be designated by DOE as an atomic weapons employer under section 7384l(4) of the Act to be a covered employer, and that the employer has not been so designated, OWCP will deny the claim on the ground that the employer is not a covered atomic weapons employer.

(d) Records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

§ 30.213 How does a claimant establish that the radiogenic cancer was at least as likely as not related to employment at the DOE facility, the atomic weapons employer facility, or the RECA section 5 facility?

(a) HHS, with the advice of the Advisory Board on Radiation and Worker Health, has issued regulatory guidelines at 42 CFR part 81 that OWCP uses to determine whether radiogenic cancers claimed under Parts B and E of EEOICPA were at least as likely as not related to employment at a DOE facility, an atomic weapons employer facility, or a RECA section 5 facility, as appropriate. Persons should consult HHS's regulations for information regarding the factual evidence that will be considered by OWCP, in addition to the employee's radiation dose reconstruction that will be provided to OWCP by HHS, in making this particular factual determination.

(b) HHS's regulations satisfy the legal requirements in section 7384n(c) of the Act, which also sets out OWCP's obligation to use them in its adjudication of claims for radiogenic cancer filed under Part B of the Act, and provide the factual basis for OWCP to determine if the ''probability of causation'' (PoC) that an employee's cancer was sustained in the performance of duty is 50% or greater (*i.e.*, it is ''at least as likely as not'' causally related to employment), as required under section 7384n(b).

(c) OWCP also uses HHS's regulations when it makes the determination required by section 7385s–4(c)(1)(A) of the Act, since those regulations provide the factual basis for OWCP to determine if ''it is at least as likely as not'' that exposure to radiation at a DOE facility or RECA section 5 facility, as appropriate, was a significant factor in aggravating, contributing to, or causing the employee's radiogenic cancer claimed under Part E of EEOICPA. For cancer claims under Part E, if the PoC is less than 50% and the claimant alleges that the employee was exposed to additional toxic substances, OWCP will determine if the claim is otherwise compensable pursuant to § 30.230(d) of this part.

§ 30.214 How does a claimant establish that the employee is a member of the Special Exposure Cohort?

(a) For purposes of establishing eligibility as a member of the Special Exposure Cohort (SEC) under § 30.210(a)(1), the employee must have been a DOE employee, a DOE contractor employee, or an atomic weapons employee who meets any of the following requirements:

(1) The employee was so employed for a number of workdays aggregating at least 250 workdays before February 1, 1992, at a gaseous diffusion plant located in Paducah, Kentucky; Portsmouth, Ohio; or Oak Ridge, Tennessee; and during such employment:

(i) Was monitored through the use of dosimetry badges for exposure at the plant of the external parts of the employee's body to radiation; or

(ii) Worked in a job that had exposures comparable to a job that is or was monitored through the use of dosimetry badges.

(2) The employee was so employed before January 1, 1974, by DOE or a DOE contractor or subcontractor on Amchitka Island, Alaska, and was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(3) The employee is a member of a group or class of employees subsequently designated as additional members of the SEC by HHS.

(b) For purposes of satisfying the 250 workday requirement of paragraph (a)(1) of this section, the claimant may aggregate the days of service at more than one gaseous diffusion plant.

(c) Proof of employment by the DOE or a DOE contractor, or an atomic weapons employer, for the requisite time periods set forth in paragraph (a) of this section, may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and the time period(s) of such employment. If the evidence shows that exposure occurred while the employee was employed by an employer that would have to be designated by DOE as an atomic weapons employer under section 7384l(4) of the Act to be a covered employer, and that the employer has not been so designated, OWCP will deny the claim on the ground that the employer is not a covered atomic weapons employer.

(d) Records from the following sources may be considered as evidence for purposes of establishing employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

§ 30.215 How does a claimant establish that the employee has sustained an injury, illness, impairment or disease as a consequence of a diagnosed cancer?

An injury, illness, impairment or disease sustained as a consequence of a diagnosed cancer covered by the provisions of § 30.210 must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disease and the cancer. Neither the fact that the injury, illness, impairment or disease manifests itself after a diagnosis of a cancer, nor the belief of the claimant that the injury, illness, impairment or disease was caused by the cancer, is sufficient in itself to prove a causal relationship.

Eligibility Criteria for Claims Relating to Chronic Silicosis Under Part B of EEOICPA

§ 30.220 What are the criteria for eligibility for benefits relating to chronic silicosis?

To establish eligibility for benefits for chronic silicosis under Part B of EEOICPA, an employee or his or her survivor must show that:

(a) The employee is a civilian DOE employee, or a civilian DOE contractor employee, who was present for a number of workdays aggregating at least 250 workdays during the mining of tunnels at a DOE facility (as defined in § 30.5(x)) located in Nevada or Alaska for tests or experiments related to an atomic weapon, and has been diagnosed with chronic silicosis (as defined in § 30.5(j)); or

(b) The employee has been diagnosed with an injury, illness, impairment or disease that arose as a consequence of the accepted chronic silicosis.

§ 30.221 How does a claimant prove exposure to silica in the performance of duty?

(a) Proof of the employee's employment and presence for the requisite days during the mining of tunnels at a DOE facility located in Nevada or Alaska for tests or experiments related to an atomic weapon may be made by the submission of any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and present at these sites and the time period(s) of such employment and presence.

(b) If the evidence shows that exposure occurred while the employee was employed and present at a facility during a time frame that is outside the relevant time frame indicated for that facility by DOE, OWCP may request that DOE provide additional information on the facility. OWCP will determine whether the evidence of record supports enlarging the relevant time frame for that facility.

(c) Records from the following sources may be considered as evidence for purposes of establishing proof of employment or presence at a covered facility:

(1) Records or documents created by any federal government agency (including verified information submitted for security clearance), any tribal government, or any state, county, city or local government office, agency, department, board or other entity, or other public agency or office.

(2) Records or documents created as a byproduct of any regularly conducted business activity or by an entity that acted as a contractor or subcontractor to the DOE.

(d) For purposes of satisfying the 250 workday requirement of § 30.220(a), the claimant may aggregate the days of service at more than one qualifying site.

§ 30.222 How does a claimant establish that the employee has been diagnosed with chronic silicosis or has sustained a consequential injury, illness, impairment or disease?

(a) A written diagnosis of the employee's chronic silicosis (as defined in § 30.5(j)) shall be made by a medical doctor and accompanied by one of the following:

(1) A chest radiograph, interpreted by an individual certified by NIOSH as a B reader, classifying the existence of pneumoconioses of category 1/0 or higher; or

(2) Results from a computer assisted tomograph or other imaging technique that are consistent with silicosis; or

(3) Lung biopsy findings consistent with silicosis.

(b) An injury, illness, impairment or disease sustained as a consequence of accepted chronic silicosis covered by the provisions of § 30.220(a) must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disease and the accepted chronic silicosis. Neither the fact that the injury, illness, impairment or disease manifests itself after a diagnosis of accepted chronic silicosis, nor the belief of the claimant that the injury, illness, impairment or disease was caused by the accepted chronic silicosis, is sufficient in itself to prove a causal relationship.

Eligibility Criteria for Certain Uranium Employees Under Part B of EEOICPA

§ 30.225 What are the criteria for eligibility for benefits under Part B of EEOICPA for certain uranium employees?

In order to be eligible for benefits under this section, the claimant must establish the criteria set forth in either paragraph (a) or paragraph (b) of this section:

(a) The Attorney General has determined that the claimant is a covered uranium employee who is entitled to payment of $100,000 as compensation due under section 5 of RECA for a claim made under that statute (there is, however, no requirement that the claimant or surviving eligible beneficiary has actually received payment pursuant to RECA). If a deceased employee's survivor has been determined to be entitled to such an award, his or her survivor(s), if any, will only be entitled to EEOICPA compensation in accordance with section 7384u(e) of the Act.

(b) The covered uranium employee has been diagnosed with an injury, illness, impairment or disease that arose as a consequence of the medical condition for which he or she was determined to be entitled to payment of $100,000 as compensation due under section 5 of RECA.

§ 30.226 How does a claimant establish that a covered uranium employee has sustained a consequential injury, illness, impairment or disease?

An injury, illness, impairment or disease sustained as a consequence of a medical condition covered by the provisions of § 30.225(a) must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disease and the accepted medical condition. Neither the fact that the injury, illness, impairment or disease manifests itself after a diagnosis of a medical condition covered by the provisions of § 30.225(a), nor the belief of the claimant that the injury, illness, impairment or disease was caused by such a condition, is sufficient in itself to prove a causal relationship.

Eligibility Criteria for Other Claims Under Part E of EEOICPA

§ 30.230 What are the criteria necessary to establish that an employee contracted a covered illness under Part E of EEOICPA?

To establish that an employee contracted a covered illness under Part E of the Act, the employee, or his or her survivor, must show one of the following:

(a) That OWCP has determined under Part B of EEOICPA that the employee is a Department of Energy contractor employee as defined in § 30.5(w), and that he or she has been awarded compensation under that Part of the Act for an occupational illness;

(b) That the Attorney General has determined that the employee is entitled to payment of $100,000 as compensation due under section 5 of RECA for a claim made under that statute (however, if a deceased employee's survivor has been determined to be entitled to such an award, his or her survivor(s), if any, will only be entitled to benefits under Part E of EEOICPA in accordance with section 7385s–3 of the Act);

(c) That the Secretary of Energy has accepted a positive determination of a Physicians Panel that the employee sustained an illness or died due to exposure to a toxic substance at a DOE

facility under former section 7385o of EEOICPA, or that the Secretary of Energy has found significant evidence contrary to a negative determination of a Physicians Panel; or

(d)(1) That the employee is a Department of Energy contractor employee as defined in § 30.5(w), or an individual who was employed in a uranium mine or mill located in Colorado, New Mexico, Arizona, Wyoming, South Dakota, Washington, Utah, Idaho, North Dakota, Oregon or Texas at any time during the period from January 1, 1942 through December 31, 1971, or was employed in the transport of uranium ore or vanadium-uranium ore from such a mine or mill during that same period, and that he or she:

(i) Has been diagnosed with an illness; and

(ii) That it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility or at a RECA section 5 facility, as appropriate, was a significant factor in aggravating, contributing to, or causing the illness; and

(iii) That it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility or a RECA section 5 facility, as appropriate.

(2) In making the determination under paragraph (d)(1)(ii) of this section, OWCP will consider:

(i) The nature, frequency and duration of exposure of the covered employee to the substance alleged to be toxic;

(ii) Evidence of the carcinogenic or pathogenic properties of the alleged toxic substance to which the employee was exposed;

(iii) An opinion of a qualified physician with expertise in treating, diagnosing or researching the illness claimed to be caused or aggravated by the alleged exposure; and

(iv) Any other evidence that OWCP determines to have demonstrated relevance to the relation between a particular toxic substance and the claimed illness.

§ 30.231 How does a claimant prove employment-related exposure to a toxic substance at a DOE facility or a RECA section 5 facility?

To establish employment-related exposure to a toxic substance at a Department of Energy facility or RECA section 5 facility as required by § 30.230(d), an employee, or his or her survivor(s), must prove that the employee was employed at such facility and that he or she was exposed to a toxic substance in the course of that employment.

(a) Proof of employment may be established by any trustworthy records that, on their face or in conjunction with other such records, establish that the employee was so employed and the time period(s) of such employment.

(b) Proof of exposure to a toxic substance may be established by the submission of any appropriate document or information that is evidence that such substance was present at the facility in which the employee was employed and that the employee came into contact with such substance.

§ 30.232 How does a claimant establish that the employee has been diagnosed with a covered illness, or sustained an injury, illness, impairment or disease as a consequence of a covered illness?

(a) To establish that the employee has been diagnosed with a covered illness as required by § 30.230(d), the employee, or his or her survivor(s), must provide the following:

(1) The name and address of any licensed physician who is the source of a diagnosis based upon documented medical information that the employee has or had an illness and that the illness may have resulted from exposure to a toxic substance while the employee was employed at a DOE facility or a RECA section 5 facility, as appropriate, and, to the extent practicable, a copy of the diagnosis and a summary of the information upon which the diagnosis is based; and

(2) A signed medical release, authorizing the release of any diagnosis, medical opinion and medical records documenting the diagnosis or opinion that the employee has or had an illness and that the illness may have resulted from exposure to a toxic substance while the employee was employed at a DOE facility or RECA section 5 facility, as appropriate; and

(3) To the extent practicable and appropriate, an occupational history obtained by a physician, an occupational health professional, or a DOE-sponsored Former Worker Program (if such an occupational history is not reasonably available or is inadequate, and such history is deemed by OWCP to be needed for the fair adjudication of the claim, then OWCP may assist the claimant in developing this history); and

(4) Any other information or materials deemed by OWCP to be necessary to provide reasonable evidence that the employee has or had an illness that may have arisen from exposure to a toxic substance while employed at a DOE facility or RECA section 5 facility, as appropriate.

(b) The employee, or his or her survivor(s), may also submit to OWCP other evidence not described in paragraph (a) of this section showing that the employee has or had an illness that resulted from an exposure to a toxic substance during the course of employment at either a DOE facility or a RECA section 5 facility, as appropriate.

(c) An injury, illness, impairment or disease sustained as a consequence of a covered illness (as defined in § 30.5(r)) must be established with a fully rationalized medical report by a physician that shows the relationship between the injury, illness, impairment or disease and the covered illness. Neither the fact that the injury, illness, impairment or disease manifests itself after a diagnosis of a covered illness, nor the belief of the claimant that the injury, illness, impairment or disease was caused by the covered illness, is sufficient in itself to prove a causal relationship.

Subpart D—Adjudicatory Process

§ 30.300 What process will OWCP use to decide claims for entitlement and to provide for administrative review of those decisions?

OWCP district offices will issue recommended decisions with respect to claims for entitlement under Part B and/or Part E of EEOICPA that are filed pursuant to the regulations set forth in subpart B of this part. In circumstances where a claim is made for more than one benefit available under Part B and/or Part E of the Act, OWCP may issue a recommended decision on only part of that particular claim in order to adjudicate that portion of the claim as quickly as possible. Should this occur, OWCP will issue one or more recommended decisions on the deferred portions of the claim when the adjudication of those portions is completed. All recommended decisions granting and/or denying benefits under Part B and/or Part E of the Act will be forwarded to the Final Adjudication Branch (FAB). Claimants will be given an opportunity to object to all or part of the recommended decision before the FAB. The FAB will consider objections filed by a claimant and conduct a hearing, if requested to do so by the claimant, before issuing a final decision on the claim for entitlement.

§ 30.301 May subpoenas be issued for witnesses and documents in connection with a claim under Part B of EEOICPA?

(a) In connection with the adjudication of a claim under Part B of EEOICPA, an OWCP district office and/or a FAB reviewer may, at their own

initiative, issue subpoenas for the attendance and testimony of witnesses, and for the production of books, electronic records, correspondence, papers or other relevant documents. Subpoenas will only be issued for documents if they are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(b) A claimant may also request a subpoena in connection with his or her claim under Part B of the Act, but such request may only be made to a FAB reviewer. No subpoenas will be issued at the request of the claimant under any other portion of the claims process. The decision to grant or deny such request is within the discretion of the FAB reviewer. To request a subpoena under this section, the requestor must:

(1) Submit the request in writing and send it to the FAB reviewer as early as possible, but no later than 30 days (as evidenced by postmark, electronic marker or other objective date mark) after the date of the original hearing request;

(2) Explain why the testimony or evidence is directly relevant and material to the issues in the case; and

(3) Establish that a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(c) No subpoena will be issued for attendance of employees of OWCP acting in their official capacities as decision-makers or policy administrators. For hearings taking the form of a review of the written record, no subpoena for the appearance of witnesses will be considered.

(d) The FAB reviewer will issue the subpoena under his or her own name. It may be served in person or by certified mail, return receipt requested, addressed to the person to be served at his or her last known principal place of business or residence. A decision to deny a subpoena requested by a claimant can only be challenged as part of a request for reconsideration of any adverse decision of the FAB which results from the hearing.

§ 30.302 Who pays the costs associated with subpoenas?

(a) Witnesses who are not employees or former employees of the federal government shall be paid the same fees and mileage as paid for like services in the District Court of the United States where the subpoena is returnable, except that expert witnesses shall be paid a fee not to exceed the local customary fee for such services.

(b) Where OWCP asked that the witness submit evidence into the case record or asked that the witness attend, OWCP shall pay the fees and mileage. Where the claimant asked for the subpoena, and where the witness submitted evidence into the record at the request of the claimant, the claimant shall pay the fees and mileage.

§ 30.303 What information may OWCP request in connection with a claim under Part E of EEOICPA?

At any time during the course of development of a claim for benefits under Part E, OWCP may determine that it needs relevant information to adjudicate the claim. When this occurs, and at the request of OWCP, DOE and/or any contractor who employed a Department of Energy contractor employee must provide to OWCP information or documents in response to the request in connection with a claim under Part E of EEOICPA.

(a) The party to whom the request is made must respond to OWCP within 60 days of the request with either:

(1) The requested information or documents; or

(2) A sworn statement that a good faith search for the requested information or documents was conducted, and that the information or documents could not be located.

(b) DOE and/or the DOE contractor who employed a Department of Energy contractor employee must query third parties under its control to acquire the requested information or documents.

(c) In providing the requested information or documents, DOE and/or the DOE contractor who employed a DOE contractor employee must preserve the current organization of the requested information or documents, and must provide such description and indexing of the requested information or documents as OWCP considers appropriate to facilitate their use by OWCP.

(d) Information or document requests may include, but are not limited to, requests for records, files and other data, whether paper, electronic, imaged or otherwise, developed, acquired or maintained by DOE or the DOE contractor who employed a DOE contractor employee. Such information or documents may include records, files and data on facility industrial hygiene, employment of individuals or groups, exposure and medical records, and claims applications.

Recommended Decisions on Claims

§ 30.305 How does OWCP determine entitlement to EEOICPA compensation?

(a) In reaching a recommended decision with respect to EEOICPA compensation, OWCP considers the claim presented by the claimant, the factual and medical evidence of record, the dose reconstruction report calculated by HHS (if any), any report submitted by DOE and the results of such investigation as OWCP may deem necessary.

(b) The OWCP claims staff applies the law, the regulations and its procedures when it evaluates the medical evidence and the facts as reported or obtained upon investigation.

§ 30.306 What does the recommended decision contain?

The recommended decision shall contain findings of fact and conclusions of law. The recommended decision may accept or reject the claim in its entirety, or it may accept or reject a portion of the claim presented. It is accompanied by a notice of the claimant's right to file objections with, and request a hearing before, the FAB.

§ 30.307 To whom is the recommended decision sent?

(a) A copy of the recommended decision will be mailed to the claimant's last known address. However, if the claimant has a designated representative before OWCP, the copy of the recommended decision will be mailed to the representative. Notification to either the claimant or the representative will be considered notification to both parties.

(b) At the same time it issues a recommended decision on a claim, the OWCP district office will forward the record of such claim to the FAB. Any new evidence submitted to the district office following the issuance of the recommended decision will also be forwarded to the FAB for consideration.

Hearings and Final Decisions on Claims

§ 30.310 What must the claimant do if he or she objects to the recommended decision or wants to request a hearing?

(a) Within 60 days from the date the recommended decision is issued, the claimant must state, in writing, whether he or she objects to any of the findings of fact and/or conclusions of law contained in such decision, including HHS's reconstruction of the radiation dose to which the employee was exposed (if any), and whether a hearing is desired. This written statement should be filed with the FAB at the address indicated in the notice

accompanying the recommended decision.

(b) For purposes of determining whether the written statement referred to in paragraph (a) of this section has been timely filed with the FAB, the statement will be considered to be ''filed'' on the date that the claimant mails it to the FAB, as determined by postmark, or on the date that such written statement is actually received by the FAB, whichever is the earliest determinable date.

§ 30.311 What happens if the claimant does not object to the recommended decision or request a hearing within 60 days?

(a) If the claimant does not file a written statement that objects to the recommended decision and/or requests a hearing within the period of time allotted in § 30.310, the FAB may issue a final decision accepting the recommendation of the district office as provided in § 30.316.

(b) If the recommended decision accepts all or part of a claim for compensation, the FAB may issue a final decision at any time after receiving written notice from the claimant that he or she waives any objection to all or part of the recommended decision.

§ 30.312 What will the FAB do if the claimant objects to the recommended decision but does not request a hearing?

If the claimant files a written statement that objects to the recommended decision within the period of time allotted in § 30.310 but does not request a hearing, the FAB will consider any objections by means of a review of the written record. If the claimant only objects to part of the recommended decision, the FAB may issue a final decision accepting the remaining part of the recommendation of the district office without first reviewing the written record (*see* § 30.316).

§ 30.313 How is a review of the written record conducted?

(a) The FAB reviewer will consider the written record forwarded by the district office and any additional evidence and/or argument submitted by the claimant. The reviewer may also conduct whatever investigation is deemed necessary.

(b) The claimant should submit, with his or her written statement that objects to the recommended decision, all evidence or argument that he or she wants to present to the reviewer. However, evidence or argument may be submitted at any time up to the date specified by the reviewer for the submission of such evidence or argument.

(c) Any objection that is not presented to the FAB reviewer, including any objection to HHS's reconstruction of the radiation dose to which the employee was exposed (if any), whether or not the pertinent issue was previously presented to the district office, is deemed waived for all purposes.

§ 30.314 How is a hearing conducted?

(a) The FAB reviewer retains complete discretion to set the time and place of the hearing, including the amount of time allotted for the hearing, considering the issues to be resolved. At the discretion of the reviewer, the hearing may be conducted by telephone or teleconference. As part of the hearing process, the FAB reviewer will consider the written record forwarded by the district office and any additional evidence and/or argument submitted by the claimant. The reviewer may also conduct whatever investigation is deemed necessary.

(1) The FAB reviewer will try to set the hearing at a place that is within commuting distance of the claimant's residence, but will not be able to do so in all cases. Therefore, for reasons of economy, the claimant may be required to travel a roundtrip distance of up to 200 miles to attend the hearing.

(2) In unusual circumstances, the FAB reviewer may set a place for the hearing that is more than 200 miles roundtrip from the claimant's residence. However, in that situation, OWCP will reimburse the claimant for reasonable and necessary travel expenses incurred to attend the hearing if he or she submits a written reimbursement request that documents such expenses.

(b) Unless otherwise directed in writing by the claimant, the FAB reviewer will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled hearing date. If the claimant only objects to part of the recommended decision, the FAB reviewer may issue a final decision accepting the remaining part of the recommendation of the district office without first holding a hearing (*see* § 30.316). Any objection that is not presented to the FAB reviewer, including any objection to HHS's reconstruction of the radiation dose to which the employee was exposed (if any), whether or not the pertinent issue was previously presented to the district office, is deemed waived for all purposes.

(c) The hearing is an informal process, and the reviewer is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure. The reviewer may conduct the hearing in such manner as to best ascertain the rights of the claimant. During the hearing process, the claimant may state his or her arguments and present new written evidence and/or testimony in support of the claim.

(d) Testimony at hearings is recorded, then transcribed and placed in the record. Oral testimony shall be made under oath.

(e) The FAB reviewer will furnish a transcript of the hearing to the claimant, who has 20 days from the date it is sent to submit any comments to the reviewer.

(f) The claimant will have 30 days after the hearing is held to submit additional evidence or argument, unless the reviewer, in his or her sole discretion, grants an extension. Only one such extension may be granted.

(g) The reviewer determines the conduct of the hearing and may terminate the hearing at any time he or she determines that all relevant evidence has been obtained, or because of misbehavior on the part of the claimant and/or representative at or near the place of the oral presentation.

§ 30.315 May a claimant postpone a hearing?

(a) The FAB will entertain any reasonable request for scheduling the time and place of the hearing, but such requests should be made at the time that the hearing is requested. Scheduling is at the discretion of the FAB, and is not reviewable. In most instances, once the hearing has been scheduled and appropriate written notice has been mailed, it cannot be postponed at the claimant's request for any reason except those stated in paragraph (b) of this section, unless the FAB reviewer can reschedule the hearing on the same docket (that is, during the same hearing trip). If a request to postpone a scheduled hearing does not meet one of the tests of paragraph (b) of this section and cannot be accommodated on the same docket, no further opportunity for a hearing will be provided. Instead, the FAB will consider the claimant's objections by means of a review of the written record. In the alternative, a teleconference may be substituted for the hearing at the discretion of the reviewer.

(b) Where the claimant has a medical reason that prevents attendance at the hearing, or where the death or illness of the claimant's parent, spouse, or child prevents the claimant from attending the hearing as scheduled, a postponement may be granted in the discretion of the FAB if the claimant

provides at least 24 hours notice and a reasonable explanation supporting his or her inability to attend the scheduled hearing.

(c) At any time after requesting a hearing, the claimant can request a change to a review of the written record by making a written request to the FAB. Once such a change is made, no further opportunity for a hearing will be provided.

§ 30.316 How does the FAB issue a final decision on a claim?

(a) If the claimant does not file a written statement that objects to the recommended decision and/or requests a hearing within the period of time allotted in § 30.310, or if the claimant waives any objections to all or part of the recommended decision, the FAB may issue a final decision accepting the recommendation of the district office, either in whole or in part (*see* §§ 30.311, 30.312 and 30.314(b)).

(b) If the claimant objects to all or part of the recommended decision, the FAB reviewer will issue a final decision on the claim after either the hearing or the review of the written record, and after completing such further development of the case as he or she may deem necessary.

(c) Any recommended decision (or part thereof) that is pending either a hearing or a review of the written record for more than one year from the date the FAB received the written statement that objected to the recommended decision and/or requested a hearing shall be considered a final decision of the FAB on the one-year anniversary of such date. Any recommended decision described in § 30.311 that is pending at the FAB for more than one year from the date that the period of time described in § 30.310 expired shall be considered a final decision of the FAB on the one-year anniversary of such date.

(d) The decision of the FAB, whether issued pursuant to paragraph (a), (b) or (c) of this section, shall be final upon the date of issuance of such decision, unless a timely request for reconsideration under § 30.319 has been filed.

(e) A copy of the final decision of the FAB will be mailed to the claimant's last known address. However, if the claimant has a designated representative before OWCP, the copy of the final decision will be mailed to the representative. Notification to either the claimant or the representative will be considered notification to both parties.

§ 30.317 Can the FAB request a further response from the claimant or return a claim to the district office?

At any time before the issuance of its final decision, the FAB may request that the claimant submit additional evidence or argument, or return the claim to the district office for further development and/or issuance of a new recommended decision without issuing a final decision, whether or not requested to do so by the claimant.

§ 30.318 Can the FAB consider objections to HHS's reconstruction of a radiation dose or to the guidelines OWCP uses to determine if a claimed cancer was at least as likely as not related to employment?

(a) If the claimant objects to HHS's reconstruction of the radiation dose to which the employee was exposed, the FAB will evaluate the factual findings upon which HHS based its dose reconstruction. If these factual findings do not appear to be supported by substantial evidence, the claim will be returned to the district office for referral to HHS for further consideration.

(b) The methodology used by HHS in arriving at reasonable estimates of the radiation doses received by an employee, established by regulations issued by HHS at 42 CFR part 82, is binding on the FAB. The FAB reviewer may determine, however, that objections concerning the application of that methodology should be considered by HHS and may return the case to the district office for referral to HHS for such consideration.

(c) The methodology that OWCP uses to determine if a claimed cancer was at least as likely as not related to employment at a DOE facility, an atomic weapons employer facility, or a RECA section 5 facility, established by regulations issued by HHS at 42 CFR part 81, is also binding on the FAB (*see* § 30.213). However, since OWCP applies this methodology when it makes these determinations, the FAB reviewer may consider objections to the manner in which OWCP applied HHS's regulatory guidelines.

§ 30.319 May a claimant request reconsideration of a final decision of the FAB?

(a) A claimant may request reconsideration of a final decision of the FAB by filing a written request with the FAB within 30 days from the date of issuance of such decision. If a timely request for reconsideration is made, the decision in question will no longer be considered ''final'' under § 30.316(d).

(b) For purposes of determining whether the written request referred to in paragraph (a) of this section has been timely filed with the FAB, the request will be considered to be ''filed'' on the date that the claimant mails it to the FAB, as determined by postmark, or on the date that such written request is actually received by the FAB, whichever is the earliest determinable date.

(c) A hearing is not available as part of the reconsideration process. If the FAB grants the request for reconsideration, it will consider the written record of the claim again and issue a new final decision on the claim. A new final decision that is issued after the FAB grants a request for reconsideration will be ''final'' upon the date of issuance of such new decision.

(1) Instead of issuing a new final decision after granting a request for reconsideration, the FAB may return the claim to the district office for further development as provided in § 30.317.

(2) If the FAB denies the request for reconsideration, the FAB decision that formed the basis for the request will be considered ''final'' upon the date the request is denied, and no further requests for reconsideration of that particular final decision of the FAB will be entertained.

(d) A claimant may not seek judicial review of a decision on his or her claim under EEOICPA until OWCP's decision on the claim is final pursuant to either § 30.316(d) (for claims in which no request for reconsideration was filed with the FAB) or paragraph (c) of this section (for claims in which a request for reconsideration was filed with the FAB).

Reopening Claims

§ 30.320 Can a claim be reopened after the FAB has issued a final decision?

(a) At any time after the FAB has issued a final decision pursuant to § 30.316, and without regard to whether new evidence or information is presented or obtained, the Director for Energy Employees Occupational Illness Compensation may reopen a claim and return it to the FAB for issuance of a new final decision, or to the district office for such further development as may be necessary, to be followed by a new recommended decision. The Director may also vacate any other type of decision issued by the FAB.

(b) At any time after the FAB has issued a final decision pursuant to § 30.316, a claimant may file a written request that the Director for Energy Employees Occupational Illness Compensation reopen his or her claim, provided that the claimant also submits new evidence of either covered employment or exposure to a toxic substance, or identifies either a change in the PoC guidelines, a change in the

dose reconstruction methods or an addition of a class of employees to the Special Exposure Cohort.

(1) If the Director concludes that the evidence submitted or matter identified in support of the claimant's request is material to the claim, the Director will reopen the claim and return it to the district office for such further development as may be necessary, to be followed by a new recommended decision.

(2) New evidence of a medical condition described in subpart C of these regulations is not sufficient to support a written request to reopen a claim for such a condition under paragraph (b) of this section.

(c) The decision whether or not to reopen a claim under this section is solely within the discretion of the Director for Energy Employees Occupational Illness Compensation and is not reviewable. If the Director reopens a claim pursuant to paragraphs (a) or (b) of this section and returns it to the district office, the resulting new recommended decision will be subject to the adjudicatory process described in this subpart. However, neither the district office nor the FAB can consider any objection concerning the Director's decision to reopen a claim under this section.

Subpart E—Medical and Related Benefits

Medical Treatment and Related Issues

§ 30.400 What are the basic rules for obtaining medical treatment?

(a) A covered Part B employee or a covered Part E employee who fits into at least one of the compensable claim categories described in subpart C of this part is entitled to receive all medical services, appliances or supplies that a qualified physician prescribes or recommends and that OWCP considers necessary to treat his or her occupational illness or covered illness, retroactive to the date the claim for benefits for that occupational illness or covered illness under Part B or Part E of EEOICPA was filed. The employee need not be disabled to receive such treatment. When a survivor receives payment, OWCP will pay for such treatment if the employee died before the claim was paid. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the occupational illness or covered illness, the employee should consult OWCP prior to obtaining it.

(b) The decision of OWCP that medical benefits provided under paragraph (a) of this section are not necessary to treat an occupational illness or covered illness is final when issued and is not subject to the adjudicatory process described in subpart D of this part.

(c) Any qualified physician or qualified hospital may provide medical services, appliances and supplies to the covered Part B employee or the covered Part E employee. A qualified provider of medical support services may also furnish appropriate services, appliances, and supplies. OWCP may apply a test of cost-effectiveness when it decides if appliances and supplies are necessary to treat an occupational illness or covered illness. With respect to prescribed medications, OWCP may require the use of generic equivalents where they are available.

§ 30.401 What are the special rules for the services of chiropractors?

(a) The services of chiropractors that may be reimbursed by OWCP are limited to treatment to correct a spinal subluxation. The costs of physical and related laboratory tests performed by or required by a chiropractor to diagnose such a subluxation are also payable.

(b) A diagnosis of spinal subluxation as demonstrated by x-ray to exist must appear in the chiropractor's report before OWCP can consider payment of a chiropractor's bill.

(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submission of the x-ray, or a report of the x-ray, but the report must be available for submission on request.

(d) A chiropractor may also provide services in the nature of physical therapy under the direction of a qualified physician.

§ 30.402 What are the special rules for the services of clinical psychologists?

A clinical psychologist may serve as a physician within the scope of his or her practice as defined by state law. Therefore, a clinical psychologist may not serve as a physician for conditions that include a physical component unless the applicable state law allows clinical psychologists to treat physical conditions. A clinical psychologist may also perform testing, evaluation, and other services under the direction of a qualified physician.

§ 30.403 Will OWCP pay for the services of an attendant?

OWCP will authorize payment for personal care services under section 7384t of the Act, whether or not such care includes medical services, so long as the personal care services have been determined to be medically necessary and are provided by a home health aide, licensed practical nurse, or similarly trained individual. The decision of OWCP that personal care services are not medically necessary is final when issued and is not subject to the adjudicatory process described in subpart D of this part.

§ 30.404 Will OWCP pay for transportation to obtain medical treatment?

(a) The employee is entitled to reimbursement for reasonable and necessary expenses, including transportation, incident to obtaining authorized medical services, appliances or supplies. To determine what is a reasonable distance to travel, OWCP will consider the availability of services, the employee's condition, and the means of transportation. Generally, a roundtrip distance of up to 200 miles is considered a reasonable distance to travel.

(b) If travel of more than 200 miles is contemplated, or air transportation or overnight accommodations will be needed, the employee must submit a written request to OWCP for prior authorization with information describing the circumstances and necessity for such travel expenses. OWCP will approve the request if it determines that the travel expenses are reasonable and necessary, and are incident to obtaining authorized medical services, appliances or supplies. Requests for travel expenses that are often approved include those resulting from referrals to a specialist for further medical treatment, and those involving air transportation of an employee who lives in a remote geographical area with limited local medical services.

(c) The decision of OWCP that requested travel expenses are either not reasonable or necessary, or are not incident to obtaining authorized medical services, appliances or supplies, is final when issued and is not subject to the adjudicatory process described in subpart D of this part.

(d) The standard form designated for medical travel refund requests is Form OWCP–957 and must be used to seek reimbursement under this section. This form can be obtained from OWCP.

§ 30.405 After selecting a treating physician, may an employee choose to be treated by another physician instead?

(a) OWCP will provide the employee with an opportunity to designate a treating physician when it accepts the claim. When the physician originally selected to provide treatment for an occupational illness or a covered illness

refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with his or her reasons for desiring a change of physician.

(b) OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating the occupational illnesses or covered illnesses covered by EEOICPA, or the need for a new physician when an employee has moved.

(c) The decision of OWCP that insufficient reasons for a change of physician have been submitted is final when issued and is not subject to the adjudicatory process described in subpart D of this part.

§ 30.406 Are there any exceptions to these procedures for obtaining medical care?

In cases involving emergencies or unusual circumstances, OWCP may authorize treatment in a manner other than as stated in this subpart.

Directed Medical Examinations

§ 30.410 Can OWCP require an employee to be examined by another physician?

(a) OWCP sometimes needs a second opinion from a medical specialist. The employee must submit to examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary. Also, OWCP may send a case file for second opinion review where an actual examination is not needed, or where the employee is deceased.

(b) If the initial examination is disrupted by someone accompanying the employee, OWCP will schedule another examination with a different qualified physician. The employee will not be entitled to have anyone else present at the subsequent examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed.

§ 30.411 What happens if the opinion of the physician selected by OWCP differs from the opinion of the physician selected by the employee?

(a) If one medical opinion holds more probative value than the other, OWCP will base its determination of coverage on the medical opinion with the greatest probative value. A difference in medical opinion sufficient to be considered a conflict only occurs when two reports of virtually equal weight and rationale reach opposing conclusions.

(b) If a conflict exists between the medical opinion of the employee's physician and the medical opinion of a second opinion physician, an OWCP medical adviser or consultant, or a physician submitting an impairment evaluation that meets the criteria set out in § 30.905 of this part, OWCP shall appoint a third physician to make an examination. This is called a referee examination. OWCP will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case. Also, a case file may be sent for referee medical review where there is no need for an actual examination, or where the employee is deceased.

(c) If the initial referee examination is disrupted by someone accompanying the employee, OWCP will schedule another examination with a different qualified physician. The employee will not be entitled to have anyone else present at the subsequent referee examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed.

§ 30.412 Who pays for second opinion and referee examinations?

OWCP will pay second opinion and referee medical specialists directly. OWCP will also reimburse the employee for all necessary and reasonable expenses incident to such an examination, including transportation costs and actual wages the employee lost for the time needed to submit to an examination required by OWCP.

Medical Reports

§ 30.415 What are the requirements for medical reports?

In general, medical reports from the employee's attending physician should include the following:

(a) Dates of examination and treatment;

(b) History given by the employee;

(c) Physical findings;

(d) Results of diagnostic tests;

(e) Diagnosis;

(f) Course of treatment;

(g) A description of any other conditions found due to the claimed occupational illness or covered illness;

(h) The treatment given or recommended for the claimed occupational illness or covered illness; and

(i) All other material findings.

§ 30.416 How and when should medical reports be submitted?

(a) The initial medical report (and any subsequent reports) should be made in narrative form on the physician's letterhead stationery. The physician should use Form EE–7 as a guide for the preparation of his or her initial medical report in support of a claim under Part B and/or Part E of EEOICPA. The report should bear the physician's signature or signature stamp. OWCP may require an original signature on the report.

(b) The report shall be submitted directly to OWCP as soon as possible after medical examination or treatment is received, either by the employee or the physician.

§ 30.417 What additional medical information may OWCP require to support continuing payment of benefits?

In all cases requiring hospital treatment or prolonged care, OWCP will request detailed narrative reports from the attending physician at periodic intervals. The physician will be asked to describe continuing medical treatment for the occupational illness or covered illness accepted by OWCP, a prognosis, and the physician's opinion as to the continuing causal relationship between the need for additional treatment and the occupational illness or covered illness.

Medical Bills

§ 30.420 How should medical bills and reimbursement requests be submitted?

Usually, medical providers submit their bills directly for processing. The rules for submitting and processing provider bills and reimbursement requests are stated in subpart H of this part. An employee requesting reimbursement for out-of-pocket medical expenses must submit a Form OWCP–915 and meet the requirements described in § 30.702.

§ 30.421 What are the time frames for submitting bills and reimbursement requests?

To be considered for payment, bills and reimbursement requests must be submitted by the end of the calendar year after the year when the expense was incurred, or by the end of the calendar year after the year when OWCP first accepted the claim as compensable under subpart D of this part, whichever is later.

§ 30.422 If an employee is only partially reimbursed for a medical expense, must the provider refund the balance of the amount paid to the employee?

(a) The OWCP fee schedule sets maximum limits on the amounts payable for many services. The

employee may be only partially reimbursed for out-of-pocket medical expenses because the amount he or she paid to the medical provider for a service exceeds the maximum allowable charge set by the OWCP fee schedule.

(b) If this happens, the employee will be advised of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid that exceeds the maximum allowable charge. The provider that the employee paid, but not the employee, may request reconsideration of the fee determination as set forth in § 30.712.

(c) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the charge that OWCP allows, the employee should submit documentation of the attempt to obtain such refund or credit to OWCP. OWCP may authorize reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

Subpart F—Survivors; Payments and Offsets; Overpayments

Survivors

§ 30.500 What special statutory definitions apply to survivors under EEOICPA?

(a) For the purposes of paying compensation to survivors under both Parts B and E of EEOICPA, OWCP will use the following definitions:

(1) *Surviving spouse* means the wife or husband of a deceased covered Part B employee or deceased covered Part E employee who was married to that individual for the 365 consecutive days immediately prior to the death of that individual.

(2) *Child* or *children* includes a recognized natural child of a deceased covered Part B employee or deceased covered Part E employee, a stepchild who lived with that individual in a regular parent-child relationship, and an adopted child of that individual. However, to be a ''covered'' child under Part E only, such child must have been, as of the date of the deceased covered Part E employee's death, either under the age of 18 years, or under the age of 23 years and a full-time student who was continuously enrolled in one or more educational institutions since attaining the age of 18 years, or any age and incapable of self-support.

(b) For the purposes of paying compensation to survivors only under Part B of EEOICPA, OWCP will use the following additional definitions:

(1) *Parent* includes fathers and mothers of a deceased covered Part B employee through adoption.

(2) *Grandchild* means a child of a child of a deceased covered Part B employee.

(3) *Grandparent* means a parent of a parent of a deceased covered Part B employee.

§ 30.501 What order of precedence will OWCP use to determine which survivors are entitled to receive compensation under EEOICPA?

(a) Under Part B of the Act, if OWCP determines that a survivor or survivors are entitled to receive compensation under EEOICPA because a covered Part B employee who would otherwise have been entitled to benefits is deceased, that compensation will be disbursed as follows, subject to the qualifications set forth in § 30.5(gg)(3):

(1) If there is a surviving spouse, the compensation shall be paid to that individual.

(2) If there is no surviving spouse, the compensation shall be paid in equal shares to all children of the deceased covered Part B employee.

(3) If there is no surviving spouse and no children, the compensation shall be paid in equal shares to the parents of the deceased covered Part B employee.

(4) If there is no surviving spouse, no children and no parents, the compensation shall be paid in equal shares to all grandchildren of the deceased covered Part B employee.

(5) If there is no surviving spouse, no children, no parents and no grandchildren, the compensation shall be paid in equal shares to the grandparents of the deceased covered Part B employee.

(6) Notwithstanding paragraphs (a)(1) through (a)(5) of this section, if there is a surviving spouse and at least one child of the deceased covered Part B employee who is a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse, half of the compensation shall be paid to the surviving spouse, and the other half of the compensation shall be paid in equal shares to each child of the deceased covered Part B employee who is a minor at the time of payment.

(b) Under Part E of the Act, if OWCP determines that a survivor or survivors are entitled to receive compensation under EEOICPA because a covered Part E employee who would otherwise have been entitled to benefits is deceased, that compensation will be disbursed as follows, subject to the qualifications set forth in § 30.5(gg)(3):

(1) If there is a surviving spouse, the compensation shall be paid to that individual.

(2) If there is no surviving spouse, the compensation shall be paid in equal shares to all ''covered'' children of the deceased covered Part E employee.

(3) Notwithstanding paragraphs (b)(1) and (b)(2) of this section, if there is a surviving spouse and at least one ''covered'' child of the deceased covered Part E employee who is living at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse, then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each ''covered'' child of the employee who is living at the time of payment.

§ 30.502 When is entitlement for survivors determined for purposes of EEOICPA?

Entitlement to any lump-sum payment for survivors under EEOICPA, other than for ''covered'' children under Part E, will be determined as of the time OWCP makes such a payment. As noted in § 30.500(a)(2), a child of a deceased Part E employee will only qualify as a ''covered'' child of that individual if he or she satisfied one of the additional statutory criteria for a ''covered'' child as of the date of the deceased Part E employee's death.

Payment of Claims and Offset for Certain Payments

§ 30.505 What procedures will OWCP follow before it pays any compensation?

(a) In cases involving the approval of a claim, whether in whole or in part, OWCP shall take all necessary steps to determine the amount of any offset or coordination of EEOICPA benefits before paying any benefits, and to verify the identity of the covered Part B employee, the covered Part E employee, or the eligible surviving beneficiary or beneficiaries. To perform these tasks, OWCP may conduct any investigation, require any claimant to provide or execute any affidavit, record or document, or authorize the release of any information as OWCP deems necessary to ensure that the compensation payment is made in the correct amount and to the correct person or persons. OWCP shall also require every claimant under Part B of the Act to execute and provide any necessary affidavit described in § 30.620. Should a claimant fail or refuse to execute an affidavit or release of information, or fail or refuse to provide a requested document or record or to provide access to information, such failure or refusal may be deemed to be a rejection of the

payment, unless the claimant does not have and cannot obtain the legal authority to provide, release, or authorize access to the required information, records, or documents.

(b) To determine the amount of any offset, OWCP shall require the covered Part B employee, covered Part E employee or each eligible surviving beneficiary filing a claim under this part to execute and provide an affidavit (or declaration made under oath on Form EE–1 or EE–2) reporting the amount of any payment made pursuant to a final judgment or settlement in litigation seeking damages for any occupational illness or covered illness for which benefits are payable under EEOICPA. Even if someone other than the covered Part B employee or the covered Part E employee receives a payment pursuant to a final judgment or settlement in litigation seeking damages for any occupational illness or covered illness for which benefits are payable under EEOICPA (*e.g.*, the surviving spouse of a deceased covered Part B employee or a deceased covered Part E employee), the receipt of any such payment must be reported since it may constitute a payment solely for an occupational illness or covered illness for which benefits are payable under EEOICPA.

(1) For the purposes of this paragraph (b) only, ''litigation seeking damages'' refers to any request or demand for money by the covered Part B employee or the covered Part E employee, or by another individual if the covered Part B employee or the covered Part E employee is deceased, made or sought in a civil action or in anticipation of the filing of a civil action, for any occupational illness or covered illness for which benefits are payable under EEOICPA. This term does not also include any request or demand for money made or sought pursuant to a life insurance or health insurance contract, or any request or demand for money made or sought by an individual other than the covered Part B employee or the covered Part E employee in that individual's own right (*e.g.*, a spouse's claim for loss of consortium), or any request or demand for money made or sought by the covered Part B employee or the covered Part E employee (or the estate of a deceased covered Part B employee or deceased covered Part E employee) not for any occupational illness or covered illness for which benefits are payable under the EEOICPA (*e.g.*, a covered Part B employee's or a covered Part E employee's claim for damage to real or personal property).

(2) If a payment has been made pursuant to a final judgment or settlement in litigation seeking damages, OWCP shall subtract a portion of the dollar amount of such payment from the benefit payments to be made under EEOICPA. OWCP will calculate the amount to be subtracted from the benefit payments in the following manner:

(i) OWCP will first determine the value of the payment made pursuant to either a final judgment or settlement in litigation seeking damages by adding the dollar amount of any monetary damages (excluding contingent awards) and any medical expenses for treatment provided on or after the date the covered Part B employee or the covered Part E employee filed a claim for EEOICPA benefits that were paid for under the final judgment or settlement. In the event that these payments include a ''structured'' settlement (where a party makes an initial cash payment and also arranges, usually through the purchase of an annuity, for payments in the future), OWCP will usually accept the cost of the annuity to the purchaser as the dollar amount of the right to receive the future payments.

(ii) OWCP will then make certain deductions from the above dollar amount to arrive at the dollar amount to be subtracted from any unpaid EEOICPA benefits. Allowable deductions consist of attorney's fees OWCP deems reasonable, and itemized costs of suit (out-of-pocket expenditures not part of the normal overhead of a law firm's operation like filing fees, travel expenses, witness fees, and court reporter costs for transcripts) provided that adequate supporting documentation is submitted to OWCP.

(iii) The EEOICPA benefits that will be reduced will consist of any unpaid lump-sum payments payable in the future and medical benefits payable in the future. In those cases where it has not yet paid EEOICPA benefits, OWCP will reduce such benefits on a dollar-for-dollar basis, beginning with the lump-sum payments first. If the amount to be subtracted exceeds the lump-sum payments, OWCP will reduce ongoing EEOICPA medical benefits payable in the future by the amount of any remaining surplus. This means that OWCP will apply the amount it would otherwise pay to reimburse the covered Part B employee or the covered Part E employee for any ongoing EEOICPA medical treatment to the remaining surplus until it is absorbed. In addition to this reduction of ongoing EEOICPA medical benefits, OWCP will not be the first payer for any medical expenses that are the responsibility of another party (who will instead be the first payer) as part of a final judgment or settlement in litigation seeking damages.

(3) The above reduction of EEOICPA benefits will not occur if an EEOICPA claimant has had his or her workers' compensation benefits or award under section 5 of RECA reduced by the full amount of a payment made pursuant to a final judgment or settlement in litigation seeking damages. The above reduction will also not occur if an EEOICPA claimant's prior payment of EEOICPA benefits was offset to reflect the full amount of a payment made pursuant to a final judgment or settlement in litigation seeking damages. In those situations, OWCP will not reduce currently payable EEOICPA benefits by the same amount (but will reduce those benefits by the amount of any surplus final judgment or settlement payment that remains).

(c) Except as provided in § 30.506(b), when OWCP has verified the identity of every claimant who is entitled to the compensation payment, or to a share of the compensation payment, and has determined the correct amount of the payment or the share of the payment, OWCP shall notify every claimant, every duly appointed guardian or conservator of a claimant, or every person with power of attorney for a claimant, and require such person or persons to complete a Form EN–20 providing payment information. Such form shall be signed and returned to OWCP within sixty days of the date of the form or within such greater period as may be allowed by OWCP. Failure to sign and return the form within the required time may be deemed to be a rejection of the payment. If the claimant dies before the payment is received, the person who receives the payment shall return it to OWCP for redetermination of the correct disbursement of the payment. No payment shall be made until OWCP has made a determination concerning the survivors related to a respective claim for benefits.

(d) The total amount of compensation (other than medical benefits) under Part E that can be paid to all claimants as a result of the exposure of a covered Part E employee shall not be more than $250,000 in any circumstances.

§ 30.506 To whom and in what manner will OWCP pay compensation?

(a) Except with respect to claims under Part B of the Act for beryllium sensitivity, payment shall be made to the covered Part B employee or the covered Part E employee, to the duly appointed guardian or conservator of that individual, or to the person with power of attorney for that individual, unless the covered Part B employee or covered Part E employee is deceased at the time of the payment. In all cases

involving a deceased covered Part B employee or deceased covered Part E employee, payment shall be made to the eligible surviving beneficiary or beneficiaries, to the duly appointed guardian or conservator of the eligible surviving beneficiary or beneficiaries, or to every person with power of attorney for an eligible surviving beneficiary, in accordance with the terms and conditions specified in sections 7384s(e), 7384u(e), and 7385s–3(c) and (d) of EEOICPA.

(b) Under Part B of the Act, compensation for any consequential injury, illness, impairment or disease is limited to payment of medical benefits for that injury, illness, impairment or disease. Under Part E of the Act, compensation for any consequential injury, illness, impairment or disease consists of medical benefits for that injury, illness, impairment or disease, as well as any additional monetary benefits that are consistent with the terms of § 30.505(d).

(c) Rejected compensation payments, or shares of compensation payments, shall not be distributed to other eligible surviving beneficiaries, but shall be returned to the Fund.

(d) No covered Part B employee may receive more than one lump-sum payment under Part B of EEOICPA for any occupational illnesses he or she contracted. However, any individual, including a covered Part B employee who has received a lump-sum payment for his or her own occupational illness or illnesses, may receive one lump-sum payment for each deceased covered Part B employee for whom he or she qualifies as an eligible surviving beneficiary under Part B of the Act.

§ 30.507 What compensation will be provided to covered Part B employees who only establish beryllium sensitivity under Part B of EEOICPA?

The establishment of beryllium sensitivity does not entitle a covered Part B employee, or the eligible surviving beneficiary or beneficiaries of a deceased covered Part B employee, to any lump-sum payment provided for under Part B. Instead, a covered Part B employee whose sole accepted occupational illness is beryllium sensitivity shall receive beryllium sensitivity monitoring, as well as medical benefits for the treatment of this occupational illness in accordance with § 30.400.

§ 30.508 What is beryllium sensitivity monitoring?

Beryllium sensitivity monitoring shall consist of medical examinations to confirm and monitor the extent and nature of a covered Part B employee's beryllium sensitivity. Monitoring shall also include regular medical examinations, with diagnostic testing, to determine if the covered Part B employee has established chronic beryllium disease.

§ 30.509 Under what circumstances may a survivor claiming under Part E of the Act choose to receive the benefits that would otherwise be payable to a covered Part E employee who is deceased?

(a) If a covered Part E employee dies after filing a claim but before monetary benefits are paid under Part E of the Act, and his or her death is from a cause other than a covered illness, his or her survivor can choose to receive either the survivor benefits payable on account of the death of that covered Part E employee, or the monetary benefits that would otherwise have been payable to the covered Part E employee.

(b) For the purposes of this section only, a death ''from a cause other than a covered illness'' refers only to a death that was *solely* caused by a non-covered illness or illnesses. Therefore, the choice referred to in paragraph (a) of this section will not be available if a covered illness contributed to the death of the covered Part E employee in any manner. In those instances, survivor benefits will still be payable to the claimant, but he or she cannot choose to receive the monetary benefits that would have otherwise been payable to the deceased covered Part E employee in lieu of survivor benefits.

(c) OWCP only makes impairment determinations based on rationalized medical evidence in the case file that is sufficiently detailed and meets the various requirements for the many different types of impairment determinations possible under the AMA's *Guides*. Therefore, OWCP will only make an impairment determination for a deceased covered Part E employee pursuant to this section if the medical evidence of record is sufficient to satisfy the pertinent requirements in the AMA's *Guides* and subpart J of this part.

Overpayments

§ 30.510 How does OWCP notify an individual of a payment made on a claim?

(a) In addition to providing narrative descriptions to recipients of benefits paid or payable, OWCP includes on each check a clear indication of the reason the payment is being made. For payments sent by electronic funds transfer, a notification of the date and amount of payment appears on the statement from the recipient's financial institution.

(b) By these means, OWCP puts the recipient on notice that a payment was made and the amount of the payment. If the amount received differs from the amount indicated on the written notice or bank statement, the recipient is responsible for notifying OWCP of the difference. Absent affirmative evidence to the contrary, the recipient will be presumed to have received the notice of payment, whether mailed or transmitted electronically.

§ 30.511 What is an ''overpayment'' for purposes of EEOICPA?

An ''overpayment'' is any amount of compensation paid under sections 7384s, 7384t, 7384u, 7385s–2 or 7385s–3 of the EEOICPA to a recipient that constitutes, as of the time OWCP makes such payment:

(a) Payment where no amount is payable under this part; or

(b) Payment in excess of the correct amount determined by OWCP.

§ 30.512 What does OWCP do when an overpayment is identified?

Before seeking to recover an overpayment or adjust benefits, OWCP will advise the recipient of the overpayment in writing that:

(a) The overpayment exists, and the amount of overpayment;

(b) A preliminary finding shows either that the recipient was or was not at fault in the creation of the overpayment;

(c) He or she has the right to inspect and copy OWCP records relating to the overpayment; and

(d) He or she has the right to present written evidence which challenges the fact or amount of the overpayment, and/or challenges the preliminary finding that he or she was at fault in the creation of the overpayment. He or she may also request that recovery of the overpayment be waived. Any submission of evidence or request that recovery of the overpayment be waived must be presented to OWCP within 30 days of the date of the written notice of overpayment.

§ 30.513 Under what circumstances may OWCP waive recovery of an overpayment?

(a) OWCP may consider waiving recovery of an overpayment only if the recipient was not at fault in accepting or creating the overpayment. Recipients of benefits paid under EEOICPA are responsible for taking all reasonable measures to ensure that payments received from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the

following will be found to be at fault with respect to creating an overpayment:

(1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or

(2) Failed to provide information which he or she knew or should have known to be material; or

(3) Accepted a payment which he or she knew or should have known to be incorrect. (This provision applies only to the overpaid individual.)

(b) Whether or not OWCP determines that a recipient was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the recipient's capacity to realize that he or she is being overpaid.

§ 30.514 If OWCP finds that the recipient of an overpayment was not at fault, what criteria are used to decide whether to waive recovery of it?

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless:

(a) Adjustment or recovery of the overpayment would defeat the purpose of the Act (*see* § 30.516); or

(b) Adjustment or recovery of the overpayment would be against equity and good conscience (*see* § 30.517).

§ 30.515 Is a recipient responsible for an overpayment that resulted from an error made by OWCP?

(a) The fact that OWCP may have erred in making the overpayment does not by itself relieve the recipient of the overpayment from liability for repayment if the recipient also was at fault in accepting the overpayment.

(b) However, OWCP may find that the recipient was not at fault if failure to report an event affecting compensation benefits, or acceptance of an incorrect payment, occurred because:

(1) The recipient relied on misinformation given in writing by OWCP regarding the interpretation of a pertinent provision of EEOICPA or this part; or

(2) OWCP erred in calculating either the percentage of impairment or wage-loss under Part E of EEOICPA.

§ 30.516 Under what circumstances would recovery of an overpayment defeat the purpose of the Act?

Recovery of an overpayment will defeat the purpose of the Act if such recovery would cause hardship to the recipient because:

(a) The recipient from whom OWCP seeks recovery needs substantially all of his or her current income to meet current ordinary and necessary living expenses; and

(b) The recipient's assets do not exceed two months' expenditures as determined by OWCP using the Bureau of Labor Statistics Consumer Expenditure Survey tables.

§ 30.517 Under what circumstances would recovery of an overpayment be against equity and good conscience?

(a) Recovery of an overpayment is considered to be against equity and good conscience when the recipient would experience severe financial hardship in attempting to repay the debt.

(b) Recovery of an overpayment is also considered to be against equity and good conscience when the recipient, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. In making such a decision, OWCP does not consider the recipient's current ability to repay the overpayment.

(1) To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment. Gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

(2) To establish that a recipient's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits, and that this decision resulted in a loss.

§ 30.518 Can OWCP require the recipient of the overpayment to submit additional financial information?

(a) The recipient of the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the Act, or would be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

(b) Failure to submit this requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.

§ 30.519 How does OWCP communicate its final decision concerning recovery of an overpayment?

(a) After considering any written documentation or argument submitted to OWCP within the 30-day period set out in § 30.512(d), OWCP will issue a final decision on the overpayment. OWCP will send a copy of the final decision to the individual from whom recovery is sought and his or her representative, if any.

(b) The provisions of subpart D of this part do not apply to any decision regarding the recovery of an overpayment.

§ 30.520 How are overpayments collected?

(a) When an overpayment has been made to a recipient who is entitled to further payments, the recipient shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall recover the overpayment by reducing any further lump-sum payments due currently or in the future, taking into account the financial circumstances of the recipient, and any other relevant factors, so as to minimize any hardship. Should the recipient die before collection has been completed, further collection shall be made by decreasing later payments, if any, payable under EEOICPA with respect to the underlying occupational illness or covered illness.

(b) When an overpayment has been made to a recipient and OWCP is unable to recover the overpayment by reducing compensation due currently, the recipient shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. The overpayment is subject to the provisions of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*), and may be reported to the Internal Revenue Service as income. If the recipient fails to make such refund, OWCP may recover the overpayment through any available means, including offset of salary, annuity benefits, or other Federal payments, including tax refunds as authorized by the Tax Refund Offset Program, or referral of the debt to a collection agency or to the Department of Justice.

Subpart G—Special Provisions

Representation

§ 30.600 May a claimant designate a representative?

(a) The claims process under this part is informal, and OWCP acts as an impartial evaluator of the evidence. A claimant need not be represented to file a claim or receive a payment. Nevertheless, a claimant may appoint one individual to represent his or her

interests, but the appointment must be in writing.

(b) There can be only one representative at any one time, so after one representative has been properly appointed, OWCP will not recognize another individual as a representative until the claimant withdraws the authorization of the first individual. In addition, OWCP will recognize only certain types of individuals (see § 30.601).

(c) A properly appointed representative who is recognized by OWCP may make a request or give direction to OWCP regarding the claims process, including a hearing. This authority includes presenting or eliciting evidence, making arguments on facts or the law, and obtaining information from the case file, to the same extent as the claimant.

(1) Any notice requirement contained in this part or EEOICPA is fully satisfied if served on the representative, and has the same force and effect as if sent to the claimant.

(2) A representative does not have authority to complete and sign the Form EN–20, described in § 30.505(c), which collects information necessary for issuance of a compensation payment.

§ 30.601 Who may serve as a representative?

A claimant may authorize any individual to represent him or her in regard to a claim under EEOICPA, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 and 208). A federal employee may act as a representative only:

(a) On behalf of immediate family members, defined as a spouse, children, parents, and siblings of the representative, provided no fee or gratuity is charged; or

(b) While acting as a union representative, defined as any officially sanctioned union official, and no fee or gratuity is charged.

§ 30.602 Who is responsible for paying the representative's fee?

A representative may charge the claimant a fee for services and for costs associated with the representation before OWCP. The claimant is solely responsible for paying the fee and other costs. OWCP will not reimburse the claimant, nor is it in any way liable for the amount of the fee and costs.

§ 30.603 Are there any limitations on what the representative may charge the claimant for his or her services?

(a) Notwithstanding any contract, the representative may not receive, for services rendered in connection with a claim pending before OWCP, more than the percentages of the lump-sum payment made to the claimant set out in paragraph (b) of this section.

(b) The percentages referred to in paragraph (a) of this section are:

(1) 2 percent for the filing of an initial claim with OWCP, provided that the representative was retained prior to the filing of the initial claim; plus

(2) 10 percent of the difference between the lump-sum payment made to the claimant and the amount proposed in the recommended decision with respect to objections to a recommended decision.

(c)(1) Any representative who violates this section shall be fined not more than $5,000.

(2) The authority to prosecute violations of this limitation lies with the Department of Justice.

(d) The fee limitations described in this section shall not apply with respect to representative services that are rendered in connection with a petition filed with a U.S. District Court seeking review of an OWCP decision that is final pursuant to § 30.316(d), or with respect to any subsequent appeal in such a proceeding.

Third Party Liability

§ 30.605 What rights does the United States have upon payment of compensation under EEOICPA?

If an occupational illness or covered illness for which compensation is payable under EEOICPA is caused, wholly or partially, by someone other than a federal employee acting within the scope of his or her employment, a DOE contractor or subcontractor, a beryllium vendor or atomic weapons employer, the United States is subrogated for the full amount of any payment of compensation under EEOICPA to any right or claim that the individual to whom the payment was made may have against any person or entity on account of such occupational illness or covered illness.

§ 30.606 Under what circumstances must a recovery of money or other property in connection with an illness for which benefits are payable under EEOICPA be reported to OWCP?

Any person who has filed an EEOICPA claim that has been accepted by OWCP (whether or not compensation has been paid), or who has received EEOICPA benefits in connection with a claim filed by another, is required to notify OWCP of the receipt of money or other property as a result of a settlement or judgment in connection with the circumstances of that claim.

§ 30.607 How is a structured settlement (that is, a settlement providing for receipt of funds over a specified period of time) treated for purposes of reporting the recovery?

In this situation, the recovery to be reported is the present value of the right to receive all of the payments included in the structured settlement, allocated in the case of multiple recipients in the same manner as single payment recoveries.

§ 30.608 How does the United States calculate the amount to which it is subrogated?

The subrogated amount of a specific claim consists of the total money paid by OWCP from the Energy Employees Occupational Illness Compensation Fund with respect to that claim to or on behalf of a covered Part B employee, a covered Part E employee or an eligible surviving beneficiary, less charges for any medical file review (*i.e.*, the physician did not examine the employee) done at the request of OWCP. Charges for medical examinations also may be subtracted if the covered Part B employee, covered Part E employee or an eligible surviving beneficiary establishes that the examinations were required to be made available to the covered Part B employee or covered Part E employee under a statute other than EEOICPA.

§ 30.609 Is a settlement or judgment received as a result of allegations of medical malpractice in treating an illness covered by EEOICPA a recovery that must be reported to OWCP?

Since an injury caused by medical malpractice in treating an occupational illness or covered illness compensable under EEOICPA is also covered under EEOICPA, any recovery in a suit alleging such an injury is treated as a recovery that must be reported to OWCP.

§ 30.610 Are payments to a covered Part B employee, a covered Part E employee or an eligible surviving beneficiary as a result of an insurance policy which the employee or eligible surviving beneficiary has purchased a recovery that must be reported to OWCP?

Since payments received by a covered Part B employee, a covered Part E employee or an eligible surviving beneficiary pursuant to an insurance policy purchased by someone other than a liable third party are not payments in satisfaction of liability for causing an occupational illness or covered illness compensable under the Act, they are not considered a recovery that must be reported to OWCP.

§ 30.611 If a settlement or judgment is received for more than one medical condition, can the amount paid on a single EEOICPA claim be attributed to different conditions for purposes of calculating the amount to which the United States is subrogated?

(a) All medical conditions accepted by OWCP in connection with a single claim are treated as the same illness for the purpose of computing the amount which the United States is entitled to offset in connection with the receipt of a recovery from a third party, except that an injury caused by medical malpractice in treating an illness covered under EEOICPA will be treated as a separate injury.

(b) If an illness covered under EEOICPA is caused under circumstances creating a legal liability in more than one person, other than the United States, a DOE contractor or subcontractor, a beryllium vendor or an atomic weapons employer, to pay damages, OWCP will determine whether recoveries received from one or more third parties should be attributed to separate conditions for which compensation is payable in connection with a single EEOICPA claim. If such an attribution is both practicable and equitable, as determined by OWCP, in its discretion, the conditions will be treated as separate injuries for purposes of calculating the amount to which the United States is subrogated.

Effect of Tort Suits Against Beryllium Vendors and Atomic Weapons Employers

§ 30.615 What type of tort suits filed against beryllium vendors or atomic weapons employers may disqualify certain claimants from receiving benefits under Part B of EEOICPA?

(a) A tort suit (other than an administrative or judicial proceeding for workers' compensation) that includes a claim arising out of a covered Part B employee's employment-related exposure to beryllium or radiation, filed against a beryllium vendor or an atomic weapons employer, by a covered Part B employee or an eligible surviving beneficiary or beneficiaries of a deceased covered Part B employee, will disqualify that otherwise eligible individual or individuals from receiving benefits under Part B of EEOICPA unless such claim is terminated in accordance with the requirements of §§ 30.616 through 30.619.

(b) The term ''claim arising out of a covered Part B employee's employment-related exposure to beryllium or radiation'' used in paragraph (a) of this section includes a claim that is derivative of a covered Part B employee's employment-related exposure to beryllium or radiation, such as a claim for loss of consortium raised by a covered Part B employee's spouse.

(c) If all claims arising out of a covered Part B employee's employment-related exposure to beryllium or radiation are terminated in accordance with the requirements of §§ 30.616 through 30.619 of these regulations, proceeding with the remaining portion of the tort suit filed against a beryllium vendor or an atomic weapons employer will not disqualify an otherwise eligible individual or individuals from receiving benefits under Part B of EEOICPA.

§ 30.616 What happens if this type of tort suit was filed prior to October 30, 2000?

(a) If a tort suit described in § 30.615 was filed prior to October 30, 2000, the claimant or claimants will not be disqualified from receiving any EEOICPA benefits to which they may be found entitled if the tort suit was terminated in any manner prior to December 28, 2001.

(b) If a tort suit described in § 30.615 was filed prior to October 30, 2000 and was pending as of December 28, 2001, the claimant or claimants will be disqualified from receiving any benefits under Part B of EEOICPA unless they dismissed all claims arising out of a covered Part B employee's employment-related exposure to beryllium or radiation that were included in the tort suit prior to December 31, 2003.

§ 30.617 What happens if this type of tort suit was filed during the period from October 30, 2000 through December 28, 2001?

(a) If a tort suit described in § 30.615 was filed during the period from October 30, 2000 through December 28, 2001, the claimant or claimants will be disqualified from receiving any benefits under Part B of EEOICPA unless they dismiss all claims arising out of a covered Part B employee's employment-related exposure to beryllium or radiation that are included in the tort suit on or before the last permissible date described in paragraph (b) of this section.

(b) The last permissible date is the later of:

(1) April 30, 2003; or

(2) The date that is 30 months after the date the claimant or claimants first became aware that an illness of the covered Part B employee may be connected to his or her exposure to beryllium or radiation covered by EEOICPA. For purposes of determining when this 30-month period begins, ''the date the claimant or claimants first became aware'' will be deemed to be the date they received either a reconstructed dose from HHS, or a diagnosis of a covered beryllium illness, as applicable.

§ 30.618 What happens if this type of tort suit was filed after December 28, 2001?

(a) If a tort suit described in § 30.615 was filed after December 28, 2001, the claimant or claimants will be disqualified from receiving any benefits under Part B of EEOICPA if a judgment is entered against them.

(b) If a tort suit described in § 30.615 was filed after December 28, 2001 and a judgment has not yet been entered against the claimant or claimants, they will also be disqualified from receiving any benefits under Part B of EEOICPA unless, prior to entry of any judgment, they dismiss all claims arising out of a covered Part B employee's employment-related exposure to beryllium or radiation that are included in the tort suit on or before the last permissible date described in paragraph (c) of this section.

(c) The last permissible date is the later of:

(1) April 30, 2003; or

(2) The date that is 30 months after the date the claimant or claimants first became aware that an illness of the covered Part B employee may be connected to his or her exposure to beryllium or radiation covered by EEOICPA. For purposes of determining when this 30-month period begins, ''the date the claimant or claimants first became aware'' will be deemed to be the date they received either a reconstructed dose from HHS, or a diagnosis of a covered beryllium illness, as applicable.

§ 30.619 Do all the parties to this type of tort suit have to take these actions?

The type of tort suits described in § 30.615 may be filed by more than one individual, each with a different cause of action. For example, a tort suit may be filed against a beryllium vendor by both a covered Part B employee and his or her spouse, with the covered Part B employee claiming for chronic beryllium disease and the spouse claiming for loss of consortium due to the covered Part B employee's exposure to beryllium. However, since the spouse of a living covered Part B employee could not be an eligible surviving beneficiary under Part B of EEOICPA, the spouse would not have to comply with the termination requirements of §§ 30.616 through 30.618. A similar result would occur if a tort suit were filed by both the spouse of a deceased covered Part B employee and other family members (such as children of the deceased covered part B employee). In this case, the spouse would be the only

eligible surviving beneficiary of the deceased covered Part B employee under Part B of the EEOICPA because the other family members could not be eligible for benefits while he or she was alive. As a result, the spouse would be the only party to the tort suit who would have to comply with the termination requirements of §§ 30.616 through 30.618.

§ 30.620 How will OWCP ascertain whether a claimant filed this type of tort suit and if he or she has been disqualified from receiving any benefits under Part B of EEOICPA?

Prior to authorizing payment on a claim under Part B of EEOICPA, OWCP will require each claimant to execute and provide an affidavit stating if he or she filed a tort suit (other than an administrative or judicial proceeding for workers' compensation) against either a beryllium vendor or an atomic weapons employer that included a claim arising out of a covered Part B employee's employment-related exposure to beryllium or radiation, and if so, the current status of such tort suit. OWCP may also require the submission of any supporting evidence necessary to confirm the particulars of any affidavit provided under this section.

Coordination of Part E Benefits With State Workers' Compensation Benefits

§ 30.625 What does ''coordination of benefits'' mean under Part E of EEOICPA?

In general, ''coordination of benefits'' under Part E of the Act occurs when compensation to be received under Part E is reduced by OWCP, pursuant to section 7385s–11 of EEOICPA, to reflect certain benefits the beneficiary receives under a state workers' compensation program for the same covered illness.

§ 30.626 How will OWCP coordinate compensation payable under Part E of EEOICPA with benefits from state workers' compensation programs?

(a) OWCP will reduce the compensation payable under Part E by the amount of benefits the claimant receives from a state workers' compensation program by reason of the same covered illness, after deducting the reasonable costs to the claimant of obtaining those benefits.

(b) To determine the amount of any reduction of EEOICPA compensation, OWCP shall require the covered Part E employee or each eligible surviving beneficiary filing a claim under Part E to execute and provide an affidavit reporting the amount of any benefit received pursuant to a claim filed in a state workers' compensation program for the same covered illness.

(c) If a covered Part E employee or a survivor of such employee receives benefits through a state workers' compensation program pursuant to a claim for the same covered illness, OWCP shall reduce a portion of the dollar amount of such state workers' benefit from the compensation payable under Part E. OWCP will calculate the net amount of the state workers' compensation benefit amount to be subtracted from the compensation payment under Part E in the following manner:

(1) OWCP will first determine the dollar value of the benefits received by that individual from a state workers' compensation program by including all benefits, other than medical and vocational rehabilitation benefits, received for the same covered illness or injury sustained as a consequence of a covered illness.

(2) OWCP will then make certain deductions from the above dollar benefit received under a state workers' compensation program to arrive at the dollar amount that will be subtracted from any compensation payable under Part E of EEOICPA.

(i) Allowable deductions consist of reasonable costs in obtaining state workers' compensation benefits incurred by that individual, including but not limited to attorney's fees OWCP deems reasonable and itemized costs of suit (out-of-pocket expenditures not part of the normal overhead of a law firm's operation like filing, travel expenses, witness fees, and court reporter costs for transcripts), provided that adequate supporting documentation is submitted to OWCP for its consideration.

(ii) The EEOICPA benefits that will be reduced will consist of any unpaid monetary payments payable in the future and medical benefits payable in the future. In those cases where it has not yet paid EEOICPA benefits under Part E, OWCP will reduce such benefits on a dollar-for-dollar basis, beginning with the current monetary payments first. If the amount to be subtracted exceeds the monetary payments currently payable, OWCP will reduce ongoing EEOICPA medical benefits payable in the future by the amount of any remaining surplus. This means that OWCP will apply the amount it would otherwise pay to reimburse the covered Part E employee for any ongoing EEOICPA medical treatment to the remaining surplus until it is absorbed (or until further monetary benefits become payable that are sufficient to absorb the surplus).

(3) The above coordination of benefits will not occur if the beneficiary under a state workers' compensation program receives state workers' compensation benefits for both a covered and a non-covered illness arising out of and in the course of the same work-related incident.

§ 30.627 Under what circumstances will OWCP waive the statutory requirement to coordinate these benefits?

A waiver to the requirement to coordinate Part E benefits with benefits paid under a state workers' compensation program may be granted if OWCP determines that the administrative costs and burdens of coordinating benefits in a particular case or class of cases justifies the waiver. This decision is exclusively within the discretion of OWCP.

Subpart H—Information for Medical Providers

Medical Records and Bills

§ 30.700 What kinds of medical records must providers keep?

Federal government medical officers, private physicians and hospitals are required to keep records of all cases treated by them under EEOICPA so they can supply OWCP with a history of the claimed occupational illness or covered illness, a description of the nature and extent of the claimed occupational illness or covered illness, the results of any diagnostic studies performed, and the nature of the treatment rendered. This requirement terminates after a provider has supplied OWCP with the above-noted information, and otherwise terminates ten years after the record was created.

§ 30.701 How are medical bills to be submitted?

(a) All charges for medical and surgical treatment, appliances or supplies furnished to employees, except for treatment and supplies provided by nursing homes, shall be supported by medical evidence as provided in § 30.700. The physician or provider shall itemize the charges on Form OWCP–1500 or CMS–1500 (for professional charges), Form OWCP–92 or UB–92 (for hospitals), an electronic or paper-based bill that includes required data elements (for pharmacies), or other form as warranted, and submit the form or bill promptly for processing.

(b) The provider shall identify each service performed using the Physician's Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the National Drug Code (NDC) number, or the Revenue Center Code (RCC), with a brief narrative description. Where no code is applicable, a detailed

description of services performed should be provided.

(c) For professional charges billed on Form OWCP–1500 or CMS–1500, the provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the ''International Classification of Disease, 9th Edition, Clinical Modification'' (ICD–9–CM), or as revised. A separate bill shall be submitted when the employee is discharged from treatment or monthly, if treatment for the occupational illness is necessary for more than 30 days.

(1)(i) Hospitals shall submit charges for medical and surgical treatment or supplies promptly on Form OWCP–92 or UB–92. The provider shall identify each outpatient radiology service, outpatient pathology service and physical therapy service performed, using HCPCS/CPT codes with a brief narrative description. The charge for each individual service, or the total charge for all identical services, should also appear on the form.

(ii) Other outpatient hospital services for which HCPCS/CPT codes exist shall also be coded individually using the coding scheme noted in this section. Services for which there are no HCPCS/CPT codes available can be presented using the RCCs described in the ''National Uniform Billing Data Elements Specifications,'' current edition. The provider shall also furnish the diagnostic code using the ICD–9–CM. If the outpatient hospital services include surgical and/or invasive procedures, the provider shall code each procedure using the proper HCPCS/CPT codes and furnishing the corresponding diagnostic codes using the ICD–9–CM.

(2) Pharmacies shall itemize charges for prescription medications, appliances, or supplies on electronic or paper-based bills and submit them promptly for processing. Bills for prescription medications must include all required data elements, including the NDC number assigned to the product, the generic or trade name of the drug provided, the prescription number, the quantity provided, and the date the prescription was filled.

(3) Nursing homes shall itemize charges for appliances, supplies or services on the provider's billhead stationery and submit them promptly for processing.

(d) By submitting a bill and/or accepting payment, the provider signifies that the service for which payment is sought was performed as described and was necessary. In addition, the provider thereby agrees to comply with all regulations set forth in this subpart concerning the rendering of treatment and/or the process for seeking payment for medical services, including the limitation imposed on the amount to be paid for such services.

(e) In summary, bills submitted by providers must: be itemized on Form OWCP–1500 or CMS–1500 (for physicians), Form OWCP–92 or UB–92 (for hospitals), or an electronic or paper-based bill that includes required data elements (for pharmacies); contain the signature or signature stamp of the provider; and identify the procedures using HCPCS/CPT codes, RCCs, or NDC numbers. Otherwise, the bill may be returned to the provider for correction and resubmission. The decision of OWCP whether to pay a provider's bill is final when issued and is not subject to the adjudicatory process described in subpart D of this part.

§ 30.702 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?

(a) If an employee has paid bills for medical, surgical or other services, supplies or appliances provided by a professional due to an occupational illness or a covered illness, he or she must submit a request for reimbursement on Form OWCP–915, together with an itemized bill on Form OWCP–1500 or CMS–1500 prepared by the provider and a medical report as provided in § 30.700, for consideration.

(1) The provider of such service shall state each diagnosed condition and furnish the applicable ICD–9–CM code and identify each service performed using the applicable HCPCS/CPT code, with a brief narrative description of the service performed, or, where no code is applicable, a detailed description of that service.

(2) The reimbursement request must be accompanied by evidence that the provider received payment for the service from the employee and a statement of the amount paid. Acceptable evidence that payment was received includes, but is not limited to, a signed statement by the provider, a mechanical stamp or other device showing receipt of payment, a copy of the employee's canceled check (both front and back) or a copy of the employee's credit card receipt.

(b) If a hospital, pharmacy or nursing home provided services for which the employee paid, the employee must also use Form OWCP–915 to request reimbursement and should submit the request in accordance with the provisions of § 30.701(a). Any such request for reimbursement must be accompanied by evidence, as described in paragraph (a)(2) of this section, that the provider received payment for the service from the employee and a statement of the amount paid.

(c) The requirements of paragraphs (a) and (b) of this section may be waived if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the employee to obtain the required information.

(d) Copies of bills submitted for reimbursement will not be accepted unless they bear the original signature of the provider and evidence of payment. Payment for medical and surgical treatment, appliances or supplies shall in general be no greater than the maximum allowable charge for such service determined by OWCP, as set forth in § 30.705. The decision of OWCP whether to reimburse an employee for out-of-pocket medical expenses, and the amount of any reimbursement, is final when issued and is not subject to the adjudicatory process described in subpart D of this part.

(e) An employee will be only partially reimbursed for a medical expense if the amount he or she paid to a provider for the service exceeds the maximum allowable charge set by OWCP's schedule. If this happens, the employee will be advised of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid which exceeds the maximum allowable charge. The provider that the employee paid, but not the employee, may request reconsideration of the fee determination as set forth in § 30.712.

(f) If the provider fails to make appropriate refund to the employee, or to credit the employee's account, within 60 days after the employee requests a refund of any excess amount, or the date of a subsequent reconsideration decision which continues to disallow all or a portion of the disputed amount, OWCP will initiate exclusion procedures as provided by § 30.715.

(g) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the allowed charge, the employee should submit documentation of the attempt to obtain such refund or credit to OWCP. OWCP may authorize reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

§ 30.703 What are the time limitations on OWCP's payment of bills?

OWCP will pay providers and reimburse employees promptly for all bills received on an approved form and in a timely manner. However, no bill will be paid for expenses incurred if the

bill is submitted more than one year beyond the end of the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the end of the calendar year in which the claim was first accepted as compensable by OWCP, whichever is later.

Medical Fee Schedule

§ 30.705 What services are covered by the OWCP fee schedule?

(a) Payment for medical and other health services furnished by physicians, hospitals and other providers for occupational illnesses or covered illnesses shall not exceed a maximum allowable charge for such service as determined by OWCP, except as provided in this section.

(b) The schedule of maximum allowable charges does not apply to charges for services provided in nursing homes, but it does apply to charges for treatment furnished in a nursing home by a physician or other medical professional.

(c) The schedule of maximum allowable charges also does not apply to charges for appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service or the Departments of the Army, Navy, Air Force and Veterans Affairs.

§ 30.706 How are the maximum fees defined?

For professional medical services, OWCP shall maintain a schedule of maximum allowable fees for procedures performed in a given locality. The schedule shall consist of: an assignment of a value to procedures identified by HCPCS/CPT code which represents the relative skill, effort, risk and time required to perform the procedure, as compared to other procedures of the same general class; an index based on a relative value scale that considers skill, labor, overhead, malpractice insurance and other related costs; and a monetary value assignment (conversion factor) for one unit of value in each of the categories of service.

§ 30.707 How are payments for particular services calculated?

Payment for a procedure identified by a HCPCS/CPT code shall not exceed the amount derived by multiplying the relative values for that procedure by the geographic indices for services in that area and by the dollar amount assigned to one unit in that category of service.

(a) The ''locality'' which serves as a basis for the determination of average cost is defined by the Bureau of Census Metropolitan Statistical Areas. OWCP shall base the determination of the relative per capita cost of medical care in a locality using information about enrollment and medical cost per county, provided by the Centers for Medicare and Medicaid Services (CMS).

(b) OWCP shall assign the relative value units (RVUs) published by CMS to all services for which CMS has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, OWCP may develop and assign any RVUs considered appropriate. The geographic adjustment factor shall be that designated by Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for CMS and as updated or revised by CMS from time to time. OWCP will devise conversion factors for each category of service, and in doing so may adapt CMS conversion factors as appropriate using OWCP's processing experience and internal data.

(c) For example, if the unit values for a particular surgical procedure are 2.48 for physician's work (W), 3.63 for practice expense (PE), and 0.48 for malpractice insurance (M), and the dollar value assigned to one unit in that category of service (surgery) is $61.20, then the maximum allowable charge for one performance of that procedure is the product of the three RVUs times the corresponding geographical indices for the locality times the conversion factor. If the geographic indices for the locality are 0.988(W), 0.948 (PE), and 1.174 (M), then the maximum payment calculation is:

$$[(2.48)(0.988) + (3.63)(0.948) + (0.48)(1.174)] \times \$61.20$$
$$2.45 + 3.44 + .56] \times \$61.20$$
$$6.45 \times \$61.20 = \$394.74$$

§ 30.708 Does the fee schedule apply to every kind of procedure?

Where the time, effort and skill required to perform a particular procedure vary widely from one occasion to the next, OWCP may choose not to assign a relative value to that procedure. In this case the allowable charge for the procedure will be set individually based on consideration of a detailed medical report and other evidence. At its discretion, OWCP may set fees without regard to schedule limits for specially authorized consultant examinations, for directed medical examinations, and for other specially authorized services.

§ 30.709 How are payments for medicinal drugs determined?

Payment for medicinal drugs prescribed by physicians shall not exceed the amount derived by multiplying the average wholesale price of the medication by the quantity or amount provided, plus a dispensing fee.

(a) All prescription medications identified by NDC number will be assigned an average wholesale price representing the product's nationally recognized wholesale price as determined by surveys of manufacturers and wholesalers. OWCP will establish the dispensing fee.

(b) The NDC numbers, the average wholesale prices, and the dispensing fee shall be reviewed from time to time and updated as necessary.

§ 30.710 How are payments for inpatient medical services determined?

(a) OWCP will pay for inpatient medical services according to pre-determined, condition-specific rates based on the Prospective Payment System (PPS) devised by CMS (42 CFR parts 412, 413, 424, 485, and 489). Using this system, payment is derived by multiplying the diagnosis-related group (DRG) weight assigned to the hospital discharge by the provider-specific factors.

(1) All hospital discharges will be classified according to the DRGs prescribed by CMS in the form of the DRG Grouper software program. On this list, each DRG represents the average resources necessary to provide care in a case in that DRG relative to the national average of resources consumed per case.

(2) The provider-specific factors will be provided by CMS in the form of their PPS Pricer software program. The software takes into consideration the type of facility, census division, actual geographic location of the hospital, case mix cost per discharge, number of hospital beds, intern/beds ratio, operating cost to charge ratio, and other factors used by CMS to determine the specific rate for a hospital discharge under their PPS. OWCP may devise price adjustment factors as appropriate using OWCP's processing experience and internal data.

(3) OWCP will base payments to facilities excluded from CMS's PPS on consideration of detailed medical reports and other evidence.

(4) OWCP shall review the pre-determined hospital rates at least once a year, and may adjust any or all components when OWCP deems it necessary or appropriate.

(b) OWCP shall review the schedule of fees at least once a year, and may adjust the schedule or any of its components when OWCP deems it necessary or appropriate.

§ 30.711 When and how are fees reduced?

(a) OWCP shall accept a provider's designation of the code to identify a

billed procedure or service if the code is consistent with medical reports and other evidence. Where no code is supplied, OWCP may determine the code based on the narrative description of the procedure on the billing form and in associated medical reports. OWCP will pay no more than the maximum allowable fee for that procedure.

(b) If the charge submitted for a service supplied to an employee exceeds the maximum amount determined to be reasonable according to the schedule, OWCP shall pay the amount allowed by the schedule for that service and shall notify the provider in writing that payment was reduced for that service in accordance with the schedule. OWCP shall also notify the provider of the method for requesting reconsideration of the balance of the charge. The decision of OWCP to pay less than the charged amount is final when issued and is not subject to the adjudicatory process described in subpart D of this part.

§ 30.712 If OWCP reduces a fee, may a provider request reconsideration of the reduction?

(a) A physician or other provider whose charge for service is only partially paid because it exceeds a maximum allowable amount set by OWCP may, within 30 days, request reconsideration of the fee determination.

(1) Any such request will be considered by the district office with jurisdiction over the employee's claim. The request must be accompanied by documentary evidence that the procedure performed was either incorrectly identified by the original code, that the presence of a severe or concomitant medical condition made treatment especially difficult, or that the provider possessed unusual qualifications. In itself, board certification in a specialty is not sufficient evidence of unusual qualifications to justify a charge in excess of the maximum allowable amount set by OWCP. These are the only three circumstances that will justify reevaluation of the paid amount.

(2) A list of district offices and their respective areas of jurisdiction is available upon request from the U.S. Department of Labor, Office of Workers' Compensation Programs, Washington, DC 20210, or on the Internet at *http://www.dol.gov/esa/regs/compliance/owcp/eeoicp/main.htm.* Within 30 days of receiving the request for reconsideration, the district office shall respond in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

(b) If the district office issues a decision that continues to disallow a contested amount, the provider may apply to the Regional Director of the region with jurisdiction over the district office. The application must be filed within 30 days of the date of such decision, and it may be accompanied by additional evidence. Within 60 days of receipt of such application, the Regional Director shall issue a decision in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

§ 30.713 If OWCP reduces a fee, may a provider bill the employee for the balance?

A provider whose fee for service is partially paid by OWCP as a result of the application of its fee schedule or other tests for reasonableness in accordance with this part shall not request payment from the employee for the unpaid amount of the provider's bill.

(a) Where a provider's fee for a particular service or procedure is lower to the general public than as provided by the schedule of maximum allowable charges, the provider shall bill at the lower rate. A fee for a particular service or procedure which is higher than the provider's fee to the general public for that same service or procedure will be considered a charge ''substantially in excess of such provider's customary charges'' for the purposes of § 30.715(d).

(b) A provider whose fee for service is partially paid by OWCP as the result of the application of the schedule of maximum allowable charges and who collects or attempts to collect from the employee, either directly or through a collection agent, any amount in excess of the charge allowed by OWCP, and who does not cease such action or make appropriate refund to the employee within 60 days of the date of the decision of OWCP, shall be subject to the exclusion procedures provided by § 30.715(h).

Exclusion of Providers

§ 30.715 What are the grounds for excluding a provider from payment under this part?

A physician, hospital, or provider of medical services or supplies shall be excluded from payment under this part if such physician, hospital or provider has:

(a) Been convicted under any criminal statute of fraudulent activities in connection with any federal or state program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies;

(b) Been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any federal or state program referred to in paragraph (a) of this section;

(c) Knowingly made, or caused to be made, any false statement or misrepresentation of a material fact in connection with a determination of the right to reimbursement under this part, or in connection with a request for payment;

(d) Submitted, or caused to be submitted, three or more bills or requests for payment within a 12-month period under this subpart containing charges which OWCP finds to be substantially in excess of such provider's customary charges, unless OWCP finds there is good cause for the bills or requests containing such charges;

(e) Knowingly failed to timely reimburse employees for treatment, services or supplies furnished under this subpart and paid for by OWCP;

(f) Failed, neglected or refused on three or more occasions during a 12-month period to submit full and accurate medical reports, or to respond to requests by OWCP for additional reports or information, as required by § 30.700 of this part;

(g) Knowingly furnished treatment, services or supplies which are substantially in excess of the employee's needs, or of a quality which fails to meet professionally recognized standards; or

(h) Collected or attempted to collect from the employee, either directly or through a collection agent, an amount in excess of the charge allowed by OWCP for the procedure performed, and has failed or refused to make appropriate refund to the employee, or to cease such collection attempts, within 60 days of the date of the decision of OWCP.

§ 30.716 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?

(a) OWCP shall automatically exclude a physician, hospital, or provider of medical services or supplies who:

(1) Has been convicted of a crime described in § 30.715(a); or

(2) Has been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any federal or state program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies.

(b) The exclusion applies to participating in the program and to seeking payment under this part for services performed after the date of the

entry of the judgment of conviction or order of exclusion, suspension or resignation, as the case may be, by the court or agency concerned. Proof of the conviction, exclusion, suspension or resignation may consist of a copy thereof authenticated by the seal of the court or agency concerned.

§ 30.717 When are OWCP's exclusion procedures initiated?

Upon receipt of information indicating that a physician, hospital or provider of medical services or supplies (hereinafter the provider) has engaged in activities enumerated in paragraphs (c) through (h) of § 30.715, the Regional Director, after completion of inquiries he or she deems appropriate, may initiate procedures to exclude the provider from participation in the EEOICPA program. For the purposes of these procedures, ''Regional Director'' may include any officer designated to act on his or her behalf.

§ 30.718 How is a provider notified of OWCP's intent to exclude him or her?

The Regional Director shall initiate the exclusion process by sending the provider a letter, by certified mail and with return receipt requested, which shall contain the following:

(a) A concise statement of the grounds upon which exclusion shall be based;

(b) A summary of the information, with supporting documentation, upon which the Regional Director has relied in reaching an initial decision that exclusion proceedings should begin;

(c) An invitation to the provider to:

(1) Resign voluntarily from participation in the EEOICPA program without admitting or denying the allegations presented in the letter; or

(2) Request that the decision on exclusion be based upon the existing record and any additional documentary information the provider may wish to furnish;

(d) A notice of the provider's right, in the event of an adverse ruling by the Regional Director, to request a formal hearing before an administrative law judge;

(e) A notice that should the provider fail to answer (as described in § 30.719) the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider without conducting any further proceedings; and

(f) The name and address of the OWCP representative who shall be responsible for receiving the answer from the provider.

§ 30.719 What requirements must the provider's reply and OWCP's decision meet?

(a) The provider's answer shall be in writing and shall include an answer to OWCP's invitation to resign voluntarily. If the provider does not offer to resign, he or she shall request that a determination be made upon the existing record and any additional information provided.

(b) Should the provider fail to answer the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider.

(c) By arrangement with the OWCP representative, the provider may inspect or request copies of information in the record at any time prior to the Regional Director's decision.

(d) The Regional Director shall issue his or her decision in writing, and shall send a copy of the decision to the provider by certified mail, return receipt requested. The decision shall advise the provider of his or her right to request, within 30 days of the date of the adverse decision, a formal hearing before an administrative law judge under the procedures set forth in § 30.720. The filing of a request for a hearing within the time specified shall stay the effectiveness of the decision to exclude.

§ 30.720 How can an excluded provider request a hearing?

A request for a hearing shall be sent to the OWCP representative named pursuant to § 30.718(f) and shall contain:

(a) A concise notice of the issues on which the provider desires to give evidence at the hearing;

(b) Any request for a more definite statement by OWCP;

(c) Any request for the presentation of oral argument or evidence; and

(d) Any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or federal, state or local regulatory body.

§ 30.721 How are hearings assigned and scheduled?

(a) If the designated OWCP representative receives a timely request for hearing, the OWCP representative shall refer the matter to the Chief Administrative Law Judge of the Department of Labor, who shall assign it for an expedited hearing. The administrative law judge assigned to the matter shall consider the request for hearing, act on all requests therein, and issue a Notice of Hearing and Hearing Schedule for the conduct of the hearing. A copy of the hearing notice shall be served on the provider by certified mail, return receipt requested. The Notice of Hearing and Hearing Schedule shall include:

(1) A ruling on each item raised in the request for hearing;

(2) A schedule for the prompt disposition of all preliminary matters, including requests for more definite statements and for the certification of questions to advisory bodies; and

(3) A scheduled hearing date not less than 30 days after the date the schedule is issued, and not less than 15 days after the scheduled conclusion of preliminary matters, provided that the specific time and place of the hearing may be set on 10 days' notice.

(b) The purpose of the designation of issues is to provide for an effective hearing process. The provider is entitled to be heard on any matter placed in issue by his or her response to the Notice of Intent to Exclude, and may designate ''all issues'' for purposes of hearing. However, a specific designation of issues is required if the provider wishes to interpose affirmative defenses or request the certification of questions for an advisory opinion.

§ 30.722 How are subpoenas or advisory opinions obtained?

(a) In exclusion proceedings involving medical services provided under Part B of the Act only, the provider may apply to the administrative law judge for the issuance of subpoenas upon a showing of good cause therefore.

(b) A certification of a request for an advisory opinion concerning professional medical standards, medical ethics or medical regulation to a competent recognized or professional organization or federal, state or local regulatory agency may be made:

(1) As to an issue properly designated by the provider, in the sound discretion of the administrative law judge, provided that the request will not unduly delay the proceedings;

(2) By OWCP on its own motion either before or after the institution of proceedings, and the results thereof shall be made available to the provider at the time that proceedings are instituted or, if after the proceedings are instituted, within a reasonable time after receipt. The opinion, if rendered by the organization or agency, is advisory only and not binding on the administrative law judge.

§ 30.723 How will the administrative law judge conduct the hearing and issue the recommended decision?

(a) To the extent appropriate, proceedings before the administrative law judge shall be governed by 29 CFR part 18.

(b) The administrative law judge shall receive such relevant evidence as may be adduced at the hearing. Evidence shall be presented under oath, orally or in the form of written statements. The administrative law judge shall consider the Notice and Response, including all pertinent documents accompanying them, and may also consider any evidence which refers to the provider or to any claim with respect to which the provider has provided medical services, hospital services, or medical services and supplies, and such other evidence as the administrative law judge may determine to be necessary or useful in evaluating the matter.

(c) All hearings shall be recorded and the original of the complete transcript shall become a permanent part of the official record of the proceedings.

(d) In conjunction with the hearing, the administrative law judge may:

(1) Administer oaths; and

(2) Examine witnesses.

(e) At the conclusion of the hearing, the administrative law judge shall issue a written decision and cause it to be served on all parties to the proceeding, their representatives and OWCP.

§ 30.724 How can a party request review by OWCP of the administrative law judge's recommended decision?

(a) Any party adversely affected or aggrieved by the decision of the administrative law judge may file a petition for discretionary review with the Director for Energy Employees Occupational Illness Compensation within 30 days after issuance of such decision. The administrative law judge's decision, however, shall be effective on the date issued and shall not be stayed except upon order of the Director.

(b) Review by the Director for Energy Employees Occupational Illness Compensation shall not be a matter of right but of the sound discretion of the Director.

(c) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of OWCP;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass.

(e) A statement in opposition to the petition for discretionary review may be filed, but such filing shall in no way delay action on the petition.

(f) If a petition is granted, review shall be limited to the questions raised by the petition.

(g) A petition not granted within 20 days after receipt of the petition is deemed denied.

§ 30.725 What are the effects of non-automatic exclusion?

(a) OWCP shall give notice of the exclusion of a physician, hospital or provider of medical services or supplies to:

(1) All OWCP district offices;

(2) CMS; and

(3) All employees who are known to have had treatment, services or supplies from the excluded provider within the six-month period immediately preceding the order of exclusion.

(b) Notwithstanding any exclusion of a physician, hospital, or provider of medical services or supplies under this subpart, OWCP shall not refuse an employee reimbursement for any otherwise reimbursable medical treatment, service or supply if:

(1) Such treatment, service or supply was rendered in an emergency by an excluded physician; or

(2) The employee could not reasonably have been expected to know of such exclusion.

(c) An employee who is notified that his or her attending physician has been excluded shall have a new right to select a qualified physician.

§ 30.726 How can an excluded provider be reinstated?

(a) If a physician, hospital, or provider of medical services or supplies has been automatically excluded pursuant to § 30.716, the provider excluded will automatically be reinstated upon notice to OWCP that the conviction or exclusion which formed the basis of the automatic exclusion has been reversed or withdrawn. However, an automatic reinstatement shall not preclude OWCP from instituting exclusion proceedings based upon the underlying facts of the matter.

(b) A physician, hospital, or provider of medical services or supplies excluded from participation as a result of an order issued pursuant to this subpart may apply for reinstatement one year after the entry of the order of exclusion, unless the order expressly provides for a shorter period. An application for reinstatement shall be addressed to the Director for Energy Employees Occupational Illness Compensation, and shall contain a concise statement of the basis for the application. The application should be accompanied by supporting documents and affidavits.

(c) A request for reinstatement may be accompanied by a request for oral argument. Oral argument will be allowed only in unusual circumstances where it will materially aid the decision process.

(d) The Director for Energy Employees Occupational Illness Compensation shall order reinstatement only in instances where such reinstatement is clearly consistent with the goal of this subpart to protect the EEOICPA program against fraud and abuse. To satisfy this requirement the provider must provide reasonable assurances that the basis for the exclusion will not be repeated.

Subpart I—Wage-Loss Determinations Under Part E of EEOICPA

General Provisions

§ 30.800 What types of wage-loss are compensable under Part E of EEOICPA?

Years of wage-loss occurring prior to normal retirement age that are the result of a covered illness contracted by a covered Part E employee through work-related exposure to a toxic substance at a Department of Energy facility or a RECA section 5 facility, as appropriate, may be compensable under Part E of the Act. Whether years of wage-loss are compensable depends on determinations with respect to:

(a) The average annual wage of the employee as determined by OWCP in accordance with § 30.810;

(b) The percentage of his or her average annual wage that the employee was able to earn during the calendar year(s) in question as determined by OWCP in accordance with § 30.811; and

(c) Whether the employee's inability to earn at least as much as his or her average annual wage was due to a covered illness as defined in § 30.5(r).

§ 30.801 What special definitions does OWCP use in connection with Part E wage-loss determinations?

For the purposes of paying compensation based on wage-loss under Part E of the Act, OWCP will apply the following definitions:

(a) *Average annual wage* means four times the average quarterly wages of a covered Part E employee for the 12 quarters preceding the quarter during which he or she first experienced wage-loss due to exposure to a toxic substance at a DOE facility or RECA section 5 facility, excluding any quarters during which the employee was unemployed. Because being ''retired'' is not equivalent to being ''unemployed,'' quarters during which an employee had no wages because he or she was retired will not be excluded from this calculation.

(b) *Normal retirement age* means the age at which a covered Part E employee first became eligible for unreduced retirement benefits under the Old-Age, Survivors and Disability Insurance (OASDI) provisions of the Social Security Act. In general, persons born during or before 1937 are eligible for unreduced OASDI retirement benefits at age 65, and that age increases in monthly increments until it reaches 67, which is the age at which persons born during or after 1960 become eligible for unreduced OASDI retirement benefits.

(c) *Quarter* means the three-month period January through March, April through June, July through September, or October through December.

(d) *Quarter during which the employee was unemployed* means any quarter during which the covered Part E employee had $700 (in constant 2005 dollars) or less in wages unless the quarter is one during which the employee was retired.

(e) *Year of wage-loss* means a calendar year during which the covered Part E employee's earnings were less than his or her average annual wage, after such earnings have been adjusted using the Consumer Price Index for All Urban Consumers (CPI–U), as produced by the Bureau of Labor Statistics, to reflect their value in the year during which the employee first experienced wage-loss due to exposure to a toxic substance at a DOE facility or RECA section 5 facility.

Evidence of Wage-Loss

§ 30.805 What evidence does OWCP use to determine a covered Part E employee's average annual wage and whether he or she experienced compensable wage-loss under Part E of EEOICPA?

(a) OWCP may rely on quarterly wages information reported to the Social Security Administration to establish a covered Part E employee's presumed average annual wage (*see* § 30.810) and the duration and extent of any years of wage-loss that are compensable under Part E of the Act (*see* § 30.811). OWCP may also rely on other probative evidence of a covered Part E employee's wages, and may ask the claimant for additional evidence necessary to make this determination, if necessary.

(b) OWCP also requires the submission of rationalized medical evidence of sufficient probative value to establish that the period of wage-loss at issue is causally related to the covered Part E employee's covered illness.

§ 30.806 May a claimant submit factual evidence in support of a different determination of average annual wage and/or wage-loss than that found by OWCP?

A claimant who disagrees with the evidence OWCP has obtained under § 30.805(a) and alleges a different average annual wage for the covered Part E employee, or that there was a greater duration or extent of wage-loss, may submit records that were produced in the ordinary course of business due to the employee's employment to rebut that evidence, to the extent that such records are determined to be authentic by OWCP by a preponderance of the evidence. The average annual wage and/or wage-loss of the covered Part E employee will then be determined by OWCP in the exercise of its discretion.

Determinations of Average Annual Wage and Percentages of Loss

§ 30.810 How will OWCP calculate the average annual wage of a covered Part E employee?

To calculate the average annual wage of a covered Part E employee as defined in § 30.801(a), OWCP will:

(a) Aggregate the wages for the twelve quarters that preceded the quarter during which the covered Part E employee first experienced wage-loss due to exposure to a toxic substance at a DOE facility or a RECA section 5 facility, excluding any quarter during which the employee was unemployed;

(b) Add any additional wages earned by the employee during those same quarters as evidenced by records described in §§ 30.805(a) and 30.806;

(c) Divide the sum of paragraphs (a) and (b) of this section by 12 less the number of quarters during which the employee was unemployed; and

(d) Multiply this figure by four to calculate the covered Part E employee's average annual wage.

§ 30.811 How will OWCP calculate the duration and extent of a covered Part E employee's initial period of compensable wage-loss?

(a) To determine the initial calendar years of wage-loss, OWCP will use the evidence it receives under §§ 30.805 and 30.806 to determine the quarter in which a covered Part E employee first sustained wage-loss due to exposure to a toxic substance while engaged in employment at a DOE facility or a RECA section 5 facility, as appropriate.

(b) OWCP will then compare the calendar-year wages for that employee, as adjusted, with the average annual wage determined under § 30.810 for each calendar year beginning with the calendar year that includes the quarter in which the wage-loss commenced, and concluding with the last calendar year of wage-loss prior to the submission of the claim or the calendar year in which the employee reached normal retirement age (as defined in § 30.801(b), whichever occurred first.

(c) OWCP will then aggregate separately the number of calendar years of wage-loss in which the employee's wages, as adjusted, did not exceed 50 percent of the average annual wage determined under § 30.810, and the number of calendar years of wage-loss in which the employee's wages, as adjusted, exceeded 50 percent of such average annual wage, but did not exceed 75 percent of such average annual wage.

(d) For each calendar year of wage-loss determined under paragraph (c) of this section during which the employee's wages did not exceed 50 percent of his or her average annual wage, OWCP will pay the employee $15,000 as compensation for wage-loss. For each calendar year of wage-loss determined under paragraph (c) of this section during which the employee's calendar-year wages exceeded 50 percent of his or her average annual wage but did not exceed 75 percent of such average annual wage, OWCP will pay the employee $10,000 as compensation for wage-loss.

§ 30.812 May a covered Part E employee claim for subsequent periods of compensable wage-loss?

A covered Part E employee previously awarded compensation for wage-loss under § 30.811 may file for additional compensation for wage-loss suffered by the employee during periods subsequent to a period for which a wage-loss claim for the employee has already been adjudicated by OWCP. However, no compensation for wage-loss shall be awarded for any period following the year during which the covered Part E employee attained normal retirement

age for purposes of the Social Security Act as described in § 30.801(b).

Special Rules for Certain Survivor Claims Under Part E of EEOICPA

§ 30.815 Are there special rules that OWCP will use to determine the extent of a deceased covered Part E employee's compensable wage-loss?

(a) For purposes of adjudicating a claim of a survivor of a deceased covered Part E employee only, OWCP will presume that such employee experienced wage-loss for each calendar year subsequent to the calendar year of his or her death through and including the calendar year in which the employee would have reached normal retirement age under the Social Security Act. During these particular calendar years, OWCP will also presume that the deceased covered Part E employee's subsequent calendar-year wages did not exceed 50 percent of his or her average annual wage as determined under § 30.810.

(b) Except as provided in paragraph (a) of this section, OWCP will calculate the wage-loss of a deceased covered Part E employee in conformance with the provisions of §§ 30.800 through 30.811.

(c) If OWCP determines that a deceased covered Part E employee had an aggregate of not less than ten calendar years of adjusted earnings that did not exceed 50 percent of his or her average annual earnings, it will pay the eligible surviving beneficiary(s) additional compensation (the basic survivor award payable under section 7385s–3(a)(1) is $125,000) in the amount of $25,000 pursuant to section 7385s–3(a)(2) of the Act. In the alternative, if OWCP determines that the aggregate number of such years is not less than 20 years, it will pay the eligible surviving beneficiary(s) additional compensation in the amount of $50,000 pursuant to section 7385s–3(a)(3).

Subpart J—Impairment Benefits Under Part E of EEOICPA

General Provisions

§ 30.900 Who can receive impairment benefits under Part E of EEOICPA?

In order to receive impairment benefits under Part E, the employee must show that:

(a) He or she is a covered Part E employee who has been determined to have contracted a covered illness through exposure to a toxic substance at a DOE facility or a RECA section 5 facility, as appropriate, pursuant to either §§ 30.210 through 30.215 or §§ 30.230 through 30.232 of these regulations; and

(b) He or she has been determined to have an impairment, pursuant to the regulations set out in this subpart, that is the result of the covered illness referred to in paragraph (a) of this section.

§ 30.901 How does OWCP determine the extent of an employee's impairment that is due to a covered illness contracted through exposure to a toxic substance at a DOE facility or a RECA section 5 facility, as appropriate?

(a) OWCP will determine the amount of impairment benefits to which an employee is entitled based on one or more impairment evaluations submitted by physicians. An impairment evaluation shall contain the physician's opinion of:

(1) The extent of whole person impairment of all organs and body functions of the employee that are compromised or otherwise affected by the employee's covered illness or illnesses, which shall be referred to as a ''minimum impairment rating''; and

(2) the extent of such impairment attributable to an employee's covered illness or illnesses.

(b) The minimum impairment rating shall be determined in accordance with the current edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* (AMA's *Guides*). In making impairment benefit determinations, OWCP will only consider medical reports from physicians who are certified by the relevant medical board and who satisfy any additional criteria determined by OWCP to be necessary to qualify to perform impairment evaluations under Part E, including any specific training in use of the AMA's *Guides,* specific training and experience related to particular conditions and other objective factors.

(c) OWCP will establish criteria based upon objective factors such as training and certification that must be met by physicians preparing impairment evaluations in order for an impairment evaluation to be considered in determining an impairment award. Such criteria shall be made available to claimants and the public by OWCP.

(d) If one or more percentage points of the minimum impairment rating are found by OWCP to be the result of a covered illness, the employee is entitled to an award of impairment benefits.

§ 30.902 How will OWCP calculate the amount of the award of impairment benefits that is payable under Part E?

OWCP will multiply the percentage points of the minimum impairment rating that are the result of the employee's covered illness or illnesses by $2,500 to calculate the amount of the award.

Medical Evidence of Impairment

§ 30.905 How may an impairment evaluation be obtained?

(a) Except as provided in paragraph (b) of this section, OWCP may request that an employee undergo an evaluation of his or her impairment that specifies the percentage points that are the result of the employee's covered illness or illnesses. To be of any probative value, such evaluation must be performed by a physician who meets the criteria OWCP has identified for physicians performing impairment evaluations for the pertinent covered illness or illnesses in accordance with the AMA's *Guides.*

(b) In lieu of submitting an evaluation requested by OWCP under paragraph (a) of this section, an employee may obtain an impairment evaluation at his own initiative and submit it to OWCP for consideration. Such an evaluation will be deemed to have sufficient probative value to be considered in the adjudication of impairment benefits by OWCP only if:

(1) It was performed by a physician who meets the criteria identified by OWCP for the covered illness or illnesses in question;

(2) It was performed no more than one year before the date that it was received by OWCP; and

(3) It conforms to all applicable requirements set out in this part.

§ 30.906 Who will pay for an impairment evaluation?

(a) OWCP will pay for one impairment evaluation obtained by an employee if it meets the criteria set out in § 30.905(b), unless it was performed by a physician prior to the date that the claim for Part E benefits is filed, or obtained for a claim in which OWCP finds that the employee did not contract a covered illness. At its discretion, OWCP may direct that the employee undergo additional evaluations at its expense. OWCP will pay for any such additional evaluations and will reimburse the employee for any reasonable and necessary costs incident to the evaluations, as described in §§ 30.404 and 30.412 of this part.

(b) Except for one impairment evaluation obtained pursuant to § 30.905(b) and meeting the criteria set out in § 30.905(b)(1), (2) and (3), the employee must pay for any impairment evaluations not directed by OWCP.

§ 30.907 Can an impairment evaluation obtained by OWCP be challenged prior to issuance of the recommended decision?

(a) An employee may submit arguments challenging an impairment evaluation, and/or additional medical evidence of impairment, before the district office issues a recommended decision on his or her claim. However, the district office will not consider an additional impairment evaluation, even if it differs from the impairment evaluation obtained under §§ 30.905 or 30.906, if it does not meet the criteria listed in § 30.905(b)(1), (2) and (3).

(b) If the district office obtains an additional impairment evaluation that differs from the impairment evaluation obtained under §§ 30.905 or 30.906, the district office will base its recommended determinations regarding impairment upon the evidence it considers to have the greatest probative value, after evaluating all relevant evidence of impairment in the record, including evidence from directed medical examinations that it deems necessary pursuant to §§ 30.410 and 30.411 of this part.

§ 30.908 How will the FAB evaluate new medical evidence submitted to challenge the impairment determination in the recommended decision?

(a) If an employee submits an additional impairment evaluation that differs from the impairment evaluation relied upon by the district office, the FAB will not consider the additional impairment evaluation if it does not meet the criteria listed in § 30.905(b)(1), (2) and (3).

(b) The employee shall bear the burden of proving that the additional impairment evaluation submitted is more probative than the evaluation relied upon by the district office to determine the employee's recommended minimum impairment rating and the percentage points of such rating that are the result of the employee's covered illness or illnesses.

(c) If an employee submits an additional impairment evaluation that differs from the impairment evaluation relied upon by the district office, the FAB will review all relevant evidence of impairment in the record, and will base its determinations regarding impairment upon the evidence it considers to be most probative. The FAB will determine the minimum impairment rating and the percentage points of the rating that are the result of the employee's covered illness or illnesses after it has evaluated all relevant evidence and argument in the record.

Ratable Medical Impairments

§ 30.910 Will an impairment that cannot be assigned a numerical percentage using the AMA's Guides be included in the impairment rating?

(a) An impairment that cannot be assigned a numerical impairment percentage using the AMA's *Guides* will not be included in the employee's impairment rating.

(b) A mental impairment that does not originate from a documented physical dysfunction of the nervous system, and cannot be assigned a numerical percentage using the AMA's *Guides,* will not be included in the impairment rating for the employee. Mental impairments that are due to documented physical dysfunctions of the nervous system can be assigned numerical percentages using the AMA's *Guides* and will be included in the rating.

§ 30.911 Does maximum medical improvement always have to be reached for an impairment to be included in the impairment rating?

(a) An impairment that is the result of a covered illness will be included in the employee's impairment rating determined by OWCP under § 30.901 only if OWCP concludes that the impairment has reached maximum medical improvement, which means that it is well-stabilized and unlikely to change substantially with or without medical treatment.

(b) Notwithstanding paragraph (a) of this section, if OWCP finds that an employee's covered illness is in the terminal stages, based upon probative medical evidence, an impairment that results from such covered illness will be included in the impairment rating for the employee even if it has not reached maximum medical improvement.

§ 30.912 Can a covered Part E employee receive benefits for additional impairment following an award of such benefits by OWCP?

A covered Part E employee previously awarded impairment benefits by OWCP may file a claim for additional impairment benefits. Such claim must be based on an increase in the impairment rating that is the result of the covered illness or illnesses from the impairment rating that formed the basis for the last award of such benefits by OWCP. OWCP will only adjudicate claims for such an increased rating that are filed at least two years from the date of the last award of impairment benefits. However, OWCP will not wait two years before it will adjudicate a claim for additional impairment that is based on an allegation that the employee sustained a new covered illness.

Signed at Washington, DC, this 26th day of May 2005.

Victoria A. Lipnic,

Assistant Secretary of Labor for Employment Standards.

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Part III

Department of Housing and Urban Development

24 CFR Part 598

Empowerment Zones: Performance Standards for Utilization of Grant Funds; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 598

[Docket No. FR–4853–P–01; HUD–2005–0009]

RIN 2506–AC16

Empowerment Zones: Performance Standards for Utilization of Grant Funds

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to establish certain planning and performance standards for utilization of grant funds allocated to Empowerment Zones, including for benefit levels and economic-development activities. The standards are designed to ensure that the activities undertaken by Empowerment Zones with Federal grants are consistent with the Empowerment Zone's strategic plan.

DATES: Comment Due Date: August 8, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Interested persons may also submit comments electronically through either:

- The Federal eRulemaking Portal at: *http://www.regulations.gov;* or
- The HUD electronic Web site at: *http://www.epa.gov/feddocket.* Follow the link entitled ''View Open HUD Dockets.'' Commenters should follow the instructions provided on that site to submit comments electronically.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the above docket number and title. All comments and communications submitted will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Copies of the public comments are also available for inspection and downloading at *http://www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: John Haines, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7130, 451 Seventh Street, SW., Washington, DC 20410–7000, telephone (202) 708–6339 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to amend HUD's regulations at 24 CFR part 598 by adding a new subpart G, ''Empowerment Zone Grants,'' that will establish an implementation plan and performance standards for the use of funds appropriated by Congress and made available by HUD specifically for the Round II urban Empowerment Zones (EZs). These funds are referred to as HUD EZ Grant Funds. The funds Congress has appropriated to date are found under the following appropriation acts commencing with fiscal year 1999: Public Laws 105–277, 106–74, 106–377, 106–554, 107–73, and 108–7. Should additional funds be made available in the future for Round II or Round III EZs, the provisions of this new subpart G, once promulgated as a final rule, would apply to them as well. Subpart G would provide for an EZ to submit to HUD its plan for expenditure of HUD EZ Grant Funds. Such planning would assist both HUD and the EZ to ensure that HUD EZ Grant Funds are expended consistent with the EZ's strategic plan and any directions or restrictions that may be imposed on the grant funds by the appropriations acts that make the funds available to EZs. Subpart G also would establish certain performance standards for the expenditure of EZ grant funds to greater ensure that a certain level of the benefits resulting from the expenditure of these funds will accrue to persons who reside within the EZ.

II. Benefits to EZ Residents

With respect to performance standards for utilization of funds for the benefit of EZ residents, numerous comments were received by HUD on this subject following HUD's issuance of a policy statement on resident benefit in July 2002. Round I EZs received Social Service Block Grants (SSBG) from the Department of Health and Human Services (HHS). Part of an HHS statute governing the use of SSBG funding, (42 U.S.C. 1397f(c)(1)(C)), states that, ''an area shall use the grant for activities that benefit residents of the area for which the grant is made.'' Round II EZs received HUD EZ Grant Funds rather than SSBG funds. This funding distinction has created a situation where there is an explicit statutory basis for a resident benefit standard for Round I, but not for Round II EZs. Nevertheless, HUD has determined that it is appropriate to establish a performance standard that helps to ensure a certain level of resident benefit from the use of HUD EZ Grant Funds. The establishment of such a standard is supported by and would be consistent with the fact that several of the tax incentives that are the primary benefits for businesses operating in the EZs also provide a direct benefit to EZ residents. For example, the Empowerment Zone Employment Wage Credit is specifically linked to existing employees and new hires who live and work in the EZ, and the Work Opportunity Tax Credit gives employers a tax credit for hiring EZ residents who are within specified age brackets. EZ residents are certainly intended to be among the principal beneficiaries of the EZ program.

Accordingly, to enhance achievement of the objectives of an EZ strategic plan and the specific objective of benefiting EZ residents, this rule proposes for each EZ to submit an implementation plan for HUD approval, after this rule is issued as final and becomes effective. The implementation plan will describe the EZ's planned use of HUD EZ Grant Funds, and how utilization of funds will meet one of three performance standards designed to promote benefit to residents. The three performance standards are a principal benefit standard, a proportional benefit standard, and an exception criterion for determining the amount of HUD EZ Grant Funds that may be used to fund a particular project or activity described in an implementation plan. The following discusses each of these standards in more detail.

A. Principal Benefit Standard

The principal benefit standard looks at the percentage of the total number of persons projected to benefit from the assisted activity who reside within the boundaries of the EZ. This standard begins with the presumption, with which HUD agrees, that for most projects it is not feasible to entirely limit the persons who benefit directly to those who reside within the EZ. This rule proposes to establish a minimum percentage for this purpose. The strong emphasis on the benefits to be received by EZ residents stems from HUD's belief that such an emphasis is needed to make the main goal of the EZ program more likely to be achieved. That goal is the long-term, sustainable revitalization of a highly impoverished area. In the

case of an EZ, which by definition includes a very high percentage of persons in poverty, this means that many such persons must find a way to raise their income. Accordingly, the objective expressed at 24 CFR 598.2 in the Round II regulations appropriately calls for ''empowering low-income persons and families receiving public assistance to become economically self-sufficient.'' Conversely, HUD also recognizes that the local governments involved in the EZ program must partner with private businesses to achieve the desired redevelopment of the area, and cannot control the results entirely. Thus, some sharing of the direct benefits with those outside the EZ is likely to occur. HUD accepts the proposition that, if a majority of the direct beneficiaries reside within the EZ, the project that provides the benefits may be assisted with HUD EZ Grant Funds to meet this concern. However, HUD also notes that the Congress, in setting the requirements for some of the tax incentives available in conjunction with EZs, allows for a smaller proportion of resident benefit. In these cases, the tax incentives only require 35 percent of jobholders to be EZ residents. For example, among the criteria a business has to meet to qualify as an ''Enterprise Zone Business'' eligible to use the Increased Section 179 Deduction, EZ Facility Bonds, and certain other incentives is the requirement that 35 percent of employees must be EZ residents. HUD believes that this requirement provides a reasonable basis for allowing as few as 35 percent of the direct beneficiaries to be EZ residents to suffice with respect to a project that provides for the creation of jobs or, in the case where the loss of jobs would result without the assistance of the federal EZ funds, the retention of jobs.

Therefore, this proposed rule provides that an EZ may use HUD EZ Grant Funds to assist any project that provides at least 51 percent of its direct benefits to persons who reside within the designated EZ boundaries. Moreover, in any case where the direct benefits to be provided by the project in question will be in the form of jobs, the project may be assisted if at least 35 percent of the jobs, on a full-time equivalent basis, are taken by, or made available to, EZ residents. But HUD also recognizes that there may be projects that would be helpful to the overall effort to revitalize an EZ but which cannot meet either of these tests (51 percent or 35 percent), and so two other standards are also provided, as discussed below.

B. Proportional Benefit Standard

In the interest of providing maximum flexibility to an EZ in its quests to pursue its strategic plan, HUD has made provision to also assist such an activity to a lesser degree. That is, while a project that will meet either the 51 percent or 35 percent test, as applicable, may be fully assisted with HUD EZ Grant Funds, one that cannot meet those tests may also be assisted in part. The level of assistance that may be provided must be limited so that it does not exceed the percentage of direct beneficiaries that are EZ residents. An example might help to show how this would work. If a business needs $100,000 to expand its operations and will create four new full time jobs, but it can only assure that one of those four jobs will be made available to an EZ resident, the EZ could provide $25,000 (one-fourth of the total amount needed by the business) in the form of HUD EZ Grant Funds. This is because only one-fourth of the jobs will benefit EZ residents. Using this practical approach, HUD allows the use of the HUD EZ Grant Funds at a level commensurate with the extent to which EZ residents will benefit directly from such a project.

Comparing the principal benefit standard to the proportional standard proposed by this regulation means that the EZs will have an incentive to fund projects that will provide at least 51 percent (or 35 percent, where applicable) of the direct benefits to EZ residents. This is because where the applicable percentage can be reached, there is no limit as to the percentage of the funding needed by the project in question that may be met using the HUD EZ Grant Funds. However, if a project is highly desirable for other reasons, it may still be assisted, in part, using such funds.

C. Exception Criterion

In any case where a proposed project does not meet the principal benefit standard or the proportional benefit standard set forth in this regulation, the regulation provides that HUD will consider a request for exception if an EZ concludes that the project would contribute to its strategic plan in a critical way. Where an EZ shows, to HUD's satisfaction, other substantial benefits to the EZ that would result from the project or other compelling reasons justifying the appropriateness of the implementation plan to its strategic plan, HUD may expressly approve the project despite its failure to meet either the principal or proportionate criterion. All requests for exceptions to these criteria must be in writing, accompanied by the facts that the EZ wants HUD to review and consider as justifying the exception. The performance standards proposed in this rule for determining whether an activity is in conjunction with economic development contain a similar exception provision, as discussed elsewhere in this preamble.

D. Additional Issues

1. *Amount of benefit.* The question of how much benefit, at minimum, should be derived from the expenditure of HUD EZ Grant Funds is not addressed in this proposed rule. The concern about the amount of benefit stems from the fact that the dominant use of HUD EZ Grant Funds is expected to be for assisting private businesses to establish, expand or remain in place and thus to create or retain jobs that would otherwise not be available. Since private businesses must principally focus on their own profitability, the public sector needs to make sure that the number of jobs that are made available is commensurate with the amount of HUD EZ Grant Funds provided to such businesses. HUD is not aware of abuses in this regard with respect to the use of HUD EZ Grant Funds, but is interested in receiving public comment on whether establishing specific requirements would be desirable to prevent them from occurring. For example, in the Community Development Block Grant (CDBG) program, there is a general requirement that economic development activities that will create or retain jobs must create or retain at least one permanent, full-time equivalent job for each $35,000 of CDBG funds obligated for applicable activities during the program year. HUD invites public comment on whether this or any similar requirement would be appropriate to apply to all jobs created or retained by the use of the HUD EZ Grant Funds.

2. *Types of benefits/service area/location of the project.* Economic development professionals recognize other types of direct benefits besides creation and retention of jobs. For example, a supermarket, drug store, or for-profit medical clinic may provide essential services to support the quality of life and the business climate in the community. Specifically, if EZ residents comprise at least 51 percent of the persons who live within the area served by the business, the project would qualify under that standard, even if it cannot meet the 35 percent jobs standard. (Appendix D of the *CDBG Guide to National Objectives and Eligible Activities for Entitlement Communities,* published in 1998, contains guidance on how to determine a service area that may be used for this

purpose.) Thus, an EZ may choose which of the two standards, principal benefit or proportional benefit, to apply to a proposed commercial project. In addition, the location of a facility within the EZ and the nature of the goods and services that it will provide may justify a presumption that most of its goods and services would benefit the residents of the EZ. If a project is located outside the EZ, HUD would naturally expect the EZ to provide more substantial analysis of its service area and customer base if it claims that a majority of these kinds of benefits would accrue to EZ residents.

3. *Full-time equivalency.* The standards for ensuring that sufficient benefit will go to EZ residents from activities assisted with HUD EZ Grant Funds require measuring the jobs on a full-time equivalent basis. This is because many of the jobs can be expected to involve less than full-time employment. Because the standards in this regulation require that a calculation of the percentage of the total jobs resulting that will benefit EZ residents, it is important that provision be made for those cases where one or more of the resulting jobs will be part-time jobs. An example might help to clarify the concerns HUD has and how the calculation should be made. Assume that a proposed project is expected to create 10 new jobs, four of which will require only 20 hours of work per week. Knowing that four of the new jobs will go to EZ residents would, on the surface, appear to meet the standard that at least 35 percent of the new jobs benefit EZ residents. However, if the four jobs to be taken by EZ residents are all only part-time, the simple calculation based on the number of jobs alone is misleading. While 40 percent of the new jobs will benefit EZ residents, less than 40 percent of the *total employment* to be produced will accrue to them. Using a full-time equivalent approach, only 25 percent of the employment opportunity will benefit EZ residents. This is because when the part-time jobs are converted to their equivalent in full-time jobs (*i.e.*, a 20 hour per week job is the equivalent of one-half of a full-time job), they would compute to only two full-time equivalent jobs. Thus, using a full-time equivalent calculation, the 10 new jobs are seen as equaling only eight full-time equivalent jobs. The four part-time jobs that would go to EZ residents convert to the equivalent of two of those eight full-time jobs, yielding only 25 percent of the total employment opportunities to be produced by the HUD EZ Grant Funds. (**Note:** In those cases where an employer operates on the basis of a full-time schedule of less than 40 hours [*e.g.*, 36 hours], the calculation of part-time to full-time equivalency would be made using that lesser figure in lieu of 40.)

4. *Making jobs ''available to'' EZ residents.* The standards proposed in this regulation for ensuring sufficient benefit to EZ residents allow for qualifying based on the fact that a job was made available to such residents even if they do not actually take the job. This provision recognizes that it may not be feasible for a business to hold one or more jobs open indefinitely while they attempt to fill it with a resident of the EZ. If the EZ can demonstrate that the job referral resources and the business have a good faith plan to provide first consideration to EZ residents who reasonably can be expected to fill 35 percent of the jobs, it will be seen as meeting the principal benefit standard under this regulation. Note, however, that qualifying for tax exempt financing, increased deductions for capital equipment in accordance with section 179 of the Internal Revenue Code, and preferential tax treatment for capital gains otherwise available to an ''EZ business'' requires that the business meet the tests that define an ''Enterprise Zone Business'' under the Internal Revenue Code, including having at least 35 percent of its employees residing in the EZ.

III. In Conjunction With Economic Development

To date, all funds appropriated by Congress for Round II EZs (the HUD EZ Grant Funds) have generally been accompanied by the explicit requirement that the funds be used ''in conjunction with economic development activities consistent with the strategic plan for each EZ.'' (*See* Public Laws 105–277, 106–74, 106–377, 107–73, and 108–7. Public Law 106–554 does not contain this requirement, but HUD has determined to apply a consistent approach to focus the use of all HUD funds made available to EZs.) Over the course of time that such funds have been made available to these EZs, a number of questions have arisen about whether particular planned activities would fall within this statutory restriction. While each question was answered on an individual basis, HUD had not attempted to set forth specific requirements for adhering to the economic development restriction. The regulations governing urban EZs from Round II are contained in 24 CFR part 598. At the time they were published, it was expected that any funds the Congress would appropriate for Round II EZs would continue to fall under the jurisdiction of HHS as the Round I funds did. The regulations are now being amended to reflect the change in jurisdiction over the funds to HUD. This rulemaking removes references to HHS at 24 CFR 598.215(b)(4)(i)(D) and in its place provides that HUD EZ Grant Funds are to be used in conjunction with economic development activities consistent with an EZ's strategic plan. This rule also provides for economic development activity standards.

In order to ensure that the economic development standard is met, each proposed use of the funds must be described in an implementation plan and approved by HUD in advance. This rule would provide that in reviewing a proposed use of HUD EZ Grant Funds, HUD will consider the nature of the activity and, in addition to making a determination that the resident benefit standard is met, will make a decision as to whether the activity is in conjunction with economic development. It should be noted that while the two standards (resident benefit and economic development) covered in this proposed rule are independent of each other, they will have to be considered almost simultaneously by those making decisions about how to spend HUD EZ Grant Funds. This preamble and §§ 598.605 and 598.615(a)(1) of the proposed rule contain reminders that both resident benefit and economic development standards must be separately met for each activity supported with HUD EZ Grant Funds. HUD's decision as to whether the activity is in conjunction with economic development will be made in accordance with the following:

1. An activity that involves assisting a business to establish or expand is clearly ''economic development.'' Such activities include efforts to stimulate the development or expansion of microenterprises. Assisting commercial businesses that provide goods or services within the EZ to either remain within the EZ or expand would also satisfy the standard, whether or not the business will create any new jobs, so long as either the principal benefit or the proportional benefit standard is met, or an exception is granted for resident benefit.

2. An activity that assists a person to take, or remain in, a job also meets the economic development standard. The standard is met by job training, provision of child care or transportation to or from the place of employment (or the place where job training is taking place), or even by counseling persons on how to interview successfully for a job, dress and/or act appropriately in the conduct of a job.

3. The provision of other kinds of educational assistance meets the economic development standard only if the EZ's implementation plan demonstrates that such education will be provided to persons who cannot qualify for available jobs because of the lack of some specific knowledge that would be given them through the course(s) to be provided and at least 51 percent of whom are EZ residents.

4. An activity that is clearly aimed at increasing the capacity of governance board members, or staff of the EZ's lead agency, to carry out their roles with respect to economic development projects expected to be assisted in support of the EZ's strategic plan meets the test as well. This includes the cost of attending a conference on economic development. Because of the difficulty of tracking the relationship of such capacity building to resultant grant-assisted activities, this rule would deem the use of funds to build capacity for carrying out economic development activities as providing adequate benefit to EZ residents.

5. The provision of public improvements, such as construction of a parking structure, extension of water or sewer capacity, street widening, etc., meets the economic development standard only if it is shown that the lack of the improvements clearly is an impediment to the establishment, expansion or retention of one or more businesses, and that the provision of the proposed public improvement would be limited as much as feasible to assisting the business or businesses. The benefits provided by such businesses would need to satisfy the resident benefit standard.

6. HUD may also expressly approve a project that does not fall within any of the previous review standards if the EZ provides evidence in the implementation plan that, in some other way, the project can reasonably be seen as meeting the economic development standard. All requests for such an exception must be in writing, accompanied by the facts that the EZ wants HUD to review and consider as justification.

IV. Technical and Conforming Changes

This proposed rule would add, at § 598.605(b), provisions to emphasize the need for compliance with other requirements applicable to the use of HUD EZ Grant Funds, such as the uniform administrative requirements of 24 CFR part 85, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601 *et seq.*) and with the environmental review procedures required to expend HUD funds. These amendments are in the nature of technical corrections to codify general requirements affecting the use of HUD grant funds.

This rule would also remove references to SSBG. Congress appropriated HUD EZ Grant Funds rather than SSBG funds as was anticipated when 24 CFR part 598 was first issued. As a result, the SSBG references in part 598 are not relevant and would be removed, as follows:

The definition of ''EZ/EC SSBG'' would be removed from § 598.3. ''HUD EZ Grant Funds'' would be defined in § 598.600.

The certification requirement in § 598.210(e) would be removed. It reads as follows: ''Provide assurances that any Round II EZ/EC SSBG funds that may be provided to the state for the area will not be used to supplant federal or non-federal funds for services and activities that promote the purposes of section 2007 of the Social Security Act.''

The phrase, ''and reporting on the use of EZ/EC SSBG funds'' would be removed from the certification requirement in § 598.210(f), which would be redesignated as § 598.210(e).

The certification requirement in § 598.210(g) would be removed. It reads as follows: ''Provide assurances that the nominating State(s) agrees to distribute any EZ/EC SSBG funds that may be awarded to it for use by a designated Empowerment Zone for programs, services, and activities included in the Empowerment Zone's strategic plan to the extent they are consistent with section 2007(a) of the Social Security Act as well as other applicable Federal, State, and local laws and regulations.''

Section 598.210(h) would be redesignated as § 598.210(f).

The last sentence of § 598.215(b)(4)(i)(D) would be removed. It reads as follows: ''Budgets will also include details about proposed uses of any Round II EZ/EC SSBG funds that may become available from HHS, in accordance with Guidelines on Eligible Uses of EZ/EC SSBG Funds.''

The reference to EZ/EC SSBG funds in § 598.405 would be changed to HUD EZ Grant Funds. Section 598.405 would also identify HUD's environmental review responsibility under 24 CFR part 50 and specify, consistent with 24 CFR 50.3(h)(1), that the EZ must provide HUD with the information necessary to conduct an environmental review.

V. Evaluation, Monitoring and Enforcement

HUD will review the performance of the EZ's use of HUD EZ Grant Funds as part of its regular evaluation process under 24 CFR 598.420, through on-site monitoring under 24 CFR 85.40(e), and by other appropriate means. Should it appear that an EZ is not carrying out its funded activities in accordance with its approved implementation plan, including performance standards, HUD may forward a warning letter to the EZ informing it of a potential violation. If HUD makes an initial determination that there has been a violation in the use of HUD EZ Grant Funds, it will notify the EZ of the alleged violation and the proposed action HUD will take under 24 CFR 85.43, the enforcement provision of HUD's promulgation at 24 CFR part 85 of the government-wide ''Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments'' or if appropriate, 24 CFR 598.430. The notice will also provide the EZ with at least 30 days to respond with any information to rebut or mitigate the alleged violation. If the EZ does not respond within the specified period, HUD may proceed to take the action proposed in the notice. If the EZ responds, HUD will consider the information received from the EZ and may request additional information. After considering the information received from the EZ, HUD will notify the EZ of HUD's final determination and action, affirming, modifying, or repealing HUD's initial determination and proposed action.

VI. Findings and Certifications

Paperwork Reduction Act

The proposed new information collection requirements contained in subpart G of part 598 have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The public reporting burden for this new collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in the following table:

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
§ 598.610	15	1	15	4	60
§ 598.615	15	1	15	3	45
§ 598.620	15	1	15	6	90
Total hours					195

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected 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.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the interim rule, however. Comments must refer to the proposal by name and docket number (FR–4853–P–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503–0001; Fax number (202) 395–6974;

and

Shelia Jones, Reports Liaison Officer, Department of Housing and Urban Development, Office of Community and Planning Development, Room 7232, 451 Seventh Street, SW., Washington, DC 20410–7000.

Environmental Review

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule would only establish program-specific requirements governing a recipient's use of federal grant funds and does not impose a federal mandate that will result in expenditure by state, local, or tribal governments, within the meaning of the UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule would establish performance standards for the use of grant funds made available to EZs by HUD, largely pertaining to benefit levels and economic-development activities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities and there are not any unusual procedures that would need to be complied with by small entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this is a ''significant regulatory action,'' as defined in section 3(f) of the order (although not an economically significant regulatory action under the Order). The docket file is available for public inspection in the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Numbers for 24 CFR part 598 is 14.244.

List of Subjects in 24 CFR Part 598

Community development, Economic development, Empowerment zones, Housing, Indians, Intergovernmental relations, Reporting and record keeping requirements, Urban renewal.

Accordingly, HUD proposes to amend 24 CFR part 598 as follows:

PART 598—URBAN EMPOWERMENT ZONES: ROUND TWO AND THREE DESIGNATIONS

1. The authority citation for 24 CFR part 598 continues to read as follows:

Authority: 26 U.S.C. 1391; 42 U.S.C. 3535(d).

§ 598.3 [Amended]

2. In § 598.3, remove the definition of ''EZ/EC SSBG funds.''

3. In § 598.210, remove paragraphs (e) and (g), redesignate paragraph (f) as paragraph (e), redesignate paragraph (h) as paragraph (f), and revise redesignated paragraphs (e) and (f) to read as follows:

§ 598.210 What certifications must governments make?

* * * * *

(e) Provide that the nominating governments or corporations agree to make available all information requested by HUD to aid in the evaluation of progress in implementing the strategic plan; and

(f) Provide assurances that the nominating governments will administer the Empowerment Zone program in a manner that affirmatively furthers fair housing on the bases of race, color, national origin, religion, sex, disability, and familial status (presence of children).

* * * * *

§ 598.215 [Amended]

4. In § 598.215, remove the last sentence of paragraph (b)(4)(i)(D).

5. Revise § 598.405 to read as follows:

§ 598.405 Environmental review.

Where any EZ's strategic plan or any revision thereof proposes the use of HUD EZ Grant Funds (see § 598.600) for activities that are not excluded from environmental review under 24 CFR 50.19(b), the EZ shall supply HUD with all available, relevant information necessary for HUD to perform any environmental review required by 24 CFR part 50.

6. Following § 598.515, add a new subpart G to read as follows:

Subpart G—Empowerment Zone Grants

Sec.

598.600 Applicability.
598.605 Implementation plan.
598.610 Resident benefit standards.
598.615 Economic development standards.
598.620 Evaluation, monitoring, and enforcement.

§ 598.600 Applicability.

This subpart applies to the use of funds appropriated by Congress and made available by HUD specifically for use by EZs. These funds are referred to as ''HUD EZ Grant Funds.''

§ 598.605 Implementation plan.

(a) *Implementation plan content.* An EZ must submit an implementation plan for HUD approval that addresses each project or activity proposed to be undertaken by the EZ with HUD EZ Grant Funds. The implementation plan must:

(1) Describe the project or activity;

(2) Identify the completion date or duration of the project or activity;

(3) Provide the total cost of the project or activity;

(4) Identify the amount of HUD EZ Grant Funds to be used for the project or activity; and

(5) Include a narrative description of how the project or activity meets the resident benefit and economic development standards of this subpart.

(b) *Proposed funded project or activity.* The project or activity proposed in the implementation plan is subject to the following requirements:

(1) The federal requirements listed in 24 CFR 5.105;

(2) The governmentwide, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments at 24 CFR part 85;

(3) The requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601 *et seq.*);

(4) The environmental review and approval requirements of 24 CFR part 50;

(5) The provisions of the Memorandum of Agreement (MOA) setting forth the obligations and requirements that the state and local governments, as Empowerment Zone designees, have agreed to meet as signatories of the agreement.

(6) Recipients of the HUD EZ Grant Funds also must adhere to the requirements set forth in the provisions of the grant agreement for HUD EZ Grant Funds.

§ 598.610 Resident benefit standards.

The project or activity described in an implementation plan submitted for HUD approval by an Empowerment Zone to describe the planned use of HUD EZ Grant Funds must meet one of the following three standards of resident benefit for determining the amount of HUD EZ Grant Funds that may be used to fund a particular project or activity:

(a) *Principal benefit standard.* (1) *Benefits other than jobs.* If a majority (51 percent) of the direct beneficiaries of the project or activity described in the implementation plan reside within the Empowerment Zone, the project or activity may be fully assisted with HUD EZ Grant Funds.

(2) *Jobs benefit.* In any case where the direct benefits to be provided by a project or activity described in an implementation plan will be in the form of jobs, the project may be fully assisted with HUD EZ grant funds if at least 35 percent of the jobs, on a full-time equivalent basis, are taken by, or made available to, Empowerment Zone residents.

(b) *Proportional benefit standard.* If a project or activity described in an implementation plan cannot meet the principal benefit standard of paragraph (a) of this section, the percent of the cost of the project or activity that may be assisted with HUD EZ Grant Funds may not be greater than the percent of all persons benefiting directly from the project or activity who reside within the Empowerment Zone.

(c) *Exception criterion.* In any case where a proposed project or activity would not meet the standards of paragraph (a) or paragraph (b) of this section, HUD EZ Grant Funds may be used where HUD determines that an implementation plan, accompanied by the facts that the Empowerment Zone requests HUD to review and consider as justifying the exception, demonstrates substantial benefits to the Empowerment Zone that would result from the project or other compelling reasons justifying the appropriateness of the implementation plan to the Empowerment Zone's strategic plan.

§ 598.615 Economic development standards.

(a) *Economic development standards.* The project or activity in an implementation plan submitted for HUD approval by an Empowerment Zone to describe the planned use of HUD EZ Grant Funds must meet one of the following economic development standards:

(1) *Business development assistance.* An activity that involves assisting a business in the Empowerment Zone meets the standard, whether or not the business will create any new jobs. Any such activity must also meet the standards for benefiting a sufficient portion of Empowerment Zone residents as required under § 598.610. Qualifying activities include the use of HUD EZ Grant Funds to:

(i) Assist in establishing a business;

(ii) Expand a business, including efforts to stimulate the development or expansion of microenterprises; and

(iii) Assisting businesses that provide goods or services within the Empowerment Zone to remain within the Empowerment Zone.

(2) *Employment training and assistance.* An activity that assists a person to take, or remain in, a job, subject to meeting the standards for benefiting a sufficient proportion of Empowerment Zone residents as required under § 598.610, including:

(i) Job training;

(ii) Provision of child care;

(iii) Transportation to or from the place of employment or the place where job training is taking place; or

(iv) Counseling persons on job-related skills, such as how to interview successfully for a job, and dress and act appropriately in the conduct of a job.

(3) *Educational assistance.* The provision of educational assistance meets the economic development standard only if the Empowerment Zone's implementation plan demonstrates that such education will be provided to persons who cannot qualify for available jobs because of the lack of some specific knowledge that would be given them through the course(s) to be provided. Any educational assistance provided must also meet the standard for benefiting a sufficient portion of Empowerment Zone residents as required under § 598.610.

(4) *Empowerment Zone administrative capacity.* An activity that increases the capacity of governance board members or staff of the Empowerment Zone's lead agency to carry out their roles with respect to economic development projects expected to be assisted in support of the Empowerment Zone's strategic plan is eligible. This includes the cost of attending a conference on economic development. The use of HUD EZ Grant Funds for capacity building under this paragraph is deemed to provide adequate benefit to Empowerment Zone residents.

(5) *Public improvements.* The provision of public improvements, such as extension of water or sewer capacity, or street widening, meets the economic development standard only if it is shown in the implementation plan that the lack of the improvements clearly is an impediment to the establishment, expansion or retention of one or more businesses in the Empowerment Zone, and that the provision of the proposed public improvement would be limited as much as feasible to assisting the business or businesses. Any public improvements must also meet the standard for benefiting a sufficient portion of Empowerment Zone residents as required under § 598.610.

(b) *Exception request.* HUD may approve a project or activity that does not fall within any of the previous review standards of this section if the Empowerment Zone provides evidence that, in some way, the project or activity can reasonably be seen as meeting the economic development standard. Such a project or activity must also meet the standards for benefiting a sufficient portion of Empowerment Zone residents as required under § 598.610. All requests for such an exception must be in writing, accompanied by the facts that the Empowerment Zone wants HUD to review and consider as justification.

§ 598.620 Evaluation, monitoring, and enforcement.

(a) *Progress, evaluation, and monitoring.* HUD will review the performance of an Empowerment Zone's use of HUD EZ Grant Funds for compliance with this subpart as part of its regular evaluation process under 24 CFR 598.420, through on-site monitoring under 24 CFR 85.40(e), and by other appropriate means.

(b) *Warning letter.* If HUD has reason to believe that an Empowerment Zone is not carrying out its funded activities in accordance with any applicable requirements, including the resident benefit and economic development standards of this subpart, HUD may forward a warning letter to the Empowerment Zone informing it of a potential violation and recommending action to avoid a violation. A warning letter is not a prerequisite for any other action HUD may take.

(c) *Notice of violation.* If HUD determines that there appears to be a violation in the use of HUD EZ Grant Funds, it will notify the Empowerment Zone of the alleged violation and the action HUD proposes to take under 24 CFR 85.43 or its successor regulation or if appropriate, 24 CFR 598.430.

(d) *Response to notice.* A notice sent to an Empowerment Zone under paragraph (c) of this section will provide the Empowerment Zone with at least 30 calendar days from the time HUD sends the notice to respond with any information to rebut or mitigate the alleged violation.

(e) *Final action.* If the Empowerment Zone does not respond within the period specified pursuant to paragraph (d) of this section, HUD will make a final determination of the violation and may proceed to take the action proposed in the notice. If the Empowerment Zone responds, HUD will consider the information received from the Empowerment Zone and may request additional information. After considering the information received from the Empowerment Zone, HUD will notify the Empowerment Zone of HUD's final determination and action, affirming, modifying, or repealing HUD's initial determination of an alleged violation and proposed action.

Dated: May 10, 2005.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 05–11311 Filed 6–7–05; 8:45 am]

BILLING CODE 4210–29–P

Federal Register

Wednesday,
June 8, 2005

Part IV

Department of Housing and Urban Development

24 CFR Part 320

Removal of Regulation Specifying Minimum Face Value of Ginnie Mae Securities; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 320

[Docket No. FR–4856–F–02]

RIN 2503–AA17

Removal of Regulation Specifying Minimum Face Value of Ginnie Mae Securities

AGENCY: The Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Final rule.

SUMMARY: This final rule removes the regulation that specifies the current minimum face amount of any security issued by the Government National Mortgage Association (Ginnie Mae). The removal of the regulation allows Ginnie Mae to change the current minimum amount of $25,000. This final rule follows publication of a proposed rule on April 13, 2004. The Department gave careful consideration to the public comments and decided to adopt the proposed rule as final without change.

DATES: Effective Date: July 8, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas R. Weakland, Senior Vice President, Office of Program Operations, or Stephen L. Ledbetter, Director, Securities Policy and Research, Government National Mortgage Association, Room 6216, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone 202–708–2884 (this is not a toll-free number). Speech-or hearing-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. The April 13, 2004 Proposed Rule

HUD published a proposed rule on April 13, 2004 (69 FR 19746) that invited public comment on the Department's proposal to remove the regulatory provision at 24 CFR 320.5(c). That regulation provided that ''The face amount of any security cannot be less than $25,000.'' The proposed rule stated that after this final rule becomes effective, the minimum face amount for Ginnie Mae securities would be published in Ginnie Mae's Mortgage-Backed Securities Guide. The proposed rule also indicated, among other things, that Ginnie Mae would like to offer investors different denominations of Ginnie Mae guaranteed securities in order to ensure that Ginnie Mae securities remain attractive to investors.

Five public comments were received in response to the proposed rule. The Department carefully considered the issues raised in the comments, and has decided to adopt the proposed rule as final without change. For the convenience of the reader, the comments are summarized below with HUD's response immediately following the comment.

II. Discussion of Public Comments Received on the Proposed Rule

One commenter expressed its support for the proposed rule. The commenter stated that empowering Ginnie Mae to set its minimum denominations on a flexible basis will help the marketability of Ginnie Mae mortgage-backed securities (MBS) to the benefit of FHA and VA borrowers. Other commenters raised questions or comments about the proposed rule as follows:

Comment: Removing the $25,000 minimum denomination limit will drain insured deposits out of depository institutions; this could harm the liquidity of community banks, and thus weaken their ability to respond to the credit needs of their communities.

HUD Response: Ginnie Mae MBS are not generally considered substitutes for insured deposits. Unlike insured deposits, the cash flow of an MBS depends on the cash flow of an underlying pool of mortgages. For example, while a certificate of deposit and an MBS may have identical stated maturities, their effective durations will likely be substantially different. In addition, the duration of the MBS is generally more sensitive to changes in interest rates. Due to these fundamentally different cash flow characteristics, the Ginnie Mae MBS investor base is quite different from a community bank's depositor customer base. Removing the $25,000 minimum denomination limit on Ginnie Mae MBS should thus have little impact on the ability of community banks to raise funds through the use of insured deposits.

It is also important to note that the fundamental premise of the Ginnie Mae business model is to help community banks and other participating institutions respond to the credit needs of their communities. The Ginnie Mae guarantee allows community banks to raise funds more easily and cheaply by creating more liquid Ginnie Mae securities. Because banks know they can pool their loans as Ginnie Mae MBS and sell them for a good price, they can use these proceeds to make additional loans in their communities. Any change in the minimum denomination that benefited investors by enhancing the liquidity of Ginnie Mae securities would benefit community banks as well, allowing them to respond more effectively to the credit needs of their communities by offering lower rates to the low- and moderate-income borrowers that are at the core of Ginnie Mae's mission.

While a lower minimum denomination is not likely to substantially increase the investor base of Ginnie Mae MBS, it will result in increased flexibility for current Ginnie Mae investors. For example, a lower minimum would make it easier for existing investors to reinvest principal and interest payments on their Ginnie Mae MBS into more Ginnie Mae MBS. This would have the effect of increasing the demand for Ginnie Mae securities, which ultimately results in lower rates for low- and moderate-income borrowers.

Comment: The investors attracted to smaller denominations of Ginnie Maes are likely to be individuals who may be less sophisticated than current investors and less able to anticipate the multiple risks to which all mortgage-backed security investors are exposed. The proposed change could expose a class of individuals to risks that they are not equipped to manage. Moreover, some investors might mistakenly believe that securities issued in small denominations have the same risk characteristics as instruments covered by deposit insurance.

HUD Response: The current $25,000 minimum denomination does not prevent small investors from buying Ginnie Mae securities. Small investors can already invest in Ginnie Mae securities in amounts substantially less than $25,000; indeed, investors can invest $1,000 or less in mutual funds that hold all Ginnie Mae MBS. Through mutual funds and other similar vehicles, those same investors can invest in corporate bonds, stocks and other securities that are much more risky than Ginnie Mae MBS.

The purpose of the $25,000 minimum denomination requirement was not to protect less sophisticated investors; it was implemented primarily to limit the operational complexities and expenses associated with the market as it existed in 1970, when all Ginnie Mae MBS were issued as physical securities. This was not just the case for Ginnie Mae securities. For example, the U.S. Department of the Treasury and the Federal Reserve converted Treasury securities to a book-entry system over a 20-year period, starting in 1966, in order to lower the substantial costs associated with safekeeping and transferring

physical securities.[1] These costs were partly responsible for Treasury increasing the minimum denomination for Treasury bills from $1,000 to $10,000 in 1970.[2] The move to a book-entry system made it easier for Treasury to resume allowing Treasury securities to be offered to investors in smaller denominations; in 1998, Treasury lowered the amounts for Treasury bills and notes from $10,000 and $5,000, respectively, to $1,000.

Similarly, Fannie Mae maintained a $25,000 minimum denomination for its MBS until it moved from physical to book-entry certification. During the period when Fannie Mae allowed both, it had two different minimum denominations: $25,000 for a ''Certificate in definitive form''[3] and $1,000 for a ''Certificate in book-entry form.'' Today, both Fannie Mae and Freddie Mac MBS are book-entry securities, and, consistent with market norms, have $1,000 minimum denominations. It should be noted that Ginnie Mae eliminated the option for Ginnie Mae MBS to be issued as physical securities as part of its conversion of the settlement of all Ginnie Mae securities from the Depository Trust & Clearing Corporation to the Federal Reserve's book-entry system in 2002.[4]

Ginnie Mae investors are protected from unknowingly taking risks by a statutory and regulatory framework that includes requirements that broker-dealers be registered with the Securities and Exchange Commission (SEC). In addition, most broker-dealers are required to join a self-regulatory organization (SRO). A primary mission of both the SEC and the SROs is to create and enforce rules for broker-dealers designed to protect investors. The SEC's principal method for protecting investors is to ensure that they are provided with timely, comprehensive and accurate information with respect to prospective investments. SROs put additional requirements on their members. For example, broker-dealers are required to have reasonable grounds for believing that investments are suitable for customers, and they have a fundamental responsibility for dealing fairly with their customers. These investor protections will continue to apply for broker-dealers selling Ginnie Mae MBS regardless of what the minimum denomination requirement is.

Comment: Just because HUD allowed Fannie Mae and Freddie Mac (the GSEs) to offer small denomination securities, that is no justification for allowing Ginnie Mae to do the same.

HUD Response: This comment appears to be alluding to questions that have recently been raised with respect to certain products offered by the GSEs that are specifically targeted at retail investors. However, these products—Investment Notes for Fannie Mae and FreddieNotes® for Freddie Mac—are senior debt products that are part of their term note funding programs; they do not represent interests in or receive payments from mortgages. Thus, unlike Ginnie Mae MBS, these products have cash flows that are similar to certain types of deposit products, and may appeal to retail investors as higher-yielding substitutes for federally-insured deposits. In contrast, as discussed above, Ginnie Mae MBS are not generally considered substitutes for insured deposits.

Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Regulations Division, Office of General Counsel, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–5000.

Environmental Impact

This rule removes an existing regulation. The rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, in accordance with 24 CFR 50.19(c)(1), this rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This rule does not impose a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that will have to be complied with by small entities. The rule removes an existing regulation. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments and does not preempt state law within the meaning of the executive order.

List of Subjects in 24 CFR Part 320

Mortgages, Securities.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 320 as follows:

[1] In an article published in the December 2004 volume (Vol. 10, No. 3) of FRBNY Economic Policy Review, Kenneth D. Garbade of the Federal Reserve Bank of New York points out that ''the cost of safekeeping a bearer municipal bond in the mid-1980s was about $6 per year, and [the] safekeeping costs for bearer Treasury bonds in the mid-1960s were comparable.'' Obviously, this fee would be prohibitively expensive on a low minimum denomination security.

[2] See Chapter 7 of *Instruments of the Money Market*, edited by Timothy Q. Cook and Robert K. Laroche, Federal Reserve Bank of Richmond.

[3] See, for example, the prospectus dated November 12, 1987, for Fannie Mae Guaranteed Mortgage Pass-Through Certificates.

[4] Although all Ginnie Mae securities are issued in book-entry form, investors still have the option, after initial issuance, to convert their securities to physical form.

PART 320—GUARANTY OF MORTGAGE-BACKED SECURITIES

■ 1. The authority citation for part 320 continues to read as follows:

Authority: 12 U.S.C. 1721(g), 1723a(a), and 42 U.S.C. 3535(d).

§ 320.5 [Amended]

■ 2. Amend § 320.5 by removing and reserving paragraph (c).

Dated: May 23, 2005.

Michael J. Frenz,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 05–11312 Filed 6–7–05; 8:45 am]

BILLING CODE 4210–66–P

Federal Register

Wednesday,
June 8, 2005

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, Part 2, et al.
Federal Acquisition Circular 2005–04; Federal Acquisition Regulations; Interim and Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2005–04; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim and final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–04. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.acqnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–04 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.acqnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Notification of Employee Rights Concerning Payment of Union Dues or Fees	2004–010	Marshall.
II	Telecommuting for Federal Contractors	2003–025	Zaffos.
III	Incentives for Use of Performance-Based Contracting for Services	2004–004	Wise.
IV	Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items (Interim).	2004–035	Olson.
V	Applicability of SDB and HUBZone Price Evaluation Factor	2003–015	Marshall.
VI	Labor Standards for Contracts Involving Construction	2002–004	Nelson.
VII	Deferred Compensation and Postretirement Benefits Other Than Pensions	2001–031	Olson.
VIII	Gains and Losses	2004–005	Olson.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–04 amends the FAR as specified below:

Item I—Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2004–010)

This final rule adopts, without change, the interim rule published in the **Federal Register** at 69 FR 76352, December 20, 2004, and issued as Item IV of FAC 2001–26. It amends FAR parts 2, 22, and 52 to implement Executive Order (E.O.) 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees, and Department of Labor regulations at 29 CFR 470. The rule requires Government contractors and subcontractors to post notices informing their employees that under Federal law they cannot be required to join a union or maintain membership in a union to retain their jobs. The required notice also advises employees who are not union members that they can object to the use of their union dues for certain purposes. This rule applies to Federal contractors and subcontractors with contracts or subcontracts that exceed the simplified acquisition threshold, unless covered by an exemption granted by the Secretary of Labor.

Item II—Telecommuting for Federal Contractors (FAR Case 2003–025)

This rule finalizes without changes the interim rule published in the **Federal Register** at 69 FR 59701, October 5, 2004, and issued as Item III of FAC 2001–025. This final rule implements Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108–136), which prohibits agencies from including a requirement in a solicitation that precludes an offeror from permitting its employees to telecommute or, when telecommuting is not precluded, from unfavorably evaluating an offeror's proposal that includes telecommuting unless it would adversely affect agency requirements, such as security. Contracting officers awarding service contracts should familiarize themselves with this rule.

Item III—Incentives for Use of Performance-Based Contracting for Services (FAR Case 2004–004)

This final rule amends the Federal Acquisition Regulation (FAR) to provide Governmentwide authority to treat performance-based contracts or task orders for services as commercial items, if certain conditions are met. Agencies must report on the use of this authority. This change implements sections 1431 and 1433 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) and is intended to promote the use of performance-based contracting.

Item IV—Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items (FAR Case 2004–035)

This interim rule implements an amendment to 10 U.S.C. 2306a. The change requires that the exception from the requirement to obtain certified cost or pricing data for a commercial item does not apply to noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than $500,000 or 5 percent of the total price of the contract, whichever is greater. Section 818 applies to offers submitted, and to modifications of contracts or subcontracts made, on or after June 1, 2005. This new policy applies only to acquisitions funded by DoD, NASA, or the Coast Guard, since the statute amends 10 U.S.C. 2306a, which only applies to DoD, NASA, and the Coast Guard. The new language does not apply to acquisitions funded by other than DoD, NASA, or the Coast Guard because Section 818 did not amend 41 U.S.C. 254b, which prohibits obtaining cost or pricing data for commercial items. However, the new policy applies to contracts awarded or task or delivery orders placed on behalf of DoD, NASA, or the Coast Guard by an official of the United States outside of those agencies, because the statutory requirement of Section 818 applies to the funds provided by DoD, NASA, or the Coast Guard.

Item V—Applicability of SDB and HUBZone Price Evaluation Factor (FAR Case 2003–015)

This final rule removes some of the exceptions to the Small Disadvantaged Business and HUBZone preference programs. The contracting officer will now apply a price evaluation adjustment to offers of eligible products in acquisitions subject to the Trade Agreements Act. This rule will have a beneficial impact on all domestic concerns, especially small entities that are small disadvantaged business concerns or HUBZone small business concerns.

Item VI—Labor Standards for Contracts Involving Construction (FAR Case 2002–004)

This final rule implements in the FAR the DoL rule revising the terms ''construction, prosecution, completion or repair'' (29 CFR 5.2(j)) and ''site of the work'' (29 CFR 5.2(l)). In addition, the Councils have clarified several definitions relating to labor standards for contracts involving construction and made requirements for flow down of labor clauses more precise.

The most significant impact of this rule is that contractors must pay Davis-Bacon Act wages at a secondary site of the work, if a significant portion of the work is to be constructed at that site and the site meets the other criteria specified in the rule. When transporting portions of the building or work between the secondary site of the work and the primary site of the work, the wages for the primary site of the work are applicable. The contracting officer must coordinate with the Department of Labor when there is any uncertainty as to whether a work site is a secondary site of the work.

Item VII—Deferred Compensation and Postretirement Benefits Other Than Pensions (FAR Case 2001–031)

This final rule amends the FAR by revising paragraph (k), Deferred compensation other than pensions, and paragraph (o), Postretirement benefits other than pensions, of FAR 31.205–6, Compensation for personal services, cost principle. Changes to paragraph (k) include: deletion of language that duplicates definitions provided in FAR 31.001, elimination of obsolete coverage, and use of terminology consistent with Cost Accounting Standards. Changes to paragraph (o) include: moving and revising language in (o)(3) through (o)(5) to (o)(2)(iii) because these requirements only apply to accrual costing other than terminal funding. In addition, new coverage is added to the related contract clause at FAR 52.215–18, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions, specifying the method of recovery of refunds and credits. The rule revises the cost principle and contract clause by improving clarity and structure, and removing unnecessary and duplicative language.

The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.,* price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item VIII—Gains and Losses (FAR Case 2004–005)

This final rule amends FAR 31.205–16 to address the timing of the gain or loss recognition of sale and leaseback arrangements of contractor depreciable property or other capital assets. The final rule defines the disposition date for a sale leaseback arrangement as the date the contractor begins to incur an obligation for lease or rental costs. Contracting officers, auditors, and contractors with responsibilities related to allowable cost determinations involving sale and leaseback arrangements of contractor depreciable property or other capital assets will be impacted by new policies governing that area.

Dated: May 27, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–04 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–04 is effective July 8, 2005, except for Items I, II, III, and IV, which are effective June 8, 2005.

Dated: May 26, 2005.

Vincent J. Feck,

Lt Col, Acting Director, Defense Procurement and Acquisition Policy.

Dated: May 27, 2005.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: May 26, 2005.

Scott Thompson,

Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 05–11179 Filed 6–7–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 22, 52

[FAC 2005–04; FAR Case 2004–010; Item I]

RIN 9000–AK04

Federal Acquisition Regulation; Notification of Employee Rights Concerning Payment of Union Dues or Fees

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to convert the interim rule amending the Federal Acquisition Regulation (FAR) published in the **Federal Register** at 69 FR 76352, December 20, 2004, to a final rule without change. This rule implemented Executive Order (E.O.) 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees. The rule requires Government contractors and subcontractors to post notices, in all plants and offices, whether or not used in performing work that supports a Federal contract, informing their employees that under Federal law they cannot be required to join a union or maintain membership in a union to retain their jobs. The required notices also advise employees who are not union members that they can object to the use of their union dues for certain purposes.

DATES: *Effective Date:* June 8, 2005.

The Department of Labor's final rule implementing E.O. 13201 was published on March 29, 2004, with an effective date of April 28, 2004. This FAR rule is the formal notification to contracting officers to insert the E.O. 13201 clause in covered solicitations issued on or after the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Kimberly A. Marshall, Procurement Analyst, at (202) 219–0986. Please cite FAC 2005–04, FAR case 2004–010.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation. DoD, GSA, and NASA published an interim rule in the **Federal Register** at 69 FR 76352, December 20, 2004. The 60-day comment period for the interim rule ended February 18, 2005. The Councils did not receive any public comments, and, therefore, agree to finalize the interim rule without change.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely requires contractors to post notices and to insert a clause in subcontracts and purchase orders requiring subcontractors and vendors to post the notices also. The notices advise the contractors' and subcontractors' nonunion member employees of their rights under existing law concerning use of their union dues or fees where a union security agreement is in place. The rule provides sanctions for noncompliance, but full compliance with the Executive Order and any related rules, regulations and orders of the Secretary of Labor is expected of all contractors. Further, this rule is only implementing the Department of Labor (DOL) final rule. The Secretary of Labor has certified to the Chief Counsel for Advocacy at the Small Business Administration that the DOL final rule will not substantially change existing obligations for Federal contractors. The Councils did not receive any comments relating to the Regulatory Flexibility Act. However, the Councils will consider comments from small entities concerning the affected FAR Parts 2, 22, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–04, FAR case 2004–010), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 1215–0203.

List of Subjects in 48 CFR Parts 2, 22, 52

Government procurement.

Dated: May 27, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 2, 22, and 52, which was published at 69 FR 76352, December 20, 2004, is adopted as a final rule without change.

[FR Doc. 05–11180 Filed 6–7–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 7, 11, 13, and 15

[2005–04; FAR Case 2003–025; Item II]

RIN 9000–AK03

Federal Acquisition Regulation; Telecommuting for Federal Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to convert the interim rule published in the **Federal Register** at 69 FR 59701, October 5, 2004, to a final rule without change. The final rule amends the Federal Acquisition Regulation (FAR) to implement section 1428 of the Services Acquisition Reform Act of 2003, Title XIV of Public Law 108–136, Authorization of Telecommuting for Federal Contractors.

DATES: *Effective Date:* June 8, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2005–04, FAR case 2003–025.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule implementing Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108–136) was published in the **Federal Register** on October 5, 2004 (69 FR 59701). Five comments were received from four respondents in response to the interim rule. While all of the commenters were supportive of the rule, the commenters offered the following recommendations to maximize the use of telecommuting for Federal contractors. One commenter suggested that the Councils provide an incentive for ''suppliers who take the initiative to hire telecommuting contractors.'' The Councils did not adopt this suggestion because the statute does not establish incentives, and the Councils believe establishing such an incentive is beyond the scope and authority of the Councils. Another commenter believes that the rule does not go far enough because it allows the contracting officer to determine that allowing telecommuting would be contrary to the agency's requirements. The commenter believes that Government managers who are uncomfortable with the concept of telecommuting will convince contracting officers to disallow telecommuting more often than allow it. To prevent this, the commenter recommended that ''telecommuting be established as a 'requirement' for some percentage of government contracts and that telecommuting be defined as working offsite for 25 or more hours a week.'' This commenter also recommended that contracting officers who award contracts to firms that allow their employees to telecommute receive additional training, funds, ''and a leg up on promotion.'' The Councils did not adopt this recommendation because there is no evidence that contracting officers will not act in good faith when making a determination not to allow

telecommuting. Moreover, the requirement for a written determination will allow agencies to conduct periodic reviews as may be necessary to ensure there is no abuse of this discretion. Also, issues of contracting officer rewards are personnel issues that are beyond the scope of this case and the general purview of the Councils. Another commenter recommended creating a vetting procedure for determinations to prohibit telecommuting and to hold contracting officers' ''feet to the fire.'' The Councils did not adopt this recommendation because compliance issues are beyond the scope of this case and are more appropriately addressed by individual agency management.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because there is no Governmentwide policy or practice concerning contractor employee telecommuting. In addition, this rule will not be a major change, but instead a small positive benefit to small businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 7, 11, 13, and 15

Government procurement.

Dated: May 27, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 7, 11, 13, and 15, which was published in the **Federal Register** at 69 FR 59701, October 5, 2004, is adopted as a final rule without change.

[FR Doc. 05–11181 Filed 6–7–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 12, 37, and 52

[FAC 2005–04; FAR Case 2004–004; Item III]

RIN 9000–AJ97

Federal Acquisition Regulation; Incentives for Use of Performance–Based Contracting for Services

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed to convert the interim rule published in the **Federal Register** at 69 FR 34226, June 18, 2004, to a final rule with changes to amend the Federal Acquisition Regulation (FAR) to implement Sections 1431 and 1433 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Section 1431 enacts Governmentwide authority to treat performance–based contracts or task orders for services as commercial items if certain conditions are met, and requires agencies to report on performance–based contracts or task orders awarded using this authority. Section 1433 amends the definition of commercial item to add specific performance–based terminology and to conform to the language added by Section 1431.

DATE: *Effective Date:* June 8, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Julia Wise, Director, Contract Policy Division, at (202) 208–1168. Please cite FAC 2005–04, FAR case 2004–004.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation. DoD, GSA, and NASA published an interim rule in the **Federal Register** at 69 FR 34226, June 18, 2004, implementing Section 1431 and Section 1433 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Public comments were received from three entities. The Councils reviewed and resolved the comments. The disposition of comments, as stated below, requires one change to the rule, as requested in comment 7.

1. *Comment:* Requested clarification as to whether the term ''performance assessment'' should be used in place of ''quality assurance'' in FAR 37.601(a)(2). This comment was based on a statement in the ''Guidebook for Performance–Based Services Acquisition (PBSA) in the Department of Defense,'' December 2000, that, ''[h]ereafter, 'performance assessment' will be used in place of the term 'quality assurance' unless otherwise noted.''

Council's response: This statement applied only to usage in the Guide and was not meant as a change in Governmentwide policy. In fact, a more recent memo, dated August 19, 2003, from the Undersecretary of Defense for Acquisition, Technology and Logistics, continues to use the term ''quality assurance,'' as does the ''Seven Steps Guide to Procurement Based Services Acquisition Guide.'' This comment is more appropriate for FAR Case 2003–18, which covers a broader revision of Performance–Based Services Acquisition, and will be considered along with other comments received in response to that case. FAR Case 2003–18 was published in the **Federal Register** at 69 FR 43712, July 21, 2004; public comments were due September 20, 2004.

2. *Comment:* Suggested that the Councils move the reference to quality assurance surveillance plans from FAR 37.601(a)(2) and make it a new subparagraph (5) to emphasize the importance of quality assurance surveillance plans.

Council's response: The Councils did not adopt this suggestion because the purpose of this case is to allow agencies to use FAR Part 12 for noncommercial services if the services otherwise meet the existing definition of performance–based contracting. This comment is more appropriate for FAR Case 2003–18 and will be considered along with other comments received in response to that case.

3. *Comment:* Recommended revising FAR 12.102(g)(1) by adding the additional qualifying factor of ''Includes a performance work statement.''

Council's response: The Councils did not adopt this suggestion because the purpose of the case is to allow agencies to use FAR Part 12 for noncommercial services if the services otherwise meet the existing definition of performance–based contracting, which addresses use of a work statement that is performance–based. FAR

12.102(g)(1)(vi) further addresses this comment.

4. *Comment:* Recommended changing FAR 12.102(g)(1)(ii) to: ''has an estimated value at time of solicitation of not more that $25 million'' because they thought it would be very cumbersome to change back to FAR Part 15 if the contract value ends up exceeding $25 million.

Council's response: The Councils did not adopt this suggestion because it will change the intent of this SARA provision. If acquisition planning is properly performed, prudent independent Government estimates are constructed and market research is conducted, the contracting officer will know upfront if this SARA authority is appropriate for this acquisition.

5. *Comment:* Recommended changing the language in FAR 12.102(g)(1)(iv) to ''includes appropriate quality assurance provisions'' instead of ''includes a quality assurance surveillance plan'' since the Government should not require the creation of a quality assurance plan different from the one the contractor uses when providing commercial services as required by FAR 12.208.

Council's response: FAR 12.208 does require the Government to rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing unless customary market practices for the commercial item being acquired include in–process inspection. Since the rule authorizes the use of FAR Part 12 procedures for certain non–commercial services, customary market practices for the non–commercial services may not exist. However, the Councils do not believe it is necessary to ''include'' the quality assurance surveillance plan in the contract or task order and revised the rule to require each contract or task order to ''use'' a quality assurance surveillance plan.

6. *Comment:* Recommended changing the language in FAR 12.102(g)(vii) to: ''under terms and conditions similar to those being offered to the Federal Government.''

Council's response: The Councils recognize the difference in the language, but believe this change is consistent with and clarifies the statutory language.

7. *Comment:* Stated that the language in FAR 12.102(g)(2) was more prescriptive than the language in FAR 12.302 for tailoring provisions and clauses for commercial items and recommended that the language be revised to avoid unnecessary tailoring of the inspection and acceptance provisions in FAR 52.212–4(a).

Council's response: The Councils recognize the need to avoid unnecessary tailoring when acquiring commercial items, and consequently changed the language in FAR 12.102(g)(2) by inserting the word ''may'' instead of the word ''should.'' However, this case authorizes the use of FAR Part 12 procedures when purchasing certain non–commercial services. The current basis for tailoring a FAR Part 12 contract at FAR 12.302 authorizes tailoring based, in part, on customary commercial practices. It is likely that customary commercial practices may not exist for non–commercial services, even when the services are acquired using a performance–based requirement. This is particularly important in the area of inspection and acceptance covered by FAR 12.102(g)(2) and the clause at FAR 52.212–4. The Councils believe that relying exclusively on FAR 12.302 as the basis for tailoring provisions for non–commercial services may not adequately ensure the Government's interests are protected in this area. Therefore, the Councils determined that the FAR should provide the ability to consider additional remedies if needed to protect the Government against nonconforming services since the items being procured are not commercial items as defined by FAR 2.101. Since the new language at FAR 12.102(g)(2) only allows the contracting officer to tailor the inspections and acceptance provisions when necessary to protect the Government, the Councils do not believe this flexibility will lead to unnecessary tailoring.

8. *Comment:* Recommended several revisions to FAR 37.601(a) to provide for additional flexibility when using performance–based contracts for services.

Council's response: The Councils did not adopt these suggestions because this rule does not change existing FAR requirements at FAR 37.601(a) that pertain to performance–based contracts for services. The only revision to FAR 37.601 in this rule is to add a cross reference to FAR 12.102(g). These comments are more appropriate for FAR case 2003–18, which covers a broader revision of Performance–Based Services Acquisition, and will be considered along with other comments received in response to that case.

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

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because we have changed procedures for award and administration of contracts or task orders enabling the Government to treat certain commercial services as commercial items when the contract or task order—

- Is entered into on or before November 24, 2013;
- Has a value of $25 million or less;
- Meets the definition of performance–based contracting at FAR 2.101;
- Includes a quality assurance surveillance plan;
- Includes performance incentives where appropriate;
- Specifies a firm–fixed price for specific tasks to be performed or outcomes to be achieved; and
- Is awarded to an entity that provides similar services to the general public under terms and conditions similar to those in the contract or task order.

Therefore, a Final Regulatory Flexibility Analysis (FRFA) was prepared in accordance with Title 5, of the United States Code 604. The rule revised the FAR in order to comply with recently enacted Public Law 108–136, Section 1431 and 1433 of the National Defense Authorization Act for Fiscal Year 2004. Section 1431 provides for Governmentwide authority to treat certain performance–based contracts or task orders for services as commercial items if the certain conditions are met. Section 1433 also amends the definition of commercial services to conform to the language added by Section 1431 by inserting performance–based terms for clarification.

The implementation of Sections 1431 and 1433 will change the FAR as follows:

- Revises the commercial items definition in FAR 2.101 and 52.202–1;
- Adds a new record requirement for reporting commercial performance–based contracts and task orders to FAR 4.601;
- Incorporates the conditions for using FAR Part 12 for any performance–based contract or task order for services in FAR 12.102;
- Adds performance–based terms as required by section 1433; and
- Adds a cross reference to FAR 12.102(g) in FAR 37.601.

An Initial Regulatory Flexibility Analysis (IRFA) was published with the interim rule, and no comments

concerning the IRFA were received. A Final Regulatory Flexibility Analysis (FRFA) was prepared. The rule is expected to have a positive impact on small business concerns. However, it is not expected to have a significant impact on a substantial number of small entities because it provides Governmentwide procurement authority that enables the contracting officer (CO) to treat a noncommercial service as commercial if specific conditions, most of which pertain to performance–based contracting, are met. The Government is encouraged to use performance–based contracting techniques on all service contracts and allowing this authority—

- Opens up opportunities to small businesses that otherwise would not have been available if they could not meet the commercial items definition in FAR 2.101 and 52.202–1;
- Provides contracting flexibility when using performance–based contracting techniques;
- Helps the Government move closer to achieving the performance–based contracting performance–goals for Fiscal Years 2004 and 2005; and
- Allows the CO to use FAR Part 12, and procure these types of services similar to the commercial marketplace.

Specifically, a query of the Central Contractor Registration (CCR) system indicates there are 198,732 small businesses registered, and many of these contractors were awarded performance–based contracts or task orders for noncommercial services and the Government was required to use FAR Part 13, Simplified Acquisition Procedures, FAR Part 14, Sealed Bidding, or FAR Part 15, Contracting by Negotiations, for these acquisitions because they were not commercial items. This authority allows the CO to use FAR Part 12, which is the Government's preference since this will allow us to procure these types of services similar to the commercial marketplace, and using FAR Part 12 will provide more contracting flexibility and opportunities to the small business community.

The rule will impose no new reporting or recording keeping requirements on large or small entities. It only requires the Government to report on contracts or task orders awarded under this authority. Specifically, implementation of Section 1431 requires agencies to collect and maintain reliable data sufficient to identify the contracts or task orders treated as contracts for commercial items using the authority of this section. The Federal Procurement Data System–Next Generation (FPDS–NG) will be revised to enable agencies to report on the use of such authority both Governmentwide and for each department and agency. By November 2006, the Office of Management and Budget will start reporting to the Committees on Governmental Affairs and Armed Services of the Senate, and the Committees on Government Reform and Armed Services of the House of Representatives on the implementation of this section. The authority of Section 1431 expires on November 24, 2013, ten years after enactment.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–004, FAR Case 2004–004), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 4, 12, 37, and 52

Government procurement.

Dated: May 27, 2005.

Julia B. Wise,

Director, Contract Policy Division.

Interim Rule Adopted as Final With Changes

■ Accordingly, DOD, GSA, and NASA adopt the interim rule amending 48 CFR parts 2, 4, 12, 37, and 52, which was published in the **Federal Register** at 69 FR 34226, June 18, 2004, as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 2, 4, 12, 37, and 52, is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.102 [Amended]

■ 2. Amend section 12.102 in paragraph (g)(1)(iv) by removing ''Includes'' and adding ''Uses'' in its place; and in paragraph (g)(2) by removing ''should'' and adding ''may'' in its place.

[FR Doc. 05–11189 Filed 6–7–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2005–04; FAR Case 2004–035; Item IV]

RIN 9000–AK17

Federal Acquisition Regulation; Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) regarding prohibition on obtaining cost or pricing data to implement Section 818 of Public Law 108–375, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

DATES: *Effective Date:* June 8, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before August 8, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–04, FAR case 2004–035, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E–mail: *farcase.2004–035@gsa.gov*. Include FAC 2005–04, FAR case 2004–035, in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–04, FAR case 2004–035, in all correspondence related to this case. All comments received will be posted without change to *http://*

www.acqnet.gov/far/ProposedRules/proposed.htm, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2005–04, FAR case 2004–035.

SUPPLEMENTARY INFORMATION:

A. Background

Section 818, Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items, of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, amends 10 U.S.C. 2306a. 10 U.S.C. 2306a provides exceptions to the requirement for submission of cost or pricing data, including an exception for commercial items. Section 818 states that the exception for a commercial item does not apply to noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than $500,000 or 5 percent of the total price of the contract, whichever is greater. Section 818 applies to offers submitted, and to modifications of contracts or subcontracts made, on or after June 1, 2005.

B. Discussion

The Councils are revising the commercial item discussion in paragraph (c)(3) of FAR 15.403–1, Prohibition on Obtaining Cost or Pricing Data, to reflect the requirements of Section 818. This includes inserting a new paragraph (3)(ii). This new paragraph provides the exception to the requirement for cost or pricing data for minor modifications that do not change the item from a commercial item to a noncommercial item. The exception applies to all such minor modifications for acquisitions funded by agencies other than DoD, NASA, and Coast Guard. For acquisitions funded by DoD, NASA, and Coast Guard, the exceptions apply to all such modifications if the total cost of the modifications do not exceed the greater of $500,000 or 5 percent of the total price of the contract.

This new policy applies only to acquisitions funded by DoD, NASA, or the Coast Guard, since the statute amends 10 U.S.C. 2306a, which only applies to DoD, NASA, and the Coast Guard. The new language does not apply to acquisitions funded by other than DoD, NASA, or the Coast Guard because Section 818 did not amend 41 U.S.C. 254b, which prohibits obtaining cost or pricing data for commercial items. However, the new policy applies to contracts awarded or task or delivery orders placed on behalf of DoD, NASA, or the Coast Guard by an official of the United States outside of those agencies, because the statutory requirement of section 818 applies to the funds provided by DoD, NASA, or the Coast Guard.

C. Regulatory Planning and Review

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

D. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act,5 U.S.C. 601, *et seq.*, because the number of small entities providing commercial items with non–commercial modifications costing more than $500,000 is expected to be very low.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Part 15 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–04, FAR case 2004–035), in correspondence.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

F. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that an urgent and compelling reason exists to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement the changes resulting from the enactment of Section 818 of Public Law 108–375, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 that are effective June 1, 2005. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: May 27, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 15 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 15.403–1 by revising the first sentence of paragraph (c)(3)(i), redesignating paragraph (c)(3)(ii) as (c)(3)(iii), and adding new paragraph (c)(3)(ii) to read as follows:

15.403–1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

* * * * *

(c) * * *

(3) *Commercial items.* (i) Any acquisition of an item that meets the commercial item definition in 2.101, or any modification, as defined in paragraph (3)(i) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for cost or pricing data. * * *

(ii) The following requirements apply to minor modifications defined in paragraph (3)(ii) of the definition of a commercial item at 2.101 that do not change the item from a commercial item to a noncommercial item:

(A) For acquisitions funded by any agency other than DoD, NASA, or Coast Guard, the modifications are exempt from the requirement for submission of cost or pricing data.

(B) For acquisitions funded by DoD, NASA, or Coast Guard, the modifications are exempt from the requirement for submission of cost or pricing data provided the total cost of the modifications do not exceed the greater of $500,000 or 5 percent of the total price of the contract.

(C) For acquisitions funded by DoD, NASA, or Coast Guard where the total cost of the modifications exceeds the greater of $500,000 or 5 percent of the total price of the contract and no other exception or waiver applies, the contracting officer must require submission of cost or pricing data.

* * * * *

[FR Doc. 05–11188 Filed 6–7–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2005–04; FAR Case 2003–015; Item V]

RIN 9000–AK02

Federal Acquisition Regulation; Applicability of SDB and HUBZone Price Evaluation Factor

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove some of the exceptions to the applicability of the Small Disadvantaged Business (SDB) and HUBZone price evaluation factor.

DATES: *Effective Date*: July 8, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Kimberly Marshall, Procurement Analyst, at (202) 219–0986. Please cite FAC 2005–04, FAR case 2003–015.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 19.1103(a) and FAR 19.1307(b) in order to remove the exceptions to the Small Disadvantaged Business (SDB) and HUBZone preference programs that direct the contracting officer not to apply a price evaluation adjustment to offers of eligible products in acquisitions subject to the Trade Agreements Act (19 U.S.C. 2501, *et seq.*) or where application of the factor would be inconsistent with a Memorandum of Understanding (MOU) or other international agreement.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 53780, September 2, 2004. We received one response, which was entirely favorable to the rule. Therefore, we are converting the proposed rule to a final rule without change.

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

B. Regulatory Flexibility Act

This rule is expected to have a significant (beneficial) economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it will reduce the exceptions to the preference for small disadvantaged businesses and HUBZone small businesses. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and is summarized as follows:

This rule was initiated at the request of the Small Business Administration in order to remove preferential treatment for certain offers of foreign products in acquisitions intending to provide a preference for small disadvantaged business concerns or HUBZone small business concerns. The objective of this rule is to remove exceptions to the Small Disadvantaged Business (SDB) and HUBZone preference programs that direct the contracting officer not to apply a price evaluation adjustment to offers of eligible products in acquisitions subject to the Trade Agreements Act or where application of the factor would be inconsistent with a Memorandum of Understanding (MOU) or other international agreement. The rule applies to all offerors in acquisitions that provide a preference for small disadvantaged business concerns or HUBZone small business concerns. Because of the reduced exceptions to the preferences, this rule will have a beneficial impact on all domestic concerns, especially small entities that are small disadvantaged business concerns or HUBZone small business concerns.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 19 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2005–04, FAR Case 2003–015), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: May 27, 2005

Julia B. Wise,

Director,Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 19 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

19.1103 [Amended]

■ 2. Amend section 19.1103 by—

■ a. Adding ''or'' to the end of paragraph (a)(1);

■ b. Removing paragraphs (a)(2), (a)(3), and (a)(5); and redesignating paragraph (a)(4) as (a)(2); and

■ c. Removing ''; or'' from the end of newly redesignated paragraph (a)(2) and adding a period in its place.

19.1307 [Amended]

■ 3. Amend section 19.1307 by—

■ a. Adding ''or'' to the end of paragraph (b)(1);

■ b. Removing the semicolon from the end of paragraph (b)(2) and adding a period in its place; and

■ c. Removing paragraphs (b)(3) and (b)(4).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

■ 4. Amend section 52.212–5 by—

■ a. Revising the date of the clause to read ''(JUL 2005)'';

■ b. Removing ''(Jan 1999)'' from paragraph (b)(3) of the clause and adding ''(JUL 2005)'' in its place; and

■ c. Removing ''(June 2003)'' from paragraph (b)(10)(i) of the clause and adding ''(JUL 2005)'' in its place.

52.219–4 [Amended]

■ 5. Amend section 52.219–4 by—

■ a. Revising the date of the clause to read ''(JUL 2005)''; and

■ b. Adding ''and'' to the end of paragraph (b)(1)(i) of the clause; removing the semicolon from the end of paragraph (b)(1)(ii) of the clause and adding a period in its place; and removing paragraphs (b)(1)(iii) and (b)(1)(iv) of the clause.

■ 6. Amend section 52.219–23 by revising the date of the clause and paragraph (b)(1) to read as follows:

52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (JUL 2005)

* * * * *

(b) *Evaluation adjustment.* (1) The Contracting Officer will evaluate offers by adding a factor of _____ [*Contracting Officer insert the percentage*] percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment; and

(ii) For DoD, NASA, and Coast Guard acquisitions, an otherwise successful offer from a historically black college or university or minority institution.

* * * * *

[FR Doc. 05–11187 Filed 6–7–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 52, and 53

[FAC 2005–04; FAR Case 2002–004; Item VI]

RIN 9000–AJ79

Federal Acquisition Regulation; Labor Standards for Contracts Involving Construction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement the revised definitions of ''construction'' and ''site of the work'' in the Department of Labor (DoL) regulations. In addition, the Councils have clarified several definitions relating to labor standards for contracts involving construction and made requirements for flow down of labor clauses more precise.

DATES: *Effective Date*: July 8, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. The TTY Federal Relay Number for further information is 1–800–877–8973. Please cite FAC 2005–04, FAR case 2002–004.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule constitutes the implementation in the FAR of the DoL rule revising the terms ''construction, prosecution, completion or repair'' (29 CFR 5.2(j) and ''site of the work'' (29 CFR 5.2(l)). The DoL final rule (65 FR 80268) was published on December 23, 2000, and became effective on January 19, 2001. In addition, the Councils have clarified several definitions relating to labor standards for contracts involving construction and made requirements for flow down of labor clauses more precise.

The proposed rule was published in the **Federal Register** at 68 FR 74403, December 23, 2003. The Councils received comments in response to the proposed rule from 161 respondents. Responses to the more significant comments are as follows:

1. Support extension of Davis-Bacon Act (DBA) to secondary sites of the work.

The first category includes general comments in support of extending the DBA to secondary sites for various reasons. Among the reasons under this category given by the respondents in support of the rule are because it:

- Helps workers;
- Prevents companies from circumventing the DBA;
- Addresses the realities of new construction techniques in the construction industry;
- Correctly implements DoL final rule, which is not inconsistent with previous court cases.

The Councils concur. No further response is necessary.

2. *Oppose the extension of the DBA to secondary sites.*

Many respondents opposed extension of the DBA to a secondary site, because—

- It is too difficult to administer-confusing, burdensome, beyond logistic capability;
- It will increase costs of construction;
- Court decisions demonstrate that the DoL rule is invalid;
- The Councils have the authority to reject the DoL rule; or
- The respondent opposes the DBA entirely. Let the market prevail.

The Councils do not concur. It is apparent that many of the respondents misunderstood the concept of the ''secondary site of the work''. This concept only includes a site where ''a significant portion of the building or work is constructed.'' This does not cover the manufacture or sale of construction material to be used at the site, but only actual construction that is unique and integrally related to the final building or work. The Councils anticipate that very few construction projects will have a secondary site of the work.

With regard to increased cost to the contractor, this is not necessarily the case because the contractor should take all the labor costs into consideration in submitting his offer. With regard to increased cost to the Government, this is a benefit to the workers that the Government is willing to provide in accordance with the law.

Questions as to the validity of the DoL rule are outside the scope of this case. This rule implements the DoL rule, which has already been subject to notice and comment.

Comments regarding the benefits and value of the DBA itself are also outside the scope of this case.

3. *Oppose retroactive application of wage rates at secondary site, without change in contract price or estimated cost.*

Many respondents considered that this so-called ''retroactive'' aspect of the FAR rule was unfair to contractors, and goes beyond the DoL rule. These respondents were concerned about the term ''retroactive application'' which was used in the preamble to the proposed rule. These respondents mistakenly interpreted ''retroactive'' in this context to mean that the DBA rates would be applied retroactively to secondary sites on existing contracts. One respondent stated that the rule would require back pay through the year 2000 (effective date of the DoL rule) for secondary sites of current projects and pay in future payrolls at secondary sites through the remainder of the term of the contract. Combined with the misapprehension about what constitutes a secondary site, the small businesses fear bankruptcy with the implementation of the DoL rule in the FAR.

The Councils do not concur. The FAR rule is not retroactive. It does not apply to existing contracts or projects. It only applies to new solicitations or contracts entered into after the effective date of the FAR rule. See FAR 1.108(d). If these clauses were incorporated into a contract retroactively, then there would be an appropriate adjustment to the contract price. In new solicitations issued after the effective date of this rule, the contractor is forewarned that the DBA is applicable to the secondary site of the work pursuant to the solicitation provision 52.222–5, Davis-Bacon Act—Secondary Site of the Work. Moreover, the contract clause 52.222–6,

Davis-Bacon Act, also stipulates that DBA coverage extends ''to any other site where a significant portion of the building or work is constructed, provided that such site is located in the United States and established specifically for the performance of the contract or project.'' This regulatory language is intended to force contractors to come forward if they intend to use a secondary site. DoL says these instances should be rare. This will not be a regular occurrence. An example discussed in the DOL rule preamble is constructing a segment of a dam the size of a football field and floating it down a river. If a contractor intends to establish a secondary site of the work, and not disclose this information to the Government until after contract award with the preconceived objective to request a price adjustment to cover the increased DBA wages, this could skew the procurement process to the disadvantage of the other offerors. The contractor is in a position to anticipate the possible establishment of a secondary site of the work based on its entrepreneurial ability during preparation of his proposal or after it has been awarded the contract. The solicitation provision and contract clauses provide advanced and clear guidance and stipulations to the contractor on all the effects of a secondary site of work from the moment he intends to establish it.

4. *Oppose application of DBA wage rates for transportation of materials from secondary site of the work to primary site of the work.*

One respondent asserted that the proposed revision improperly covers drivers of materials for time spent transporting materials or pre-fabricated construction components between the newly expanded ''secondary'' site and the traditional site of the work. Another respondent contended that if a wage determination is to be applied to workers at secondary sites, it should at least be the wage determination for the secondary site.

The Councils do not concur. The Davis-Bacon Act covers transportation of the significant portion(s) of the public building or public work that were constructed at a covered secondary site of the work and are then moved to the primary site of the work where the building or work will remain when it is completed. The transportation of other materials and supplies between the two covered sites is not subject to DBA coverage, and is not provided for in the DoL rule nor the FAR rule. With regard to covering the transportation of a significant portion of the building or work between covered sites, the FAR rule is implementing the DoL final rule. With respect to which wage determinations should apply to the transportation of a significant portion of the building or work constructed at the secondary site of the work between the two covered sites, the decision to apply the wage determination for the primary site of the work for these situations represents a reasonable interpretation of the remedial purposes of the DBA. Even though DoL did not include in its final rule which wage determination was applicable in this circumstance, DoL did include in the preamble to the final rule, an administrative determination to enforce ''the wage determination for the area in which the construction will remain when completed.'' (See 65 FR 80276, December 20, 2000). This is consistent with the language included in the FAR implementation of the DoL rule.

5. *Councils failed to comply with the Regulatory Flexibility Act. Must perform Initial Regulatory Flexibility Analysis and publish it for public comment.*

Numerous respondents asserted that the Regulatory Flexibility Act requires that an analysis of the cost of this rule to small business must occur and be published for comment. The respondents state that the FAR Council has failed to comply with the Regulatory Flexibility Act because the rule will have a significant economic impact on small business. Most construction firms are small businesses (98%), and the retroactive aspects of the rule without any adjustment in contract price will have a devastating impact on small businesses.

The Councils have reviewed the Final Regulatory Flexibility Analysis of the Department of Labor and support the DoL determination in the Final Regulatory Flexibility Analysis that its regulation would not have a significant economic impact on a substantial number of small entities (see 65 FR 80277, Dec 20, 2000). The implementation in the FAR is within the framework provisions of the DoL rule. For further analysis of impact of this final rule, see Paragraph B. of this notice, which addresses the Regulatory Flexibility Act.

With regard to the so-called ''retroactive'' aspect of the FAR rule, which would increase the impact beyond that of the DoL rule, see the response to comment category 3. above.

6. *Requests for substantive changes made by various respondents to clarify or strengthen the rule. Some respondents suggested the following changes to the FAR rule:*

a. Specify in the provision that the contracting agency has the right to apply DBA to a site that the DoL or the agency determines to be a secondary site.

b. Define what is a ''significant portion of the work''

c. Include liquidated damages if contractor sets up a site, claims the site is permanent and previously established, then dismantles it at the end of the project.

d. Do not require the contractor to determine the applicability of a wage determination.

e. Do not limit ''site of the work'' geographically.

The Councils respond to these suggestions as follows:

a. The Councils do not concur. The Councils note that the DBA provision is directed to the offeror, requesting that the offeror identify any planned secondary site. It is not necessary to state in the provision that the contracting officer has the right to apply the DBA to a site that the DoL or the agency determined to be a secondary site because it is implicit in the law that DoL has the statutory authority to make this determination regarding the application of the DBA. Also, the contracting officer has the authority to make these determinations under the FAR. If a DBA wage coverage determination made on a secondary site by the DoL or the contracting officer is inconsistent, or in violation of the law, or the regulation, the contractor has the prerogative to administratively appeal this determination to the DoL Administrative Review Board in accordance with the FAR clause at 52.222–14, Disputes Concerning Labor Standards.

b. The Councils do not concur. The Councils do not have the jurisdiction to define this concept that was introduced in the DoL rule. The FAR rule implements the DoL final rule. The DoL rule does not define ''significant portion of the work'', because in DoL's view the size and the nature of the specific project will dictate what constitutes ''a significant portion'' under the provision. If an offeror or the cognizant agency is unsure whether a site meets the criteria of secondary site of the work, the agency should consult with DoL.

c. The Councils do not concur. This measure is not necessary because it is not possible to ''set up'' a ''previously established site.'' If the site was not previously established before award but meets the other criteria for DBA site of the work, it cannot be exempted from consideration as a DBA wage covered site of the work.

d. The Councils partially concur. The final rule revises the provision at FAR 52.222–5, Davis-Bacon Act—Secondary

Site of the Work, to stipulate in paragraph (a)(2) that if the offeror is uncertain if a planned work site satisfies the criteria for a secondary site of the work, the offeror shall request a wage determination for a secondary site from the contracting officer. This is intended to reduce the instances in which the DoL comes in after the fact and declares a site to be a secondary site of the work. In addition, the Councils revised the language in paragraph (b)(1) of the provision to require that if the wage determination provided by the Government for work at the primary site of the work is not applicable to the secondary site of the work, the offeror shall request a wage determination from the contracting officer, rather than requiring the offeror to seek the correct wage determination on line.

e. The Councils do not concur. The FAR rule is implementing the DoL final rule. DoL already considered and rejected this comment in the formulation of its final rule. DoL is constrained by case law.

The Councils are also adopting other clarifying changes, of which the most significant change is revision of the ''site of the work'' definition at FAR 22.401 and in the clause at FAR 52.222–6, Davis-Bacon Act, to include the requirement for a secondary site of work to be located in the United States. The DBA does not apply outside the United States. This was not an issue as long as the rules did not permit a secondary site of the work that is geographically removed from the primary site of the work. If the secondary site of the work is not located in the United States it would not qualify for DBA coverage. Therefore, since the Councils have removed the statement in the DBA secondary site of the work provision that the offeror shall notify the contracting officer ''if the Davis-Bacon Act is applicable to the secondary site of the work, '' the definition of ''site of the work'' must be more restrictive.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Councils support the DoL determination in the Final Regulatory Flexibility Analysis that its regulation would not have a significant economic impact on a substantial number of small entities (see 65 FR 80277, December 20, 2000). The implementation in the FAR is within the framework provisions of the DoL rule.

In accordance with the DoL final rule, this FAR rule requires contractors to pay Davis-Bacon wages at a secondary site of the work, if there is a secondary site of the work. A secondary site of the work exists only if a significant portion of the building or work is constructed there and the site is established specifically for the performance of the contract or project. This is an issue not contemplated under the current regulatory language. However, we concur with the DoL estimate that such instances will be rare. We estimate that this will result in a negligible increase in application of Davis-Bacon wages, because we estimate that less than 5 sites will qualify as secondary sites, out of approximately 14,000 construction contracts per year.

Furthermore, with regard to dedicated facilities such as fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., Davis-Bacon wages will now apply only if the dedicated facilities are ''adjacent or virtually adjacent to the site of the work.'' Currently the FAR states that the dedicated facilities must be ''so located in proximity to the actual construction location that it would be reasonable to include them.'' We estimate that this change will result in a negligible decrease in payment of Davis-Bacon wages, because usually these types of dedicated facilities are located adjacent to the site of the work, for economic reasons as well as security. Usually disputes regarding dedicated facilities have revolved around the functional test rather than the geographic test. We estimate that this change in definition will impact less than 100 sites out of 14,000 construction contracts per year.

Under this final rule, off-site transportation of materials, supplies, tools, is generally not covered. Contractors must only pay Davis-Bacon wage rates to employees that are transporting portions of the building or work between the secondary site of the work and the primary site of the work (an extremely rare occurrence, as stated above) or between the adjacent dedicated facility and the site of the construction. Furthermore, there are now a few less dedicated facilities that count as part of the ''site of the work'' and they are all adjacent rather than just ''in proximity''.

We estimate that these changes with regard to transportation will only slightly reduce the application of Davis-Bacon wages for transportation, because paying Davis-Bacon wages for off-site transportation of materials is currently a rare occurrence. Contractors must currently pay Davis-Bacon wage rates if an employee of the construction contractor or subcontractor is transporting materials or supplies to or from the building or work and (in accordance with court decisions) such employee spends more than a ''de minimus'' amount of time at the site of the work. However, most suppliers deliver materials to the construction site (rather than using an employee of the construction contractor to transport) and construction contractor employees that are transporting such bulk materials as sand, dirt, or snow to or from the site usually do not spend more time at the site than is required for a pick-up or delivery.

Therefore, we concur with the conclusion of the DoL that the number of projects affected by these changes is very limited and the prevailing wage implications are not substantial, especially with regard to the transportation activities attendant to these types of projects.

There were public comments filed on the impact on small business. One commenter provided extensive comments which also covered particular nuances of the Regulatory Flexibility Act not covered by other commenters. The substance of these comments has been addressed above in the discussion of public comments in Section A., paragraphs 3. through 5.

C. Executive Order 12866; Small Business Regulatory Enforcement Fairness Act; Unfunded Mandates Reform Act

Because of the interests expressed by some commenters, the final rule is nonetheless being treated as a significant rule. However, the rule is not economically significant and does not require preparation of a full regulatory impact analysis. This rule implements a Department of Labor rule which was not expected to have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a section of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Therefore this rule also is not expected to have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a section of the economy, productivity, competition, jobs, the

environment, public health or safety, or State, local, or tribal governments or communities.

The modifications to regulatory language in this final rule implement the Department of Labor rule which limited coverage of off-site material and supply work from Davis-Bacon prevailing wage requirements as a result of appellate court rulings. In addition, this final rule implements the Department of Labor's limited amendment to the site of the work definition to address an issue not contemplated under then current regulatory language—those instances where significant portions of buildings or works may be constructed at secondary sites which are not in the vicinity of the project's final resting place. The Department of Labor believed that such instances will be rare, and that any increased costs which may arise on such projects would be offset by the savings resulting from the other changes that limit coverage.

The DoD, GSA, and NASA also conclude that the rule is not a ''major rule'' requiring approval by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). DoD, GSA, and NASA agree with the Department of Labor assessment that this rule will not likely result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in excess of $100 million in expenditures by state, local and tribal governments in the aggregate, or by the private sector. Furthermore, the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1532, do not apply here because the rule does not include a Federal mandate. The term Federal mandate is defined to include either a Federal intergovernmental mandate or a Federal private sector mandate (2 U.S.C. 658(6)). Except in limited circumstances not applicable here, those terms do not include an enforceable duty which is a duty arising from participation in a voluntary program (2 U.S.C. 658(7)(A)). A decision by a contractor to bid on Federal and Federally assisted construction contracts is purely voluntary in nature, and the contractor's duty to meet Davis-Bacon Act requirements arises from participation in a voluntary Federal program.

D. Executive Order 13132 (Federalism)

DoD, GSA, and NASA have reviewed this rule in accordance with Executive Order 13132 regarding federalism, and have determined that it does not have federalism implications. The rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22, 52, and 53

Government procurement.

Dated: May 27, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, 52, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 2. Amend section 22.401 by—

■ a. Adding, in alphabetical order, the definitions ''Apprentice'' and ''Trainee;''

■ b. Removing from the first sentence of the definition ''Building or work'' the word ''generally;'' and

■ c. Revising the definitions ''Construction, alteration, or repair'', ''Laborers or mechanics'' and ''Site of the work.''

■ The added and revised text reads as follows:

22.401 Definitions.

* * * * *

Apprentice means a person—

(1) Employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS; or

(2) Who is in the first 90 days of probationary employment as an apprentice in an apprenticeship program, and is not individually registered in the program, but who has been certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

* * * * *

Construction, alteration, or repair means all types of work done by laborers and mechanics employed by the construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitations—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (1)(i) and (ii) of the ''site of the work'' definition of this section, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the ''site of work'' definition of this section; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the ''site of the work'' definition in paragraph (1)(ii) of this section, and the physical place or places where the building or work will remain (paragraph (1)(i) in the ''site of the work'' definition of this section).

Laborers or mechanics.—(1) Means—

(i) Workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial;

(ii) Apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards;

(iii) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR part 541, for the time so spent; and

(iv) Every person performing the duties of a laborer or mechanic,

regardless of any contractual relationship alleged to exist between the contractor and those individuals; and

(2) Does not include workers whose duties are primarily executive, supervisory (except as provided in paragraph (1)(iii) of this definition), administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics.

* * * * *

Site of the work.—(1) Means—

(i) T*he primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the ''primary site of the work'' as defined in paragraphs (1)(i) of ''the secondary site of the work'' as defined in paragraph (1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the ''site of the work.'' Such permanent, previously established facilities are not a part of the ''site of the work'', even if the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Trainee means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

* * * * *

■ 3. Amend section 22.404–3 by revising paragraph (c) to read as follows:

22.404–3 Procedures for requesting wage determinations.

* * * * *

(c) *Time for submission of requests.* (1) The time required by the Department of Labor for processing requests for project wage determinations varies according to the facts and circumstances in each case. An agency should expect the processing to take at least 30 days. Accordingly, agencies should submit requests for project wage determinations for the primary site of the work to the Department of Labor at least 45 days (60 days if possible) before issuing the solicitation or exercising an option to extend the term of a contract.

(2) Agencies should promptly submit to the Department of Labor an offeror's request for a project wage determination for a secondary site of the work.

* * * * *

22.404–4 [Amended]

■ 4. Amend section 22.404–4 by revising the section heading as set forth below; and amending paragraphs (a), (b), and (c) by adding ''for the primary site of the work'' after ''determination'' each time it appears.

22.404–4 Solicitations issued without wage determinations for the primary site of the work.

* * * * *

■ 5. Amend section 22.404–5 by—

■ a. Revising the first sentence of paragraphs (b)(1), (b)(2) introductory text, and (b)(2)(i);

■ b. Revising paragraph (b)(2)(ii);

■ c. Revising the first sentence of paragraphs (c)(2) and (c)(3); and

■ d. Revising paragraph (c)(4).

■ The revised text reads as follows:

22.404–5 Expiration of project wage determinations.

* * * * *

(b) * * *

(1) If a project wage determination for the primary site of the work expires before bid opening, or if it appears before bid opening that a project wage determination may expire before award, the contracting officer shall request a new determination early enough to ensure its receipt before bid opening. * * *

(2) If a project wage determination for the primary site of the work expires after bid opening but before award, the contracting officer shall request an extension of the project wage determination expiration date from the Administrator, Wage and Hour Division. * * *

(i) If the new determination for the primary site of the work changes any wage rates for classifications to be used in the contract, the contracting officer may cancel the solicitation only in accordance with 14.404–1. * * *

(ii) If the new determination for the primary site of the work does not change any wage rates, the contracting officer shall award the contract and modify it to include the number and date of the new determination. (See 43.103(b)(1).)

(c) * * *

(2) The contracting officer need not delay opening and reviewing proposals or discussing them with the offerors while a new determination for the primary site of the work is being obtained. * * *

(3) If the new determination for the primary site of the work changes any wage rates, the contracting officer shall amend the solicitation to incorporate the new determination, and furnish the wage rate information to all prospective offerors that were sent a solicitation if the closing date for receipt of proposals has not yet occurred, or to all offerors that submitted proposals if the closing date has passed. * * *

(4) If the new determination for the primary site of the work does not change any wage rates, the contracting officer shall amend the solicitation to include the number and date of the new determination and award the contract.

■ 6. Amend section 22.404–6 by revising the second sentence of paragraph (a)(2), the first sentence of paragraph (a)(3), the first sentence of paragraph (b)(3), and paragraph (b)(4) to read as follows:

22.404–6 Modifications of wage determinations.

(a) * * *

(2) * * * The need to include a modification of a project wage determination for the primary site of the work in a solicitation is determined by the time of receipt of the modification by the contracting agency. * * *

(3) The need for inclusion of the modification of a general wage determination for the primary site of the work in a solicitation is determined by the publication date of the notice in the **Federal Register**, or by the time of receipt of the modification (annotated with the date and time immediately upon receipt) by the contracting agency, whichever occurs first. * * *

(b) * * *

(3) If an effective modification of the wage determination for the primary site of the work is received by the contracting officer before bid opening, the contracting officer shall postpone the bid opening, if necessary, to allow a reasonable time to amend the solicitation to incorporate the modification and permit bidders to amend their bids. * * *

(4) If an effective modification of the wage determination for the primary site of the work is received by the contracting officer after bid opening, but before award, the contracting officer shall follow the procedures in 22.404–5(b)(2)(i) or (ii).

* * * * *

■ 7. Amend section 22.404–8 by revising the introductory text of paragraph (a) and paragraph (a)(2); and in paragraphs (b)(1) introductory text, (b)(2), and (c) by adding ''of an improper wage determination for the primary site of the work'' after ''notification''.

22.404–8 Notification of improper wage determination before award.

(a) The following written notifications by the Department of Labor shall be effective immediately without regard to 22.404–6 if received by the contracting officer prior to award:

* * * * *

(2) A wage determination is withdrawn by the Administrative Review Board.

* * * * *

22.406–9 [Amended]

■ 8. Amend section 22.406–9 by—

■ a. Removing from the heading of paragraph (c)(1) ''Secretary of the Treasury'' and adding ''Comptroller General'' in its place; and removing from the last sentence of paragraph (c)(1) ''Secretary of the Treasury'' and adding ''Comptroller General (Claims Section)'' in its place; and

■ b. Removing from paragraph (c)(3) ''Secretary of the Treasury'' and adding ''Comptroller General'' in its place.

■ 9. Amend section 22.407 by—

■ a. Revising the heading as set forth below;

■ b. Removing from the introductory text of paragraph (a) ''The contracting officer shall insert'' and adding ''Insert'' in its place;

■ c. Removing from paragraphs (a)(1) through (a)(10) ''The clause at'';

■ d. Removing from paragraph (b) ''The contracting officer shall insert'' and adding ''Insert'' in its place;

■ e. Removing from the second sentence of paragraph (c) ''the contracting officer shall'';

■ f. Removing from paragraph (d) ''The contracting officer shall insert'' and adding ''Insert'' in its place; and

■ g. Adding paragraph (h) to read as follows:

22.407 Solicitation provision and contract clauses.

* * * * *

(h) Insert the provision at 52.222–5, Davis Bacon Act—Secondary Site of the Work, in solicitations in excess of $2,000 for construction within the United States.

PART 52—SOLICIATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Amend section 52.212–5 by revising the date of the clause; and in paragraph (c)(1) and (e)(1)(vi) by removing ''(May 1989)'' and adding ''(JUL 2005)'' in its place. The revised text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JUL 2005)

* * * * *

■ 11. Amend section 52.213–4 by revising the date of the clause; and in paragraph (b)(1)(vi) by removing ''(May 1989)'' and adding ''(JUL 2005)'' in its place. The revised text reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS OTHER THAN COMMERCIAL ITEMS (JUL 2005)

* * * * *

■ 12. Amend section 52.222–4 by revising the date of the clause and paragraph (e) to read as follows:

52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation.

* * * * *

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (JUL 2005)

* * * * *

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

■ 13. Add text to section 52.222–5 to read as follows:

52.222–5 Davis-Bacon Act—Secondary Site of the Work.

As prescribed in 22.407(h), insert the following provision:

DAVIS-BACON ACT—SECONDARY SITE OF THE WORK (JUL 2005)

(a)(1) The offeror shall notify the Government if the offeror intends to perform work at any secondary site of the work, as defined in paragraph (a)(1)(ii) of the FAR clause at 52.222–6, Davis-Bacon Act, of this solicitation.

(2) If the offeror is unsure if a planned work site satisfies the criteria for a secondary site of the work, the offeror shall request a determination from the Contracting Officer.

(b)(1) If the wage determination provided by the Government for work at the primary site of the work is not applicable to the secondary site of the work, the offeror shall request a wage determination from the Contracting Officer.

(2) The due date for receipt of offers will not be extended as a result of an offeror's request for a wage determination for a secondary site of the work.

(End of provision)

■ 14. Amend section 52.222–6 by—

■ a. Revising the date of the clause;

■ b. Redesignating paragraphs (a) through (d) as paragraphs (b) through (e);

■ c. Adding a new paragraph (a);

■ d. Revising the newly designated paragraph (b); and

■ e. Removing from the newly designated paragraph (c)(4) ''(b)(2)'' and ''(b)(3)'' and adding ''(c)(2)'' and ''(c)(3)''in their places, respectively.

■ The revised and added text reads as follows:

52.222–6 Davis-Bacon Act.

* * * * *

DAVIS-BACON ACT (JUL 2005)

(a) *Definition.—Site of the work*—(1) Means—

(i) *The primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the ''primary site of the work'' as defined in paragraph (a)(1)(i), or the ''secondary site

of the work'' as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the ''site of the work.'' Such permanent, previously established facilities are not a part of the ''site of the work'' even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

* * * * *

■ 15. Amend section 52.222–9 by revising the date of the clause and paragraphs (a) and (b) to read as follows:

52.222–9 Apprentices and Trainees.

* * * * *

APPRENTICES AND TRAINEES (JUL 2005)

(a) *Apprentices.* (1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

* * * * *

■ 16. Revise the clause in section 52.222–11 to read as follows:

52.222–11 Subcontracts (Labor Standards).

* * * * *

SUBCONTRACTS (LABOR STANDARDS) (JUL 2005)

(a) *Definition. Construction, alteration or repair,* as used in this clause, means all types

of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the ''site of the work'' as defined in the FAR clause at 52.222–6, Davis-Bacon Act of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the ''site of work'' definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the ''site of the work'' definition in paragraph (a)(1)(ii) of the FAR clause at 52.222–6, Davis-Bacon Act, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at 52.222–6, in the ''site of the work'' definition).

(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

(1) Davis-Bacon Act;

(2) Contract Work Hours and Safety Standards Act—Overtime Compensation (if the clause is included in this contract);

(3) Apprentices and Trainees;

(4) Payrolls and Basic Records;

(5) Compliance with Copeland Act Requirements;

(6) Withholding of Funds;

(7) Subcontracts (Labor Standards);

(8) Contract Termination—Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Davis-Bacon and Related Act Regulations; and

(11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

(End of clause)

52.222–41 [Amended]

■ 17. Amend section 52.222–41 by revising the date of the clause to read ''(JUL 2005)''; and in the first sentence of paragraph (r) of the clause by removing ''Bureau of Apprenticeship and Training, Employment and Training Administration'' and adding ''Office of Apprenticeship Training, Employer, and Labor Services (OATELS)'' in its place.

PART 53—FORMS

53.222 [Amended]

■ 18. Amend section 53.222 in paragraph (e) by removing ''*(Rev. 6/89)*'' and adding ''*(Rev. 7/2005)*'' in its place; and removing the last sentence.

■ 19. Amend section 53.301–1413 by revising the form to read as follows:

53.301–1413 Statement and Acknowledgement.

STATEMENT AND ACKNOWLEDGMENT

OMB No.: 9000-0014
Expires: 01/31/2008

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat, (VIR), Regulatory and Federal Assistance Division, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0014), Washington, DC 20503.

PART I - STATEMENT OF PRIME CONTRACTOR

1. PRIME CONTRACT NO.	2. DATE SUBCONTRACT AWARDED	3. SUBCONTRACT NUMBER

4. PRIME CONTRACTOR			5. SUBCONTRACTOR		
a. NAME			a. NAME		
b. STREET ADDRESS			b. STREET ADDRESS		
c. CITY	d. STATE	e. ZIP CODE	c. CITY	d. STATE	e. ZIP CODE

6. The prime contract ☐ does, ☐ does not contain the clause entitled "Contract Work Hours and Safety Standards Act -- Overtime Compensation."

7. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on the date shown in Item 2 to the subcontractor identified in item 5 by the following firm:

a. NAME OF AWARDING FIRM

b. DESCRIPTION OF WORK BY SUBCONTRACTOR

8. PROJECT	9. LOCATION

10a. NAME OF PERSON SIGNING	11. BY *(Signature)*	12. DATE SIGNED
10b. TITLE OF PERSON SIGNING		

PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR

13. The subcontractor acknowledges that the following clauses of the contract shown in Item 1 are included in this subcontract:

- Contract Work Hours and Safety Standards Act - Overtime Compensation - (If included in prime contract see Block 6)
- Payrolls and Basic Records
- Withholding of Funds
- Disputes Concerning Labor Standards
- Compliance with Davis-Bacon and Related Act Regulations
- Davis-Bacon Act
- Apprentices and Trainees
- Compliance with Copeland Act Requirements
- Subcontracts (Labor Standards)
- Contract Termination - Debarment
- Certification of Eligibility

14. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY

A		A	
B		B	

15a. NAME OF PERSON SIGNING	16. BY *(Signature)*	17. DATE SIGNED
15b. TITLE OF PERSON SIGNING		

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION IS NOT USABLE

STANDARD FORM 1413 (REV. 7/2005)
Prescribed by GSA/FAR (48 CFR) 53.222(e)

[FR Doc. 05–11186 Filed 6–7–05; 8:45 am]
BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAC 2005–04; FAR Case 2001–031; Item VII]

RIN 9000–AJ67

Federal Acquisition Regulation; Deferred Compensation and Postretirement Benefits Other Than Pensions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising the cost principles for Deferred compensation other than pensions, and Postretirement benefits other than pensions. The related contract clause, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions, is also revised. The rule revises the cost principle and contract clause by improving clarity and structure, and removing unnecessary and duplicative language. The revisions are intended to revise contract cost principles and procedures, in light of the evolution of Generally Accepted Accounting Principles (GAAP), the advent of Acquisition Reform, and experience gained from implementation of the cost principles in the FAR.

DATES: *Effective Date*: July 8, 2005.

FOR FURTHER INFORMATION CONTACT The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501–3221. Please cite FAC 2005–04, FAR case 2001–031.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 33326, June 3, 2003, with request for public comments. Four respondents submitted comments; a discussion of the comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the proposed rule and final rule are discussed in Section B, Comments 2, 5, 6, and Changes for Clarity, below.

B. Public Comments

Deferred compensation—Subsequent period awards

1. *Comment*: Revise proposed FAR 31.205–6(k)(2). One respondent commented that the word ''made'' could be misconstrued to mean ''paid'' versus when the award program is instituted. The sentence should be changed to read: ''Deferred compensation awards are unallowable if the award program is instituted in a period subsequent to the accounting period when the work being remunerated was performed.''

Councils' response: Nonconcur. The Councils believe that the proposed language (which is the same as the current language in the last sentence of paragraph (k)(1) and has been unchanged for many years) is clear. By definition, deferred compensation is an award ''made'' to compensate an employee in a future period, *i.e.*, the award is ''paid'' in the future. Therefore, the Councils do not believe it is likely that the word ''made'' will be misconstrued as ''paid.'' In addition, the respondent has provided no evidence that this language is being misinterpreted.

Furthermore, the respondent's proposed language would change the meaning of the provision and create an inappropriate result. Under that proposed language, the contractor could ''institute'' an award program in 1999, and award an employee in 2003 for work performed during 2000. The purpose of the FAR provision is to preclude such retroactive awards; the respondent's proposed revision would thwart this purpose.

Delayed recognition methodology for recognizing PRB past service costs

2. *Comment*: Revise proposed FAR 31.205–6(o)(2)(iii)(A). The respondent believes that the second sentence of the provision could be misinterpreted to mean that the entire amount of PRB costs attributable to the past service (transition obligation) is unallowable, not just the portion of the PRB costs in excess of the amount assignable under the delayed recognition methodology. The provision should be revised to read as follows:

''However, the portion of PRB costs attributable to past service (''transition obligation'') as defined in Financial Accounting Standards Board Statement 106, paragraph 110, that is in excess of the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Statement 106 is unallowable.''

Councils' response: Concur. The Councils agree that the language was intended to disallow only the excess amount, not the total amount. The Councils also agree that the respondent's proposed language, with some additional wording, is appropriate. Therefore, the Councils have revised the language to read as follows:

''However, the portion of PRB costs attributable to the transition obligation assigned to the current year that is in excess of the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Financial Accounting Standards Board Statement 106 is unallowable. The transition obligation is defined in Statement 106, paragraph 110.''

Refund of Government share of PRB costs which revert or inure to the contractor

3. *Comment*: Revise proposed FAR 31.205–6(o)(3). One respondent was concerned that, under the proposed language, the Government may be entitled to an equitable share of previously funded PRB costs when benefits are reduced but total costs are not. In the present environment, contractors may be required to reduce benefits to simply keep retiree health costs from increasing at an unsustainable level. The provision does not define what is meant by ''any amount of previously funded PRB costs which revert or inure to the contractor.'' The respondent recommends that the provision explicitly state that the Government is entitled to an equitable share of previously funded costs only when the costs are ultimately reduced.

Councils' response: Nonconcur. The Councils believe the respondent is misapplying the provision. Neither a reduction in PRB costs nor a reduction in PRB benefits alone entitles the Government to an equitable share of previously funded PRB costs under proposed FAR 31.205–6(o)(3) (FAR 31.205–6(o)(5) of the final rule) or FAR 52.215–18. The Government is entitled to an equitable share when previously funded PRB costs revert or inure to the contractor, for whatever reason. ''Inure'' is defined in Webster's College Dictionary as ''to come into use or operation,'' while ''revert'' means ''to return or go back.'' Thus, this language applies whenever assets return or go back to the contractor, or come into use

or operation (*i.e.*, are constructively received) by the contractor.

4. *Comment*: Revise proposed FAR 31.205–6(o)(3). Two respondents asserted that the provision is one-sided by entitling the Government to share in any proceeds resulting from over funding but shielding the Government from liability in the event of under funding. The respondents recommend that the provision require the Government to receive a pro-rata share of the unfunded liability that exists at the time of a segment closing, plan termination, or curtailment of benefits. In addition, the rule should be amended so that PRB plan closing adjustments operate the same way as pension plan closing adjustments.

Councils' response: Nonconcur. The assertion that the provision is one-sided is based on the assumption that this provision applies whenever the PRB plan is over funded. The provision at FAR 31.205–6(o)(3) of the proposed rule (FAR 31.205–6(o)(5) of the final rule) does not apply simply because a PRB plan is over funded. The provision applies only when the assets revert, inure, or are constructively received by the contractor.

The Councils do not believe that FAR 31.205–6(o)(3) should be revised to provide a segment closing adjustment for PRB costs. Unlike pension benefits, contractors generally reserve the right to reduce or eliminate PRB benefits. Therefore, the Councils do not believe an adjustment similar to the pension segment closing adjustment is appropriate for PRBs.

5. *Comment*: Revise proposed FAR 31.205–6(o)(3). Four respondents believe that the last sentence of the provision (that specifies the contractor shall credit the Government's share of previously funded PRB costs to the Government, either as a cost reduction or by cash refund, at the option of the Government) is inequitable and should be eliminated because it ignores the interest of the contractor, it is both unnecessary and undesirable, and it is unduly prescriptive. In addition, the respondents believe that explicitly dictating the required alternative methods of adjustment reduces the flexibility to negotiate an equitable adjustment that considers the unique facts relating to a particular situation. The provision should be revised to read as follows:

''When determining or agreeing on the method for treating the equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the cost over a number of years, cash refund or some other agreed upon method.''

Councils' response: Partially concur. The Councils agree with the concept that the parties should attempt to negotiate the method of recovery for the Government's equitable share of PRB funds that inure or revert to the contractor. However, the rule must also address those instances where the parties fail to reach a settlement. While the contractor and the Government should attempt to negotiate a settlement, if the parties disagree, the Contracting Officer must designate the method for recovery of the equitable share. Therefore, to address this concern, the Councils deleted the last sentence of proposed 31.205–6(o)(3) and added the following language to the related contract clause at 52.215–18(b):

When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.

Reduced benefits for a PRB plan

6. *Comment*: Revise proposed FAR 52.215–18. One respondent asserted that the language in the first sentence of the contract clause, regarding what is meant by ''reduced benefits'' in a PRB plan, is ambiguous. A contractor might reduce benefits but, because of increased costs in other areas, the allocable costs of the PRB plan might stay steady or even increase. The respondent also believes that the language should focus on allocable costs and not on the level of benefits in the plan.

Councils' response: Partially concur. The Councils agree that the phrase ''reduce a PRB plan'' is ambiguous and has revised it to read ''reduce the benefits of a PRB plan.''

The Councils do not agree that the language should be revised to focus on allocable costs. The language requires the contractor to notify the contracting officer when there is a PRB termination or a reduction in benefits under the PRB plan. The purpose of this provision is to assure that the Government is promptly notified so that timely adjustments can be made for purposes of contract negotiations (forward pricing rate adjustments) and billing (billing rate adjustments). The purpose is also to assure that the Government receives its equitable share of any previously funded PRB costs which inure or revert to the contractor as a result of a plan termination or reduction in benefits, or for any other reason. In those cases where there is a reduction in benefits but it does not affect the amount of PRB costs allocable to Government contracts, no adjustments would be made to the forward pricing or billing rates. If no funds inure or revert to the contractor as a result of the reduction in benefits, there would also be no refund or credit due the Government under the provision. However, the contractor must still notify the Contracting Officer so that the Government has an opportunity to review any assertion that the reduction in benefits does not impact allocable costs or result in a refund or credit due the Government.

Changes for Clarity

For purposes of enhancing clarity and structure, the Councils have revised the language at FAR 31.205–6(o)(2) and (3). In addition, upon further review, the Councils have determined that the language at FAR 31.205–6(o)(3) applies to all of (o)(2), and not just (o)(2)(iii). Therefore, the language that was moved to FAR 31.205–6(o)(2)(iii)(D) in the proposed rule, has been moved back to FAR 31.205–6(o)(3) in the final rule.

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

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: May 27, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 31 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 31 and 52 is revised to read as follows:

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 2. Amend section 31.205–6 by revising paragraphs (k), (o)(2), (o)(3), and (o)(5) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(k) *Deferred compensation other than pensions.* The costs of deferred compensation awards are allowable subject to the following limitations:

(1) The costs shall be measured, assigned, and allocated in accordance with 48 CFR 9904.415, Accounting for the Cost of Deferred Compensation.

(2) The costs of deferred compensation awards are unallowable if the awards are made in periods subsequent to the period when the work being remunerated was performed.

* * * * *

(o) *Postretirement benefits other than pensions (PRB).*

* * * * *

(2) To be allowable, PRB costs shall be incurred pursuant to law, employer-employee agreement, or an established policy of the contractor, and shall comply with paragraphs (o)(2)(i), (ii), or (iii) of this subsection.

(i) *Pay-as-you-go.* PRB costs are not accrued during the working lives of employees. Costs are assigned to the period in which—

(A) Benefits are actually provided; or

(B) The costs are paid to an insurer, provider, or other recipient for current year benefits or premiums.

(ii) *Terminal funding.* PRB costs are not accrued during the working lives of the employees.

(A) Terminal funding occurs when the entire PRB liability is paid in a lump sum upon the termination of employees (or upon conversion to such a terminal-funded plan) to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees.

(B) Terminal funded costs shall be amortized over a period of 15 years.

(iii) *Accrual basis.* PRB costs are accrued during the working lives of employees. Accrued PRB costs shall be—

(A) Measured and assigned in accordance with generally accepted accounting principles. However, the portion of PRB costs attributable to the transition obligation assigned to the current year that is in excess of the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Financial Accounting Standards Board Statement 106 is unallowable. The transition obligation is defined in Statement 106, paragraph 110;

(B) Paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees; and

(C) Calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(3) To be allowable, PRB costs must be funded by the time set for filing the Federal income tax return or any extension thereof, or paid to an insurer, provider, or other recipient by the time set for filing the Federal income tax return or extension thereof. PRB costs assigned to the current year, but not funded, paid or otherwise liquidated by the tax return due date as extended are not allowable in any subsequent year.

* * * * *

(5) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data were required or which were subject to Subpart 31.2.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Revise section 52.215–18 to read as follows:

52.215–18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.

As prescribed in 15.408(j), insert the following clause:

REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (JUL 2005)

(a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.

(b) If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by 31.205–6(o)(5) of the Federal Acquisition Regulation (FAR). When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.

(c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408(j).

(End of clause)

[FR Doc. 05–11185 Filed 6–7–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–04; FAR Case 2004–005; Item VIII]

RIN 9000–AJ93

Federal Acquisition Regulation; Gains and Losses

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising the contract cost principles for Gains and losses on disposition or impairment of depreciable property or other capital assets, Depreciation costs, and Rental costs. The final rule adds language to specifically address the gain or loss recognition of sale and leaseback transactions to be consistent with the date at which a contractor begins to incur an obligation for lease or rental costs. A date for recognition of gain or loss associated with sale and leaseback transactions was previously undefined within the cost principles. In addition, revised language is also added to recognize that an adjustment to the lease/rental cost limitations are required to ensure that the total costs associated with the use of the subject assets do not exceed the constructive costs of ownership.

DATES: *Effective Date*: July 8, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2005–04, FAR case 2004–005.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed FAR rule for public comment in the **Federal Register** at 68 FR 40466, July 7, 2003, under FAR case 2002–008. The proposed rule related to FAR 31.205–16, Gains and losses on disposition or impairment of depreciable property or other capital assets; FAR 31.205–24, Maintenance and repair costs; and FAR 31.205–26, Material costs. As result of the public comments received, the Councils converted the proposed rule relating to FAR 31.205–24 and FAR 31.205–26 to a final rule, with minor changes. The Councils also decided to make substantive changes to the proposed rule for FAR 31.205–16 and published a second proposed FAR rule in the **Federal Register** at 69 FR 29380, May 21, 2004, with a request for comments by July 20, 2004.

Three respondents submitted public comments in response to the second proposed FAR rule. A discussion of these public comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule and changes to FAR 31.205–11 and FAR 31.205–36 to address concerns raised in the public comments. Differences between the second proposed rule and final rule are discussed in Section B, Comments 1, 2, 3, and 5, below.

B. Public Comments

The Government and the contractor

1. *Comment*: Two respondents are opposed to the language ''the Government and Contractor shall'' take certain actions. One of the respondents specifically states, ''The new phrase implies that both parties perform such duties as accounting entries when in reality FAR provides requirements that must be met by the contractor and approved by the contracting officer.'' The respondents recommend removing the language ''the Government and Contractor shall'' and retaining the current language structure.

Councils' response: Concur. The Councils concur that the FAR cost principles are regulations that the contractor must meet with regard to the allowability of contract costs. Since the current language has not resulted in any problems and the proposed revision could cause potential confusion, the Councils have retained the current language and removed reference to ''the Government and the contractor shall'' at proposed FAR 31.205–16(a), (c), (d), (e)(1), (f), and (g).

Disposition date

2. *Comment*: Two respondents support the disposition date being the date of the sale and leaseback arrangement. However, the respondents noted that the use of the term ''arrangement'' is ambiguous and subject to various interpretations. The respondents have recommended using language that represents the effective date (*i.e.*, the date title passes from seller to buyer) as the disposition date for the sale and leaseback transaction.

Councils' response: Partially concur. The Councils agree that the date of the sale and leaseback arrangement may be subject to various interpretations. However, the Councils believe that the term ''effective date'' also would be subject to various interpretations because of the numerous underlying legal relationships that can affect a sale and leaseback arrangement. The Councils therefore have revised the language at FAR 31.205–16(b) to state that the gain or loss is determined on the date that the contractor becomes a lessee of the property. In addition, for clarity purposes, the Councils have removed the term ''disposition date'' from the proposed rule at FAR 31.205–16(b)(1) and (2), since that term is not used elsewhere in this provision in discussing other asset dispositions.

Depreciation recapture/lease cost limitation

3. *Comment*: One respondent asserts that ''the combined reading of proposed 31.205–16(a), (b), (c) and (d) with 31.205–11(m)(1) and 31.205–36(b)(2) to mean that the contractor must provide both depreciation recapture and limit future lease charges to what would have been the continuing ownership costs.'' This respondent further states:

> ''This unclear and contentious area has long been an inequitable proposition. For example, a contractor sells a building for the original value. This results in a full depreciation recapture and means that the Government received goods and services free of any building costs. However, if the leaseback exceeds the previous ownership costs, then the contractor is forced to provide future facilitization at less than cost. This is clearly inequitable compared to other contractors who receive full recovery of their facility costs.''

The respondent suggests that the sale and leaseback transaction should be limited to an ''either or'' negotiation. Either apply the depreciation recapture at the time of sale, or limit the lease cost for the period of time necessary to liquidate an amount equal to the depreciation recapture.

Councils' response: Partially concur. The Councils disagree with the respondent's recommendation regarding an ''either or'' negotiation. As stated in the **Federal Register** at 69 FR 29380, May 21, 2004, the FAR ''will continue to limit future lease costs to the costs of ownership.'' In addition, the long-standing policy, referred to as ''depreciation recapture'' by the respondent, will continue in that ''gains and losses on disposition of tangible capital assets, including those acquired under capital leases (see 31.205–11(i)), shall be considered as adjustments of depreciation costs previously recognized.'' (see FAR 31.205–16(c)).

However, the Councils have recognized that some additional language is needed to ensure that the contractor's and Government's interests are protected. The intent of this longstanding limitation in the cost principles is that, for Government contract costing purposes, the contractor should not benefit, nor should the contractor be harmed, for entering into a sale and leaseback agreement, and that the recovery of costs should be limited to the normal cost of ownership. As the respondent has noted, under the current proposed rule, the recognition of a gain may limit the contractor in its ability to recoup what would otherwise be considered allowable costs up to the original acquisition cost. Likewise, the recognition of a loss may have the opposite effect that being the Government would actually reimburse the contractor for costs in excess of the original acquisition cost. As a result, the limitation at FAR 31.205–11(i)(1) and FAR 31.205–36(b)(2) has been modified to reflect these concerns.

Limitation on losses from less than arm's-length transactions

4. *Comment*: One respondent states that the proposed rule ''is a boon for government contractors and a bust for the government and taxpayers.'' The respondent notes that proposed paragraph 31.205–16(d) clearly limits the amount of credit accruing to the Government but that the proposed rule has no limit on the losses the contractor can charge to the Government. The respondent recommends that paragraph (b) include language that eliminates the recognition of losses on Government

contracts that are not entered into in an arm's-length transaction.

Councils' response: Nonconcur. The provisions in the proposed paragraph 31.205–16(d) limiting recognition of any gain on the disposition of capital assets to the accumulated depreciation as of the disposition date has been the cost principle provision for many years. This provision is currently found in FAR 31.205–16(b). For contract costing purposes, gains and losses are ''considered as adjustments of depreciation costs previously recognized.'' The Government participates in the cost associated with the use of the capital asset by the contractor; this does not include any appreciation in asset value in excess of its original cost. Therefore, the cost principle limits the Government's recognition of the gain to the accumulated depreciation costs. In addition, the proposed paragraph at 31.205–16(b)(2) limits the allowable loss to the amount computed using ''fair market value,'' which protects the Government from participating in any potential ''paper losses.'' As a result, the Councils do not believe the recommendation to add a provision relative to less than arm's-length transactions is necessary.

Fair Market Value

5. *Comment*: Two respondents are opposed to using the language ''fair market value'' and recommend using the existing term ''net amount realized,'' which is used in the proposed paragraph at 31.205–16(c). The assertion is that the ''fair market value'' is an undefined term and subject to multiple interpretations, which one of the respondents noted as being a problematic concept that has led to litigation. In addition, one respondent asserted that the use of ''fair market value'' to measure the gain is inconsistent with the language provided at CAS 409.50(j)(1). This respondent stated that CAS 409 measures the gain or loss as the difference between the net amount realized and its undepreciated balance. The respondent believes that since CAS is the determining authority for the measurement and assignment of cost, the language should be revised to make it consistent with CAS.

Councils' response: Partially concur. The concept of ''fair market value'' is adopted widely in the financial and accounting literature and is representative of the price for which the property could be sold in an arm's-length transaction between unrelated parties. In the case of sale and leaseback arrangements, the use of ''net amount realized'' instead of ''fair market value'' places the Government at risk for potentially reimbursing the costs of raising capital. Sale and leaseback arrangements are unique and can be structured by the parties involved in many ways. Therefore, the use of ''fair market value'' helps to protect the Government from participating in any potential ''paper losses'' or artificially reduced gains. However, the Councils recognize that the CAS governs the measurement of the gain or loss for CAS covered contracts. Thus, the final rule reflects the measurement provisions at CAS 409 for such contracts. Since the Councils believe the measurement should be the same for all contracts, the final rule also measures the gain or loss for non-CAS covered contracts in accordance with CAS 409.

Although CAS 409 provides for the measurement of the gain or loss, the Councils continue to be concerned that the Government may be at risk of reimbursing the costs of raising capital (a cost the Government does not normally reimburse, as indicated by the provision at FAR 31.205–27). In addition, the parties can structure the transaction such that the Government participates in ''paper losses.'' Therefore, the final rule in 31.205–16(b)(2) limits the allowable portion of any loss to the difference between the fair market value and the undepreciated balance of the asset on the date the contractor becomes a lessee. While the Councils are also concerned about artificially reduced gains, the FAR cannot recognize a gain in excess of the amount measured by CAS. Thus, the allowable portion of the gain under the final rule is equal to the amount measured by CAS 409.

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

C. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis and do not require application of the cost principle discussed in this rule.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: May 27, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.205–11 by revising paragraph (i)(1) to read as follows:

31.205–11 Depreciation.

* * * * *

(i)* * *

(1) Lease costs under a sale and leaseback arrangement are allowable only up to the amount that would be allowed if the contractor retained title, computed based on the net book value of the asset on the date the contractor becomes a lessee of the property adjusted for any gain or loss recognized in accordance with 31.205–16(b); and

* * * * *

■ 3. Amend section 31.205–16 by—

■ a. Removing from paragraph (a) the words ''paragraph (d)'' and inserting ''paragraph (f)'' in its place;

■ b. Redesignating paragraphs (b), (c), (d), (e), (f), and (g), as (c), (e), (f), (g), (h), and (i), respectively;

■ c. Adding new paragraphs (b) and (d); and

■ d. Revising the newly designated paragraph (e)(2)(ii).

■ The revised and added text reads as follows:

31.205–16 Gains and losses on disposition or impairment of depreciable property or other capital assets.

* * * * *

(b) Notwithstanding the provisions in paragraph (c) of this subsection, when costs of depreciable property are subject to the sale and leaseback limitations in 31.205–11(i)(1) or 31.205–36(b)(2)—

(1) The gain or loss is the difference between the net amount realized and the undepreciated balance of the asset on the date the contractor becomes a lessee; and

(2) When the application of (b)(1) of this subsection results in a loss—

(i) The allowable portion of the loss is zero if the fair market value exceeds the undepreciated balance of the asset on the date the contractor becomes a lessee; and

(ii) The allowable portion of the loss is limited to the difference between the fair market value and the undepreciated balance of the asset on the date the contractor becomes a lessee if the fair market value is less than the undepreciated balance of the asset on the date the contractor becomes a lessee.

* * * * *

(d) The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost (or for assets acquired under a capital lease, the value at which the leased asset is capitalized) of the asset and its undepreciated balance (except see paragraphs (e)(2)(i) or (ii) of this subsection).

(e)* * *

(2)* * *

* * * * *

(ii) Recognize the gain or loss in the period of disposition, in which case the Government shall participate to the same extent as outlined in paragraph (e)(1) of this subsection.

* * * * *

■ 4. Amend section 31.205–36 by revising paragraph (b)(2) to read as follows:

31.205–36 Rental costs.

* * * * *

(b)* * *

(2) Rental costs under a sale and leaseback arrangement only up to the amount the contractor would be allowed if the contractor retained title, computed based on the net book value of the asset on the date the contractor becomes a lessee of the property adjusted for any gain or loss recognized in accordance with 31.205–16(b).

* * * * *

[FR Doc. 05–11184 Filed 6–7–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–04 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–04 which precedes this document. These documents are also available via the Internet at *http://www.acqnet.gov/far*.

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501–4755. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2005–04

Item	Subject	FAR case	Analyst
I	Notification of Employee Rights Concerning Payment of Union Dues or Fees	2004–010	Marshall.
II	Telecommuting for Federal Contractors	2003–025	Zaffos.
*III	Incentives for Use of Performance-Based Contracting for Services	2004–004	Wise.
IV	Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items (Interim).	2004–035	Olson.
*V	Applicability of SDB and HUBZone Price Evaluation Factor	2003–015	Marshall.
VI	Labor Standards for Contracts Involving Construction	2002–004	Nelson.
VII	Deferred Compensation and Postretirement Benefits Other Than Pensions	2001–031	Olson.
VIII	Gains and Losses	2004–005	Olson.

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–04 amends the FAR as specified below:

Item I—Notification of Employee Rights Concerning Payment of Union Dues or Fees (FAR Case 2004–010)

This final rule adopts, without change, the interim rule published in the **Federal Register** at 69 FR 76352, December 20, 2004, and issued as Item IV of FAC 2001–26. It amends FAR parts 2, 22, and 52 to implement Executive Order (E.O.) 13201, Notification of Employee Rights Concerning Payment of Union Dues or Fees, and Department of Labor regulations at 29 CFR 470. The rule requires Government contractors and subcontractors to post notices informing their employees that under Federal law they cannot be required to join a union or maintain membership in a union to retain their jobs. The required notice also advises employees who are not union members that they can object to the use of their union dues for certain purposes. This rule applies to Federal contractors and subcontractors with contracts or subcontracts that exceed the simplified acquisition threshold, unless covered by an exemption granted by the Secretary of Labor.

Item II—Telecommuting for Federal Contractors (FAR Case 2003–025)

This rule finalizes without changes the interim rule published in the **Federal Register** at 69 FR 59701, October 5, 2004, and issued as Item III of FAC 2001–025. This final rule implements Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108–136), which prohibits agencies from including a requirement in a solicitation that precludes an offeror from permitting its employees to telecommute or, when telecommuting is not precluded, from

unfavorably evaluating an offeror's proposal that includes telecommuting unless it would adversely affect agency requirements, such as security. Contracting officers awarding service contracts should familiarize themselves with this rule.

Item III—Incentives for Use of Performance-Based Contracting for Services (FAR Case 2004–004)

This final rule amends the Federal Acquisition Regulation (FAR) to provide Governmentwide authority to treat performance-based contracts or task orders for services as commercial items, if certain conditions are met. Agencies must report on the use of this authority. This change implements sections 1431 and 1433 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) and is intended to promote the use of performance-based contracting.

Item IV—Submission of Cost or Pricing Data on Noncommercial Modifications of Commercial Items (FAR Case 2004–035)

This interim rule implements an amendment to 10 U.S.C. 2306a. The change requires that the exception from the requirement to obtain certified cost or pricing data for a commercial item does not apply to noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than $500,000 or 5 percent of the total price of the contract, whichever is greater. Section 818 applies to offers submitted, and to modifications of contracts or subcontracts made, on or after June 1, 2005. This new policy applies only to acquisitions funded by DoD, NASA, or the Coast Guard, since the statute amends 10 U.S.C. 2306a, which only applies to DoD, NASA, and the Coast Guard. The new language does not apply to acquisitions funded by other than DoD, NASA, or the Coast Guard because Section 818 did not amend 41 U.S.C. 254b, which prohibits obtaining cost or pricing data for commercial items. However, the new policy applies to contracts awarded or task or delivery orders placed on behalf of DoD, NASA, or the Coast Guard by an official of the United States outside of those agencies, because the statutory requirement of Section 818 applies to the funds provided by DoD, NASA, or the Coast Guard.

Item V—Applicability of SDB and HUBZone Price Evaluation Factor (FAR Case 2003–015)

This final rule removes some of the exceptions to the Small Disadvantaged Business and HUBZone preference programs. The contracting officer will now apply a price evaluation adjustment to offers of eligible products in acquisitions subject to the Trade Agreements Act. This rule will have a beneficial impact on all domestic concerns, especially small entities that are small disadvantaged business concerns or HUBZone small business concerns.

Item VI—Labor Standards for Contracts Involving Construction (FAR Case 2002–004)

This final rule implements in the FAR the DoL rule revising the terms ''construction, prosecution, completion or repair'' (29 CFR 5.2(j)) and ''site of the work'' (29 CFR 5.2(l)). In addition, the Councils have clarified several definitions relating to labor standards for contracts involving construction and made requirements for flow down of labor clauses more precise.

The most significant impact of this rule is that contractors must pay Davis-Bacon Act wages at a secondary site of the work, if a significant portion of the work is to be constructed at that site and the site meets the other criteria specified in the rule. When transporting portions of the building or work between the secondary site of the work and the primary site of the work, the wages for the primary site of the work are applicable. The contracting officer must coordinate with the Department of Labor when there is any uncertainty as to whether a work site is a secondary site of the work.

Item VII—Deferred Compensation and Postretirement Benefits Other Than Pensions (FAR Case 2001–031)

This final rule amends the FAR by revising paragraph (k), Deferred compensation other than pensions, and paragraph (o), Postretirement benefits other than pensions, of FAR 31.205–6, Compensation for personal services, cost principle. Changes to paragraph (k) include: deletion of language that duplicates definitions provided in FAR 31.001, elimination of obsolete coverage, and use of terminology consistent with Cost Accounting Standards. Changes to paragraph (o) include: moving and revising language in (o)(3) through (o)(5) to (o)(2)(iii) because these requirements only apply to accrual costing other than terminal funding. In addition, new coverage is added to the related contract clause at FAR 52.215–18, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions, specifying the method of recovery of refunds and credits. The rule revises the cost principle and contract clause by improving clarity and structure, and removing unnecessary and duplicative language.

The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.,* price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item VIII—Gains and Losses (FAR Case 2004–005)

This final rule amends FAR 31.205–16 to address the timing of the gain or loss recognition of sale and leaseback arrangements of contractor depreciable property or other capital assets. The final rule defines the disposition date for a sale leaseback arrangement as the date the contractor begins to incur an obligation for lease or rental costs. Contracting officers, auditors, and contractors with responsibilities related to allowable cost determinations involving sale and leaseback arrangements of contractor depreciable property or other capital assets will be impacted by new policies governing that area.

Dated: May 27, 2005.

Julia B. Wise,

Director, Contract Policy Division.

[FR Doc. 05–11183 Filed 6–7–05; 8:45 am]

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June 8, 2005

Part VI

Federal Communications Commission

47 CFR Part 76

Cable Television Horizontal and Vertical Ownership Limits; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–264; FCC 05–96]

Cable Television Horizontal and Vertical Ownership Limits

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission seeks additional input on horizontal and vertical cable ownership limits to satisfy the legislative mandate in the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) and the court's directives in *Time Warner Entertainment Co.* v. *FCC,* 240 F.3d 1126 (D.C. Cir. 2001) (*Time Warner II*). Section 613(f) of the Communications Act, enacted as part of the 1992 Cable Act, directs the Commission to conduct proceedings to establish reasonable limits on the number of subscribers a cable operator may serve (horizontal limit) and the number of channels a cable operator may devote to its affiliated programming networks (vertical, or channel occupancy, limit). The court in *Time Warner II* reversed and remanded the Commission's 30% horizontal ownership limit and its 40% channel occupancy limit. The Commission concludes that it is necessary to update and strengthen the evidentiary record, which must be sufficient to support revised ownership limits.

DATES: Comments are due on or before July 8, 2005, and reply comments are due on or before July 25, 2005.

ADDRESSES: You may submit comments, identified by MM Docket No. 92–264, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or telephone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Barbara Esbin or Patrick Webre, Media Bureau, (202) 418–7200, or via Internet at *Barbara.Esbin@fcc.gov* or *Patrick.Webre@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Further Notice of Proposed Rulemaking in MM Docket No. 92–264, adopted May 13, 2005, and released May 17, 2005. The complete text of this Second Further Notice of Proposed Rulemaking (*Second FNPRM*) is available for inspection and copying Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, Portals II, 445 12th Street, SW., Washington, DC 20554. The complete text is also available on the Commission's Internet Site at *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the *Second FNPRM* may also be purchased from the Commission's duplicating contractor, Best Copying and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.*

Synopsis of the Second Further Notice of Propose Rule Making (Second FNPRM)

I. Introduction

1. Pursuant to Section 613(f) of the Communications Act, which was enacted by the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act),[1] the Commission must conduct proceedings to establish reasonable limits on the number of subscribers a cable operator may serve (horizontal limit), and the number of channels a cable operator may devote to its affiliated programming networks (vertical, or channel occupancy, limit). Congress intended the ownership limits mandated by Section 613(f) to ensure that cable operators did not use their dominant position in the multichannel video distribution (MVPD) market, acting unilaterally or jointly, to unfairly impede the flow of video programming to consumers. At the same time, Congress recognized that multiple system ownership could provide benefits to consumers by allowing efficiencies in the administration, distribution and procurement of programming, and by providing capital and a ready subscriber base to promote the introduction of new programming services.

2. The Commission first established a 30% horizontal ownership limit and a 40% vertical ownership limit in 1993.[2] Initially, the horizontal limit prohibited any cable operator from serving more than 30% of all homes passed by cable. In 1999, the Commission revised the horizontal limit to permit a cable operator to reach 30% of all MVPD subscribers. The vertical limit bars cable operators with 75 or fewer channels from devoting more than 40% of their channel capacity to affiliated programming. For systems with more than 75 channels, the limit applies only to 75 channels. The United States Court of Appeals for the District of Columbia Circuit in *Time Warner Entertainment Co.* v. *FCC (Time Warner II)* reversed and remanded both limits.[3] In response, the Commission issued a Further Notice of Proposed Rulemaking (*2001 FNPRM*),[4] in which it solicited comment on the nature of the MVPD industry, industry changes since the 1992 Cable Act, how these changes affected the implementation of horizontal and vertical limits, and various proposals for a new horizontal limit.

3. None of the comments to the *2001 FNPRM* yielded a sound evidentiary basis for setting horizontal or vertical limits as demanded by the court in *Time Warner II.* The Commission subsequently sought to augment the record by means of a programming network survey[5] and an experimental economics analysis (the BKS Study)[6]. The programming network survey yielded little useful information. The BKS Study and a theoretical work of Adilov and Alexander[7] suggest that,

[1] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. 102–385, 106 Stat. 1460; Communications Act of 1934, 47 U.S.C. 151, *et seq.* (Communications Act).

[2] *Second Report and* Order, 58 FR 60135, November 15, 1993.

[3] 240 F.3d 1126 (D.C. Cir. 2001). The D.C. Circuit upheld the underlying statute in *Time Warner Entertainment Co.* v. *United States,* 211 F.3d 1313 (D.C. Cir. 2000) (*Time Warner I*).

[4] 66 FR 51905, October 11, 2001. After the 2001 FNPRM, the Commission issued an Order which suspended the elimination of the broadcast single majority shareholder exemption pending the outcome of this proceeding. FCC 01–353, 16 FCC Rcd 353 (2001).

[5] Letter from W. Kenneth Ferree, Chief, Cable Services Bureau, FCC, to Programming Network Owners (Feb. 15, 2002).

[6] Mark Bykowsky, Anthony Kwasnica, & William Sharkey, *Horizontal Concentration in the Cable Television Industry: An Experimental Analysis,* FCC Office of Plans and Policy, Working Paper No. 35 (June 2002 & rev. July 2002) (BKS Study). The BKS Study was released for public comment and was placed in the record of this proceeding.

[7] Nodir Adilov & Peter J. Alexander, *Asymmetric Bargaining Power and Pivotal Buyers,* FCC Media Bureau Working Paper No. 13 (Sept. 2002) (Asymmetric Bargaining Power); Nodir Adilov &

under certain conditions, increased firm size can produce an improved bargaining position and adversely affect the flow of programming. However, these analyses of bargaining power are imprecise in determining the point at which such increased bargaining power impedes the flow of programming.

4. In addition to the deficiencies in the record, a number of significant events have occurred since the release of the *2001 FNPRM* that must be taken into account in fashioning cable ownership limits. First, the 2002 Comcast-AT&T cable transaction resulted in one entity having a share of MVPD subscribers very close to our remanded 30% ownership limit. Second, the 2003 News Corp.-Hughes transaction created the first vertically integrated DBS operator, involving a number of video programming assets. Third, courts have remanded media ownership rules in three decisions, requiring that the Commission more firmly base its rules on empirical data and record evidence.

5. The Commission concludes that a *Second FNPRM* is necessary and seeks comment on the proposals in the record, on recent developments in the industry, and on certain tentative conclusions. The Commission asks commenters to supplement the record where possible by providing new evidence and information to support the formulation of horizontal and vertical limits, and invites parties to undertake their own studies in order to further inform the record. The Commission also invites comment on Media Bureau Staff Research Paper No. 2004–1 (Survival Analysis), which examines the effect of subscribership on a network's ability to survive in the marketplace.[8]

II. Second Further Notice of Proposed Rulemaking

A. Legal Framework

6. The *Second FNPRM* in paragraphs 18 through 26 examines the statutory objectives of the 1992 Act, and discusses the Commission's previous efforts to implement the statute and judicial review of those efforts. The *Second FNPRM* in paragraphs 27 through 37 examines the elements of the horizontal and vertical limits in light of the stated objectives of the 1992 Act and the *Time Warner I*[9] and *Time Warner II* decisions. Section 613(f)(1) of the Communications Act directs the Commission to set horizontal and vertical limits in order to ''enhance effective competition.'' Section 613(f)(2) sets forth seven specific criteria and public interest objectives to be taken into account in setting horizontal and vertical limits. The *Second FNPRM* considers each of these criteria.

7. *Horizontal Limits.* In ruling that the Commission had failed to meet the required evidentiary standard, the court in *Time Warner II* stated that the Commission must base the limits on a ''non-conjectural risk'' of economic harm. In response to the *2001 FNPRM,* cable operators generally oppose the imposition of any ownership limits.

As discussed in paragraphs 39 through 44 of the *Second FNPRM,* the Commission tentatively concludes that the language of Section 613(f) requires us to set some limit on the number of MVPD subscribers one entity may reach, and that Congress gave the Commission significant discretion in determining the ownership limits, both in their absolute level as well as in their form and structure. The *Second FNPRM* seeks comment on the Commission's tentative conclusions.

8. *Vertical Limits.* In response to the *2001 FNPRM,* the Consumer Federation of America (CFA) argues that although horizontal market power is the primary focus of this proceeding, vertical market power is the driving force behind the horizontal ownership cap. CFA argues that vertical market power results in anticompetitive conduct, and that when dominant firms become integrated across markets for critical inputs, there are potential problems, and that vertical integration can create barriers to entry. However, CFA fails to offer any argument or evidence on how a channel occupancy limit can prevent the harms it alleges. Alternatively, commenters representing the cable industry argue that no vertical limit is necessary.

9. As discussed in paragraphs 45 through 48 of the *Second FNPRM,* the Commission observes that Section 613(f) directs us to establish a reasonable vertical limit, and we are not persuaded that ''reasonable'' can be construed as ''no'' limit. Thus, the Commission tentatively concludes that Section 613(f) requires the Commission to set both cable horizontal ownership and vertical channel occupancy limits at some number. The *Second FNPRM* seeks comment on how we can set both horizontal ownership and channel occupancy limits that will survive constitutional scrutiny in light of present circumstances.

B. Industry Developments

10. As discussed in paragraphs 49 through 58 of the *Second FNPRM*, there have been significant changes in the MVPD industry that bear upon the question of establishing reasonable cable horizontal and vertical ownership limits. The current MVPD market differs dramatically from that which existed when Congress enacted the subscriber and channel occupancy provisions of the 1992 Act. Cable operators, as well as other MVPDs, have been increasing their plant capacity, and have upgraded and enhanced system capabilities. As a result, MVPDs are offering substantially more programming networks and are rolling out new, advanced services to their customers, including digital tiers, video-on-demand and subscription video-on-demand. In addition to, and possibly as a result of the increased plant capacity of cable operators, the number of national programming networks has increased dramatically in recent years. Similarly, competition among programming networks and their diversity of source and content has increased. The *Second FNPRM* seeks comment on the effect that these developments, including the possibility of Internet-based distribution of programming, may have on the opportunity for independent programmers to gain distribution of their programming. It also requests information on plans cable operators may have to increase channel capacity further, and comment on the implications of such efforts.

11. *Unaffiliated Programming Networks*. Paragraphs 59 and 60 of the *Second FNPRM* examine some of the factors that have been integral to the success of new programming networks that are not affiliated with any cable operator. The *Second FNPRM* seeks comment on whether there is a relationship between ownership limits and the ability of independent programmers to gain carriage from cable operators, and remain independent, viable entities.

C. Economic Basis for Horizontal Limit

12. The *Second FNPRM*, in paragraphs 61 through 142 considers potential harms and benefits of horizontal concentration and proposed economic foundations for establishing a horizontal limit on cable operator size. None of the comments filed in response to the *2001 FNPRM* yields a sound

Peter J. Alexander, Most-Favored Customers in the Cable Industry, FCC Media Bureau Working Paper No. 14 (Sept. 2002).

[8] Keith S. Brown, *A Survival Analysis of Cable Networks,* Media Bureau Staff Research Paper No. 2004–1 (rel. Dec. 7, 2004) (Survival Analysis). The study is being placed in the record of this proceeding.

[9] *Time Warner Entertainment Co.* v. *United States,* 211 F.3d 1313 (D.C. Cir. 2000) (*Time Warner I*).

evidentiary basis for setting horizontal or vertical limits.

1. Defining the Market

13. The *2001 FNPRM* proposed a definition of markets in which the Commission distinguished between three separate but interrelated markets: The production of programming; the packaging of programming in networks; and the distribution of programming to consumers. While the Commission has received comments on these proposed market definitions, we find that some key questions remain unresolved. The *Second FNPRM* therefore seeks comment on certain questions and seeks further analysis and evidence to help resolve the issues raised.

(a) Programming Market

14. In response to the *2001 FNPRM*, one commenter argues that the Commission should not be concerned with networks' ability to enter the market, but instead should focus on program producers' ability to find outlets to distribute their programming to the public. Under this theory, the ability of networks to enter the MVPD marketplace would not be important if there are sufficient conduits for programming to reach consumers. If, on the other hand, networks play a significant role in developing and producing original and high quality programming, then the entry of new networks will encourage the production and distribution of new programming to consumers. The *Second FNPRM* seeks comment generally on the role that networks play in the production and distribution of programming, and on the role of niche networks in the development of genre-specific programs that may target audiences that are too small and specific to make them attractive to general entertainment networks or networks serving other genres.

(b) Programming Distribution Market

15. The Commission previously determined that the programming distribution market should be measured by the number of subscribers rather than the number of homes passed, and that DBS subscribers should be included in the count of total subscribers to which the limit is applied; that is, that the limit should be formulated as a percentage of all MVPD subscribers, rather than as a percentage of cable homes passed. The *Second FNPRM* seeks further comment on the appropriate definition of the programming distribution market, and tentatively concludes that other physical conduits such as theatrical showings in movie theaters and sales and rentals of VHS tapes and DVDs, should not be considered part of the same market of programming network distribution.

(c) Relevant Geographic Markets

16. In the *2001 FNPRM*, the Commission recognized that ''[t]he geographic market for certain types of niche programming may * * * be national or international in scope'' and sought comment on this conclusion. Some commenters allege that the market for programming is international. Other commenters say the Commission should also consider regional markets. The Commission continues to find it reasonable to concentrate our inquiry on the effects of cable concentration in the United States, and ask for comment on this tentative conclusion. The Commission also believes that regional markets may be relevant when considering programming that is only of interest to, or available in, a particular region. The *Second FNPRM* seeks comment on whether and how the existence of regional markets should affect the Commission's development of horizontal and vertical limits. Specifically, the *Second FNPRM* asks whether a regional limit on concentration would better effectuate any of the statutory purposes set forth in Section 613(f)(2), and if so, under what circumstances, and what would be the measure?

2. Potential Harms of Horizontal Concentration

(a) Analytical Frameworks for Economic Analysis of Harms

17. In paragraphs 71 through 136 of the *Second FNPRM*, the Commission seeks further comment on the appropriate economic framework for determining whether, and at what level, a cable operator's size is likely to impede the flow of programming to consumers or diminish effective competition, and discusses the strengths and weaknesses of a number of proposed analytical frameworks and economic theories.

(1) Open Field Approach

18. In 1999, the Commission adopted horizontal limits based on a theory that cable operators at certain concentration levels could effectively prevent programming networks from entering or surviving in the marketplace simply by deciding not to carry them. The Commission found that a new programming network needs to have access to 15 to 20 million subscribers and that the typical programming network had only a 50% chance of actually reaching all available MVPD subscribers. The Commission concluded that a programmer needed to have an ''open field'' of 40% of MVPD subscribers nationwide and that a 30% MVPD subscriber limit would assure that a 40% open field remained even if the two largest cable operators decided not to carry it.

19. The *Time Warner II* court rejected certain aspects of this approach, finding that the Commission lacked any evidence that cable operators would collude and that it could not simply assume that cable operators would coordinate their behavior. Further, the court held that Section 613(f)(1) does not authorize the agency to regulate the ''legitimate, independent editorial choices of multiple MSOs.'' Thus, the court found that the record supported only a 60% limit under the Commission's 40% open field premise. However, the court did not reach the question of whether the 40% open field assumption was reasonable. The court stated that on remand the Commission should take into account the effects of retail competition from DBS and other MVPDs.

20. In response to the *2001 FNPRM*, several commenters claim that an open field approach cannot justify a horizontal limit. For example, commenters point out that many successful programming networks reach fewer than 15 million subscribers. Commenters also dispute the methods the Commission used to move from the 20% of the industry necessary for network survival to the 30% limit, such as the 50% success rate assumption, and theories of collusion. The statute does not refer to particular types of programming networks, but rather to programming generally. The simple fact that some networks may be able to survive with fewer subscribers than others does not invalidate the use of averaged data to fashion a limit. The *Second FNPRM* seeks comment on whether the Commission should focus its analysis on the minimum number of subscribers needed by an average network, or instead examine separately the requirements of networks with high-cost and those with low-cost programming.

21. The *Second FNPRM* seeks additional comment on whether the Commission should continue to use an open field approach. Commenters should focus on a programmer's ability to survive in the marketplace without carriage by the largest operator. Commenters advocating the use of an open field approach should also address how the Commission should determine the size of the open field, recognizing that different types of networks may

require different subscriber reaches to be viable, depending on the cost of the programming, the target audience, and projected advertising revenue.

22. While developing a defensible horizontal limit under the open field approach requires an analysis of the number of subscribers a programmer needs in order to remain viable, the record in this proceeding generated almost no comments from independent cable programming networks. In another proceeding, the Media Bureau released a report (*A La Carte Report*) on the efficacy of *a la carte* pricing (*i.e.*, offering networks on a per-channel basis rather than only as part of a package) in the pay-television industry. In that proceeding, several video programmers alleged adverse impacts of mandated *a la carte* or themed-tier offerings, and provided new and insightful data and information on the current real-world relationships between content providers and distributors.[10] The Commission finds this data relevant to our analysis of reasonable horizontal ownership limits and seeks comment on how it should be applied.

23. The *Second FNPRM* also seeks comment on whether the Commission should take steps to address the reliability of any subscriber data we may use in applying the horizontal limit, and whether the Commission should adopt its own data collection procedures to obtain industry-wide subscriber data. The *Second FNPRM* further seeks comment on the recently released Survival Analysis, which focuses on the actual failure and success rates of networks and the relationship of those rates to subscriber reach. The Commission seeks comment on the value of this method in developing a horizontal limit under the open field approach.

(2) Monopsony Framework

24. In response to the *2001 FNPRM*, some commenters argue that the market for programming does not meet the key conditions necessary for the applicability of the monopsony [11] model, in which a large purchaser of programming could cause harm to the market. On the other hand, Consumer Federation of America (CFA) maintains that a monopsonist would have the power to decrease programmers' output and the prices they receive. In paragraphs 85 through 89 of the *Second FNPRM*, the Commission seeks comment on the appropriateness of applying standard monopsony arguments to the Commission's analysis of the programming market, and on how monopsony power can be measured.

(3) Bargaining Power as a Source of Unilateral Anticompetitive Action

25. Bargaining theory is an alternative framework to the theory of monopsony for analyzing how a large purchaser of programming services could exercise market power and cause harm to the market. The *2001 FNPRM* suggested that at certain levels of concentration cable operators could use their bargaining power to force down the prices they pay for programming, which could harm the flow of programming. In paragraphs 90 through 96 of the *Second FNPRM,* the Commission explores bargaining power as a source of unilateral anticompetitive action, and discusses the inefficiencies that can arise in negotiations for carriage between programmers and MVPDs.

(a) The Use of Bargaining Theory To Establish New Limits

26. Cable industry commenters draw on the work of Alexander Raskovich[12] to argue that large firm size could, in fact, weaken a cable operator's bargaining position. Raskovich's model is a generalization of the work of Chipty and Snyder,[13] who construct a bargaining framework in which a program seller engages in simultaneous bilateral bargaining with multiple program buyers. As detailed in paragraphs 97 through 100 of the *Second FNPRM,* neither the Chipty and Snyder model nor the Raskovich model persuades the Commission that limits on cable operator size are unnecessary. The Commission finds it unlikely that bargaining power is symmetric across all buyers regardless of size. Adilov, using basic data from the BKS Study, estimates bargaining power directly.[14] Adilov's results reveal statistically significant differences in individual buyers' bargaining power, a result that is not consistent with an assumption of constant bargaining power across firm size. The data generated from the BKS Study also show that buyers and sellers did not split the economic surplus evenly under all conditions. The Commission seeks comment on the usefulness of bilateral bargaining theory in setting an ownership limit.

(b) Experimental Economics Study

27. In 2002, the Commission released the BKS Study, which concerns the extent to which different levels of horizontal concentration among MVPDs might affect the flow of video programming to consumers. The study, placed in the record of this proceeding, utilized the methodology of experimental economics, which examines economic interactions among market participants in controlled laboratory settings. Commenters to the *2001 FNPRM* raise several objections to reliance on the BKS Study in setting a horizontal ownership limit. The Commission recognizes that the BKS study has limitations; however, the Commission believes that experimental economics can be a useful tool for evaluating the effects of increasing concentration. The *Second FNPRM* seeks comment on whether the Commission should consider employing experimental economics for purposes of setting an ownership limit.

(c) Additional Factors in the Analysis

28. The *Second FNPRM* in paragraphs 105 through 136 discusses four factors that should be considered when designing, evaluating, and applying an analytical framework.

(1) The Impact of Competition at the Distribution Level

29. The *Time Warner II* court criticized the Commission for failing to examine whether cable operators had market power in the distribution market, and in particular, for failing to take into account the growth of competition from direct broadcast satellite (DBS) providers. In the *2001 FNPRM,* the Commission sought comment on the impact of DBS' growth and presence on cable operators' market power and on their incentive to choose programming for reasons other than quality. In response, cable commenters argue that the Commission must conduct a ''dynamic'' examination of market power, which would show that the Commission need not impose any limits, since programmers have so many different outlets for their product that cable operators hold no deleterious market power. These commenters maintain that because any dissatisfied cable customer can switch to DBS, cable operators have no incentive to lower the

[10] *See, e.g.*, Comments filed in MB Docket No. 04–207 (*A La Carte Proceeding*), Oxygen Comments at 2–8; A&E Comments at 15–25; Crown Media Comments at 7–12; TV One Comments at 1–3, Decl. of Larry D. Gerbrandt at 4–11.

[11] The term ''monopsony'' refers to the situation in which a firm is the only buyer in a market, and the term ''monopoly'' refers to the situation in which a firm is the only seller in a market.

[12] *See* Raskovich Comments, later revised and published as Alexander Raskovich, *Pivotal Buyers and Bargaining Position,* 51 J. of Indus. Econ. 4, 405–26 (Dec. 2003).

[13] Tasneem Chipty & Christopher Snyder, *The Role of Firm Size in Bilateral Bargaining: A Study of the Cable Television Industry,* 81 Rev. Econ. & Stat. 2, 326–40 (1999).

[14] Adilov *ex parte* statement (Jan. 9, 2003) (submitting Nodir Adilov, *Firm Size and Bargaining Power: A Non-Linear Least Squares Estimate from the Cable Industry,* Working Paper, Department of Economics, Cornell University (Nov. 2002)).

quality or quantity of programming. CFA, however, argues that DBS is not a substitute for cable, because of its higher price and quality, and that the rise of DBS competition has failed to limit cable rate increases. CFA points to survey data that show that rural areas often lack cable service, and that a large proportion of satellite customers live in rural areas. CFA claims that the survey data demonstrate that for most satellite customers cable is not a substitute.

30. The *Second FNPRM* seeks comment on CFA's arguments and evidence, especially in light of the rapid growth of DBS subscribership and recent changes in the prices and programming DBS operators offer. It also seeks comment on whether a dynamic analysis of the type envisioned by cable commenters is necessary, and comment on how the Commission could perform such an analysis. The *Second FNPRM* further seeks comment on the degree to which the presence of DBS distribution alternatives acts to curb cable operators' bargaining power in the total programming market, and on how the Commission can analyze the effects of competition in the MVPD market to establish a specific limit.

(a) Threshold Approach

31. Under the threshold approach, the Commission would determine the level of competition from DBS and other MVPDs necessary to prevent the harms identified by Congress in Section 613(f). As long as competition exceeded this threshold, no horizontal limit would be necessary. The *2001 FNPRM* proposed several measures that could be used in a threshold test and asked for comment on these. The *Second FNPRM* requests further comment on the threshold approach, as well as on whether the Implicit Lerner Index, the ''q'' ratio, the Herfindahl-Hirschman Index (HHI), or alternative measures of market performance could be used in the threshold approach.

(2) The Potential for Joint Action

32. The Commission in paragraphs 117 through 125 of the *Second FNPRM* asks whether Section 613(f)(2)(A) requires the Commission to examine the possibility of joint action, in which firms act to maximize their joint benefits by reducing competition, either through overt or tacit collusion. Because the language of the Act refers to cable operators' ''joint actions,'' and because the economics and legal literatures acknowledge the possibility of tacit collusion in certain circumstances, the *Second FNPRM* tentatively concludes that the Commission should determine whether joint action by cable operators is likely, and if we determine that it is likely, we should factor this into the analysis.

33. The Commission notes that an explicit agreement among firms in a given market may not be necessary for that market to be characterized by joint action. This kind of coordinated action, ''conscious parallelism,'' is difficult to detect or control. The *2001 FNPRM* sought comment and economic evidence on whether cable operators have the incentives to engage in collusive behavior, and on what kinds of coordinated or collusive conduct would be relevant to the establishment of a limit. The Commission is not persuaded by the comments received in response to the *2001 FNPRM* that argue that joint action could not occur under certain circumstances, and the *Second FNPRM* seeks further comment on whether cable operators have the incentive and ability to engage in joint action.

(3) The Impact of Independent Actions by Multiple Cable Operators

34. The Commission, in paragraphs 126 through 127 of the *Second FNPRM* asks whether there are theories addressing how multiple cable operators that are acting independently could unfairly impede the flow of programming. The *Second FNPRM* seeks comment on whether such theories would be consistent with the court's holding in *Time Warner II* that promoting diversity alone is not a sufficient basis for crafting a limit designed to address multiple cable operations' independent editorial choices. The Commission seeks comment on the ability of cable operators to identify networks that will be successful, and the cost to programmers and to consumers of cable operator errors in predicting the value of new networks. The Commission also requests information on whether the existence of DBS operators affects these relationships.

(4) The Impact of Vertical Integration

35. The *2001 FNPRM* asked whether large cable operators with programming interests would have an incentive to unfairly favor affiliated programming over unaffiliated programming, and whether they could withhold their affiliated programming from competitors in order to disadvantage or prevent entry by competing MVPDs. The *2001 FNPRM* also asked if vertically-integrated cable operators could use their size to gain large programming license fee discounts and exclusive contracts with nonaffiliated programming, and whether this would harm rival MVPDs, lessen competition, and reduce the flow of programming to consumers. The Commission, in paragraphs 128 through 136 of the *Second FNPRM* finds the studies and analysis submitted in the record on the issue of vertical foreclosure to be insufficient, and seeks further comment and empirical evidence on the likelihood of vertical foreclosure and the ability of a horizontal limit to reduce that likelihood.

(a) Empirical Studies of Foreclosure

36. In response to the *2001 FNPRM,* empirical studies were submitted to the Commission that examined whether vertically-integrated cable operators have favored their affiliated programming services and are likely to do so in the future. However, since the industry has undergone tremendous change since these studies were performed, the Commission tentatively concludes that these studies are of little probative value in our analysis. The *Second FNPRM* asks in paragraph 135 for more evidence that alternative distribution channels are available to the kinds of new programming found on cable TV, and will provide sufficient revenues to provide a means of entering the market. The Commission also asks whether a programming network could make use of these alternative distribution channels for distributing its regular programming, as opposed to a program producer attempting to distribute a single piece of programming, such as a movie.

37. The Commission finds that cable operators potentially have an incentive to engage in vertical foreclosure, and that the evidence presented about their past behavior does not rule out the possibility that a cable operator of larger size could, in the future, have the incentive and ability to discriminate against or foreclose an unaffiliated network. The *Second FNPRM* seeks comment on independent analyses that have been performed on this issue since the close of the comment period in the *2001 FNPRM.*

3. Potential Benefits of Horizontal Concentration

38. The *2001 FNPRM* asked about the benefits of horizontal concentration, such as economies of scale, development of new programming, digital deployment, and investment in non-video services. Some commenters claim that concentration would bring such benefits. The *Second FNPRM* in paragraphs 137 through 142 discusses some theoretical benefits of concentration; however, the Commission has no evidence that would

help us identify these benefits or evaluate them at concentrations higher than those that exist today. Further, many of the purported benefits such as high-speed Internet, digital cable and telephony services are emerging at current levels of concentration, and the Commission tentatively concludes that further concentration is not necessary to speed development and delivery of these services.

39. Some commenters argue that high levels of concentration may provide direct benefits to programmers, in particular by better enabling programmers to recover their costs. Commenters also argue that increasing concentration can help solve the potential problem of multiple small cable operators attempting to free ride on the payments made by other cable operators, in which each cable operator forces down the price it pays to a level that fails to cover an adequate share of the fixed costs. The realization of this potential benefit, however, depends upon several factors that are not likely to occur in practice. The *Second FNPRM* tentatively concludes that commenters have not demonstrated that allowing a cable operator to become large enough to become a ''pivotal buyer'' will improve the flow of programming, and should therefore not be counted as a benefit of increased horizontal concentration.

D. Vertical Limit

40. Section 613(f) of the Communications Act directs the Commission to ''prescribe rules and regulations establishing reasonable limits on the number of channels on a cable system that can be occupied by a video programmer in which a cable operator has an attributable interest.'' In 1993, the Commission set a 40% limit on the number of activated channels that can be occupied by a cable operator's affiliated video programming services. The *Time Warner II* decision reversed and remanded the 40% channel occupancy limit, finding that the Commission had failed to justify its vertical limit with record evidence, and had failed to adequately consider the benefits and harms of vertical integration or current MVPD market conditions in its analysis. The *2001 FNPRM* sought comment on how the Commission could fashion meaningful and relevant channel occupancy limits given the changes that have occurred in the MVPD industry.

41. As discussed in paragraphs 143 through 147 of the *Second FNPRM,* several commenters assert that the Commission should not adopt any channel occupancy rules and should not limit the carriage of affiliated programming. Other commenters, however, assert that horizontal concentration and vertical integration in the MVPD industry require that the Commission enact and enforce a strict channel occupancy limit.

42. Both Congress and the Commission have long recognized that vertical integration produces efficiencies in the production, distribution, and marketing of video programming; however, we have also been concerned that such integration may provide an incentive for cable operators to engage in strategic, anticompetitive behavior. The economics literature provides support for both propositions, yet none of the comments filed in response to the *2001 FNPRM* yielded a sound evidentiary basis for either retaining the current vertical limit or for setting a different limit. Nonetheless, the Commission disagrees with commenters who assert that the Commission should not adopt any channel occupancy rules and should not limit carriage of affiliated programming, finding that the Commission is bound to follow Congress' statutory directive that a vertical limit be set. The Commission requests comment and empirical and theoretical evidence to assist in the development of reasonable limits and in the articulation of how such limits address the statutory goals.

1. Defining the Market

43. In paragraphs 148 through 149, the *Second FNPRM* seeks comment on how to define the programming and distribution markets for the purposes of determining an appropriate vertical limit. The *2001 FNPRM* proposed that programming could be classified into two broad categories, general entertainment and niche programming. The *Second FNPRM* asks whether the market for programming should be segmented according to the type of programming network involved. It also seeks comment on whether placement of networks on different tiers affects how vertical foreclosure might be implemented by a cable operator, and whether the Commission's rules should be applied on a tier-specific or package-specific basis.

2. Potential Harms of Vertical Integration

44. The *2001 FNPRM* asked commenters to ''address the economic basis underlying the concern with vertical integration and market foreclosure'' and whether the necessary conditions existed in the MVPD industry for cable operators to profitably engage in vertical foreclosure, and for this foreclosure to be harmful to the flow of programming. The Commission also sought comment on whether current and likely future developments in the MVPD market will mitigate past concerns regarding the ability of cable operators to discriminate against unaffiliated programming networks. In their responses to the *2001 FNPRM,* cable operators point to market factors that make vertical foreclosure unlikely. The *Second FNPRM* again seeks empirical, theoretical and anecdotal evidence to support the Commission's effort to carry out its statutory mandate in setting a vertical limit.

3. Potential Benefits of Vertical Integration

45. The *2001 FNPRM* sought comment on what impact relaxing or modifying the current limit might have on producing economic efficiencies, fostering innovation in services, and encouraging greater investment in and development of diverse and responsive programming. In response, cable commenters argued that vertical integration provides efficiencies by increasing the likelihood of financing for new networks and reducing the likelihood of ''hold-up.'' They also argue that it eliminates the problem of double marginalization, which occurs when both upstream and downstream firms attempt to exercise market power by charging above-cost prices. Commenters failed, however, to demonstrate that the benefits of vertical integration will always exceed the potential harms from vertical foreclosure. The Commission thus seeks further comment on whether and when the benefits of vertical integration mitigate the potential harms that might result, either generally or for particular vertical combinations.

46. The literature indicates that historically, content providers have received benefits from vertical integration with distributors. In the multichannel video programming industry, three kinds of benefits can result from vertical integration: transaction efficiencies, enhanced availability of capital and creative resources, and risk reduction through signaling commitment. The *Second FNPRM* examines each of these benefits in paragraphs 154 through 162.

E. Diversity of Information Sources

47. Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70% of households within the United States and are subscribed to by 70% of

those households, the Commission may promulgate any additional rules necessary to promote diversity of information sources. In its *Eleventh Annual Report,* the Commission found that the first 70% threshold has been met, but that the second 70% threshold has not been met.[15] The Commission seeks comment in this proceeding on whether Section 612(g) would provide an independent or complementary statutory basis to limit cable operators' horizontal or vertical ownership interests, should the Commission determine that the second threshold has been met.

III. Procedural Matters

A. Comment Information

48. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
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B. Paperwork Reduction Act

49. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

C. Ex Parte Information

50. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's Rules.[16]

IV. Initial Regulatory Flexibility Act Statement

51. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules considered in the *Second Further Notice of Proposed Rulemaking* (*Second FNPRM*) Public comments are requested on this IRFA. Comments must be identified as responses to this IRFA and must be filed by the deadlines for comments provided on the first page of this document. The Commission will send a copy of the *Second FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need for, and Objectives of, the Proposed Rules

52. Section 613(f) of the Communications Act is intended, in part, to foster a diverse, robust, and competitive market in the acquisition and delivery of multichannel video programming. Specifically, Section 613(f) requires the Commission to establish reasonable limits on the number of cable subscribers that may be reached through commonly owned or attributed systems (horizontal limits) and on the number of channels that can be occupied by the cable system's owned or attributed video programming services (vertical limits). Congress intended these limits to ensure that cable operators do not use their horizontal reach in the multichannel video distribution (MVPD) market, acting unilaterally or jointly, to unfairly impede the flow of video programming to consumers. However, Congress recognized that multiple system ownership could benefit consumers by allowing efficiencies in the administration, distribution, and procurement of programming, and by providing capital and a ready subscriber base to promote the introduction of new programming services. Pursuant to its statutory mandate, and balancing these competing interests, the Commission has adopted and periodically revised cable ownership limits.

53. The Commission first established horizontal and vertical ownership limits in 1993.[17] The horizontal limit bars cable operators from serving more than 30% of all U.S. MVPD subscribers. The vertical limit bars cable operators with 75 or fewer channels from devoting more than 40% of channel capacity to

[15] *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming,* 20 FCC Rcd 2755, 2767–68 para. 20 (2005).

[16] *See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).

[17] *See Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits, Cross-Ownership Limitations, and Anti-trafficking Provisions,* 8 FCC Rcd 8565, 8567 paras. 3–4 (1993) (*1993 Second Report and Order*).

affiliated programming. In *Time Warner II,* the D.C. Circuit remanded the Commission's horizontal and vertical limits, finding that the horizontal and vertical ownership limits unduly burdened cable operators' First Amendment rights, that the Commission's evidentiary basis for imposing the ownership limits and its rationales supporting the vacated attribution rules did not meet the applicable standards of review, and that the Commission had failed to consider sufficiently changes that have occurred in the MVPD market since passage of the 1992 Act. The Commission thereafter issued the *2001 FNPRM* soliciting comment aimed at establishing a sound record on which to base cable horizontal and vertical limits.

54. None of the comments to the *2001 FNPRM* yielded a sound evidentiary basis for setting horizontal or vertical limits. The Commission concludes that a *Second FNPRM* is necessary to update the record and provide additional input on horizontal and vertical ownership limits so that the Commission may comply with the statutory mandate and the court's directives.

55. In the *Second FNPRM*, the Commission seeks comment on how recent developments in the industry may affect the issues before us. Additionally, to develop a more focused and useful record, the Commission addresses the viability of proposals for setting limits suggested in the record.

Legal Basis

56. The authority for the action proposed in this rulemaking is contained in Sections 2(a), 4(i), 303, 307, 309, 310, and 613 of the Communications Act of 1934, as amended, 47 U.S.C. 152(a), 154(i), 303, 307, 309, 310, 533.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

57. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[18] Under the Small Business Act, a ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[19] In paragraphs 8 through 11 of Appendix B of the *Second FNPRM*, the Commission discusses the various types of small entities that may be affected by the rules and policies in the *Second FNPRM*.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

58. None proposed.

Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

59. The RFA requires an agency to describe any significant alternatives specifically affecting small entities that it has considered in proposing regulatory approaches, which may include, among others, the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[20]

60. The cable ownership limits are intended to prevent large cable entities from unfairly impeding the flow of video programming to consumers through their horizontal reach and/or their vertical integration. Any horizontal or vertical limits adopted by the Commission would directly impact large cable entities, and we anticipate that they will have little adverse impact on small entities. The *Second FNPRM* discusses several potential scenarios in which small entities may suffer harm from large entities, either through their horizontal reach, their vertical integration, or both, and seeks comment on crafting rules that prevent harms to small entities, which could, in turn, protect the flow of programming to consumers.

Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

61. None.

V. Ordering Clauses

62. Accordingly, it is ordered, that pursuant to authority contained in sections 2(a), 4(i), 303, 307, 309, 310, and 613 of the Communications Act of 1934, as amended, 47 U.S.C. 152(a), 154(i), 303, 307, 309, 310, and 533, this *Second Further Notice of Proposed Rulemaking* is adopted.

63. It is further ordered that, pursuant to the authority contained in sections 2(a), 4(i), 303, 307, 309, 310, and 613 of the Communications Act of 1934, as amended, 47 U.S.C. 152(a), 154(i), 303, 307, 309, 310, and 533, notice is hereby given of the proposals described in this *Second Further Notice of Proposed Rulemaking.*

64. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–11473 Filed 6–7–05; 8:45 am]

BILLING CODE 6712–01–P

[18] *Id.* sec. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[19] 15 U.S.C. 632.

[20] 5 U.S.C. 603(c).

Reader Aids

Federal Register

Vol. 70, No. 109

Wednesday, June 8, 2005

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
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FEDERAL REGISTER PAGES AND DATE, JUNE

31321–32218 1
32219–32480 2
32481–32708 3
32709–32976 6
32977–33334 7
33335–33688 8

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
25 ..... 33335, 33337
39 ..... 32483, 32982, 32984, 32986, 32988, 32990, 32992, 32996, 32998, 33339, 33340, 33344
71 ..... 32229, 32231, 32484, 33346, 33347, 33348

Proposed Rules:
39 ..... 31393, 31395, 32273, 32524, 32527, 32534, 32537, 32540, 32542, 32544, 32547, 32738, 33045
27 33399
71 ..... 32275, 33401, 33402, 33403
414 32192

15 CFR

902 31323

16 CFR

305 32484

17 CFR

1 32866

19 CFR

Proposed Rules:
146 33046

20 CFR

1 33590
30 33590

Proposed Rules:
404 32550
416 32550

21 CFR

510 32487
520 32488
522 32488
558 32488

Proposed Rules:
1 33404

24 CFR

320 33650

Proposed Rules:
598 33642

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, 33349, 33351
148.....33351
149.....33351
150.....33351
165 .....32235, 32239, 32241, 33352

Proposed Rules:
117 .....32276, 32278, 33405
165.....33047

36 CFR

7.....31345
228.....32713
401.....32490
402.....32490
403.....32490

39 CFR

3001.....32492

40 CFR

9.....33354
23.....33354
52.....33363, 33364
63.....33000
70.....32243
81.....31353, 33364
93.....31354
163.....33354
177.....33354
178.....33354
179.....33354
180 .....31355, 31359, 31365, 33354
228.....32498
271.....32247
300.....33368

Proposed Rules:
52.....33408
81.....33408, 33409
152.....33414
158.....33414
180.....31401
271.....32280
300.....33415

42 CFR

Proposed Rules:
50.....33053

44 CFR

64.....32520
65.....33002

46 CFR

531.....31370

Proposed Rules:
401.....33415

47 CFR

1.....31372
23.....31372
25 .....31372, 32249, 33373
64.....32258
73 .....31372, 33377, 33378
74.....31372
78.....31372
95.....31372
97.....31372

Proposed Rules:
Ch. I.....33416
25.....33426
52.....31405
64.....31405, 31406
73.....31409, 33429
76.....33680

48 CFR

Ch. 1.....33654, 33676
2.....33655, 33657
4.....33657
7.....33656
11.....33656
12.....33657
13.....33656
15.....33656, 33659
19.....33661
22.....33655, 33662
31.....33671, 33973
37.....33657
52 .....33655, 33657, 33661, 33662, 33671
53.....33662
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

49 CFR

171.....33378
209.....33380
213.....33380
214.....33380
215.....33380
216.....33380
217.....33380
218.....33380
219.....33380
220.....33380
221.....33380
222.....33380
223.....33380
225.....33380
228.....33380
229.....33380
230.....33380
231.....33380
232.....33380
233.....33380
234.....33380
235.....33380
236.....33380
238.....33380
239.....33380
240.....33380
241.....33380
244.....33380
1507.....33383

Proposed Rules:
393.....33430

50 CFR

17.....32732, 33015
622 .....32266, 33033, 33385
635.....33033, 33039
648.....31323, 33042
679.....33390
680.....33390

Proposed Rules:
20.....32282
223.....33440
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 8, 2005

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Noncommercial modifications of commercial items; submission of cost or pricing data; published 6-8-05

Payment of union dues or fees; notification of Employee rights; published 6-8-05

Performance-based contracting use for services; incentives; published 6-8-05

Telecommuting for Federal contractors; published 6-8-05

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Noncommercial modifications of commercial items; submission of cost or pricing data; published 6-8-05

Payment of union dues or fees; notification of Employee rights; published 6-8-05

Performance-based contracting use for services; incentives; published 6-8-05

Telecommuting for Federal contractors; published 6-8-05

HEALTH AND HUMAN SERVICES DEPARTMENT

Civil Rights Restoration Act:

Nondiscrimination on basis of race, color, national origin, handicap, sex, and age; conforming amendments; published 5-9-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

Florida; published 6-8-05

Louisiana; published 5-24-05

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Willamette River, Portland, OR; published 6-8-05

LABOR DEPARTMENT

Workers' Compensation Programs Office

Energy Employees Occupational Illness Compensation Program Act; implementation:

Lump-sum payments and medical benefits payments to covered DOE employees, their survivors, certain vendors, contractors and subcontractors; published 6-8-05

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright Arbitration Royalty Panel rules and procedures:

Sound recordings under statutory license; usage reports; published 5-9-05

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Noncommercial modifications of commercial items; submission of cost or pricing data; published 6-8-05

Payment of union dues or fees; notification of Employee rights; published 6-8-05

Performance-based contracting use for services; incentives; published 6-8-05

SDB and HUBZone price evaluation factor; applicability; published 6-8-05

Telecommuting for Federal contractors; published 6-8-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Class E airspace

Correction; published 6-8-05

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Environmental impact and related procedures:

Technical corrections; published 5-9-05

TRANSPORTATION DEPARTMENT

Federal Transit Administration

Environmental impact and related procedures:

Technical corrections; published 5-9-05

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*.

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H.R. 2566/P.L. 109–14

Surface Transportation Extension Act of 2005 (May 31, 2005; 119 Stat. 324)

Last List May 17, 2005

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