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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–04–310]

RIN 0581–AC46

Revision of Fees for the Fresh Fruit and Vegetable Terminal Market Inspection Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations governing the inspection and certification for fresh fruits, vegetables and other products by increasing by approximately 15 percent certain fees charged for the inspection of these products at destination markets. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services at destination markets under the Agricultural Marketing Act of 1946 (AMA of 1946). The fees charged to persons required to have inspection on imported commodities are in accordance with the Agricultural Marketing Agreement Act of 1937 and for imported peanuts under section 1308 of the Farm Security and Rural Investigation Act of 2002.

DATES: Effective January 27, 2006.

FOR FURTHER INFORMATION CONTACT: Rita Bibbs-Booth, Program Support Section, Fresh Products Branch, Fruit and Vegetable Programs, USDA, 1400 Independence Ave., SW., Room 0640–S, Washington, DC 20250–0295, or call (202) 720–0391.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

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

Also, pursuant to the requirement set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS proposed this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The action described herein is being taken for several reasons, including that additional user fee revenues are needed to cover the costs of: (1) Providing current program operations and services; (2) improving the timeliness in which inspection services are provided; and (3) improving the work environment.

AMS regularly reviews its user-fee financed programs to determine if the fees are adequate. The Fresh Products Branch (FPB) has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce its costs. Such actions can provide alternatives to fee increases. However, even with these efforts, FPB's existing fee schedule will not generate sufficient revenue to cover program costs while maintaining the Agency mandated reserve balance. Current revenue projections for FPB's destination market inspection work during FY 2005 are $14.6 million with costs projected at $20.9 million and an end-of-year reserve balance of $17.6 million. However, this reserve balance is due to appropriated funding received in October 2001, and for infrastructure, workplace, and technological improvements. FPB's costs of operating the destination market program are expected to increase to approximately $22.4 million during FY 2006 and $23.1 million during FY 2007. The current fee structure with the infusion of the appropriated funding is expected to fund the terminal market inspection program until FY 2008, when FPB will fall below the Agency's mandated four-month reserve level.

This fee increase should result in an estimated $1.4 million in additional revenues per year (effective in FY 2006). This will not cover all of FPB's costs. FPB will need to continue to increase fees in order to cover the program's operating cost and maintain the required reserve balance. FPB believes that increasing fees incrementally is appropriate at this time. Additional fee increases beyond FY 2006 will be needed to sustain the program in the future.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 3.71 to 4.87 percent depending on locality, effective January 2005, has significantly increased program costs. In addition, general and locality salary increases for Federal employees ranging from 3.90% to 4.92% depending on locality, effective from January 2004, also significantly increased program costs. These salary adjustments have increased FPB's costs by over $700,000 per year. Increases in health and life insurance premiums, along with workers compensation will also increase program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by over $600,000 per year.

Additional funds of approximately $155,000 are necessary in order for FPB to continue to cover the costs associated with additional staff and to maintain office space and equipment. Additional revenues are also necessary to improve the work environment by providing training and purchasing needed equipment. In addition, FPB began, in 2001, developing (with appropriated funds) the Fresh Electronic Inspection Reporting/Resource System (FEIRS) to replace its manual paper and pen inspection reporting process. FEIRS was implemented in 2004. This system has been put in place to enhance and streamline FPB's fruit and vegetable inspection process, however, additional revenue is required to maintain FEIRS.

This rule should increase user fee revenue generated under the destination market program by approximately 15 percent. This action is authorized under the Agricultural Marketing Act of 1946 (AMA of 1946) (See 7 U.S.C. 1622(h)), which provides that the Secretary of Agriculture may assess and collect ''such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *'' There are more than 2,000 users of FPB's

destination market grading services (including applicants who must meet import requirements [1]—inspections which amount to under 2.5 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). There would be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this rule. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in part 51 have been approved previously by OMB and assigned OMB No. 0581–0125. FPB has not identified any other Federal rules which may duplicate, overlap or conflict with this rule.

The destination market grading services are voluntary (except when required for imported commodities) and the fees charged to users of these services vary with usage. However, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is not excessive and should not significantly affect these entities. Finally, except for those persons who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and, therefore, any decision on their part to discontinue the use of the services should not prevent them from marketing their products.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Action

The AMA of 1946 authorizes official inspection, grading, and certification, on a user-fee basis, of fresh fruits, vegetables and other products such as raw nuts, Christmas trees and flowers. The AMA of 1946 provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the cost of the services rendered. This rule would amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs necessary to operate the program.

The Agricultural Marketing Service (AMS) regularly reviews its user-fee programs to determine if the fees are adequate. While FPB continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining the Agency mandated reserve balance. Current revenue projections for destination market inspection work during FY–05 are $14.6 million, with costs projected at $20.9 million and an end-of-year reserve of $17.6 million. However, this reserve balance is due to appropriated funding received from Congress in October of 2001. These funds were established to build up the terminal market inspection reserve fund and for infrastructure improvements including development and maintenance of the inspector training center, workplace and technological improvements, including digital imaging and automation of the inspection process. However, by FY–08, without increasing fees, FPB's trust fund balance for this program will be below the agency mandated four months of operating reserve (approximately $4.6 million) deemed necessary to provide an adequate reserve balance in light of increasing program costs. Further, FPB's costs of operating the destination market program are expected to increase to approximately $22.4 million in FY–06 and to approximately $23.1 million during FY–07. These cost increases (which are outlined below) will result from inflationary increases with regard to current FPB operations and services (primarily salaries and benefits), increased inspection demands, and the acquisition and maintenance of computer technology (*i.e.*, FEIRS).

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 3.71 to 4.87 percent depending on locality, effective January 2005, has significantly increased program costs. In addition, general and locality salary increases for Federal employees ranging from 3.90% to 4.92% depending on locality, effective from January 2004, also significantly increased program costs. These salary adjustments have increased FPB's costs by over $700,000 per year. Increases in health and life insurance premiums, along with workers compensation, will also increase program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by over $600,000 per year.

Additional revenues (approximately $155,000) are necessary in order for FPB to continue to cover the costs associated with additional staff and to maintain office space and equipment. Additional revenues are also necessary to continue to improve the work environment by providing training and purchasing needed equipment. In addition, FPB began, in 2001, developing (with appropriate funds) an automated system known as FEIRS, to replace its manual paper and pen inspection reporting process. Approximately $10,000 in additional revenue per month will be needed to maintain the system. This system has been put in place to enhance FPB's fruit and vegetable inspection processes.

Based on the aforementioned analysis of this program's increasing costs, AMS proposed to increase the fees for destination market inspection services. The following table compares current fees and charges with the proposed fees and charges for fresh fruit and vegetable inspections as found in 7 CFR 51.38. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charge in the schedule of fees as found in § 51.38 are:

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply during those periods when domestic marketing order regulations are in effect. Section 1308 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), 7 U.S.C. 7958, required USDA among other things to develop new peanut quality and handling standards for imported peanuts marketed in the United States.

Currently, there are 14 commodities subject to 8e import regulations: Avocados, dates (other than dates for processing), filberts, grapefruit, kiwifruit, olives (other than Spanish-style green olives), onions, oranges, potatoes, prunes, raisins, table grapes, tomatoes and walnuts. A current listing of the regulated commodities can be found under 7 CFR parts 944, 980, 996, and 999.

Service	Current	Proposed
Quality and condition inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$99.00	$114.00
—Half carlot equivalent or less of each product	83.00	95.00
—For each additional lot of the same product	45.00	52.00
Condition only inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	83.00	95.00
—Half carlot equivalent or less of each product	76.00	87.00
—For each additional lot of the same product	45.00	52.00
Quality and condition and condition only inspections of products each in quantities of 50 or less packages unloaded from the same land or air conveyance:		
—For each product	45.00	52.00
—For each additional lot of any of the same product	45.00	52.00
Lots in excess of carlot equivalents will be charged proportionally by the quarter carlot		
Dock side inspections of an individual product unloaded directly from the same ship:		
—For each package weighing less than 30 pounds	2.5 cents	2.9 cents
—For each package weighing 30 or more pounds	3.8 cents	4.4 cents
—Minimum charge per individual product	99.00	114.00
—Minimum charge for each additional lot of the same product	45.00	52.00
Hourly rate for inspections performed for other purposes during the grader's regularly scheduled work week:		
—Hourly rate for other work performed during the grader's regularly scheduled work week will be charged at a reasonable rate.	49.00	56.00
Audit based services:		75.00
Overtime or holiday premium rate (per hour additional) for all inspections performed outside the grader's regularly scheduled work week.	25.00	29.00
Hourly rate for inspections performed under 40 hour contracts during the grader's regularly scheduled work week.	49.00	56.00
Rate for billable mileage, per mile	1.00	1.00

A notice of proposed rulemaking was published in the **Federal Register** on August 25, 2005 (70 FR 49882). FPB received three comments during this period.

The first comment was received from Western Growers in support of the proposed rule to increase fees by approximately 15 percent for the inspection of products at destination markets. In addition, Western Growers urged the department to utilize an efficient business model to help infuse and enhance the program. Western Growers recognized that cost saving opportunities had been sought and asked that efforts continue to achieve an efficient business model and generate sufficient savings.

The second comment was received from the United Fresh Fruit & Vegetable Association (United) in support of the fee increase. However, United also requested that other funding options be explored before additional fee increases are considered in subsequent years.

The final comments were received from the North American Perishable Agricultural Receivers (NAPAR). NAPAR expressed concern regarding the fee increase, stating that a 15 percent increase seems excessive compared to inspection fees in Canada. It is difficult to compare the USDA fee structure with the Canadian fee structure since both operationally and logistically, the programs are different. NAPAR also commented on the validity of fees charged on multi-lot inspections. We reviewed the charges assessed in the example given and noted that the fee was calculated correctly. NAPAR also commented on the Fresh Electronic Inspection Reporting/Resource System (FEIRS). First, identifying early functionally concerns. Second, noting FEIRS improvements and third, recommending that funds from any increase in fees be used for continued FEIRS development. Appropriate funding for the FEIRS program has been included in the user fee calculations. NAPAR also requested a two week extension to allow their members an opportunity to file comments, which was granted on October 20, 2005, and ended on November 4, 2005. No additional comments from NAPAR members were received during the extension period.

However, during the extended period for comments, two additional comments were received. A comment from Frahm Fresh Produce, Inc., urged that fees not be increased. The State of Washington Potato Committee expressed understanding for the need to increase fees and cited their anticipation of greater efficiencies. In addition, we received a comment concerning FEIRS noting that the program was appreciated at terminal markets and encouraged implementation at shipping point. However, the State of Washington Potato Committee does not support an increase in fees to maintain FEIRS. Finally, the comment stated that the Washington potato industry is feeling funding pressure and has no choice but to opt-out of the inspection process. We do note that there has been a decline in shipping point inspections.

Each of the five comments received was carefully considered. Nevertheless, FPB's current fees are not adequate and an increase in fees is necessary. At the same time, FPB has and continues to realize cost savings to the terminal market program by re-assessing hours of service and staffing, improved management of overtime charged and travel and supply purchases.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and record keeping requirements, Trees, Vegetables.

■ For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Section 51.38 is revised to read as follows:

§ 51.38 Basis for fees and rates.

(a) When performing inspections of product unloaded directly from land or air transportation, the charges shall be determined on the following basis:

(1) Quality and condition inspections of products in quantities of 51 or more packages and unloaded from the same air or land conveyance:

(i) $114 for over a half carlot equivalent of an individual product;

(ii) $95 for a half carlot equivalent or less of an individual product;

(iii) $52 for each additional lot of the same product.

(2) Condition only inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:

(i) $95 for over a half carlot equivalent of an individual product;

(ii) $87 for a half carlot equivalent or less of an individual product;

(iii) $52 for each additional lot of the same product.

(3) For quality and condition inspections and condition only inspections of products in quantities of 50 or less packages unloaded from the same conveyance:

(i) $52 for each individual product:

(ii) $52 for each additional lot of any of the same product. Lots in excess of carlot equivalents will be charged proportionally by the quarter carlot.

(b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:

(1) Dock side inspections of an individual product unloaded directly from the same ship:

(i) 2.9 cents per package weighing less than 30 pounds;

(ii) 4.4 cents per package weighing 30 or more pounds;

(iii) Minimum charge of $114 per individual product;

(iv) Minimum charge of $52 for each additional lot of the same product.

(2) [Reserved]

(c) When performing inspections of products from sea containers unloaded directly from sea transportation or when palletized products unloaded directly from sea transportation are not offered for inspection at dock-side, the carlot fees in (a) of this section shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in paragraphs (a) through (c) of this section, including weight-only and freezing-only inspections, fees for inspections shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of $56 per hour: *Provided,* that:

(1) Charges for time shall be rounded to the nearest half hour;

(2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections;

(3) When weight certification is provided in addition to quality and/or condition inspections, a one hour charge shall be added to the carlot fee;

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of $29.00 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: November 16, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–24338 Filed 12–27–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 510, 546, 559, 560, 561, and 567

[No. 2005–57]

Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. They include clarifications and corrections of typographical errors.

EFFECTIVE DATE: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Sandra E. Evans, Legal Information Assistant (Regulations), (202) 906–6076, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS is amending its regulations to incorporate a number of technical and conforming amendments. OTS is making the following miscellaneous changes:

- *Part 510—Miscellaneous Organizational Regulations.* The final rule revises OTS' regulation on waiver or relaxation of regulatory provisions with respect to disaster or emergency areas in § 510.2(b). The revision indicates that OTS will make such waivers by ''order,'' rather than by ''resolution.'' This update in terminology better reflects the usual method of operation of OTS, as compared to that of its predecessor, the Federal Home Loan Bank Board.
- *Part 546—Federal Mutual Savings Associations—Merger, Dissolution, Reorganization, and Conversion.* The final rule removes the name of an office that is no longer in existence and corrects a grammatical error.
- *Part 559—Subordinate Organizations.* The final rule adds investments in rural business investment companies (RBICs) to the list of preapproved activities for federal savings association service corporations. This addition reflects the statutory authority of savings associations to make such investments under 7 U.S.C. 2009cc–9. It is consistent with the inclusion of investments in small business investment companies and new market venture capital companies on the list of preapproved activities under the current rule.
- *Part 560—Lending and Investment.* The final rule adds investments in RBICs to the lending and investment powers chart. This addition reflects the statutory authority of savings associations to establish and invest in such entities, or any entity established to invest solely in RBICs, up to five percent of total capital and surplus under 7 U.S.C. 2009cc–9.
- *Part 561—Definitions for Regulations Affecting All Savings Associations.* The final rule revises the definition of ''demand accounts'' in § 561.16 to delete paragraph (b), remove the designation for paragraph (a), and make a grammatical change to the text that was formerly designated as

paragraph (a). OTS is deleting paragraph (b) for consistency with a November 28, 2005, Chief Counsel opinion. That opinion concluded that the payment of a certain type of finders' fee would not violate the prohibition against the payment of interest on demand deposits in section 5(b)(1)(B)(i) of the Home Owners' Loan Act, 12 U.S.C. 1464(b)(1)(B)(i), even though the fees in question would not specifically fit the exceptions indicated in paragraph (b). Savings associations may, however, continue to rely on the language in paragraph (b) as two examples of permissible types of finders' fees.

• *Part 567—Capital.* The final rule corrects a typographical error in § 567.6(b)(5)(v)(B).

Administrative Procedure Act; Riegle Community Development and Regulatory Improvement Act of 1994

OTS finds that there is good cause to dispense with prior notice and comment on this final rule and with the 30-day delay of effective date mandated by the Administrative Procedure Act.[1] OTS believes that these procedures are unnecessary and contrary to public interest because the rule merely makes technical changes to existing provisions. Because the amendments in the rule are not substantive, these changes will not affect savings associations.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides that regulations that impose additional reporting, disclosure, or other new requirements may not take effect before the first day of the quarter following publication.[2] This section does not apply because this final rule imposes no additional requirements and makes only technical changes to existing regulations.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[3] the OTS Director certifies that this technical corrections regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866

OTS has determined that this rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

[1] 5 U.S.C. 553.

[2] Public Law 103–325, 12 U.S.C. 4802.

[3] Public Law 96–354, 5 U.S.C. 601.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

List of Subjects

12 CFR Part 510

Administrative practice and procedure.

12 CFR Part 546

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Subsidiaries.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 561

Savings associations.

12 CFR Part 567

Savings associations.

■ Accordingly, the Office of Thrift Supervision amends title 12, chapter V of the Code of Federal Regulations, as set forth below.

PART 510—MISCELLANEOUS ORGANIZATIONAL REGULATIONS

■ 1. The authority citation for part 510 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; Pub. L. 101–410, 104 Stat. 890; Pub. L. 104–134, 110 Stat. 1321–358.

§ 510.2 [Amended]

■ 2. Amend § 510.2(b) by removing the word ''resolution'' and by adding the word ''order'' in its place.

PART 546—FEDERAL MUTUAL SAVINGS ASSOCIATIONS—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

■ 3. The authority citation for part 546 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

§ 546.4 [Amended]

■ 4–5. Section 546.4 is amended in paragraph (a) by removing the phrase ''or the Resolution Trust Corporation'', and in paragraph (b) by removing the phrase ''and home-financing institutions'' and adding the phrase ''or home-financing institutions'' in its place.

PART 559—SUBORDINATE ORGANIZATIONS

■ 6. The authority citation for part 559 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828.

■ 7. Revise § 559.4(g) to read as follows:

§ 559.4 What activities are preapproved for service corporations?

* * * * *

(g) *Investments.* (1) Tax-exempt bonds used to finance residential real property for family units;

(2) Tax-exempt obligations of public housing agencies used to finance housing projects with rental assistance subsidies;

(3) Small business investment companies and new markets venture capital companies licensed by the U.S. Small Business Administration;

(4) Rural business investment companies; and

(5) Investing in savings accounts of an investing thrift.

* * * * *

PART 560—LENDING AND INVESTMENT

■ 8. The authority citation for part 560 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

■ 9. Amend the table in § 560.30 by adding an entry in alphabetical order to read as follows:

§ 560.30 General lending and investment powers of Federal savings associations.

* * * * *

LENDING AND INVESTMENT POWERS CHART

Category	Statutory authorization [1]	Statutory investment limitations (Endnotes contain applicable regulatory limitations)
* * * * * * *		
Rural business investment companies	7 U.S.C. 2009cc–9	Five percent of total capital.
* * * * * * *		

Endnotes

1. All references are to section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) unless otherwise indicated.

* * * * *

PART 561—DEFINITIONS FOR REGULATIONS AFFECTING ALL SAVINGS ASSOCIATIONS

■ 10. The authority citation for part 561 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

■ 11. Revise § 561.16 by removing paragraph (b), removing the designation for paragraph (a), and revising ''which'' to read ''that'' in both instances that it appears.

PART 567—CAPITAL

■ 12. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

■ 13. Amend 567.6(b)(5)(v)(B) by revising ''1381o(g)'' to read ''1831o(g)''.

Dated: December 21, 2005.

By the Office of Thrift Supervision.

Scott M. Polakoff,

Deputy Director.

[FR Doc. 05–24499 Filed 12–27–05; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Policy Statement No. ANM–115–05–14]

Acceptable Methods of Compliance with § 25.562(c)(5) for Front Row Passenger Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy on Acceptable Methods of Compliance with Title 14 Code of Federal Regulations (CFR) § 25.562(c)(5) for Front Row Passenger Seats.

DATES: The final policy was issued by the Transport Airplane Directorate on December 14, 2005.

FOR FURTHER INFORMATION CONTACT: John Shelden, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe/Cabin Safety Branch, ANM–115, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2785; fax (425) 227–1232; e-mail: *John.shelden@faa.gov.*

SUPPLEMENTARY INFORMATION:

Disposition of Comments

A notice of proposed policy was published in the **Federal Register** on April 26, 2005 (70 FR 21343). The comment period was reopened on June 9, 2005 (70 FR 33720). Eight (8) commenters responded to the requests for comments.

Background

The purpose of the policy memorandum is to clarify FAA certification policy of the acceptable substantiation methods used to provide protection under § 25.562(a) when meeting the performance standards in § 25.562(c) for ''front row'' seats. Front row seats are those seats which are located directly aft of a partition, monument, or other commodity, including all passenger seats not considered ''row-to-row.'' The policy is not directed toward other seats. The policy provides an acceptable means of protection for front row occupants.

The final policy as well as the disposition of public comments received are available on the Internet at the following address: *http://airweb.faa.gov.rgl.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Issued in Renton, Washington, on December 14, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24503 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22156; Directorate Identifier 2005–CE–43–AD; Amendment 39–14435; AD 2005–26–14]

RIN 2120–AA64

Airworthiness Directives; BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG Model G103 TWIN ASTIR Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG (Burkhardt Grob) Model G103 TWIN ASTIR sailplanes. This AD requires you to replace the elevator lever, part number (P/N) 103–3521, with an improved design part, P/N 103–3523. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent cracks in the elevator lever, which could cause the elevator lever to fail. This failure could result in loss of control of the sailplane.

DATES: This AD becomes effective on February 6, 2006.

As of February 6, 2006, 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 BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG, Letenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany;

telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200.

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–2005–22156; Directorate Identifier 2005–CE–43–AD.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all Burkhardt Grob Model G103 TWIN ASTIR sailplanes. The LBA reports an instance of elevator lever failure on one of the affected sailplanes. Cracks in the elevator lever caused the elevator lever to fail.

The cracks are a result of inadequate design in the structural strength and durability.

The elevator lever, part number (P/N) 103–3521, is made from the same cast alloy as the airbrake over-center levers, P/Ns 103–4123 (left) and 103–4124 (right), used on Burkhardt Grob Model G103 TWIN ASTIR sailplanes. Cracks found on these parts caused us to issue AD 97–24–10, Amendment 39–10217 (62 FR 62948, November 26, 1997), which requires replacing P/Ns 103–4123 and 103–4124 with improved design parts, P/N 103B–4123 and 103B–4124.

What is the potential impact if FAA took no action? If not prevented, cracks in the elevator lever could cause the elevator lever to fail. This failure could result in loss of control of the sailplane.

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 all Burkhardt Grob Model G103 TWIN ASTIR sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 14, 2005 (70 FR 54311). The NPRM proposed to require you to replace the aluminum cast alloy elevator lever, P/N 103–3521, with a sheet aluminum elevator lever, P/N 103–3523.

Comments

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

Comment Issue No. 1: Address the Use of Parts Manufacturer Approval (PMA) Parts

What is the commenter's concern? The commenter states that the PMA part may often share the identical design data with the original part while carrying a completely different part number; therefore, it is possible the AD will not address certain defective PMA parts installed on the aircraft, allowing the unsafe condition to continue.

The commenter also states that it is possible that a ''new and improved'' PMA version of the defective original part may already exist in the marketplace. Therefore, specifying one approved part in preference to a different, but also approved part, will impart a commercial advantage to one manufacturer over the other.

The commenter requests that the final rule AD action be changed to address the replacement of identical, defective PMA parts and allow replacement with an identical, improved PMA part.

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

We will change the final rule AD action to include the phrase to cover the PMA replacement parts and add information to clarify the phrase ''or FAA-approved equivalent part number.''

Conclusion

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

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

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

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many sailplanes does this AD impact? We estimate that this AD affects 60 sailplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected sailplanes? We estimate the following costs to do the replacement:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
20 work hours × $65 per hour = $1,300	$715	$2,015	60 × $2,015 = $120,900.

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–2005–22156; Directorate Identifier 2005–CE–43–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:

2005–26–14 BURKHARDT GROB LUFT– UND RAUMFAHRT GmbH & CO KG: Amendment 39–14435; Docket No. FAA–2005–22156; Directorate Identifier 2005–CE–43–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on February 6, 2006.

What Other ADs Are Affected By This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects Model G103 TWIN ASTIR sailplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent cracks in the elevator lever, which could cause the elevator lever to fail. This failure could result in loss of control of the sailplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Check the sailplane service history records to determine if part number (P/N) 103–3521 (or FAA-approved equivalent P/N), aluminum cast alloy elevator lever, has been replaced with P/N 103–3523 (or FAA-approved equivalent P/N), sheet aluminum elevator lever.	Within the next 25 hours time-in-service (TIS) after February 6, 2006 (the effective date of this AD).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the sailplane service of history records 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) If you can positively determine by checking the sailplane service history records that the replacement specified in paragraph (e)(1) of this AD has been done, no further action is required.	Not applicable	Not applicable.
(3) If you cannot positively determine by checking the sailplane service history records that the replacement specified in paragraph (e)(1) of this AD has been done, replace P/N 103–3521 (or FAA-approved equivalent P/N) with P/N 103–3523 (or FAA-approved equivalent P/N).	Within the next 25 hours TIS after February 6, 2006 (the effective date of this AD).	Following GROB Luft-und Raumfahrt Service Bulletin MSB 315–67/1 dated December 20, 2004.
(4) 14 CFR 21.303 allows for replacement parts through parts manufacturer approval (PMA). The phrase ''or FAA-approved equivalent part number'' in this AD is intended to signify those parts that are PMA approved through identicality to the design of the part under the type certificate and replacement parts to correct the unsafe condition under PMA (other than identicality). If parts are installed that are identical to the unsafe parts, then the corrective actions of the AD affect these parts also. In addition, equivalent replacement parts to correct the unsafe condition under PMA (other than identicality) may also be installed provided they meet current airworthiness standards, which include those actions cited in this AD.	Not applicable	Not applicable.

Actions	Compliance	Procedures
(5) Do not install any P/N 103–3521 (or FAA-approved P/N equivalent to 103–3521), aluminum cast alloy elevator lever.	As of February 6, 2006 (the effective date of this AD).	Not applicable.

May I Request an Alternative Method of Compliance?

(f) The Manager, Standards Office, Small Airplane Directorate, FAA, has the authority to approve alternative methods of compliance (AMOCs) for this AD, if requested using the procedures found in 14 CFR 39.19. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) German AD Number D–2004–292R1, dated February 28, 2005, also addresses the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in GROB Luft-und Raumfahrt Service Bulletin MSB 315–67/1 dated December 20, 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 BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG, Letenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200. 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–2005–22156; Directorate Identifier 2005–CE–43–AD.

Issued in Kansas City, Missouri, on December 16, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24478 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20803; Directorate Identifier 2005–CE–19–AD; Amendment 39–14433; AD 2005–26–12]

RIN 2120–AA64

Airworthiness Directives; BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, G103C TWIN III ACRO, and G 103 C Twin III SL Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) to supersede AD 2004–08–13, which applies to certain BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG (Burkhardt Grob) Models G103 TWIN ASTIR, G103 TWIN II, G103 TWIN III ACRO, and G103 C Twin III SL sailplanes. AD 2004–08–13 currently requires you to replace the center of gravity (CG) release hook attachment brackets with brackets of improved design. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. This AD retains all the actions required in AD 2004–08–13 and adds Model G103A TWIN II ACRO sailplanes to the applicability. We are issuing this AD to prevent abnormal or uncontrolled sailplane release due to cracked CG release hook attachment brackets. This condition could result in reduced or loss of sailplane control.

DATES: This AD becomes effective on February 6, 2006.

On June 4, 2004 (69 FR 21402, April 21, 2004), the Director of the Federal Register approved the incorporation by reference of Grob Service Bulletin No. MSB315–62, dated January 21, 2002, and Grob Service Bulletin No. MSB869–22, dated January 22, 2002.

As of February 6, 2006, the Director of the Federal Register approved the incorporation by reference of Grob Service Bulletin No. MSB315–62/2, dated March 9, 2005.

ADDRESSES: To get the service information identified in this AD, contact BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG, Letenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200.

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–2005–20803; Directorate Identifier 2005–CE–19–AD.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What is the background of the subject matter? Reports of cracks found in the center of gravity (CG) release hook attachment brackets caused us to issue AD 2004–08–13, Amendment 39–13582 (69 FR 21402, April 21, 2004). AD 2004–08–13 applies to Burkhardt Grob Models G103 TWIN ASTIR, G103 TWIN II, G103 TWIN III ACRO, and G103 C Twin III SL sailplanes. That AD currently requires you to replace the CG release hook attachment brackets with brackets of improved design.

What has happened since AD 2004–08–13 to initiate this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified FAA of the need to change AD 2004–08–13. The LBA reports that the actions required in AD 2004–08–13 should also apply to Model G103A TWIN II ACRO sailplanes.

What is the potential impact if FAA took no action? If not prevented, a cracked CG release hook attachment bracket could lead to abnormal or uncontrolled sailplane release. This condition could result in reduced or loss of sailplane control.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Burkhardt

Grob Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, G103C TWIN III ACRO, and G 103 C Twin III SL sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 5, 2005 (70 FR 58100). The NPRM proposed to supersede AD 2004–08–13 with a new AD. The proposed AD would retain the actions exactly as required in AD 2004–08–13 for Models G103 TWIN ASTIR, G103 TWIN II, G103C TWIN III ACRO, and G 103 C Twin III SL sailplanes, and would add Model G103A TWIN II ACRO sailplanes to the applicability.

Comments

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

Conclusion

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

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

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

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many sailplanes does this AD impact? We estimate that this AD affects 136 sailplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected sailplanes? We estimate the following costs to do the replacement:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
2 work hours × $65 per hour = $130	$67	$197	$197 × 136 = $26,792.

What is the difference between the cost impact of this AD and the cost impact of AD 2004–08–13? The only difference between the cost impact of AD 2004–08–13 and this AD is the addition of Model G103A TWIN II ACRO sailplanes to the applicability. There is no difference in the cost to do the required actions.

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–2005–20803; Directorate Identifier 2005–CE–19–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2004–08–13, Amendment 39–13582 (69 FR 21402, April 21, 2004), and by adding a new AD to read as follows:

2005–26–12 BURKHARDT GROB LUFT– UND RAUMFAHRT GmbH & CO KG: Amendment 39–14433; Docket No. FAA–2005–20803; Directorate Identifier 2005–CE–19–AD; supersedes AD 2004–08–13, Amendment 39–13582.

When Does This AD Become Effective?

(a) This AD becomes effective on February 6, 2006.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2004–08–13, Amendment 39–13582.

What Sailplanes Are Affected by This AD?

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

MODELS
(1) G103 TWIN ASTIR
(2) G103 TWIN II
(3) G103A TWIN II ACRO
(3) G103C TWIN III ACRO
(4) G 103 C Twin III SL

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions of this AD are intended to prevent abnormal or uncontrolled sailplane release due to cracked center of gravity (CG) release hook attachment brackets. This condition could result in reduced or loss of sailplane control.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Replace the center of gravity (CG) release hook attachment brackets with improved design brackets as follows: (i) *For Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, and G103C TWIN III ACRO sailplanes:* install new part number (P/N) 103B–2360.01/1 or 103B–2360.01/2 and P/N 103B–2360.02/1 or 103B–2360–02/2. (ii) *For Models G103 TWIN ASTIR sailplanes:* install an additional plate, P/N 103–2360.02 below each attachment bracket. (iii) *For Models G103 C TWIN III SL sailplanes:* install new P/N 103B–2360.01/2 and P/N 103B–2360.02/2.	For sailplanes previously affected by AD 2004–08–13: Within the next 25 hours time-in-service (TIS) after June 4, 2004 (the effective date of AD 2004–08–13), unless already done. For sailplanes not previously affected by AD 2004–08–13: Within the next 25 hours time-in-service (TIS) after February 6, 2006 (the effective date of this AD), unless already done.	*For Models G103 TWIN ASTIR, G103 TWIN II, G103A TWIN II ACRO, and G103C TWIN III ACRO sailplanes:* Follow Grob Service Bulletin No. MSB315–62, dated January 21, 2002, or Grob Service Bulletin No. MSB315–62/2, dated March 9, 2005. *For Model G103 C Twin III SL sailplanes:* Follow Grob Service Bulletin No. MSB869–22, dated January 22, 2002.
(2) Do not install any CG release hook attachment bracket that is not a part number referenced in paragraphs (e)(1)(i) and (e)(1)(iii) of this AD, as applicable.	As of 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 Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) German AD No. 2002–066, effective date: March 21, 2002, and German AD No. 2002–067, effective date: March 21, 2002, also addresses the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Grob Service Bulletin No. MSB315–62, dated January 21, 2002, Grob Service Bulletin No. MSB315–62/2, dated March 9, 2005, and Grob Service Bulletin No. MSB869–22, dated January 22, 2002, as applicable.

(1) On June 4, 2004 (69 FR 21402, April 21, 2004), and in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the Director of the Federal Register approved the incorporation by reference of Grob Service Bulletin No. MSB315–62, dated January 21, 2002, and Grob Service Bulletin No. MSB869–22, dated January 22, 2002.

(2) As of February 6, 2006, and in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, the Director of the Federal Register approved the incorporation by reference of Grob Service Bulletin No. MSB315–62/2, dated March 9, 2005.

(3) To get a copy of this service information, contact BURKHARDT GROB LUFT–UND RAUMFAHRT GmbH & CO KG, Letenbachstrasse 9, D–86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998139; facsimile: 011 49 8268 998200. 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–2005–20803; Directorate Identifier 2005–CE–19–AD.

Issued in Kansas City, Missouri, on December 16, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24480 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22206; Directorate Identifier 2005–CE–45–AD; Amendment 39–14432; AD 2005–26–11]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Models DG–800B and DG–500MB Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain DG Flugzeugbau GmbH Models DG–800B and DG–500MB sailplanes. This AD requires you to modify the connection of the starter ring gear to the lower drive belt pulley adapter. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to prevent the bolts currently used to connect the starter ring gear to the drive belt pulley adapter from shearing off and the bolt heads falling into the engine compartment. Failure of this connection could render the engine inoperative. Consequently, this failure could lead to loss of control of the sailplane.

DATES: This AD becomes effective on February 7, 2006.

As of February 7, 2006, 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 DG-Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: ++49 7257 890; facsimile: ++45 7257 8922; Internet: *www.dg-flugzeugbau.de.*

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2005–22206; Directorate Identifier 2005–CE–45–AD.

FOR FURTHER INFORMATION CONTACT: Gregory Davison, Glider Project Manager, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain DG Flugzeugbau GmbH Models DG–800B and DG–500MB sailplanes. The LBA reports that sheared off bolt heads have been found in the engine compartment of approximately 20 of the specified sailplanes. These bolts connect the starter ring gear to the lower drive belt pulley adapter. Failure of this connection could render the engine inoperative.

What is the potential impact if FAA took no action? The bolts currently used to connect the starter ring gear to the drive belt pulley adapter may shear off and the bolt heads could fall into the engine compartment. Failure of this connection could render the engine inoperative. Consequently, this failure could lead to loss of control of the sailplane.

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 DG Flugzeugbau GmbH Models DG–800B and DG–500MB sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 9, 2005 (70 FR 58107). The NPRM proposed to require the modification of the connection of the starter ring gear to the lower drive belt pulley adapter.

Comments

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

Conclusion

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

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

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

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many sailplanes does this AD impact? We estimate that this AD affects 7 sailplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected sailplanes? We estimate the following costs to do this modification:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
3 work hours × $65 = $195	$21	$216	$1,512

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–2005–22206; Directorate Identifier 2005–CE–45–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:

2005–26–11 DG Flugzeugbau GmbH: Amendment 39–14432; Docket No. FAA–2005–22206; Directorate Identifier 2005–CE–45–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on February 7, 2006.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

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

Model	Serial Nos.
(1) DG–800B ..	All serial numbers up to and including 8–260, with the exception of 8–247 and 8–258; and
(2) DG–500MB	All serial numbers up to and including 5E220B15, with the exception of 5E190B5.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of bolt failure in the connection of the starter ring gear to the drive belt pulley adapter. The bolt heads may shear off and the bolt heads could fall into the engine compartment. The actions specified in this AD are intended to prevent the bolts currently used to connect the starter ring gear to the drive belt pulley adapter from shearing off and the bolt heads falling into the engine compartment. Failure of this connection could render the engine inoperative. Consequently, this failure could lead to loss of control of the sailplane.

What Must I Do to Address This Problem?

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

Actions	Compliance	Procedures
(1) Remove the starter ring gear assembly with adapter and lower drive belt pulley.	Within 30 days after February 7, 2006 (the effective date of this AD).	Follow DG-Flugzeugbau GmbH Working Instruction No. 1 for TN 873/30, dated June 9, 2004; and Technical Note No. 873/30 and No. 843/22, approved by Luftfahrt-Bundesamt (LBA) on June 29, 2004, and approved by European Aviation Safety Agency (EASA) on July 9, 2004.
(2) Modify the connection area where the bolts connect the starter ring gear to the lower drive belt pulley adapter.	Within 30 days after February 7, 2006 (the effective date of this AD).	Follow DG-Flugzeugbau GmbH Working Instruction No. 1 for TN 873/30, dated June 9, 2004; and Technical Note No. 873/30 and No. 843/22, approved by LBA on June 29, 2004, and approved by EASA on July 9, 2004.
(3) Reinstall the starter ring gear assembly with the adapter and lower pulley.	Within 30 days after February 7, 2006 (the effective date of this AD).	Follow DG-Flugzeugbau GmbH Working Instruction No. 1 for TN 873/30, dated June 9, 2004; and Technical Note No. 873/30 and No. 843/22, approved by LBA on June 29, 2004, and approved by EASA on July 9, 2004.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Gregory Davison, Glider Project Manager, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) LBA Airworthiness Directive D–2004–347, dated July 2, 2004; DG-Flugzeugbau GmbH Working Instruction No. 1 for TN 873/30, dated June 9, 2004; and Technical Note No. 873/30 and No. 843/22, approved by LBA on June 29, 2004, and approved by the EASA on July 9, 2004, also address 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 DG-Flugzeugbau GmbH Working Instruction No. 1 for TN 873/30, dated June 9, 2004; and Technical Note No. 873/30 and No. 843/22, approved by LBA on June 29, 2004, and approved by the EASA on July 9, 2004. The Director of the Federal Register approved the incorporation by reference of this service information in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact DG-Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: ++49 7257 890; facsimile: ++45 7257 8922; e-mail: *www.dg-flugzeugbau.de.* 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 20590–0001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2005–22206; Directorate Identifier 2005–CE–45–AD.

Issued in Kansas City, Missouri, on December 16, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24481 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22745; Airspace Docket No. 05–ACE–31]

Establishment of Class E5 Airspace; Hill City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a Class E airspace area extending upward from 700 feet above the surface at Hill City, KS.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft departing from and executing instrument approach procedures to, Hill City Municipal Airport, KS and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

EFFECTIVE DATE: 0901 UTC, April 13, 2006.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 392–2524.

SUPPLEMENTARY INFORMATION:

History

On Thursday, November 10, 2005 the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Hill City, KS (70 FR 68386). The proposal was to establish a Class E5 airspace area to bring Hill City, KS airspace into compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This notice amends Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a Class E airspace area extending upward from 700 feet above the surface at Hill City Municipal Airport, KS. The establishment of Area Navigation (RNAV) Global Positioning System (GPS) Instrument Approach Procedures (IAP) to Runways (RWY) 17 and 35 has made this action necessary. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Hill City Municipal Airport, KS. The area will be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. of the same Order. 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 operationally current. Therefore, this regulation—(1) is not a ''significant rule'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

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; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

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

* * * * *

ACE KS E5 Hill City, KS

Hill City Municipal Airport, KS
(Lat. 39°22′44″ N., long. 99°49′53″ W.)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Hill City Municipal Airport and within 2 miles each side of the 001° bearing from the airport extending from the 7.8-mile radius to 11.4 miles north of the airport, and within 2 miles each side of the 181° bearing from the airport extending from the 7.8-mile radius to 12.5 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on December 8, 2005.

Paul J. Sheridan,

Area Director, Western Flight Services Operations.

[FR Doc. 05–24505 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2003N–0346]

Food Labeling: Ingredient Labeling of Dietary Supplements That Contain Botanicals; Withdrawal

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) published in the **Federal Register** of August 28, 2003 (68 FR 51693), a direct final rule to amend the regulation on the designation of ingredients in dietary supplements by incorporating by reference the most recent editions of the references *Herbs of Commerce* and the *International Code of Botanical Nomenclature*. The direct final rule also would have added a sentence to this regulation codifying the requirements contained in the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) that restrict

the use of the term ''ginseng'' as a common or usual name to botanicals within the genus ''Panax'' and limiting the use of the term ''ginseng'' to labeling and advertising of herbs or herbal ingredients classified within the genus ''Panax.'' FDA is withdrawing the direct final rule because the agency received significant adverse comment.

DATES: The direct final rule published at 68 FR 51693, August 28, 2003, is withdrawn as of December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Office of Nutritional Products, Labeling and Dietary Supplements (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1784.

Authority: Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the direct final rule published on August 28, 2003 (68 FR 51693), is withdrawn.

Dated: December 21, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–24511 Filed 12–27–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9238]

RIN 1545–BE94

Guidance Under Section 7874 for Determining Ownership by Former Shareholders or Partners of Domestic Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 7874 of the Internal Revenue Code (Code) relating to the disregard of certain affiliate-owned stock in determining whether a corporation is a surrogate foreign corporation under section 7874(a)(2)(B) of the Code. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective December 28, 2005.

Applicability Dates: For the date of applicability, see § 1.7874–1T(e).

FOR FURTHER INFORMATION CONTACT: Jefferson VanderWolk, 202–622–3800 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary amendments to 26 CFR part 1 under section 7874 of the Code relating to the determination of the percentage of stock in a foreign corporation held by former shareholders or partners of a domestic corporation or partnership (domestic entity) by reason of holding stock or a partnership interest in the domestic entity, for purposes of determining whether the foreign corporation is a surrogate foreign corporation under section 7874(a)(2)(B).

Section 7874 provides rules for expatriated entities and their surrogate foreign corporations. An expatriated entity is defined in section 7874(a)(2)(A) as a domestic corporation or partnership with respect to which a foreign corporation is a surrogate foreign corporation and any U.S. person related (within the meaning of section 267(b) or 707(b)(1)) to such domestic corporation or partnership. Generally, a foreign corporation is a surrogate foreign corporation under section 7874(a)(2)(B), if, pursuant to a plan or a series of related transactions:

(i) The foreign corporation directly or indirectly acquires substantially all the properties held directly or indirectly by a domestic corporation, or substantially all the properties constituting a trade or business of a domestic partnership;

(ii) After the acquisition at least 60 percent of the stock (by vote or value) of the foreign corporation is held by (in the case of an acquisition with respect to a domestic corporation) former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or (in the case of an acquisition with respect to a domestic partnership) by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership (ownership percentage test); and

(iii) The expanded affiliated group that includes the foreign corporation does not have business activities in the foreign country in which the foreign corporation was created or organized that are substantial when compared to the total business activities of such group.

The tax treatment of expatriated entities and surrogate foreign corporations varies depending on the level of owner continuity. If the percentage of stock (by vote or value) in the surrogate foreign corporation held by former owners of the domestic entity by reason of holding an interest in the domestic entity is 80 percent or more, the surrogate foreign corporation is treated as a domestic corporation for all purposes of the Code. If such ownership percentage is 60 percent or more (but less than 80 percent) by vote or value, the surrogate foreign corporation is treated as a foreign corporation but any applicable corporate-level income or gain required to be recognized by the expatriated entity under section 304, 311(b), 367, 1001, 1248 or any other applicable provision with respect to the transfer or license of property (other than inventory or similar property) cannot be offset by net operating losses or credits (other than credits allowed under section 901). This treatment of an expatriated entity generally applies from the first date properties are acquired pursuant to the plan through the end of the 10-year period following the completion of the acquisition.

Section 7874(c)(2) provides that stock held by members of the expanded affiliated group which includes the foreign corporation is not taken into account for purposes of the ownership percentage test (affiliate-owned stock rule). Section 7874(c)(1) defines the term *expanded affiliated group* as an affiliated group defined in section 1504(a) but without regard to the exclusion of foreign corporations in section 1504(b)(3) and with a reduction of the 80 percent ownership threshold of section 1504(a) to a more-than-50 percent threshold.

The statute provides the Secretary of the Treasury significant regulatory authority. Section 7874(c)(6) authorizes the Secretary of the Treasury to prescribe such regulations as may be appropriate to determine whether a corporation is a surrogate foreign corporation, including regulations to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and to treat stock as not stock. Section 7874(g) authorizes the Secretary of the Treasury to provide such regulations as are necessary to carry out the section.

The legislative history of section 7874 indicates that it was intended to apply to so-called inversion transactions in which a U.S. parent corporation of a multinational corporate group is replaced by a foreign parent corporation without significant change in the ultimate ownership of the group. See H.R. Conf. Rep. No. 108–755, 108th Cong., 2d Sess., at 568 (Oct. 7, 2004). The statute was also intended to apply to similar transactions in which a trade or business of a domestic partnership is transferred to a foreign corporation at

least 60 percent of which is owned by former partners.

A key feature of section 7874 is the affiliate-owned stock rule. Congress intended to accomplish two main objectives with this rule. See Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 108th Congress,* at 344. First, Congress intended that the ownership percentage test should be applied to prevent avoidance of the provisions when they otherwise should apply, including situations involving the use of so-called *hook stock.* In this context, hook stock is stock of the acquiring foreign corporation held by an entity that is at least 50 percent owned (by vote or value) directly or indirectly by the acquiring foreign corporation. If hook stock were respected as stock of the foreign corporation for purposes of section 7874(a)(2)(B)(ii), a taxpayer might implement an inversion and take the position that section 7874 was not applicable by ensuring that hook stock accounted for over 40 percent of the value and voting power of the foreign corporation's stock.

Second, Congress intended that the affiliate-owned stock rule could operate in specified situations to prevent the section from applying to certain transactions occurring within a group of corporations owned by the same common parent corporation before and after the transaction, such as the conversion of a wholly owned domestic subsidiary into a new wholly owned controlled foreign corporation. *Id.* In the absence of this rule, section 7874 could apply to internal group restructuring transactions involving the transfer of a wholly owned domestic corporation (or its assets) to a wholly owned foreign corporation, without a change in the parent corporation of the group.

The IRS and Treasury Department have concluded that the affiliate-owned stock rule should not operate in a manner that allows the avoidance of section 7874 in situations where it should apply. For example, the affiliate-owned stock rule should prevent the use of hook stock to avoid section 7874. On the other hand, the IRS and Treasury Department have also concluded that the rule should not operate in a manner that would result in section 7874 applying to certain types of transactions that are outside the intended scope of the section. For example, the type of concerns that Congress meant to address in enacting section 7874 do not result from certain internal group restructuring transactions involving the transfer to a foreign corporation of the stock or assets of a domestic corporation where minority shareholders have a relatively small percentage interest in such stock or assets before and after the transaction.

In addition, the IRS and Treasury Department believe that the affiliate-owned stock rule was not intended to cause section 7874 to apply to certain acquisitive business transactions, such as the acquisition of stock or assets of a domestic corporation by an unrelated foreign corporation where after the acquisition the former owners of the domestic entity do not own more than 50 percent (by vote or value) of the stock of any member of the expanded affiliate group. For example, the contribution of a domestic entity or its assets to a foreign joint venture corporation in exchange for a minority interest in the joint venture corporation should not result in the joint venture corporation's being treated, for purposes of the ownership percentage test, as wholly owned by the former owners of the domestic entity by operation of the affiliate-owned stock rule. In contrast, section 7874 may properly apply to the acquisition of an existing domestic joint venture entity by a foreign corporation which is at least 60 percent owned, after the acquisition, by the former owners of the acquired domestic entity. Congress intended the section to apply to transactions (other than internal group restructurings, as discussed above) that effectively replace a domestic corporation or partnership with a foreign corporation at least 60 percent of which is held by former owners of the domestic entity.

Explanation of Provisions

The IRS and Treasury Department believe that guidance is necessary to ensure that the affiliated-owned stock rule cannot be used to avoid the application of section 7874, through the use of hook stock or otherwise, where that provision should apply. However, the IRS and Treasury Department also believe that guidance is needed to make sure that this test does not apply to certain transactions that are properly viewed as outside the scope of section 7874. Consequently, clarification is needed with respect to the application of the affiliate-owned stock rule.

The temporary regulation provides, as a general rule, that affiliate-owned stock is excluded from both the numerator and the denominator of the fraction that determines the stock ownership percentage for purposes of section 7874(a)(2)(B)(ii). This rule prevents the use of hook stock (and similar techniques) as means to remove an otherwise covered transaction from the scope of section 7874.

The temporary regulation also provides limited exceptions to the general rule pursuant to which affiliate-owned stock (other than hook stock) is included in the denominator of the fraction that determines the stock ownership percentage for purposes of section 7874(a)(2)(B)(ii), but is excluded from the numerator of that fraction. These exceptions are necessary to prevent section 7874 from applying to (1) certain transactions occurring as part of an internal group restructuring involving a domestic entity; and (2) certain acquisitive business transactions between unrelated parties where the former shareholders or partners of the domestic entity have a minority interest in the acquired properties after the acquisition.

With respect to internal group restructurings, the special rule applies where the common parent corporation owns directly or indirectly at least 80 percent of the domestic entity before the transaction, and continuing owners that are not members of the expanded affiliated group hold no more than 20 percent of the stock of the acquiring foreign corporation after the transaction.

With respect to transactions between unrelated parties, the special rule applies to the acquisition of a domestic entity or its assets by a foreign corporation where, after the acquisition, the former owners of the domestic entity do not own, in the aggregate, directly or indirectly, more than 50 percent of the stock (by vote or value) of any member of the expanded affiliated group that includes the acquiring foreign corporation.

The temporary regulation also provides a rule that prevents hook stock from being taken into account for purposes of (1) determining the percentage of ownership of an entity for purposes of determining whether the special rule is applicable; and (2) the application of the special rule itself.

The IRS and Treasury Department decided it was important to issue these regulations to deal with affiliate-owned stock as soon as possible. As a result, these temporary regulations are being published without further delay and with the same applicability date as section 7874, which applies for taxable years ending after March 4, 2003.

Request for Comments

The IRS and Treasury Department identified internal restructurings and acquisitions by unrelated parties as categories of transactions requiring a special rule regarding affiliate-owned stock in order to prevent unintended consequences under section 7874. Comments are requested as to any other

categories of transactions that may give rise to unintended consequences under section 7874 and these regulations.

The IRS and Treasury Department are considering issuing subsequent public guidance that addresses additional issues under section 7874. This guidance may address issues related to (1) the determination of whether there has been a direct or indirect acquisition of substantially all the properties held directly or indirectly by a domestic corporation or substantially all the properties constituting a trade or business of a domestic partnership; (2) the requirement that such acquisition be pursuant to a plan or a series of related transactions; (3) the requirement, in the ownership percentage test, that ownership of stock be by reason of holding an interest in the domestic corporation or partnership; (4) the treatment of stock sold in a public offering that is related to the acquisition; (5) the requirement that the group's activities in the relevant foreign country are insubstantial when compared to the group's total business activities; (6) whether and to what extent options on stock and other similar interests are treated as stock for the purpose of determining whether a corporation is a surrogate foreign corporation; (7) the disregard of transfers of properties or liabilities if the transfers are part of a plan a principal purpose of which is to avoid the purposes of section 7874; and (8) any adjustments to the application of the section that are necessary to carry out its purposes, including adjustments necessary to prevent avoidance. The IRS and Treasury Department specifically request comments regarding appropriate rules in relation to these and other issues arising under section 7874.

The IRS and Treasury Department also are considering possible changes to § 1.367(a)–3(c), which governs the tax consequences at the shareholder level of certain transactions similar to those addressed by section 7874, in light of the enactment of section 7874. Comments are requested in this regard.

Regulations Addressing Avoidance of the Purposes of Section 7874

The IRS and Treasury Department understand that taxpayers are implementing structures that result in the same overall tax consequences as structures that Congress intended to be subject to section 7874, but taxpayers are taking the position these structures are not within the scope of section 7874. For example, the IRS and Treasury Department understand that the shareholders (or partners) of a domestic corporation (or domestic partnership) may arrange to transfer their shares (or partnership interests) to a newly-formed foreign entity for which an entity classification election under Treasury regulations § 301.7701–3 is made to treat such entity as a foreign partnership for Federal tax purposes. Taxpayers may take the position that these transactions are not subject to section 7874 because the foreign entity is not a foreign corporation for Federal tax purposes and thus is not a surrogate foreign corporation under section 7874(a)(2)(B). In some cases, taxpayers further take the position that the foreign entity, the interests in which are publicly traded, is treated as a partnership for Federal tax purposes.

The IRS and Treasury Department believe that such structures have the effect of inversion transactions. Section 7874(g) grants broad regulatory authority to make adjustments to the application of section 7874 to prevent the avoidance of the purpose of section 7874 through the use of non-corporate entities or other intermediaries. In addition, sections 7805(b)(2) and (3) provide exceptions in certain situations to the general prohibition against the issuance of retroactive regulations found in section 7805(b)(1). Accordingly, the IRS and Treasury Department are considering issuing regulations, which may be retroactive, addressing these structures. The IRS and Treasury Department specifically request comments regarding appropriate rules in relation to these and other uses of intermediary entities (and other techniques, including the use of exchangeable shares) to avoid the purpose of section 7874.

Effective Date

Section 1.7874–1T applies to taxable years ending after March 4, 2003.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f), this Treasury decision will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jefferson VanderWolk, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *. Section 1.7874–1T also issued under 26 U.S.C. 7874(c)(6) and (g).

■ **Par. 2.** Section 1.7874–1T is added to read as follows:

§ 1.7874–1T Disregard of affiliate-owned stock (temporary).

(a) *Scope.* Section 7874(c)(2)(A) provides that stock of the foreign corporation referred to in section 7874(a)(2)(B) held by members of the expanded affiliated group that includes such foreign corporation (the EAG) shall not be taken into account in determining, for purposes of section 7874(a)(2)(B)(ii), the percentage of stock in such foreign corporation held, after the acquisition, by former shareholders or partners of the domestic corporation or partnership referred to in section 7874(a)(2)(B)(i) (the domestic entity) by reason of having held stock or a partnership interest in the domestic entity. This section provides rules under section 7874(c)(2)(A).

(b) *General rule.* Except as provided in paragraph (c) of this section, for purposes of the ownership percentage determination required by section 7874(a)(2)(B)(ii), stock held by one or more members of the EAG is not included in either the numerator or the denominator of the fraction that determines such percentage. For purposes of this § 1.7874–1T, stock held by a partnership shall be considered as held proportionately by its partners.

(c) *Special rules.* For purposes of the ownership percentage determination required by section 7874(a)(2)(B)(ii), stock held by one or more members of the EAG shall be included in the denominator, but not in the numerator, of the fraction that determines the percentage if:

(1)(i) Before the acquisition, 80 percent or more of the stock (by vote or value) or the capital or profits interest in the domestic entity was owned directly or indirectly by the corporation that is the common parent of the EAG after the acquisition; and

(ii) After the acquisition, stock held by non-members of the EAG by reason of holding stock or a capital or profits interest in the domestic entity, if any, does not exceed 20 percent of the stock (by vote or value) of the foreign corporation; or

(2) After the acquisition, the former shareholders or partners of the domestic entity do not own, in the aggregate, directly or indirectly, more than 50 percent of the stock (by vote or value) of any member of the EAG.

(d) *Disregard of subsidiary-owned interests.* Stock or partnership interests owned by an entity in which at least 50 percent of the stock (by vote or value), or at least 50 percent of the capital or profits interest, is owned directly or indirectly by the issuer of such stock or by the partnership in question shall not be taken into account for purposes of:

(1) Determining the percentage of ownership of an entity under paragraphs (c)(1) and (c)(2) of this section; or

(2) Treating stock held by one or more members of the EAG as included in the denominator but not in the numerator under paragraph (c) of this section.

(e) *Examples.* The application of this section is illustrated by the following examples. It is assumed that all transactions in the examples occur after March 4, 2003. In all the examples, *the EAG* means the expanded affiliated group which includes the foreign corporation that has completed the direct or indirect acquisition referred to in section 7874(a)(2)(B)(i). In all the examples, if an entity or other person is not described as either domestic or foreign, it may be either domestic or foreign. The analysis of the following examples is limited to a discussion of issues under section 7874, even though the examples may raise other issues (for example, under section 367):

Example 1. Disregard of hook stock—(i) *Facts.* A is a domestic corporation with 100 shares of a single class of common stock outstanding. A's stock is held by a group of individuals. Pursuant to a plan, A forms F, a foreign corporation, and transfers to F the stock of several wholly owned foreign subsidiaries, in exchange for 90 shares of F stock. F then forms Merger Sub, a domestic corporation. Under a merger agreement and state law, Merger Sub merges into A, with A surviving the merger as a subsidiary of F. In exchange for their A stock, the former shareholders of A receive, in the aggregate, 100 shares of F stock. A continues to hold 90 shares of F stock.

(ii) *Analysis.* F has indirectly acquired substantially all the properties of A pursuant to a plan. After the acquisition, the former shareholders of A own 100 shares of F stock by reason of holding stock in A, and A owns 90 shares of F stock. Under paragraph (b) of this section, the 90 shares of F stock held by A, a member of the EAG, are not included in either the numerator or the denominator of the fraction that determines the percentage of F stock owned by former shareholders of A by reason of holding stock in A. Accordingly, the fraction is 100/100 and the percentage is 100%. If the condition stated in section 7874(a)(2)(B)(iii) regarding relatively insubstantial business activities in F's country of incorporation is satisfied, F is a surrogate foreign corporation which is treated as a domestic corporation under section 7874(b).

Example 2. Intra-group restructuring; wholly owned corporation—(i) *Facts.* USS, a domestic corporation, has 100 shares of common stock outstanding, all of which are owned by P, a corporation. As part of an internal restructuring within the P group, USS transfers all its assets to FS, a newly formed foreign corporation, in exchange for stock of FS, in a reorganization described in section 368(a)(1)(F). P exchanges its USS stock for FS stock under section 354.

(ii) *Analysis.* FS has acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. P, the common parent of the EAG, held more than 80% of the stock of USS before the acquisition. After the acquisition, less than 20% of FS's stock is owned by non-members of the EAG. Under paragraph (c)(1) of this section, the FS stock owned by P by reason of holding stock in USS is included in the denominator but not in the numerator of the fraction that determines the percentage of FS stock owned by former shareholders of USS by reason of holding stock in USS. Accordingly, the fraction is 0/100 and the percentage is 0%. FS is not a surrogate foreign corporation.

Example 3. Intra-group restructuring; wholly owned corporation—(i) *Facts.* The facts are the same as in *Example 2* except that USS does not transfer any of its assets. P transfers all 100 shares of USS stock to FS in exchange for FS stock.

(ii) *Analysis.* FS has indirectly acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. P, the common parent of the EAG, held more than 80% of the stock of USS before the acquisition. After the acquisition, less than 20% of FS's stock is owned by non-members of the EAG. Under paragraph (c)(1) of this section, the FS stock owned by P by reason of holding stock in USS is included in the denominator but not in the numerator of the fraction that determines the percentage of stock owned by former shareholders of USS by reason of holding stock in USS. Accordingly, the fraction is 0/100 and the percentage is 0%. FS is not a surrogate foreign corporation.

Example 4. Intra-group restructuring; less than wholly owned corporation—(i) *Facts.* The facts are the same as in *Example 2* except that P owns 85 shares of USS stock. The remaining 15 shares of USS stock are owned by A, a person unrelated to P. As part of an internal restructuring within the P group, P and A transfer all their USS stock to FS, in exchange for an equal number of shares of FS stock.

(ii) *Analysis.* FS has indirectly acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. After the acquisition, P owns 85 shares of FS stock by reason of holding stock in USS, and A owns 15 shares of FS stock by reason of holding stock in USS. Before the acquisition, USS was more than 80% owned by P, which is the common parent of the EAG, and after the acquisition, less than 20% of FS's stock is owned by non-members of the EAG (i.e., by A) by reason of holding stock in USS. Under paragraph (c)(1) of this section, the FS stock owned by P is included in the denominator, but is not included in the numerator, of the fraction that determines the percentage of FS stock owned by former shareholders of USS by reason of holding stock in USS. Accordingly, the fraction is 15/100 and the percentage is 15%. FS is not a surrogate foreign corporation. FS is a controlled foreign corporation.

Example 5. Formation of joint venture corporation—(i) *Facts.* M, a corporation, owns all the outstanding stock of S, a domestic corporation engaged in business Y in the United States. B, a corporation unrelated to M, owns several foreign subsidiaries that are engaged in business Y outside the United States. M and B enter into an agreement under which each will transfer certain assets to FJV, a newly formed foreign corporation, in exchange for stock of FJV. FJV will conduct business Y on a worldwide basis. Pursuant to the plan, M transfers to FJV all the outstanding stock of S in exchange for 40 shares of FJV stock, and B transfers to FJV the stock of several foreign corporations in exchange for 60 shares of FJV stock. FJV has no other stock outstanding.

(ii) *Analysis.* FJV has indirectly acquired substantially all the properties held directly or indirectly by S pursuant to a plan. After the acquisition, M owns 40 shares of FJV stock by reason of holding stock in S, and B owns the remaining 60 shares of FJV stock. M does not own, directly or indirectly, more than 50% of the stock of any member of the EAG. Under paragraph (c)(2) of this section, the FJV stock owned by B is included in the denominator but not the numerator of the fraction that determines the percentage of FJV stock owned by former shareholders of S by reason of holding stock in S. Accordingly, the fraction is 40/100 and the percentage is 40%. FJV is not a surrogate foreign corporation.

Example 6. Acquisition of existing joint venture entity—(i) *Facts.* K and L are unrelated corporations. T is a domestic corporation with 100 shares of stock outstanding, 55 of which are held by K and 45 of which are held by L. K and L contribute their T stock to U, a newly formed foreign corporation, in exchange for an equal number of shares of U stock.

(ii) *Analysis.* U has indirectly acquired substantially all the properties held directly or indirectly by T pursuant to a plan. After the acquisition, K owns 55 shares of U stock

by reason of holding stock in T, and L owns 45 shares of U stock by reason of holding stock in T. Under paragraph (b) of this section, the U stock held by K is not included in either the numerator or the denominator of the fraction that determines the percentage of U stock owned by former shareholders of T by reason of holding stock in T. Accordingly, the fraction is 45/45 and the percentage is 100%. If the EAG does not have substantial business activities in U's country of incorporation when compared to the total business activities of the EAG, U is a surrogate foreign corporation which is treated as a domestic corporation under section 7874(b).

Example 7. Intra-group restructuring; less than wholly owned partnership—(i) *Facts.* LLC, a Delaware limited liability company engaged in the conduct of a trade or business, is 90% owned by C, a corporation, and 10% owned by D, a person unrelated to C. LLC has not elected to be treated as an association taxable as a corporation. As part of an internal restructuring within the C group, C and D transfer their interests in LLC to E, a newly formed foreign corporation, in exchange for 90 shares and 10 shares, respectively, of E's common stock, which are all of the issued and outstanding shares of E.

(ii) *Analysis.* LLC is a domestic partnership for Federal income tax purposes. E has indirectly acquired substantially all the properties constituting a trade or business of LLC pursuant to a plan. After the acquisition, C holds 90% of E's stock by reason of holding a capital or profits interest in LLC, and D holds 10% of E's stock by reason of holding a capital or profits interest in LLC. Before the acquisition, LLC is more than 80% owned by C, the common parent of the EAG, and after the acquisition, less than 20% of E's stock is owned by non-members of the EAG (that is by D) by reason of holding a capital or profits interest in LLC. Under paragraph (c)(1) of this section, the E stock held by C is included in the denominator but not the numerator of the fraction that determines the percentage of E stock owned by former partners of LLC by reason of holding an interest in LLC. Accordingly, the fraction is 10/100 and the percentage is 10%. E is not a surrogate foreign corporation.

Example 8. Acquisition of 50–50 joint venture partnership—(i) *Facts.* The facts are the same as in *Example 7* except that C and D each own 50% of the capital and profits interests in LLC. C and D transfer their interests in LLC to G, a newly formed foreign corporation, in exchange for 50 shares each of G's common stock, which are all of the issued and outstanding shares of G.

(ii) *Analysis.* G has indirectly acquired substantially all the properties constituting a trade or business of LLC, a domestic partnership, pursuant to a plan. After the acquisition, C and D each hold 50% of G's stock by reason of holding an interest in LLC. G is not included in an expanded affiliated group after the acquisition. Accordingly, none of the stock of G is disregarded under this section in determining the percentage of G stock held by former partners of LLC by reason of holding an interest in LLC. Thus, the fraction is 100/100 and the percentage is 100%. If the EAG does not have substantial business activities in G's country of incorporation when compared to the total business activities of the EAG, G is a surrogate foreign corporation which is treated as a domestic corporation under section 7874(b).

(e) *Effective date.* This section applies to taxable years ending after March 4, 2003.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 13, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 05–24450 Filed 12–27–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–049]

RIN 1625–AA09

Drawbridge Operation Regulation; Bayou Lafourche, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing six bridges across Bayou Lafourche, south of the Gulf Intracoastal Waterway, in Lafourche Parish, Louisiana. The Lafourche Parish Council has requested that the bridges remain closed to navigation at various times on weekdays during the school year. These closures will facilitate the safe, efficient movement of staff, students and other residents within the parish.

DATES: This rule is effective January 27, 2006.

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 [CGD08–05–049], which has incorporated docket [USCG–2005–22363] into the original docket, and are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 500 Poydras Street, New Orleans, Louisiana 70130–3310, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone 504–589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 2, 2005, we published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; Lafourche Bayou, Lafourche Parish, LA,'' in the **Federal Register** (70 FR 52340). Due to the passage of Hurricane Katrina, the Coast Guard issued a second notice of proposed rulemaking indicating that comments should be sent to a new location due to the temporary closure of the Bridge Administration Office in New Orleans. On September 8, 2005, we published the second notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulation; Lafourche Bayou, Lafourche Parish, LA,'' in the **Federal Register** (70 FR 53328). We received four letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The U.S. Coast Guard, at the request of the Lafourche Parish Council, proposes to modify the existing operating schedules of six bridges across Bayou Lafourche south of the Gulf Intracoastal Waterway in Lafourche Parish, Louisiana. The six bridges include: Golden Meadow Vertical Lift Bridge, mile 23.9; the Galliano Pontoon Bridge, mile 27.8; the South Lafourche (Tarpon) Vertical Lift Bridge, mile 30.6; the Cote Blanche Pontoon Bridge, mile 33.9; the Cutoff Vertical Lift Bridge, mile 36.3; and the Larose Pontoon Bridge, mile 39.1. The modification of the existing regulations will allow these bridges to remain closed to navigation from 7 a.m. to 8 a.m.; from 2 p.m. to 4 p.m.; and from 4:30 p.m. to 5:30 p.m., Monday through Friday from August 15 through May 31. At all other times, the bridges would open on signal for the passage of vessels.

Presently, only two of these bridges have special operation regulations in place. The Galliano/South Lafourche (Tarpon) Vertical Lift Bridge, mile 30.6, and the Cote Blanche Pontoon Bridge, mile 33.9, open on signal; except that, from 2:30 p.m. to 3:30 p.m. and from 4:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays, the draws need not open for the passage of vessels. The other four bridges open on signal for the passage of vessels.

Traffic counts and vessel openings vary among the six bridges. The Louisiana Department of Transportation and Development provided information on vessel openings and traffic counts for the Larose Pontoon Bridge, mile 39.1; the Galliano/South Lafourche (Tarpon)

Vertical Lift Bridge, mile 30.6; and the Golden Meadow Vertical Lift Bridge, mile 23.9. The Lafourche Parish Council provided information on vessel openings and traffic counts for the Cutoff Vertical Lift Bridge, mile 36.3; the Cote Blanche Pontoon Bridge, mile 33.9; and the Galliano Pontoon Bridge, mile 27.8.

The Larose Pontoon Bridge, mile 39.1, is the first bridge south of the Gulf Intracoastal Waterway intersection. This bridge is located just south of a flood control structure that has a horizontal clearance of 56 feet and a depth over the sill of 10 feet. The bridge opens an average of 410 times a month for vessels. Based upon the request, approximately 18% of the vessels would be affected by the proposed closures. Traffic counts indicate that 9000 vehicles cross the bridge daily and approximately 23% of those vehicles cross during the requested closure times. Vessel openings of the bridge delay vehicular traffic nine minutes per opening, delaying 20 vehicles per opening. The Larose Pontoon Bridge is presently scheduled for replacement. The new bridge will be a vertical lift bridge and it will be located 0.4 miles downstream from its present location. Once the new bridge is constructed, the old bridge will be removed. The special operating regulation for the old bridge, if approved, may not be transferred to the new bridge and a new request for a special operation regulation must be made for the new bridge.

The Cutoff Vertical Lift Bridge, mile 36.3 is the next bridge downstream from the Larose Pontoon Bridge. The bridge opens an average of 419 times a month for vessels. Based upon the request, approximately 23% of the vessels would be affected by the proposed closures. Traffic counts indicate that 7180 vehicles cross the bridge daily and approximately 33% of those vehicles cross during the requested closure times. Vessel openings of the bridge delay vehicular traffic five minutes per opening, delaying 80 vehicles per opening.

The Cote Blanche Pontoon Bridge, mile 33.9 is the next bridge downstream from the Cutoff Vertical Lift Bridge. The bridge opens an average of 441 times a month for vessels. Based upon the request, approximately 23% of the vessels would be affected by the proposed closures. Traffic counts indicate that 7180 vehicles cross the bridge daily and approximately 33% of those vehicles cross during the requested closure times. Vessel openings of the bridge delay vehicular traffic five minutes per opening, delaying 54 vehicles per opening.

The Galliano/South Lafourche (Tarpon) Vertical Lift Bridge, mile 30.6 is the next bridge downstream from the Cote Blanche Pontoon Bridge. The bridge opens an average of 430 times a month for vessels. Based upon the request, approximately 20% of the vessels would be affected by the proposed closures. Traffic counts indicate that 8000 vehicles cross the bridge daily and approximately 28% of those vehicles cross during the requested closure times. Vessel openings of the bridge delay vehicular traffic six minutes per opening, delaying 43 vehicles per opening.

The Galliano Pontoon Bridge, mile 27.8 is the next bridge downstream from the Galliano/South Lafourche (Tarpon) Vertical Lift Bridge. The bridge opens an average of 580 times a month for vessels. Based upon the request, approximately 23% of the vessels would be affected by the proposed closures. Traffic counts indicate that 5040 vehicles cross the bridge daily and approximately 34% of those vehicles cross during the requested closure times. Vessel openings of the bridge delay vehicular traffic five minutes per opening, delaying 60 vehicles per opening.

The Golden Meadow Vertical Lift Bridge, mile 23.9 is the next bridge downstream from the Galliano Pontoon Bridge. The bridge opens an average of 610 times a month for vessels. Based upon the request, approximately 30% of the vessels would be affected by the proposed closures. Traffic counts indicate that 2400 vehicles cross the bridge daily and approximately 30% of those vehicles cross during the requested closure times. Vessel openings of the bridge delay vehicular traffic six minutes per opening, delaying 16 vehicles per opening.

Navigation at the site of the bridge consists primarily of commercial and recreational fishing vessels, crew boats, and some tugboats with barges. Alternate routes are not readily accessible.

The existing regulations on the Galliano/South Lafourche (Tarpon) Vertical Lift Bridge, mile 30.6 and the Cote Blanche Pontoon Bridge, mile 33.9, were established on September 20, 1995. Since the establishment of these special operation regulations, the Coast Guard has not received any formal complaints regarding the operation of the bridges. It has been approximately ten years since the last formal request to change the operating regulations of the Cote Blanche bridge and the Galliano/South Lafourche bridge.

Discussion of Comments and Changes

Four letters were received with regard to the NPRM. The Gulf Intracoastal Canal Association objected to the proposed changes. Blessey Marine objected to the proposed changes. American Commercial Barge Lines objected to the proposed changes. The Greater Lafourche Port Commission (GLPC) provided comments regarding their authority to regulate commerce and traffic in the Tenth Ward of Lafourche Parish and sought the right to discuss this serious matter at its committee and board meetings and possibly comment on the proposed revisions. The GLPC held its meeting and did not submit any additional comments.

The Coast Guard contacted the three entities that objected to the proposed changes and provided additional information with regard to the location of the bridges so that their objections and concerns have been relieved. Based upon these comments and subsequent discussions with the objectors, no changes were made to the proposed regulation.

Regulatory Evaluation

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

This rule allows vessels ample opportunity to transit this waterway with proper notification before and after the peak vehicular traffic periods. According to the vehicle traffic surveys, the public at large is better served by the additional closure times.

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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this 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 the Eighth Coast Guard District Bridge Administration Branch at the address above. The Coast Guard will not retaliate against any individual or entity that questions or complains about this rule or any policy or action of the Coast Guard.

Collection of Information

This 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 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 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 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 would not create an environmental risk to health or risk to safety that might 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 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 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. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA. Since this rule will alter the normal operating conditions of the drawbridge, it falls within this exclusion.

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 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. § 117.465(a) is revised to read as follows:

§ 117.465 Lafourche Bayou.

The draws of the following bridges shall open on signal; except that, from August 15 through May 31, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 7 a.m. to 8 a.m.; from 2 p.m. to 4 p.m.; and from 4:30 p.m. to 5:30 p.m.:

(1) SR 308 (Golden Meadow) Bridge, mile 23.9, at Golden Meadow

(2) Galliano Pontoon Bridge, mile 27.8, at Galliano

(3) SR 308 (South Lafourche (Tarpon)) Bridge, mile 30.6, at Galliano

(4) Cote Blanche Pontoon Bridge, mile 33.9, at Cutoff

(5) Cutoff Vertical Lift Bridge, mile 36.3, at Cutoff

(6) SR 310 (Larose Pontoon) Bridge, mile 39.1, at Larose

* * * * *

Dated: December 20, 2005.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 05–24539 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–131]

RIN 1625–AA11

Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has established a permanent regulated navigation area on the Chicago Sanitary and Ship Canal on the Illinois Waterway near Romeoville, IL. This permanent regulated navigation area places navigational and operational restrictions on all vessels transiting through the demonstration electrical dispersal barrier located on the Chicago Sanitary and Ship Canal. This regulated navigation area is necessary to protect vessels and their crews from harm as a result of electrical discharges emitting from the electrical dispersal barrier as vessels transit over it.

DATES: This rule is effective on January 1, 2006 at 12:01 a.m. local time.

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 [CGD09–05–131] and are available for inspection or copying at Ninth Coast Guard District (dpw–1), 1240 E. 9th Street, Room 2069, Cleveland, OH 44199. The Ninth Coast Guard District Waterways Planning and Development Section (dpw–1) 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 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have further questions on this rule, contact CDR K. Phillips, Waterways Planning and Development Section, Ninth Coast Guard District, Cleveland, OH at (216) 902–6045.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 14, 2005, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (70 FR 69128). We received 2 letters containing a total of three comments 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**. The Fish Barrier can cause significant arcing and hazardous electrical discharges, putting vessels and mariners that transit through it at risk. Any delay in establishing this regulation would increase the danger.

Background and Purpose

On January 7, 2005, the U.S. Army Corps of Engineers, in close coordination with the U.S. Coast Guard, conducted preliminary safety tests on the electrical dispersal barrier located at Mile Marker 296.5 of the Chicago Sanitary and Ship Canal near Romeoville, IL. This barrier was constructed to prevent Asian Carp from entering Lake Michigan through the Illinois River system by generating a low-voltage electric field across the canal. The Coast Guard and Army Corps of Engineers conducted field tests to ensure the continued safe navigation of commercial and recreational traffic across the barrier; however, results indicated a significant arcing risk and hazardous electrical discharges as vessels transited the barrier posing a serious risk to navigation through the barrier. To mitigate these risks, the Coast Guard established this final rule, which places navigational and operational restrictions on all vessels transiting through the vicinity.

On January 26, 2005 a regulated navigation area (RNA) was published in the **Federal Register** (70 FR 3625) as a temporary final rule. The temporary final rule was extended on August 10, 2005 (70 FR 46407). Testing has continued since the temporary regulation was first proposed in January 2005, but has not yet been completed. Preliminary results indicate that further tests and analysis are warranted and that this process may continue for an undetermined period of time.

Discussion of Rule

Until the potential electrical hazards can be rectified, the Coast Guard will require vessels transiting the regulated navigation area to adhere to specified operational and navigational requirements. The regulated navigation area encompasses all waters of the Chicago Sanitary and Ship Canal from the north side of the Romeo Highway Bridge at Mile Marker 296.1 to the aerial pipeline arch located at Mile Marker 296.7. The requirements placed on all vessels include: All vessels are prohibited from loitering in the regulated navigation area; vessels may enter the regulated navigation area for the sole purpose of transiting to the other side, and must maintain headway throughout the transit; all personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the regulated navigation area; vessels may not moor or lay up on the right or left descending banks in the regulated navigation area; towboats may not make or break tows in the regulated navigation area; vessels may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side; and commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

These restrictions are necessary for safe navigation of the regulated navigation area and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during recent safety tests conducted by the Army Corps of Engineers. Deviation from this rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representative. The Commander, Ninth Coast Guard District will designate Captain of the Port, Lake Michigan as his designated representative for the purposes of this 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 determination is based on the fact that traffic will still be able to transit through the RNA.

Discussion of Comments

The Coast Guard received three comments regarding this rule. One comment requested that the required Personal Flotation Device (PFD) be changed from a Type I to Type V with the understanding that commercial crews would only be on deck in the

event of unusual circumstances or an emergency. The Coast Guard disagrees with this recommendation. The Coast Guard has determined that the electrical voltage poses significant risks to human life with a high risk of causing immobility to a person in the water. The suggestion that a crew member would only be on deck in an emergency further increases the risk and the need for the Type I PFD. A Type I PFD is designed to provide support to the head so that the face of an unconscious, immobilized, or exhausted person is held above the water.

The second comment requested that the regulated navigation area remain temporary. In the alternative, the submitter requested that additional comments be permitted upon the release of further safety data, the deactivation of the temporary barrier, or the activation of the new barrier. The Coast Guard disagrees with this recommendation. While the barrier is in operation there are serious safety concerns, and the Coast Guard has not been given a date that final safety testing will be complete. Since the danger to mariners and vessels remains indefinitely, the Coast Guard has elected to make this rule permanent. If there are changes to the barrier or additional safety data becomes available, the Coast Guard may re-evaluate this rule. If additional data makes it necessary to amend this rule, the Coast Guard will follow notice and comment rulemaking procedures.

The third comment recommended that visual warnings be posted to alert towboat pilots well before the electrical dispersal barrier. The Coast Guard agrees with this comment. However, the Coast Guard does not agree that this rule needs to be modified. Warning signs are being designed and constructed by the Army Corps of Engineers. The warning signs will alert all waterway users and will be placed on right and left descending banks at both ends of the regulated navigation area (mile markers 296.7 and 296.1). The two signs on the right descending bank will be alert notices and will read ''DANGER''. The signs on the left descending bank will read ''DANGER; ELECTRIC CHARGE IN WATER; DO NOT STOP, ANCHOR OR FISH; NO MOORING OR PASSING; TYPE 1 LIFEJACKET MUST BE WORN''. These signs will be approximately 8 feet tall and 20 feet wide. The type and size of the lettering meets Army Corps of Engineers standards and will be similar to the safety signs found on all locks and dams. Installation of these signs is an Army Corps of Engineers project, therefore any party concerned with signage should contact that agency. The Coast Guard will continue to work closely with all waterway users to assess the safety issues and the management of the regulated navigation area.

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.

We suspect that there may be small entities affected by this rule but are unable to provide more definitive information as to the number of small entities that may be affected. We did not receive any comments on this issue. The risk, outlined above, is severe and requires that immediate action be taken. The Coast Guard will evaluate whether a substantial number of small entities are affected as more information becomes available.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on 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 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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore we believe this rule should be categorically excluded, under figure 2–1, paragraph 34(g) from further environmental documentation. This rule establishes a regulated navigation area and as such is covered by this paragraph.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.923 to read as follows:

§ 165.923 Regulated Navigation Area between mile markers 296.1 and 296.7 of the Chicago Sanitary and Ship Canal located near Romeoville, IL.

(a) *Location.* The following is a Regulated Navigation Area: All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL between the north side of Romeo Road Bridge Mile Marker 296.1, and the south side of the Aerial Pipeline Mile Marker 296.7.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.13 apply.

(2) All vessels are prohibited from loitering in the regulated navigation area.

(3) Vessels may enter the regulated navigation area for the sole purpose of transiting to the other side, and must maintain headway throughout the transit.

(4) All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the regulated navigation area.

(5) Vessels may not moor or lay up on the right or left descending banks of the regulated navigation area.

(6) Towboats may not make or break tows in the regulated navigation area.

(7) Vessels may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the barrier to announce intentions and work out passing arrangements on either side.

(8) Commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

(c) *Compliance.* All persons and vessels shall comply with this rule and any additional instructions of the Ninth Coast Guard District Commander, or his designated representative. The Captain of the Port, Lake Michigan is a designated representative of the District Commander for the purposes of this rule.

Dated: December 19, 2005.

R.J. Papp, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 05–24538 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2005–AL–0001–200520a; FRL–8014–9]

Approval and Promulgation of Implementation Plans; Alabama; Nitrogen Oxides Budget and Allowance Trading Program, Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Alabama on February 23, 2005. The revision responds to the EPA's regulation entitled, ''Interstate Ozone Transport: Response to Court Decisions on the Nitrogen Oxides (NO_X) SIP Call, NO_X SIP Call Technical Amendments, and Section 126 Rules,'' otherwise known as the ''NO_X SIP Call Phase II.'' This revision satisfies EPA's rule that requires Alabama to submit NO_X SIP Call Phase II revisions needed to achieve the necessary incremental reductions of NO_X. The intended effect of this SIP revision is to reduce emissions of NO_X in order to help attain the National Ambient Air Quality Standard (NAAQS) for ozone. The revision also corrects a typographical error and deletes an expired provision pertaining to open burning in Morgan County, Alabama in 2003.

DATES: This direct final rule is effective February 27, 2006 without further notice, unless EPA receives adverse comment by January 27, 2006. If adverse comment is received, EPA 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 No. R04–OAR–2005–AL–0001, by one of the following methods:

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

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

3. *E-mail: difrank.stacy@epa.gov.*
4. *Fax:* (404) 562–9019.
5. *Mail:* ''R04–OAR–2005–AL–0001,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
6. *Hand Delivery or Courier. Deliver your comments to:* Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2005–AL–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Regulatory Development Section, Air planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. DiFrank can also be reached via electronic mail at *difrank.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 27, 1998, EPA published a final rule known as the ''NO_X SIP Call'' (See 63 FR 57356). The NO_X SIP Call requires 22 states, including the State of Alabama, and the District of Columbia (DC) to meet statewide NO_X emission budgets during the ozone season in order to reduce the amount of ground level ozone that is transported across the eastern United States (Phase I). EPA identified NO_X emission reductions by source category that could be achieved by suing cost-effective measures. The source categories include electric generating units (EGUs), non-electric generating units (non-EGUs), internal combustion (IC) engines, and cement kilns. EPA determined that state-wide NO_X emission budgets based on the implementation of these cost effective controls for each affected jurisdiction are to be met by the year 2007. The Phase I NO_X SIP Call gave states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. IC engines were not addressed by Alabama in response to Phase I, but are addressed in Phase II. For more information regarding the specifics of these Phase I source categories and budgets, see 66 FR 27047, May 16, 2001.

A number of parties, including certain States as well as industry and labor groups, challenged the NO_X SIP Call rule. On March 2, 2000 (65 FR 11222), EPA published additional technical amendments to the NO_X SIP Call in the **Federal Register**. On March 3, 2000, the D.C. Circuit issued its decision on the NO_X SIP Call, ruling in favor of EPA on all the major issues. *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000). The DC Circuit Court denied petitioners' requests for rehearing or rehearing en banc on July 22, 2000. However, the Circuit Court remanded four specific elements to EPA for further action: (1) The definition of EGU, (2) the level of control for stationary IC engines, (3) the geographic extent of the NO_X SIP Call for Georgia and Missouri, and (4) the inclusion of Wisconsin. On March 5, 2001, the U.S. Supreme Court declined to hear an appeal by various utilities, industry groups and a number of upwind states from the DC Circuit's ruling on EPA's NO_X SIP Call rule.

On October 13, 2000, the Alabama Department of Environmental Management (ADEM) submitted a draft NO_X emission control rule to the EPA. On March 12, 2001, ADEM submitted final revisions to its SIP that complied with the requirements of the NO_X SIP Call Phase I (see 66 FR 27047, May 16, 2001).

EPA published a final rule, dated April 21, 2004 (69 FR 21604), that addresses the remanded portion of the NO_X SIP Call Rule. This rule is entitled, ''Interstate Ozone Transport: Response to Court Decisions on the NO_X SIP Call, NO_X SIP Call Technical Amendments, and Section 126 Rules,'' otherwise known as the ''NO_X SIP Rule Phase II.'' This action finalizes specific changes in response to the Court's rulings on the NO_X SIP Call. Specifically, it finalizes certain aspects of the definitions of EGU and non-EGU, the control level assumed for large stationary IC engines in the NO_X SIP Call, partial State budgets for Georgia, Missouri, Alabama, and Michigan in the NO_X SIP Call, changes to the statewide NO_X budgets, the SIP submittal dates for the required States to address the Phase II portion of the budget, and for Georgia and Missouri to submit full SIPs meeting the NO_X SIP Call and the exclusion of Wisconsin from the NO_X SIP Call (See 69 FR 21604, April 21, 2004). This final rule also requires States that submitted NO_X SIP Call Phase I revisions to submit Phase II SIP Revisions as needed to achieve the necessary incremental reductions of NO_X.

Additional emission reductions required as a result of this final rulemaking are reflected in the Phase II

portion of the State's emission budget. On April 11, 2000, in response to the Court's decision, EPA notified Alabama of the maximum amount of NO_X emissions allowed for the State during the ozone season. This emission budget reflected adjustments to Alabama's NO_X emission budget to reflect the Court's decision that Georgia and Missouri should not be included in full. Although the Court did not order EPA to modify Alabama's budget, the EPA believes these adjustments are consistent with the Court's decision.

II. Analysis of State's Submittal

The State of Alabama submitted a revision to its SIP on February 23, 2005. The revision responds to the NO_X SIP Call Phase II (69 FR 21604, April 21, 2004). ADEM is revising its regulations to remain consistent with EPA requirements. The addition of the proposed regulation to Chapter 335–3–8, specifically Rule 335–3–8–.04, fulfills this requirement.

The NO_X SIP Call Phase II (69 FR 21604) required NO_X reductions for 4,968 tons for Alabama. However, upon further calculation it was determined that the required NO_X reduction for Alabama is 4,895 tons.

The revision also includes changes to Rule 335–3–3. A typographical error is corrected in Rule 335–3–3–.01(2), changing the word ''not'' to ''nor'' in the second sentence and 335–3–3–.01(2)(d) is being revised to delete an expired provision pertaining to open burning in Morgan County in 2003.

III. Final Action

EPA is approving the aforementioned changes to the SIP. EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective February 27, 2006 without further notice unless the Agency receives adverse comments by January 27, 2006.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 27, 2006 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (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 rule 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.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C 804(2).

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 February 27, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and

recordkeeping requirements, Volatile organic compounds.

Dated: December 9, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Chapter I, Title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

■ 2. Section 52.50(c) is amended by revising entries for ''Section 335–3–3.01'' and ''Section 335–3–8.04'' to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 335–3–3 Control of Open Burning and Incineration				
*	* * *	*	*	*
Section 335–3–3–.01	Open Burning	mm/dd/yy	12/28/05 [insert citation of publication].	
*	* * *	*	*	*
Chapter 335–3–8 Control of Nitrogen Oxide Emissions				
*	* * *	*	*	*
Section 335–3–8–.04	Standards for Stationary Reciprocating Internal Combustion Engines.	mm/dd/yy	12/28/05 [insert citation of publication].	
*	* * *	*	*	*

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[FR Doc. 05–24474 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0477; FRL–7753–9]

Dichlormid; Extension of Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends 40 CFR 180.469 by extending the expiration/revocation date of the time-limited tolerances for residues of acetamide, 2,2-dichloro-*N*,*N*-di-2-propenyl- (dichlormid) in or on field corn (forage, grain, stover), pop corn (grain, stover), and sweet corn (forage, kernel plus cob with husks removed, stover) at 0.05 ppm. The current tolerances are set to expire on December 31, 2005. This rule extends the expiration/revocation date of these time-limited tolerances to December 31, 2008.

DATES: This regulation is effective December 28, 2005. Objections and requests for hearings must be received on or before February 27, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0477. All documents in the docket are listed on the www.regulations.gov Web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.) Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. 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: Keri Grinstead, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; e-mail address: *grinstead.keri@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

B. How Can I 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 part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In a final rule published in the **Federal Register** on March 27, 2000 (65 FR 16143) (FRL–6498–7), EPA established time-limited tolerances under 40 CFR 180.469 for residues of dichlormid in or on field corn (forage, grain, stover), pop corn (grain, stover) at 0.05 ppm with an expiration date of March 27, 2002. On August 7, 2002, the Agency reestablished the time-limited tolerances (67 FR 51102) (FRL–7192–5) with an expiration date of December 31, 2005.

On September 30, 2004, the Agency published a final rule (69 FR 58285) (FRL–7680–8) in response to a new petition to establish time-limited tolerances for residues of dichlormid in or on sweet corn (forage, kernel plus cob with husks removed, stover) at 0.05 ppm. An expiration/revocation date of December 31, 2005 was established for the sweet corn time-limited tolerances in order to match the same expiration date of the time-limited tolerances for field and pop corn.

Although additional studies were requested in order to complete the data set, the Agency had sufficient information to establish time-limited tolerances. EPA concluded in the final rules for the field, pop, and sweet corn time-limited tolerances that all risks were below the Agency's level of concern and there was a reasonable certainty that no harm would result to the general population and to infants and children from aggregate exposure to residues of dichlormid on corn.

The petitioner submitted the additional studies and EPA has evaluated the data. At this time, endpoints from studies do not appear to be substantially different from those of previously submitted studies. The Agency is now developing the human health risk assessment. Therefore, the Agency is extending the current time-limited tolerances for residues of dichlormid in or on field corn (forage, grain, stover), pop corn (grain, stover), and sweet corn (forage, kernel plus cob with husks removed, stover) at 0.05 ppm with an expiration date of December 31, 2008.

The Agency may require additional information, including confirmatory studies and/or data to upgrade deficient studies, in order to complete the human health risk assessment and establish permanent tolerances. Such information may include nature of the residue studies (plants and livestock), residue analytical methods, and field accumulation in rotational crops.

III. Conclusion

The Agency, acting on its own initiative, is extending the current time-limited tolerances for residues of dichlormid in or on field corn (forage, grain, stover), pop corn (grain, stover), and sweet corn (forage, kernel plus cob with husks removed, stover) at 0.05 ppm with an expiration/revocation date of December 31, 2008.

IV. Objections and Hearing Requests

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0477 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 27, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issue(s), and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2005–0477, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account

uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408(d) of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). 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 final 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 tolerances and exemptions that are established on the basis of FIFRA under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. 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 final rule directly regulates growers, food processors, food handlers and food retailers, 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 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.

VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: December 15, 2005.

Rachel C. Holloman,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.469 is amended by revising the table in paragraph (a) to read as follows:

§ 180.469 Dichlormid; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration/ revocation date
Corn, field, forage	0.05	12/31/08
Corn, field, grain	0.05	12/31/08
Corn, field, stover	0.05	12/31/08
Corn, pop, grain	0.05	12/31/08
Corn, pop, stover	0.05	12/31/08
Corn, sweet, forage	0.05	12/31/08
Corn, sweet, kernel plus cob with husks removed	0.05	12/31/08
Corn, sweet, stover	0.05	12/31/08

* * * * *

[FR Doc. 05–24470 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0467; FRL–7753–6]

Xanthomonas Campestris pv. Vesicatoria and Pseudomonas Syringae pv. Tomato Specific Bacteriophages; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the bacteriophages that specifically target the bacterial pathogens *Xanthomonas campestris pv. Vesicatoria* and *Pseudomonas syringae pv. tomato* present on tomatoes and peppers when applied/used as bacteriocides on tomatoes and peppers. Omnylytics submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages when applied/used as bacteriocides on tomatoes and peppers.

DATES: This regulation is effective December 28, 2005. Objections and requests for hearings must be received on or before February 27, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0467. All documents in the docket are listed on the www.regulations.gov Web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.) 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: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

B. How Can I 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 part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of May 3, 2000 (FR 65 25717) (FRL–6553–2), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP OF6111) by OmniLytics, P.O. Box 4296, Logan, Utah 84323–4296. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the bacteriophages that specifically target the bacterial pathogens *Xanthomonas campestris pv. Vesicatoria* and *Pseudomonas syringae pv. tomato* on tomatoes and peppers. This notice included a summary of the petition prepared by the petitioner OmniLytics. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . '' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other

relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Phages are naturally occurring viruses that are found in soil, water, and in association with animals, including humans, and plants. The total number of phages worldwide is estimated to be in the range of 1,030 to 1,032. Phages are obligate intracellular parasites of bacteria, which means they attack bacteria, and are not infectious to humans or other animals. Phages are host-specific for bacteria, with specific bacteriophages attacking only one bacterial species and most frequently only one strain of a bacterial specieis. As such, phages do not attack other beneficial soil bacteria. In addition, there is no evidence for non-selective infection. Thus, non-target organisms, such as fish and wildlife, are not affected. Humans and other animals consume phages when they eat food they are commonly found in water, ground beef, pork, sausage, chicken, raw skim milk, oysters, cheese, fresh mushrooms, and lettuce. In addition, phages are common commensals of the human gut and likely play an important role in regulating various bacteria in the gastrointestinal tract. Moreover, phages have been used therapeutically or non-therapeutically in humans for more than 80 years with no ill effects. As cited in public literature, phages have been used as therapeutic agents and are active against bacteria of many human diseases such as anthrax, bronchitis, diarrhea, scarlet fever, typhus, cholera, diphtheria, gonorrhea, paratyphus, bubonic plague, and osteomyelitis. Moreover, hundreds of millions of persons have received live bacteriophage vaccines. These phages have been used in the human population to control polio, measles, mumps and rubella. Recipients of these bacteriophages showed no evidence of adverse reactions to phages. The specific mode of action of the active component of the AgriPhage product is such that these bacteroicides are effective only against the bacterial pathogens which they specifically target, in this case, *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae* pv. tomato bacteria when found on tomatoes and peppers.

In support of this tolerance exemption, data waivers were requested and granted for the required mammalian toxicity studies, including acute toxicity and other toxicological studies used to determine risks to human health. The waiver requests, which were supported by publicly available information submitted by OmniLytics, find their jusitification in the information summarized in the paragraph above, including, more generally, documented lack of toxicity associated with bacteriophages, the fact that bacteriophages only attack specific bacteria, and that they pose little to no risk to humans. Specifically, waivers were granted based on public literature submitted by the applicant for the following studies: Acute oral toxicity, acute dermal toxicity, acute inhalation toxicity, primary eye irritation, and primary dermal irritation.

1. *Hypersensitivity (OPPTS Harmonized Guideline 870.2600).* The potential for repeated contact of the product with human skin by inhalation or dermal routes is a concern only to applicators of the end-use products (i.e., occupational exposure); however, the risk to applicators from exposure is mitigated as they are required to wear protective chemical-resistant gloves, aprons, footwear and masks. Accordingly, a hypersensitivity study is not required for registration of this product (per 40 CFR 158.690(c)(2)(iii)). In addition, there are no reports of dermal sensitization to low concentrations of *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages in the published literature. The registrant also has reported no hypersensitivity incidents to date (OPPTS Harmonized Guideline 885.3400). Nonetheless, pursuant to FIFRA section 6(a)(2), the registrant is required to report to the Agency any future incidents of hypersensitivity associated with *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages.

2. *Immune response (OPPTS Harmonized Guideline 870.7800).* The registrant requested a waiver for this study, and submitted supporting published literature. EPA's review concluded that *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages are common bacteriophages and are found in food consumed by humans (Whitman et. al., 1971). With no known incidences of allergic responses to these or similar phages, there is reasonable certainty that *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages will not induce adverse immune responses in humans. This conclusion is further bolstered by the fact that these bacteriophages are host specific. As a result, the agency approved the waiver request for the Immune Response study.

3. *Acute injection toxicity/ pathogenicity - Rat (OPPTS Harmonized Guideline 885.3200).* The Registrant submitted supporting public literature for this study, and requested a waiver. A waiver was granted based on the fact that *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages and similar bacteriophages are common bacteriophages found in drinking water and food ingested daily by humans and animals. According to published literature no known adverse effects or deaths have occurred in any species as a result of such dietary exposures. Bacteriophages are host specific and attack only the target bacteria. It has been reported in public literature that humans and other animals consume phages when they eat food--they are commonly found in water, ground beef, pork, sausage, chicken, raw skim milk, oysters, cheese, fresh mushrooms, and lettuce. Further, phages have been used in the human population to control polio, measles, mumps and rubella. Recipients of these bacteriophages showed no evidence of adverse reactions to phages.

Based on the published literature and data waivers submitted (and granted) in accordance with the Tier I toxicology data requirements set forth in 40 CFR 158.690(c), the Tier II and Tier III toxicology data requirements also set forth therein were not triggered and, therefore, not required in connection with this action.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food.* All phages, including those at issue in this action, are similar in nature in that they are host specific, attacking only bacteria. Published literature submitted by the registrant, and other publically available literature indicate that humans are exposed to phages daily, and these phages are commonly found in humans having no known adverse effects. Indeed, humans and

other animals routinely consume phages when they eat food such as raw produce and cheese. For example, it is reported that 1,000 (10^3) to 5 x 10^5 phages can be isolated routinely per gram (g) of high quality cheese. Pathogenic microorganisms are often found in foods; therefore, it is not surprising that 1 study found *E. coli* and coliphages in 11 of 12 foods purchased at retail markets. In this study, 10 purchases of each of the 12 foods were made. All 10 of the fresh ground beef purchases were contaminated with *E. coli*, and all 10 contained coliphages. In addition to ground beef, *E. coli* and coliphages were found in fresh chicken, fresh pork, fresh oyster, fresh mushrooms, lettuce, chicken pot pie, biscuit dough, deli loaf, deli roasted turkey, and package roasted chicken. Another example of phages in food has been *Propionibacterium freundenreichii* phage found in a concentration as high as 1.4 x 10^6/gm of swiss cheese. Based on the above and the fact that bacteriophages are host specific, these organisms are not known to pose any human health effects. Throughout the literature cited by the registrant and other publically available literature, there have been no known adverse effects to humans ever reported. Accordingly, the Agency concludes that when *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific Bacteriophages are used according to the manner intended (i.e., to control the bacterial pathogens *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv tomato* on tomatoes and peppers), there is a reasonable certainty that no harm will result to humans from all anticipated dietary exposures (through food) to any residues resulting from such use.

2. *Drinking water exposure*. The *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages are not intended for use in drinking water, nor are the approved uses likely to result in these bacteriophages reaching surface water or ground water that might be used as drinking water. Furthermore, in the unlikely event that *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages do reach water consumed by humans, for the many reasons enumerated numerous times above, the Agency concludes that when *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific Bacteriophages are used according to the manner intended (i.e., to control the bacterial pathogens *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv tomato* on tomatoes and peppers), there is a reasonable certainty that no harm will result to humans from all anticipated dietary exposures (through water) to any residues resulting from such use.

B. Other Non-Occupational Exposure

Since *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific Bacteriophages are host specific and inactivated within 24–48 hours after application, the potential for non-occupational, non-dietary exposures (i.e., dermal and inhalation exposures) to these phages by the general population, including infants and children, is highly unlikely. Moreover, the general population, including infants and children, are exposed to bacteriophages daily in food and drinking water with no known adverse effects ever being reported. Therefore, the Agency concludes that in the unlikely event there is non-occupational, non-dietary exposure to these specific phages, such exposures would pose no risks to the general population, including infants and children.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' These considerations include the possible cumulative effects of such residues on infants and children. *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages are host specific to the *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* bacteria that attack tomatoes and peppers only. Accordingly, under the conditions in which *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages are intended to be used, they will only attack the specific host bacteria causing lysis of that bacteria, and they are only active 24–48 hours after application. Given all of this and the fact that bacteriophages generally are consumed daily in food and drinking water, with no known adverse effects reported, any dietary and non-occupational exposures to *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages, when used according to label directions, are expected to have no cumulative or incremental effects to humans. In addition, due to the unique nature of bacteriophages, as repeatedly noted in this action, the Agency is unaware of any other substances that share a common mechanism of toxicity with the *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages.

VI. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population*. For all the reasons enumerated repeatedly above, there is reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

2. *Infants and children*. FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (MOE) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure, unless EPA determines that a different MOE will be safe for infants and children. MOEs, which are often referred to as uncertainty (safety) factors, are incorporated into EPA risk assessments either directly, or through the use of a MOE analysis or by using uncertainty factors in calculating a dose level that poses no appreciable risk. As previously mentioned in the toxicological profile, humans, including infants and children, have been exposed to phages generally through food and water, where they are commonly found, and through decades of therapeutic use, with no known or reported adverse effects. Based on this and all the other reasons enumerated repeatedly above, and based on all available information, the Agency concludes that *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages are non-toxic to mammals, including infants and children. Because there are no threshold effects of concern to infants, children, and adults when *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages are used as labeled, the Agency concludes that the additional MOE is not necessary to protect infants and children and that not adding any additional MOE will be safe for infants and children.

VII. Other Considerations

A. Endocrine Disruptors

Based on public literature cited by the company, *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages are not known endocrine disruptors nor are other phages related to *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages known endocrine disruptors. Therefore, there is no impact via endocrine-related effects on the Agency's safety finding set forth in this final rule for *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages.

B. Analytical Method

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation for the many reasons repeatedly stated above, including the active ingredient's host specificity, the fact that the human population is exposed to bacteriophages daily, through food, water, and other sources, with no adverse effects, and the fact that bacteriophages have been used therapeutically for more than 80 years with no adverse effects. For the same reasons, the Agency concludes that an analytical method is not required for enforcement purposes for *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific Bacteriophages.

C. Codex Maximum Residue Level

The are no known codex residue levels for this bacteriophage.

VIII. Conclusions

The Agency concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv.tomato* specific bacteriophages, including all anticipated dietary exposures and all other exposures for which there is reliable information, when used according to label directions, as a microbial pesticide on peppers and tomatoes.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0467 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 27, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2005–0467, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). 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 final 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 tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. 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 final rule directly regulates growers, food processors, food handlers and food retailers, 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.

X. Reference

Whitman, P.A. and R.T. Marshall. *Isolation of psychrophilic bacteriophages-host systems from refrigerated food products.* Applied Microbiology. Vol. 22, No 2, August 1971, pp. 220-223.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: December 9, 2005.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.1261 is added to subpart D to read as follows:

§ 180.1261 Xanthomonas campestris pv. vesicatoria and Pseudomonas syringae pv. tomato specific Bacteriophages.

An exemption from the requirement of a tolerance is established for residues of *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages in or on tomatoes and peppers.

[FR Doc. 05–24540 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 90

[WT Docket No. 02–55; ET Docket No. 00–258; ET Docket No. 95–18; RM–9498; RM–10024; FCC 05–174]

Private Land Mobile Services; 800 MHz Public Safety Interference Proceeding

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission amends the definition of an Enhanced Specialized Mobile Radio (ESMR) system; further delineates the relocation rights of 800 MHz incumbent licensees; narrows the Expansion Band in the Atlanta, Georgia region; reaffirms the Commission's authority to grant Nextel Communications, Inc. (Nextel) spectrum rights to ten megahertz of spectrum in the 1.9 GHz band; permits the Transition Administrator (TA) to follow a calendar year for reporting schedule purposes; permits Nextel to receive credit in the 800 MHz 'true-up' process for the relocation of certain additional BAS incumbent licensees whose licenses were issued prior to November 12, 2004; and clarifies the definitions of ''unacceptable interference'' and ''Critical Infrastructure Industries'' (CII).

DATES: Effective January 27, 2006.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brian Marenco, *Brian.Marenco@FCC.gov,* Public Safety

and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233. *Legal Information:* Roberto Mussenden, Esq., *Roberto.Mussenden@FCC.gov,* Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order,* FCC 05–174, adopted October 3, 2005 and released on October 5, 2005.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

1.–2. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting or recordkeeping requirements or burdens to the public, including businesses with fewer than 25 employees.

B. Report to Congress

3. The Commission will send a copy of this *Memorandum Opinion and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Supplemental Final Regulatory Flexibility Analysis

4. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' As required by the RFA an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the Notice of Proposed Rulemaking (''*800 MHz NPRM*'') in this proceeding. The Commission sought written public comment on the proposals in the *800 MHz NPRM,* including comment on the IRFA. Based upon the comments in response to the *800 MHz NPRM* and the IRFA, the Commission included a Final Regulatory Flexibility Analysis (''FRFA'') in the Report and Order (*800 MHz R&O*) in this proceeding. The Commission subsequently sought comment on ex parte presentations filed in this proceeding. In the Supplemental Order and Order on Reconsideration (*Supplemental Order*), the Commission, on its own motion, amended the rules in a manner that did not significantly affect small entities beyond the terms set forth in the FRFA. Accordingly, the Commission included a Supplemental Regulatory Flexibility Analysis (''Supplemental FRFA'') addressing those amendments consistent with the RFA.

5. This *Memorandum Opinion and Order* clarifies portions of the *800 MHz R&O* and companion *Supplemental Order* and addresses petitions for reconsideration of the Commission's decisions in the *800 MHz R&O* and the *Supplemental Order.* Interested parties were afforded notice and opportunity to comment on the petitions for reconsideration of the *800 MHz R&O* and *Supplemental Order. See* 70 FR 17327. Several parties filed oppositions to the petitions for reconsideration and replies to the oppositions. The clarifications we make in this MO&O are in response to the various petitions for reconsideration, oppositions and replies that have been filed thus far. Accordingly, this Supplemental Regulatory Flexibility Analysis (''Supplemental FRFA'') addresses those clarifications and conforms to the RFA.

Need for, and Objectives of, the Order on Reconsideration

6. By way of background the *800 MHz R&O* adopted a plan comprised of both long-term and short-term components that the Commission concluded represented the most effective solution to the problem of interference to public safety licensees in the 800 MHz band. The Commission addressed the ongoing interference problem over the short-term by adopting technical standards defining unacceptable interference in the 800 MHz band and detailing responsibility for interference abatement. The long-term component augmented the short-term component by reconfiguring the 800 MHz band to separate generally incompatible technologies whose current proximity to each other is the identified root cause of unacceptable interference.

7. *Enhanced Specialized Mobile Radio Systems.* In this proceeding the Commission divided the 800 MHz band into a cellular portion and non-cellular portion to create spectral separation between incompatible technologies. Section 90.614 provides that the cellular portion would be reserved for licensees that operate cellular high-density systems. Several parties sought reconsideration of the eligibility and operating requirements applicable to the cellular band arguing that these requirements are overly restrictive.

8. On our own motion we clarify the definition of ESMR system in order to resolve an ambiguity between the text of the *800 MHz R&O* and § 90.7 of the accompanying rules. This clarification is significant to the extent that it defines those licensees that may elect to be relocated into the cellular portion of the band. When the Commission first established the eligibility criteria for relocation into the cellular portion of the band, it spoke to existing ''ESMR'' systems. The *800 MHz R&O* inadvertently defined ESMR systems as those that employ ''high density'' cellular architecture. However the *800 MHz R&O* had also referred to an ''ESMR system,'' more generally, as a term to describe systems that use multiple, interconnected, multi-channel transmit/receive cells and employ frequency reuse to serve a larger number of subscribers than is possible using non-cellular technology. We resolve this contradiction by amending rule § 90.7 to eliminate the ''high density'' qualification for ESMR status. The practical effect of this clarification is to ensure licensees operating in the ESMR band have a fair amount of flexibility in the management of their systems. The purpose of this clarification is to distinguish between high-density systems that may not be operated in the non-ESMR portion of the band not to require EA licensees that relocate to the ESMR band to operate high-density systems should they elect to operate in the ESMR band. To this end we also adopt a definition of ''800 MHz high-density cellular system'' and ''800 MHz cellular system'' and revise several part 22 and 90 rules to incorporate the distinction between 800 MHz cellular systems and high-density cellular systems in order to more efficiently implement our band reconfiguration plan.

Economic Area Licensees

9. We also clarify that Economic Area (EA) licensees that elect to relocate to the cellular band may relocate site-based systems so long as they deploy a cellular system on their combined facilities by the end of their EA license term. We also clarify that those incumbent EA licensees that operate non-cellular systems in that portion of the cellular band known as the ''Upper 200 band,'' must relocate from the cellular band unless they deploy a cellular system. Failure to construct a cellular system will result in automatic cancellation of the relocated EA license and any site-based facilities relocated to the cellular band. The purpose of this clarification is to: (1) Avoid replicating in the cellular band the same incompatible mix of technologies that resulted in this proceeding; (2) ensure that licensees genuinely interested in competing with cellular operators have the opportunity to move forward with

their business plans and (3) inhibit the ability of speculative licensees to allow valuable spectrum to lie fallow or under utilized in an attempt to maximize resale value. In this connection, EA licensees, consistent with their existing construction and operational obligations, must notify the Commission whether they have constructed in accordance with the operational rules governing the ESMR band. Overall, this clarification confers upon EA licensees the benefit of added flexibility.

Unacceptable Interference

10. In the *800 MHz R&O,* the Commission adopted an objective standard for defining what constitutes ''unacceptable interference'' to public safety and other non-cellular systems in the 800 MHz band. The purpose of defining unacceptable interference is to determine the rights and responsibilities of parties to alleviate interference. One petitioner requested that we clarify that the ''unacceptable interference'' standard will apply only to interference created by licensees employing cellular architecture systems. According to this petitioner the heading and text of § 90.672 implies that ''unacceptable interference'' could be created by any type of licensee including non-cellular licensees. We clarify the heading and text of § 90.672 to specify that ''unacceptable interference'' to 800 MHz non-cellular licensees is that which originates from one or a combination of 800 MHz cellular-architecture licensees, regardless of whether the cellular-architecture licensee employs a ''high-density'' or ''low-density'' cellular system. In this connection we replace the reference to harmful interference in § 90.672 with the term unacceptable interference.

Critical Infrastructure Industry

11. One Petitioner pointed out that § 90.7 imprecisely defined Critical Infrastructure Industries (CII). Accordingly we clarify the definition of CII.

Southeast Region Band Plan

12. Section 90.617 is updated to reflect the distribution of channels between the various pool categories in the SouthernLINC/Nextel counties listed in § 90.614(c). In the *800 MHz R&O* the Commission adopted a band plan for the Southeast Region. Part of this band plan included a 1 MHz Expansion band, designed to create spectral separation between public safety and ESMR operations. Subsequently we have received petitions for reconsideration seeking to eliminate or reduce the size of the Expansion band because there is insufficient amount of spectrum to accommodate Public Safety and cellular operations in the Atlanta market. Accordingly, we reduce the size of the Expansion band in the Atlanta market and up to seventy miles outside Atlanta.

Transition Administrator Reports

13. Sections 90.676(b)(3) and (4) are revised to allow the Transition Administrator to choose the date for filing quarterly and annual reports regarding band reconfiguration. Previously § 90.676 required that the TA submit its reports based on the effective date of the *Report and Order.* We have since learned that this requirement would be complicated by Nextel Communications, Inc.'s obligations to the Securities and Exchange Commission. We therefore modify our rules to permit the TA to file its quarterly and annual reports with the Commission on the first business day following Nextel's quarterly and annual filings with the Securities and Exchange Commission.

Dispute Resolution

14. One petitioner pointed out an ambiguity and inadvertent omission in our 800 MHz band reconfiguration dispute resolution procedures. Accordingly we revise § 90.677(d) of our rules to clarify that the Transition Administrator must forward unresolved disputed issues remaining at the end of the mandatory negotiation period within thirty days of the end of the mandatory negotiation period. We also will modify § 90.674 of our rules to codify the dispute resolution procedures set forth in the text of the 800 MHz R&O.

Frequency Coordination

15. Section 90.175 is revised to clarify that 800 MHz Economic Area licensees and 900 MHz SMR licensees will continue to be exempt from frequency coordination requirements. Previously, in the Supplemental Order we provided that 800 MHz site-based SMR licensees will be subject to frequency coordination in the 800 MHz band but inadvertently omitted this requirement from the rules. Accordingly we correct this omission.

Summary of Significant Issues Raised in Response to the FRFA

16. No parties have addressed the FRFA in any subsequent filings.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

17. The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [FN352] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' 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 Small Business Administration (SBA).

18. In this *MO&O,* the Commission is amending the final rules adopted in the *800 MHz R&O* and *Supplemental Order.* In this Further FRFA, we incorporate by reference the description and estimate of the number of small entities from the FRFA in the *800 MHz R&O,* which identifies as potentially affected entities Governmental Licensees, Public Safety Radio Licensees, Wireless Telecommunications, Business, Industrial and Land Transportation Licensees, and Specialized Mobile Radio Licensees.

19. A small organization is generally ''any not-for-profit enterprise which is independently owned and operates and is not dominant in its field.'' Nationwide as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

Description of Projected Reporting, Recordkeeping and other Compliance Requirements

20. We do not adopt new reporting, recordkeeping or other compliance requirements in this *MO&O.*

Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

21. 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 (among others): (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.

22. As noted above, we reduce the size of the Expansion band in Atlanta, rather than eliminating the Expansion band in the Atlanta area. Although we reduce the Expansion band in Atlanta by .5 MHz, we maintain spectral separation between public safety and ESMR band operations. The purpose of maintaining spectral separation between public safety licensees operating in the non-cellular band and ESMR licensees operating in the cellular band is to reduce the incidence of interference to public safety. In contrast, if we had eliminated the Expansion band, we would have eliminated any spectral separation between public safety and ESMR systems operating in the cellular portion of the band. Further, public safety will continue to be entitled to interference protection from unacceptable interference. As a concession, however, some Atlanta-based B/ILT incumbents who would otherwise not be required to change frequencies will be required to relocate to the Expansion Band in order to accommodate public safety licensees relocating below the Expansion Band.

23. The Commission will send a copy of this *Memorandum Opinion and Order,* including this Supplemental Final Regulatory Flexibility Certification, in a report to be sent to Congress and the General Accounting Office 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 Order including a copy of this Memorandum Opinion and Order Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. *See* 5 U.S.C. 605(b).

A summary of this *Memorandum Opinion and Order* and this certification will also be published in the **Federal Register**.

List of Subjects in 47 CFR Parts 22 and 90

Communications, Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 22 and 90 as follows:

PART 22—PUBLIC MOBILE SERVICES

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

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

■ 2. In § 22.970, the section heading and paragraph (a) introductory text are revised to read as follows:

§ 22.970 Unacceptable interference to part 90 non-cellular 800 MHz licensees from cellular radiotelephone or part 90–800 MHz cellular systems.

(a) *Definition.* Except as provided in 47 CFR 90.617(k), unacceptable interference to non-cellular part 90 licensees in the 800 MHz band from cellular radiotelephone or part 90–800 MHz cellular systems will be deemed to occur when the below conditions are met:

* * * * *

■ 3. In § 22.971 paragraph (a) is revised to read as follows:

§ 22.971 Obligation to abate unacceptable interference.

(a) *Strict Responsibility.* Any licensee who, knowingly or unknowingly, directly or indirectly, causes or contributes to causing unacceptable interference to a non-cellular part 90 of this chapter licensee in the 800 MHz band, as defined in § 22.970, shall be strictly accountable to abate the interference, with full cooperation and utmost diligence, in the shortest time practicable. Interfering licensees shall consider all feasible interference abatement measures, including, but not limited to, the remedies specified in the interference resolution procedures set forth in § 22.972(c). This strict responsibility obligation applies to all forms of interference, including out-of-band emissions and intermodulation.

* * * * *

■ 4. In § 22.972, paragraph (c)(1) introductory text is revised to read as follows:

§ 22.972 Interference resolution procedures.

* * * * *

(c) * * *

(1) All Cellular Radiotelephone and part 90 of this chapter—800 MHz cellular system licensees who are responsible for causing unacceptable interference shall take all affirmative measures to resolve such interference. Cellular Radiotelephone licensees found to contribute to unacceptable interference, as defined in § 22.970, shall resolve such interference in the shortest time practicable. Cellular Radiotelephone licensees and part 90 of this chapter—800 MHz cellular system licensees must provide all necessary test apparatus and technical personnel skilled in the operation of such equipment as may be necessary to determine the most appropriate means of timely eliminating the interference. However, the means whereby interference is abated or the cell parameters that may need to be adjusted is left to the discretion of the Cellular Radiotelephone and/or part 90 of this chapter—800 MHz cellular system licensees, whose affirmative measures may include, but not be limited to, the following techniques:

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 5. The authority citation for part 90 continues to read as follows:

Authority: 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 6. In § 90.7, the definition for ''Cellular System (800 MHZ)'' is removed, the definition for ''800 MHz Cellular System'' is added in its place, the definition for ''800 MHz High Density Cellular System'' is added following the definition for ''800 MHz Cellular System'', and the definition for ''Critical Infrastructure Industry (CII)'' is revised to read as follows:

§ 90.7 Definitions.

* * * * *

800 MHz Cellular System. In the 806–824 MHz/ 851–869 MHz band, a system that uses multiple, interconnected, multi-channel transmit/receive cells capable of frequency reuse and automatic handoff between cell sites to serve a larger number of subscribers than is possible using non-cellular technology.

800 MHz High Density Cellular System. In the 806–824 MHz/ 851–869 MHz band, a high density cellular system is defined as a cellular system which:

(1) Has more than five overlapping interactive sites featuring hand-off capability; and

(2) Any one of such sites has an antenna height of less than 30.4 meters (100 feet) above ground level with an

antenna height above average terrain (HAAT) of less than 152.4 meters (500 feet) and twenty or more paired frequencies.

* * * * *

Critical Infrastructure Industry (CII). State, local government and non-government entities, including utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, providing private internal radio services provided these private internal radio services are used to protect safety of life, health, or property; and are not made commercially available to the public.

* * * * *

■ 7. In § 90.175, paragraph (j)(8) is revised to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(j) * * *

(8) Applications for SMR frequencies contained in §§ 90.617(d) Table 4A, 90.617(e), 90.617(f) and 90.619(b)(2).

* * * * *

■ 8. In § 90.614, the section heading, the introductory text, and paragraphs (a), (b) and (c) introductory text are revised to read as follows:

§ 90.614 Segments of the 806–824/851–869 MHz band for non-border areas.

The 806–824/851–869 MHz band (''800 MHz band'') will be divided as follows at locations farther then 110 km (68.4 miles) from the U.S./Mexico border and 140 km (87 miles) from the U.S./Canadian border (''non-border areas'')

(a) 800 MHz high density cellular systems—as defined in § 90.7—are prohibited from operating on channels 1–550 in non-border areas.

(b) 800 MHz high density cellular systems—as defined in § 90.7—are permitted to operate on channels 551–830 in non-border areas.

(c) In the following counties and parishes, 800 MHz high density cellular systems—as defined in § 90.7—are permitted to operate on channels 411–830:

* * * * *

■ 9. In § 90.615, paragraph (a) introductory text is revised to read as follows:

§ 90.615 Individual channels available in the General Category in 806–824/851–869 MHz band.

* * * * *

(a) In a given 800 MHz NPSPAC region, any channel in the 231–260 range which is vacated by a licensee relocating to channels 551–830 and which remains vacant after band reconfiguration will be available as follows:

* * * * *

■ 10. In § 90.617, revise paragraphs (a), (b), (d), (e), (g) introductory text, (h) introductory text, (i) introductory text, (j) introductory text, and (k) introductory text to read as follows:

§ 90.617 Frequencies in the 809.750–824/854.750–869 MHz, and 896–901/935–940 MHz bands available for trunked, conventional or cellular system use in non-border areas.

* * * * *

(a) Unless otherwise specified, the channels listed in Table 1 and paragraph (a)(1) of this section are available for to eligible applicants in the Public Safety Category which consists of licensees eligible in the Public Safety Pool of subpart B of this part. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These frequencies are available in non-border areas. Specialized Mobile Radio Systems will not be authorized in this category. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 1.—PUBLIC SAFETY POOL 806–816/851–861 MHZ BAND CHANNELS

[70 Channels]

Group No.	Channel Nos.
269	269–289–311–399–439
270	270–290–312–400–440
279	279–299–319–339–359
280	280–300–320–340–360
309	309–329–349–369–389
310	310–330–350–370–390
313	313–353–393–441–461
314	314–354–394–448–468
321	321–341–361–381–419
328	328–348–368–388–420
351	351–379–409–429–449
332	352–380–410–430–450
Single Channels	391, 392, 401, 408, 421, 428, 459, 460, 469, 470

(1) Channels numbers 1–230 are also available to eligible applicants in the Public Safety Category in non-border areas. The assignment of these channels will be done in accordance with the policies defined in the Report and Order of Gen. Docket No. 87–112 (See § 90.16). The following channels are available only for mutual aid purposes as defined in Gen. Docket No. 87–112: channels 1, 39, 77, 115, 153.

(2) Except as provided in paragraph (a)(3) of this section, the channels listed in Table 1A are available in the counties listed in § 90.614(c) to eligible applicants in the Public Safety Category. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 1A.—PUBLIC SAFETY POOL 806–816/851–861 MHZ BAND CHANNELS FOR COUNTIES IN SOUTHEASTERN U.S.

[70 Channels]

Group No.	Channel Nos.
261	261–313–324–335–353
262	262–314–325–336–354
265	265–285–315–333–351
266	266–286–316–334–352
269	269–289–311–322–357
270	270–290–312–323–355
271	271–328–348–358–368
279	279–299–317–339–359
280	280–300–318–340–360
309	309–319–329–349–369
310	310–320–330–350–370
321	321–331–341–361–372
Single Channels	326, 327, 332, 337, 338, 342, 343, 344, 345, 356

(3) The channels listed in Table 1B are available within 113 km (70 mi) of the center city coordinates of Atlanta, GA to eligible applicants in the Public Safety Category. The center city coordinates of Atlanta, GA—for the purposes of the rule—are defined as 33°44′55″ NL, 84°23′17″ WL. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 1B.—PUBLIC SAFETY POOL 806–816/851–861 MHZ BAND CHANNELS FOR ATLANTA, GA

[70 Channels]

Group No.	Channel Nos.
261	261–313–324–335–353
262	262–314–325–336–354
269	269–289–311–322–357
270	270–290–312–323–355
279	279–299–319–339–359
280	280–300–320–340–360
285	285–315–333–351–379
286	286–316–334–352–380
309	309–329–349–369–389
310	310–330–350–370–390
321	321–331–341–361–381
328	328–348–358–368–388
Single Channels	317, 318, 326, 327, 332, 337, 338, 356, 371, 372

(b) Unless otherwise specified, the channels listed in Table 2 are available to applicants eligible in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in § 90.603(c). 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These frequencies are available in non-border areas. Specialized Mobile Radio (SMR) systems will not be authorized on these frequencies. These channels are available for inter-category sharing as indicated in § 90.621(e).

TABLE 2.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHZ BAND CHANNELS

[100 Channels]

Group No.	Channel Nos.
322	322–362–402–442–482
323	323–363–403–443–483
324	324–364–404–444–484
325	325–365–405–445–485
326	326–366–406–446–486
327	327–367–407–447–487
342	342–382–422–462–502

TABLE 2.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHZ BAND CHANNELS—Continued

[100 Channels]

Group No.	Channel Nos.
343	343–383–423–463–503
344	344–384–424–464–504
345	345–385–425–465–505
346	346–386–426–466–506
347	347–387–427–467–507
Single Channels	261, 271, 281, 291, 301, 262, 272, 282, 292, 302, 263, 273, 283, 293, 303, 264, 274, 284, 294, 304, 265, 275, 285, 295, 305, 266, 276, 286, 296, 306, 267, 277, 287, 297, 307, 268, 278, 288, 298, 308

(1) Except as provided in paragraph (b)(2) of this section, the channels listed in Table 2A are available in the counties listed in § 90.614(c) to eligible applicants in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in § 90.603(c). 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 2A.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHZ BAND FOR CHANNELS IN SOUTHEASTERN U.S.

[69 Channels]

	Channel Nos.
Single Channels	263, 264, 267, 268, 272, 273, 274, 275, 276, 277, 278, 281, 282, 283, 284, 287, 288, 291, 292, 293, 294, 295, 296, 297, 298, 301, 302, 303, 304, 305, 306, 307, 308, 346, 347, 362, 363, 364, 365, 366, 367, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410

(2) The channels listed in Table 2B are available within 113 km (70 mi) of the center city coordinates of Atlanta, GA, to eligible applicants in the Industrial/Business Pool of subpart C of this part but exclude Special Mobilized Radio Systems as defined in § 90.603(c). The center city coordinates of Atlanta, GA—for the purposes of the rule—are defined as 33°44′55″ NL, 84°23′17″ WL. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 2B.—BUSINESS/INDUSTRIAL/LAND TRANSPORTATION POOL 806–816/851–861 MHZ BAND FOR CHANNELS IN ATLANTA, GA

[69 Channels]

	Channel Nos.
Single Channels	263, 264, 265, 266, 267, 268, 271, 272, 273, 274, 275, 276, 277, 278, 281, 282, 283, 284, 287, 288, 291, 292, 293, 294, 295, 296, 297, 298, 301, 302, 303, 304, 305, 306, 307, 308, 342, 343, 344, 345, 346, 347, 362, 363, 364, 365, 366, 367, 382, 383, 384, 385, 386, 387, 391, 392, 393, 394, 399, 400, 401, 402, 403, 404, 405, 406, 407, 409, 410

* * * * *

(d) Unless otherwise specified, the channels listed in Tables 4A and 4B are available only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. 800 MHz high density cellular systems, as defined in § 90.7, are prohibited on these channels. These frequencies are available in non-border areas. The spectrum blocks listed in Table 4A are available for EA-based services (as defined by § 90.681) prior to January 21, 2005. No new EA-based services will be authorized after January 21, 2005. EA-based licensees who operate non-high-density cellular systems prior to January 21, 2005, may choose to remain on these channels in the non-high-density cellular portion of the 800 MHz band (as defined in § 90.614). These licensees may continue to operate non-high-density cellular systems and will be grandfathered indefinitely. The channels listed in Table 4B will be available for site-based licensing after January 21, 2005, in any

Economic Area where no EA-based licensee is authorized for these channels.

TABLE 4A.—EA-BASED SMR CATEGORY 806–816/851–861 MHz BAND CHANNELS, AVAILABLE PRIOR TO JANUARY 21, 2005

[80 Channels]

Spectrum block	Channel Nos.
G	311–351–391–431–471
H	312–352–392–432–472
I	313–353–393–433–473
J	314–354–394–434–474
K	315–355–395–435–475
L	316–356–396–436–476
M	317–357–397–437–477
N	318–358–398–438–478
O	331–371–411–451–491
P	332–372–412–452–492
Q	333–373–413–453–493
R	334–374–414–454–494
S	335–375–415–455–495
T	336–376–416–456–496
U	337–377–417–457–497
V	338–378–418–458–498

TABLE 4B.—SMR CATEGORY 806–816/851–861 MHz BAND CHANNELS, AVAILABLE AFTER JANUARY 21, 2005, FOR SITE-BASED LICENSING

[80 Channels]

Group No.	Channel Nos.
315	315–355–395–435–475
316	316–356–396–436–476
317	317–357–397–437–477
318	318–358–398–438–478
331	331–371–411–451–491
332	332–372–412–452–492
333	333–373–413–453–493
334	334–374–414–454–494
335	335–375–415–455–495

TABLE 4B.—SMR CATEGORY 806–816/851–861 MHz BAND CHANNELS, AVAILABLE AFTER JANUARY 21, 2005, FOR SITE-BASED LICENSING—Continued

[80 Channels]

Group No.	Channel Nos.
336	336–376–416–456–496
337	337–377–417–457–497
338	338–378–418–458–498
Single Channels	431, 432, 433, 434, 471, 472, 473, 474, 479, 480, 481, 488, 489, 490, 499, 500, 501, 508, 509, 510

(1) Except as provided in paragraph (d)(2) of this section, the channels listed in Table 4C are available in the counties listed in § 90.614(c) for non-high-density cellular operations only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 4C.—SMR CATEGORY 806–816/851–861 MHz BAND CHANNELS AVAILABLE FOR SITE-BASED LICENSING IN SOUTHEASTERN U.S. AFTER JANUARY 21, 2005

[11 Channels]

	Channel Nos.
Single Channels	371, 373, 374, 375, 376, 377, 378, 395, 396, 397, 398

(2) The channels listed in Table 4D are available within 113 km (70 mi) of the center city coordinates of Atlanta, GA, only to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. The center city coordinates of Atlanta, GA—for the purposes of this rule—are defined as 33°44′55″ NL, 84°23′17″ WL. 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e). 800 MHz high density cellular systems as defined in § 90.7 are prohibited on these channels. These channels are available for intercategory sharing as indicated in § 90.621(e).

TABLE 4D.—SMR CATEGORY 806–816/851–861 MHz BAND CHANNELS AVAILABLE FOR SITE-BASED LICENSING IN ATLANTA, GA AFTER JANUARY 21, 2005

[11 Channels]

	Channel Nos.
Single Channels	373, 374, 375, 376, 377, 378, 395, 396, 397, 398, 408

(e) The Channels listed in § 90.614(b) and (c) are available to eligibles in the SMR category—which consists of Specialized Mobile Radio (SMR) stations and eligible end users. ESMR licensees which employ an 800 MHz high density cellular system, as defined in § 90.7, are permitted to operate on these channels in non-border areas. ESMR licensees authorized prior to January 21, 2005, may continue to operate, if they so choose, on the channels listed in Table 5. These licensees will be grandfathered indefinitely.

TABLE 5.—ESMR CATEGORY 816–821 MHz BAND CHANNELS FOR CELLULAR OPERATIONS IN NON-BORDER AREAS AVAILABLE PRIOR TO JANUARY 21, 2005

[200 Channels]

Spectrum block	Channel Nos.
A	511 through 530.
B	531 through 590.
C	591 through 710.

* * * * *

(g) In a given 800 MHz NPSPAC region, channels below 471 listed in Tables 2 and 4B which are vacated by licensees relocating to channels 551–830 and which remain vacant after band reconfiguration will be available as follows:

* * * * *

(h) In a given 800 MHz NPSPAC region, channels below 471 listed in Tables 2 and 4B which are vacated by a licensee relocating to channels 511–550 and remain vacant after band reconfiguration will be available as follows:

* * * * *

(i) Special Mobilized Radio Systems licensees who operate systems, other than 800 MHz high density cellular systems, on any of the public safety channels listed in Table 1 prior to January 21, 2005, are grandfathered and may continue to operate on these channels indefinitely. These grandfathered licensees will be

prohibited from operating 800 MHz high density cellular systems as defined in § 90.7. Site-based licensees who are grandfathered on any of the public safety channels listed in Table 1 may modify their license only if they obtain concurrence from a certified public safety coordinator in accordance with § 90.175(c). Grandfathered EA-based licensees, however, are exempt from any of the frequency coordination requirements of § 90.175 as long as their operations remain within the Economic Area defined by their license in accordance with the requirements of § 90.683(a).

(j) Licensees operating 800 MHz high density cellular systems on the channels listed in § 90.614(a), prior to January 21, 2005, may elect to continue operating on these channels and will be permitted to continue operating 800 MHz high density cellular systems (as defined in § 90.7) in this portion of the band. These licensees will be grandfathered indefinitely subject to the provisions of §§ 90.673, 90.674 and 90.675.

(k) Licensees may operate systems other than 800 MHz high density cellular systems (as defined in § 90.7) on Channels 511–550 at any location vacated by an EA-based SMR licensee. For operations on these channels, unacceptable interference (as defined in § 22.970 of this chapter and § 90.672) will be deemed to occur only at sites where the following median desired signals are received (rather than those specified in § 22.970(a)(1)(i) of this chapter and § 90.672(a)(1(i). The minimum required median desired signal, as measured at the R.F. input of the receiver, will be as follows:

* * * * *

■ 11. In § 90.619 paragraph (d)(2) is revised to read as follows:

§ 90.619 Frequencies available for use in the U.S./Mexico and U.S./Canada border areas.

* * * * *

(d) * * *

(2) All frequency assignments made pursuant to paragraph (d)(1) of this section shall comply with the requirements of § 90.619(b).

* * * * *

■ 12. In § 90.672, the section heading and the introductory text of paragraph (a) are revised to read as follows:

§ 90.672 Unacceptable interference to non-cellular 800 MHz licensees from 800 MHz cellular systems or Part 22 Cellular Radiotelephone systems.

(a) *Definition.* Except as provided in 47 CFR 90.617(k), unacceptable interference to non-cellular licensees in the 800 MHz band from 800 MHz cellular systems or part 22 of this chapter, Cellular Radiotelephone systems will be deemed to occur when the below conditions are met:

* * * * *

■ 13. In § 90.674, paragraphs (a) introductory text and (c)(1) introductory text are revised to read as follows:

§ 90.674 Interference resolution procedures before, during and after band reconfiguration.

(a) *Initial Notification.* Any non-cellular licensee operating in the 806–824/851–869 MHz band who reasonably believes it is receiving unacceptable interference, as described in § 90.672, shall provide an initial notification of the interference incident. This initial notification of an interference incident shall be sent to all part 22 of this chapter Cellular Radiotelephone licensees and ESMR licensees who operate cellular base stations (''cell sites'') within 1,524 meters (5,000 feet) of the interference incident.

* * * * *

(c) * * *

(1) All 800 MHz cellular system licensees and part 22 of this chapter Cellular Radiotelephone licensees who are responsible for causing unacceptable interference shall take all affirmative measures to resolve such interference. 800 MHz cellular system licensees found to contribute to harmful interference, as defined in § 90.672, shall resolve such interference in the shortest time practicable. 800 MHz cellular system licensees and part 22 of this chapter Cellular Radiotelephone licensees must provide all necessary test apparatus and technical personnel skilled in the operation of such equipment as may be necessary to determine the most appropriate means of timely eliminating the interference. However, the means whereby interference is abated or the cell parameters that may need to be adjusted is left to the discretion of involved 800 MHz cellular system licensees and/or part 22 of this chapter Cellular Radiotelephone licensees, whose affirmative measures may include, but not be limited to, the following techniques:

* * * * *

■ 14. In § 90.676 paragraphs (b)(3), (b)(4), and (b)(5) are revised to read as follows:

§ 90.676 Transition administrator for reconfiguration of the 806–824/851–869 MHz band in order to separate high-density cellular systems from non-cellular systems.

* * * * *

(b) * * *

(3) Provide quarterly progress reports to the Commission in such detail as the Commission may require and include, with such reports, certifications by Nextel and the relevant licensees that relocation has been completed and that both parties agree on the amount received from the letter of credit proceeds in connection with relocation of the licensees' facilities. The report shall include description of any disputes that have arisen and the manner in which they were resolved. These quarterly reports need not be audited. The Transition Administrator may select the dates for filing the quarterly progress reports;

(4) Provide to the Public Safety and Critical Infrastructure Division with an annual audited statement of relocation funds expended to date, including salaries and expenses of Transition Administrator. The Transition Administrator may select the date for filing the annual audited statement;

(5) Facilitate resolution of disputes by mediation; or referral of the parties to alternative dispute resolution services as described in § 90.677(d).

* * * * *

■ 15. In § 90.677, the introductory paragraph and paragraph (d) are revised to read as follows:

§ 90.677 Reconfiguration of the 806–824/851–869 MHz band in order to separate high-density cellular systems from non-cellular systems.

In order to facilitate reconfiguration of the 806–824/851–869 MHz band (''800 MHz band'') to separate high-density cellular systems from non-cellular systems, Nextel Communications, Inc. (Nextel) may relocate incumbents within the 800 MHz band by providing ''comparable facilities.'' For the limited purpose of band reconfiguration, the provisions of § 90.157 shall not apply and inter-category sharing will be permitted under all circumstances. Such relocation is subject to the following provisions:

* * * * *

(d) *Transition Administrator.* (1) The Transition Administrator, or other mediator, shall attempt to resolve disputes referred to it before the conclusion of the mandatory negotiation period as described in § 90.677(c) within thirty working days after the Transition Administrator has received a submission by one party and a response from the other party. Any party thereafter may seek expedited non-binding arbitration which must be completed within thirty days of the Transition Administrator's, or other mediator's recommended decision or advice. Should issues still remain

unresolved they may be referred to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau within thirty days of the Transition Administrator's, or other mediator's recommended decision or advice. When referring an unresolved matter to the Chief of the Public Safety and Critical Infrastructure Division, the Transition Administrator shall forward the entire record on any disputed issues, including such dispositions thereof that the Transition Administrator has considered. Upon receipt of such record and advice, the Commission will decide the disputed issues based on the record submitted. The authority to make such decisions is delegated to the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau who may decide the disputed issue or designate it for an evidentiary hearing before an Administrative Law Judge. If the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for de novo review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge. Any disputes submitted to the Transition Administrator after the conclusion of the mandatory negotiation period as described in § 90.677(c) shall be resolved as described in § 90.677(d)(2).

(2) If no agreement is reached during either the voluntary or mandatory negotiating periods, all disputed issues shall be referred to the Transition Administrator who shall attempt to resolve them. If disputed issues remain thirty working days after the end of the mandatory negotiation period, the Transition Administrator shall forward the record to the Chief of the Public Safety and Critical Infrastructure Division, together with advice on how the matter(s) may be resolved. The Chief of the Public Safety and Critical Infrastructure Division is hereby delegated the authority to rule on disputed issues, de novo. If the Chief of the Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau decides an issue, any party to the dispute wishing to appeal the decision may do so by filing with the Commission, within ten days of the effective date of the initial decision, a Petition for de novo review; whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge.

* * * * *

■ 16. In § 90.685 paragraph (e) is added to read as follows:

§ 90.685 Authorization, construction and implementation of EA licenses.

* * * * *

(e) EA licensees operating on channels listed in § 90.614(b) and (c) must implement an Enhanced Specialized Mobile Radio (ESMR) system—as defined in § 90.7—on their EA license and any associated site-based licenses prior to the expiration date of the EA license. EA licensees operating on these channels shall follow the construction notification procedures set forth in § 1.946(d) of this chapter. Failure to implement an ESMR system on their EA and site-based licenses before the expiration date of the EA license will result in termination of the EA license and any associated site-based licenses pursuant to § 1.946(c) of this chapter.

[FR Doc. 05–24373 Filed 12–27–05; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; DA 05–3139]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule; expiration of waiver.

SUMMARY: In this document, the Commission extends for an additional year the waiver of the emergency (911) call handling requirement for providers of Video Relay Service (VRS). The Commission extends the waiver for one year in view of continued technological challenges to determining the geographic location of telecommunications relay service (TRS) calls that originate via the Internet, and the *VRS 911 NPRM* addressing the issue.

DATES: The waiver of the emergency (911) call handling requirement will expire on January 1, 2007, or upon the release of an order addressing the VRS emergency (911) call handling issue, whichever comes first.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, (202) 418–1475 (voice), (202) 418–0597 (TTY), or e-mail *Thomas.Chandler@fcc.gov.*

SUPPLEMENTARY INFORMATION: On December 31, 2001, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Waiver Order,* DA 01–3029, CC Docket No. 98–67, 17 FCC Rcd 157 (2001), granting VRS providers a waiver until December 31, 2003, of certain TRS mandatory minimum standards, including the emergency call handling requirement. On December 19, 2003, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Order,* DA 03–4029, CC Docket No. 98–67, 18 FCC Rcd 26309 (2003), extending the waiver to June 30, 2004. On June 30, 2004, the Commission released *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, 2004 TRS Report and Order,* FCC 04–137, CC Docket No. 98–67, which published in the **Federal Register** on September 1, 2004 (69 FR 53382) again extending the waiver until January 1, 2006. This is a summary of the Commission's *Order* DA 05–3139, adopted December 2, 2005, released December 5, 2005. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). The Commission's *Order* DA 05–3139 can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb.dro.*

Synopsis

The Commission's TRS regulations set forth operational, technical, and functional mandatory minimum standards applicable to the provision of TRS. *See* 47 CFR 64.604 (the TRS ''mandatory minimum standards''). These standards apply to all forms of TRS when they are offered, unless they are waived. Therefore, to be eligible for reimbursement from the Interstate TRS Fund for the provision of TRS, the provider must meet all applicable non-waived mandatory minimum standards. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Report and Order and Further Notice of Proposed Rulemaking (*Improved TRS Order and FNPRM*), FCC 00–56, CC Docket No. 98–67, which

published in the **Federal Register** on June 21, 2000 (65 FR 38432).

The TRS mandatory minimum standards require TRS providers to handle emergency calls. *See* 47 CFR 64.604(a)(4) (requiring TRS providers to automatically and immediately transfer emergency calls to an appropriate public safety answering point (PSAP)); *2004 TRS Report and Order,* 19 FCC Rcd at 12521, paragraph 116. The Commission has recognized that, although persons with hearing and speech disabilities should generally make emergency calls directly to the PSAP by calling 911 (*e.g.*, via a TTY), many such individuals use TRS to contact emergency services.

In March 2000, the Commission recognized VRS as a form of TRS eligible for compensation from the Interstate TRS Fund. *See Improved TRS Order and FNPRM,* 15 FCC Rcd 5152–5154, paragraphs 21–27. On December 31, 2001, the Commission granted VRS providers a waiver until December 31, 2003, of certain TRS mandatory minimum standards, including the emergency call handling requirement. This waiver was ultimately extended to January 1, 2006. *See 2004 TRS Report and Order,* 19 FCC Rcd 12522, paragraph 118.

On November 30, 2005, the Commission released the *VRS 911 NPRM,* seeking comment on how providers of the Internet-based TRS services, including VRS, may determine the appropriate PSAP to contact when they receive an emergency call. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Access to Emergency Services,* Notice of Proposed Rulemaking (*VRS 911 NPRM*), FCC 05–196, CG Docket No. 05–123. The Commission noted the importance of emergency access for VRS users and the necessity to find a means to ensure that VRS calls seeking emergency assistance can be promptly routed to the appropriate emergency service provider. *VRS 911 NPRM,* at paragraphs 1–2, 18.

Discussion

The Commission may waive a provision of its rules for ''good cause shown.'' 47 CFR 1.3; *see generally 2004 TRS Report and Order,* 19 FCC Rcd 12520, paragraph 110 (discussing standard for waiving Commission rules). In view of the continued technological challenges to determining the geographic location of TRS calls originating via the Internet, including VRS calls, as well as the recently released *VRS 911 NPRM* seeking comment on this issue, the Commission finds good cause exists to extend the waiver of the emergency call handling requirement for VRS providers until January 1, 2007 or upon the release of an order addressing the emergency (911) call handling issue, whichever comes first. This waiver, like the previous waivers, is conditioned upon the filing of annual reports, due each April 16th, addressing whether it is necessary for the waiver to remain in effect. *See 2004 TRS Report and Order,* 19 FCC Rcd 12520–12521, paragraph 111 (detailing required contents of annual waiver reports). The Commission notes that in the 2005 annual reports the VRS providers agreed that it is not technologically feasible to automatically route emergency calls to the appropriate PSAP, because they do not obtain location information from the VRS user initiating the call via the Internet. *See* AT&T Corp., 2005 Annual Report on TRS Waivers at 2 (filed on April 18, 2005); Communications Access Center for the Deaf and Hard of Hearing, 2005 Annual Report on Progress of Meeting Waived Requirements at 1–2 (undated); Hamilton Relay, Inc., 2005 Annual Report Concerning IP Relay and VRS at 1–3 (filed on April 15, 2005); Hands On Video Relay Services, Inc., 2005 Annual Report on Progress of Meeting Waived Requirements at 2–3; MCI, 2005 Report on the Status of Waived IP-Relay and Video Relay Services at 11–12 (filed on April 16, 2005); Sorenson Media, Inc., 2005 Annual Report on Status of Waived VRS Requirements at 1–3 (filed on April 15, 2005); Sprint Corporation, 2005 Annual Internet Relay and Video Relay Service Progress Report at 2 (filed on April 14, 2005). Accordingly, the emergency call handling waiver for VRS will expire on January 1, 2007, or upon the release of an order addressing this issue, whichever comes first.

Ordering Clause

Pursuant to the authority contained in Sections 0.141, 0.361, 1.3 of the Commission rules, 47 CFR 0.141, 0.361, 1.3, the Order *is adopted.*

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05–24418 Filed 12–27–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050613158–5262–03; I.D. 090105A]

RIN 0648–AT48

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Extension of Emergency Fishery Closure Due to the Presence of the Toxin That Causes Paralytic Shellfish Poisoning

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

ACTION: Temporary rule; emergency action; extension of effective period.

SUMMARY: The regulations contained in the temporary rule, emergency action, published on October 18, 2005, at the request of the U.S. Food and Drug Administration (FDA), which are scheduled to expire on December 31, 2005, are extended through June 30, 2006. In the October 18, 2005, action, NMFS reinstated and corrected the temporary regulations published on September 9, 2005, which reopened a portion of Federal waters of the Gulf of Maine, Georges Bank, and southern New England that it had previously closed from June 14 through September 30, 2005, to the harvest for human consumption of certain bivalve molluscan shellfish due to the presence in those waters of the toxin that causes Paralytic Shellfish Poisoning (PSP). The FDA has determined that there is insufficient analytical data to support the scheduled reopening of the entire area to all bivalve molluscan shellfish fishing on January 1, 2006.

DATES: The temporary emergency action published on October 18, 2005 (70 FR 60450), is effective from October 18, 2005, through June 30, 2006.

ADDRESSES: Copies of the small entity compliance guide prepared for the October 18, 2005, reinstatement of the September 9, 2005, emergency action, are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. The small entity compliance guide/permit holder letter is also accessible via the Internet at *http://www.nero.noaa.gov*. Copies of the emergency rule and environmental assessment are available from Patricia

A. Kurkul, at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, (978) 281–9272.

SUPPLEMENTARY INFORMATION:

Background

Toxic algal blooms are responsible for the marine toxin that causes PSP in persons consuming affected shellfish. People have become seriously ill and some have died from consuming affected shellfish under similar circumstances.

On June 10, 2005, the FDA requested that NMFS issue an emergency rule to close an area of Federal waters to the harvesting of bivalve molluscan shellfish intended for human consumption because of toxic algal blooms off the coasts of New Hampshire and Massachusetts. This closure prohibited harvests of shellfish such as Atlantic surfclams and ocean quahogs, as well as scallop viscera. The emergency rule for the action, published in the **Federal Register** on June 16, 2005 (70 FR 35047), stated it would be in effect from June 14 through September 30, 2005, unless extended. The emergency rule was modified on July 7, 2005 (70 FR 39192) to allow for the collection of biological samples by commercial fishing vessels issued a Letter of Authorization signed by the Regional Administrator.

The action temporarily closed all Federal waters of the Exclusive Economic Zone of the northeastern United States to any bivalve molluscan shellfish harvesting, except for Atlantic sea scallops shucked at sea for their adductor muscles, in the area bound by the following coordinates in the order stated: (1) 43°00′ N. lat., 71°00′ W. long.; (2) 43°00′ N. lat., 69°00′ W. long.; (3) 40°00′ N. lat., 69°00′ W. long.; (4) 40°00′ N. lat., 71°00′ W. long.; and (5) ending at the first point. The scallop adductor muscle, or ''meat,'' is unaffected by the toxin. Further details of the original closure may be found in the preambles of the June 16, 2005, and the July 7, 2005, rules, and are not repeated here.

As a result of tests conducted by the FDA in cooperation with NMFS and the fishing industry, it was determined that toxin levels in a portion of the closure area (described below) were well below those known to cause human illness. With the exception of whole and roe-on scallops, the FDA determined that harvesting of bivalve molluscan shellfish for human consumption from the area described was once again safe.

At the FDA's request, on September 9, 2005, NMFS reopened those waters south of 41°39′ N. lat., west of 69°00′ W. long., north of 40°00′ N. lat., and east of 71°00′ W. long. (70 FR 53580). Because scallop viscera and roe are capable of retaining PSP toxins longer than other species of molluscan shellfish, scallop harvesting was permitted only in the reopened area for the purpose of shucking of the adductor muscle; however, although this limitation was discussed in the preamble of the September 9, 2005, temporary rule, it was inadvertently omitted from the regulatory text.

In the absence of further notice from the FDA, the entire temporary closure would have expired on October 1, 2005. FDA determined on September 23, 2005, that there were insufficient analytical data to support the scheduled reopening of the entire area to all bivalve molluscan shellfish on October 1, 2005; therefore, it requested that NMFS continue the regulations through December 31, 2005. Based on this request, NMFS issued additional temporary rules (70 FR 57517 and 70 FR 60450) to extend the prohibitions through December 31, 2005.

In the absence of further notice from the FDA, the entire temporary closure would have expired on January 1, 2006. FDA has once again determined that there are insufficient analytical data to support the scheduled reopening of the entire area to all bivalve molluscan shellfish on January 1, 2006, and has requested that NMFS continue the regulations, which NMFS agrees to do through June 30, 2006.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1855(c) (Magnuson-Stevens Act).

The original emergency closure was in response to a public health emergency. Pursuant to section 305(c)(3)(C) of the Magnuson-Stevens Act, the closure to the harvest of shellfish, as modified on September 9, 2005, and as reinstated on October 18, 2005, may remain in effect until the circumstances that created the emergency no longer exist, provided that the public has an opportunity to comment after the regulation is published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Commerce Secretary's action. The public had opportunities to comment on the published regulations and one comment was received. The commenter expressed her reluctance to agree with reopening a portion of the closure without seeing the results of the FDA's tests. While NMFS is the agency with authority to promulgate the emergency regulations, it modified the regulations on September 9, 2005, at the behest of the FDA, after the FDA had determined that the results of its tests warranted such action. Accordingly, the Secretary of Health and Human Services and the Secretary of Commerce concur that the emergency regulations, as modified on September 9, 2005, and as reinstated on October 18, 2005, should continue through June 30, 2006. If warranted, the regulations may be terminated at an earlier date, pursuant to section 305(c)(3)(D) of the Magnuson-Stevens Act, by publication in the **Federal Register** of a notice of termination, or extended further, if necessary, to ensure the safety of human health.

The October 18, 2005, rule was determined to be not significant under Executive Order 12866.

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

Dated: December 21, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 05–24519 Filed 12–22–05; 1:23 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050112008–5102–02; I.D.121205D]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 1B

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that 95 percent of the Atlantic herring total allowable catch (TAC) allocated to Management Area 1B (Area 1B) for fishing year 2005 is projected to be harvested by December 23, 2005. Therefore, effective 0001 hours, December 23, 2005, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Area 1B per trip or calendar day until January 1, 2006 when the 2006 TAC becomes available, except for transiting

purposes as described in this document. Regulations governing the Atlantic herring fishery require publication of this notification to advise vessel and dealer permit holders that 95 percent of the Atlantic herring TAC allocated to Area 1B has been harvested, and no TAC is available for the directed fishery for Atlantic herring harvested from Area 1B.

DATES: Effective 0001 hrs local time, December 24, 2005, through 2400 hrs local time, December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fisheries Management Specialist, at (978) 281–9221.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. The 2005 TAC allocated to Area 1B for the fishing year (70 FR 21971, April 28, 2005) is 10,000 mt (22,046,226 lb).

The regulations at 50 CFR 648.202 require the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the Atlantic herring fishery in each of the four management areas designated in the Fishery Management Plan for the Atlantic Herring Fishery and, based upon dealer reports, state data, and other available information, to determine when the harvest of Atlantic herring is projected to reach 95 percent of the TAC allocated. When such a determination is made, NMFS is required to publish notification in the **Federal Register** of this determination. Effective upon a specific date, NMFS must notify vessel and dealer permit holders that vessels are prohibited from fishing for, catching, possessing, transferring or landing more than 2,000 lb (907.2 kg) of herring per trip or calendar day in or from the specified management area for the remainder of the closure period. Transiting of Area 1B is allowed under the conditions specified below.

The Regional Administrator has determined, based upon dealer reports and other available information that 95 percent of the total Atlantic herring TAC allocated to Area 1B for the 2005 fishing year is projected to be harvested by December 23, 2005. Therefore, effective 0001 hrs local time, December 23, 2005, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Area 1B per trip or calendar day through December 31, 2005; except a vessel may transit, or land herring in Area 1B with more than 2,000 lb (907.2 kg) of herring on board, provided such herring were not caught in Area 1B, and provided all fishing gear is stowed and not available for immediate use as required by ' 648.23(b). Effective December 23, 2005, federally permitted dealers are also advised that they may not purchase Atlantic herring from federally permitted Atlantic herring vessels that harvest more than 2,000 lb (907.2 kg) of Atlantic herring from Area 1B through December 31, 2005, 2400 hrs local time.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: December 21, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–24520 Filed 12–22–05; 1:23 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 051017270–5339–02; I.D. 093005B]

RIN 0648–AT85

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; 2006 and 2007 Fishing Quotas for Ocean Quahogs

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

ACTION: Temporary rule.

SUMMARY: NMFS is specifying the final quotas for the ocean quahog fishery for 2006 and 2007. Specifications for the Atlantic surfclam and Maine ocean quahog fishery, which remain unchanged from the 2005–2007 multi-year quota specifications, are reprinted here for clarity. Regulations governing these fisheries require NMFS to publish the revised allowable harvest levels of ocean quahogs from the Exclusive Economic Zone for the 2006 and 2007 fishing years.

DATES: Effective from January 27, 2006, to December 31, 2007.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Essential Fish Habitat Assessment, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790.

The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, and public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298. A copy of the EA/RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov/nero/regs/com.html*.

FOR FURTHER INFORMATION CONTACT: Brian R. Hooker, Fishery Policy Analyst, 978–281–9220.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires that NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), specify quotas for surfclams and ocean quahogs on a 3-year basis, with an annual review, from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. In addition to this constraint, the Council policy also considers the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP (63 FR 27481, May 19, 1998) added Maine ocean quahogs (locally known as mahogany quahogs) to the management unit, and provided that a small artisanal fishery for ocean quahogs in the waters north of 43°50′ N. lat. has an annual quota within a range of 17,000 to 100,000 Maine bu (5,991 to 35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is allocated separately from the quota specified for the ocean quahog fishery. Regulations implementing Amendment 13 to the FMP (68 FR 69970, December 16, 2003) established the ability to set multi-year quotas. An evaluation, in the form of an annual quota recommendation paper, is conducted by the Council every year to determine if the multi-year quota specifications remain appropriate. The fishing quotas must be in compliance with overfishing

definitions for each species. In proposing these quotas, the Council must consider the available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected fishing effort and catches, and areas closed to fishing.

At its June 2005 Council Meeting, the Council voted to recommend maintaining the 2005 quota of 5.333 million bu (284 million L) for the ocean quahog fishery for 2006 and 2007, which was a change from the ocean quahog specifications for these fishing years published in the **Federal Register** on January 12, 2005 (70 FR 2023). At this same meeting, the Council recommended no change from the existing specifications for Atlantic surfclam and Maine ocean quahog for the 2006 and 2007 fishing years.

The final quotas for the 2006–2007 ocean quahog fishery are shown in the table below. The quotas for the Atlantic surfclam and Maine ocean quahog are re-stated in this table for clarity. Under this action, the 2005 harvest level for ocean quahogs is maintained for 2006 and 2007. The Atlantic surfclam and ocean quahog quotas are specified in standard bu of 53.24 L per bu, while the Maine mahogany ocean quahog quota is specified in ''Maine'' bu of 35.24 L per bu. Because Maine ocean quahogs are the same species as ocean quahogs, both fisheries are assessed under the same ocean quahog overfishing definition. When the two quota amounts (ocean quahog and Maine ocean quahog) are added, the total allowable harvest is still lower than the level that would result in overfishing for the entire stock.

FINAL 2006–2007 OCEAN QUAHOG[1] QUOTAS AND RE-STATEMENT OF ATLANTIC SURFCLAM[1] AND MAINE OCEAN QUAHOG QUOTAS

	2006		2007	
	bu	hL	bu	hL
Ocean Quahogs[2]	5.333	2.840	5.333	2.840
Surfclams[2]	3.400	1.810	3.400	1.810
Maine Ocean Quahogs[3]	100,000	35,240	100,000	35,240

[1]Numerical values are in millions except for Maine ocean quahogs
[2]1 bu = 1.88 cubic ft. = 53.24 liters
[3]1 bu = 1.2445 cubic ft. = 35.24 liters

Ocean Quahogs

The final 2006–2007 quotas for ocean quahogs reflect a decrease from the 2006–2007 specifications published in the **Federal Register** on January 12, 2005 (70 FR 2023). Those specifications required an increase in the 2005 ocean quahog quota from 5.333 million bu (284 million L) to 5.666 million bu (301.6 million L) in 2006 and 6.000 million bu (319.4 million L) in 2007. However, due to an unexpected surplus of ocean quahog product on the market, the previously planned increase in ocean quahog quota is no longer warranted. The assessment for ocean quahogs found that the current biomass is high, and the resource surveyed from southern New England to southern Virginia is not overfished and overfishing is not occurring. When there are market surpluses, a quota allocation owner could simply choose not to fish the quota allocation, however this would leave a surplus of individual transferrable quota shares on the market. Many individuals participate in this fishery by leasing their excess quota shares on an annual basis. When harvests are reduced in response to market demand, fishery participants that depend on income from leasing their quota incur a financial loss. National Standard 8 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that management measures should, to the extent practicable, minimize adverse economic impacts on fishing communities. This action would reduce the amount of quota shares on the market ensuring the sustained participation of individuals dependent on the annual lease of ocean quahog quota shares.

Comments and Responses

NOAA Fisheries Service received one comment on the proposed rule (November 1, 2005; 70 FR 65874) during the comment period. The comments submitted, however, were not relevant to the proposed rule, but rather spoke to concerns about the regional fishery management council process and commercial fishing in general, and are thus not responded to in this final rule.

Classification

This action is exempt from review under Executive Order 12866.

A description of the reasons why this action is being taken by the Agency and the objectives of this final rule are continued in the preambles of the proposed rule and this final rule. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. There are no compliance costs associated with this final rule.

Final Regulatory Flexibility Analysis (FRFA)

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the 2006–2007 ocean quahog quota specifications. The FRFA incorporates the economic impacts summarized in the IRFA and the corresponding RIR which were prepared for this action. The IRFA was published in the proposed rule and is not repeated here. Copies of the IRFA, FRFA, and RIR prepared for these quota specifications are available from the Northeast Regional Office (see **ADDRESSES**). A description of why this action was taken, the objectives of, and the legal basis for this rule, are contained in the preamble to this final rule and are not repeated here.

Summary of Issues Raised by the Public Comments in Response to the IRFA

No significant issues related to the IRFA or the economic effects of the proposed rule were raised in the public comments.

Description and Estimate of Number of Small Entities to Which this Rule Will Apply

This action applies to commercial fishing vessels holding ocean quahog quota shares. The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross receipts not exceeding $3.5 million. In 2004, a total of 29 vessels reported harvesting surfclams and/or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. Average 2004 gross income for the ocean quahog harvesters was $789,748 per vessel. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All 29 commercial fishing entities would thus fall under the SBA size standard for small commercial fishing entities. Additionally, there were 56 ocean quahog quota allocation owners as of August 22, 2005. An allocation owner may choose to fish or lease his or her quota allocation.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This rule does not impose any new reporting, recordkeeping, or other compliance requirements. Therefore, the cost of compliance would be unchanged.

Description of Minimization of Economic Impacts on Small Entities

Economic impacts on small entities have been minimized within the constraints of the FMP. Specifically, the commercial quotas must meet the conservation objectives of the FMP, implemented in 50 CFR part 648 under the authority of the Magnuson-Stevens Act. This final rule establishes harvest levels for ocean quahogs at the most economically viable quota level.

The Council analyzed four ocean quahog quota alternatives in addition to the preferred alternative. The alternatives are as follows: The preferred alternative of maintaining the 2005 quota level; an alternative with a 25–percent (1.333 million bu (71 million L)) decrease; an alternative with the 2004 status quo of 5.000 million bu (266.18 million L); an alternative with a 6.2–percent (0.333 million bu (17.73 million L)) increase; and an alternative with an increase to the maximum allowable quota (6.000 million bu (319.4 million L)). The minimum allowable quota specified in the current OY range is 4.000 million bu (212.94 million L) of ocean quahogs. Adoption of a 4.000 million bu (212.94 million L) quota would represent a 25–percent decrease from the current quota. This alternative would take the most conservative approach to managing the fishery that is currently available to the Council, but would result in the fewest economic benefits available to the ocean quahog fishery because it would produce the fewest landings. The alternative to reduce the quota to 5.000 million bu (266.18 million L) would reduce the amount of available quota share and thus the overall quota to the 2004 level. This alternative is not preferred because the industry believes that a reduction in quota from 2005 would communicate shortages in supply or harvesting capacity to the market. The other alternatives all propose to increase the quota. These are not preferred as they would create a fishery-wide surplus of quota share that could prevent small fishing entities from leasing or selling their individual surplus quota share to other entities with access to a steady market. While an increase is not warranted at this time, the Council chose to keep some flexibility in the quota so the industry would be able to react to an increase in product demand. Given this information, the Council and NMFS have chosen to maintain the 2005 ocean quahog quota level of 5.333 million bu (284 million L) for 2006 and 2007.

Small Entity Compliance Guide

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.'' The agency shall explain the action a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. Copies of the guide will be sent to all holders of commercial Federal Atlantic surfclam, ocean quahog, and the limited access Maine ocean quahog fishery permits. The guide will also be available on the internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

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

Dated: December 21, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 05–24541 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 248
Wednesday, December 28, 2005

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005 and 1007

[Docket No. AO–388–A17 and AO–366–A46; DA–05–06]

Milk in the Appalachian and Southeast Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider proposals for the Appalachian and Southeast Federal milk orders to amend the current inter-market transportation credit provisions and to establish new intra-market transportation credit provisions. Evidence will be taken at the hearing to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)).

DATES: The hearing will convene at 8:30 a.m., on Tuesday, January 10, 2006.

ADDRESSES: The hearing will be held at the Hyatt Regency Louisville, 320 West Jefferson Street, Louisville, Kentucky 40202, (502) 581–1234 or (800) 233–1234.

FOR FURTHER INFORMATION CONTACT: Antoinette M. Carter, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement, 1400 Independence Avenue, SW., STOP 0231, Room 2971, Washington, DC 20250–0231, (202) 690–3465, e-mail address: *Antoinette.Carter@usda.gov.*

Persons requiring a sign language interpreter or other special accommodations should contact Harold Friedly, Market Administrator, at (502) 499–0040; email *friedly@malouisville.com* before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Hyatt Regency Louisville, 320 West Jefferson Street, Louisville, Kentucky 40202, (502) 581–1234, beginning at 8:30 a.m., on Tuesday, January 10, 2006, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Appalachian and Southeast milk marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions that relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This public hearing is being conducted to collect evidence for the record regarding increasing the maximum assessment rate of the transportation credit balancing funds of the Appalachian and Southeast orders. Evidence will be collected regarding the proposed establishment of an intra-market transportation credit balancing fund for movements of milk within the two marketing areas as well as the proposed establishment of a mileage rate factor adjusted for fuel costs for both inter-market and intra-market movements of milk. In addition, evidence will be collected on proposals seeking to amend the producer milk and transportation credit provisions which would limit the amounts paid on movements of milk within and outside the Appalachian and Southeast marketing areas.

Evidence will be taken at the hearing to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any proposed amendments. Also, since proponents of the proposed amendments have requested that the hearing be held on an expedited basis, under the rules of practice and

procedure (7 CFR 900.4(a)), it is determined that less than 15 days notice is reasonable in the circumstances.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (4) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1005 and 1007

Milk marketing orders.

PARTS 1005 AND 1007—[AMENDED]

The authority citation for 7 CFR parts 1005 and 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Department.

Proposed by Dairy Farmers of America, Inc.

Proposal No. 1

This proposal seeks to increase the Appalachian and Southeast orders' maximum assessment rate of the transportation credit balancing funds.

1. Revise § 1005.81 to read as follows:

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.15 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period, after adjusting the transportation credits disbursed during the prior June–January period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

2. Revise § 1007.81 to read as follows:

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by $0.20 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period, after adjusting the transportation credits disbursed during the prior June–January period to reflect any changes in the current mileage rate versus the mileage rate(s) in effect during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

Proposal No. 2

This proposal seeks to establish transportation credit balancing funds on intra-market movements of milk within the Appalachian and Southeast marketing areas.

1. In § 1005.30, the introductory text is republished, paragraph (a)(6) is revised, and paragraph (c)(4) is added to read as follows:

§ 1005.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in detail and on prescribed forms, as follows:

(a) * * *

(6) Receipts of producer milk described in § 1005.82(c)(2) or § 1005.83(b)(3), including the identity of the individual producers whose milk is eligible for a transportation credit pursuant to the respective paragraphs and the date that such milk was received;

* * * * *

(c) * * *

(4) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.83, all of the information required in paragraph (a)(6) of this section.

* * * * *

2. In § 1007.30, the introductory text is republished, paragraph (a)(6) is revised, and paragraph (c)(4) is added to read as follows:

§ 1007.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) * * *

(6) Receipts of producer milk described in § 1007.82(c)(2) or § 1007.83(b)(3), including the identity of the individual producers whose milk is eligible for a transportation credit pursuant to the respective paragraphs and the date that such milk was received;

* * * * *

(c) * * *

(4) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.83, all of the information required in paragraph (a)(6) of this section.

* * * * *

3. Amend § 1005.61 by redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7), and adding a new paragraph (b)(5) to read as follows:

§ 1005.61 Computation of uniform prices.

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the intra-market transportation credit fund pursuant to § 1005.83 exceeds the available balance in the intra-market transportation credit fund pursuant to § 1005.80(b);

* * * * *

4. Amend § 1007.61 by redesignating paragraph (b)(5) and (b)(6) as paragraphs (b)(6) and (b)(7), and adding a new paragraph (b)(5) to read as follows:

§ 1007.61 Computation of uniform prices.

* * * * *

(b) * * *

(5) Deduct the amount by which the amount due from the intra-market transportation credit fund pursuant to § 1007.83 exceeds the available balance

in the intra-market transportation credit fund pursuant to § 1007.80(b);

* * * * *

5. Amend § 1005.80 by revising the section heading and designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 1005.80 Transportation Credit Balancing Fund and Intra-market Transportation Credit Fund.

(a) * * *

(b) *Intra-market Transportation Credit Fund.* The market administrator shall maintain a separate fund known as the Intra-market Transportation Credit Fund into which shall be deposited the payments made by handlers pursuant to § 1005.81(d) and from the producer-settlement fund pursuant to § 1005.61(b)(5) and out of which shall be made the payments due handlers pursuant to § 1005.83. Payments due a handler shall be offset against payments due from the handler.

6. Amend § 1007.80 by revising the section heading, designating the existing text as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 1007.80 Transportation Credit Balancing Fund and Intra-market Transportation Credit Fund.

(a) * * *

(b) *Intra-market Transportation Credit Fund.* The market administrator shall maintain a separate fund known as the Intra-market Transportation Credit Fund into which shall be deposited the payments made by handlers pursuant to § 1007.81(d) and from the producer settlement fund pursuant to § 1007.61(b)(5) and out of which shall be made the payments due handlers pursuant to § 1007.83. Payments due a handler shall be offset against payments due from the handler.

7. Amend § 1005.81 as proposed in Proposal 1 by adding new paragraphs (c), (d), and (e) to read as follows:

§ 1005.81 Payments to the transportation credit balancing fund and the intra-market transportation credit fund.

* * * * *

(c) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the fuel cost adjustment factor as determined in § 1005.84(c) and the mileage rate factor as determined in § 1005.84(f) for the following month.

(d) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator an intra-market transportation credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.10 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total intra-market transportation credit fund credits disbursed during the most recent two-month period. Except during the first two months that this provision is effective, the market administrator shall estimate the amount of the intra-market transportation credits that would have existed in the two months immediately preceding this provision becoming effective.

(e) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (d) of this section for the following month.

8. Amend § 1007.81 as proposed in Proposal 1 by revising the section heading and adding new paragraphs (c), (d), and (e) to read as follows:

§ 1007.81 Payments to the transportation credit balancing fund and the intra-market transportation credit fund.

* * * * *

(c) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the fuel cost adjustment factor as determined in § 1007.84(c) and the mileage rate factor as determined in § 1007.84(f) for the following month.

(d) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator an intra-market transportation credit fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1007.44 by $0.15 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total intra-market transportation credit fund credits disbursed during the most recent two month period. Except during the first two months that this provision is effective, the market administrator shall estimate the amount of the intra-market transportation credits that would have existed in the two months immediately preceding this provision becoming effective.

(e) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (d) of this section for the following month.

9. Add a new § 1005.83 to read as follows:

§ 1005.83 Payments from the intra-market transportation credit fund.

(a) Payments from the intra-market transportation credit balancing fund to handlers and cooperative associations requesting intra-market transportation credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each month, the market administrator shall pay to each handler that received milk directly from producers' farms as specified in paragraph (b) of this section, a preliminary amount determined pursuant to paragraph (c) of this section to the extent that funds are available in the intra-market transportation credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall first reduce the producer-settlement fund by the lesser of the number of dollars necessary to pay the credits or an equal number of dollars that resulted from the funds collected by the assessment as described in § 1005.81(d). If an insufficient balance remains, then the market administrator shall distribute the balance available in the intra-market transportation credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) Intra-market transportation credits paid pursuant to paragraph (a)(1) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the intra-market transportation credit fund will remain subject to the proration established pursuant to paragraph (a)(1) of this section; and

(3) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the intra-market transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) Intra-market transportation credits shall apply to receipts of producer milk received at pool distributing plants directly from the farms of producers located within the marketing area or

producers located within the marketing area of Order 1007 (7 CFR part 1007), and shall be determined as follows:

(1) Determine for each producer located within the marketing area or located within the marketing area of Federal Order 1007 (7 CFR part 1007) the pool distributing plant regulated pursuant to this Order or the pool distributing plant regulated pursuant to Federal Order 1007 (7 CFR part 1007) which is nearest to the producer's farm. For purposes of this section, if the two or more plants are determined to be equidistant in determining the plant to which the producer is nearest, the plant with the highest Class I price shall be the used as the plant to which the producer is nearest.

(2) Determine the total pounds of producer milk physically received from the farms of producers located within the marketing area of Order 1007 (7 CFR part 1007) at each pool distributing plant;

(3) Subtract from the pounds of milk described in paragraph (b)(2) of this section the pounds of bulk unpasteurized milk transferred or diverted from the pool plant receiving the milk if milk was transferred from the pool distributing plant operator on the same calendar day that the milk for which an intra-market transportation credit may be applicable was received. For this purpose, the transferred or diverted milk shall be subtracted from the most distant load of intra-market transportation credit eligible milk received, and then in sequence with the next most distant load until all of the transfers or diversions have been offset. For this purpose, transferred or diverted milk to be offset against milk for which the pool plant or the handler described in § 1005.9(c), respectively, is the responsible party for receipt of intra-market transportation credit; and,

(4) Multiply the remaining pounds determined in paragraph (b)(3) of this section by the producer milk Class I utilization percentage of all producer milk received by all pool distributing plants during the month. The resulting pounds are the pounds upon which intra-market transportation credits, as determined in paragraph (c) of this section, may be applicable.

(c) Intra-market transportation credits for pool distributing plant deliveries shall be computed as follows:

(1) Determine the distance from the farm of each producer located within the marketing area or located within the marketing area of Order 1007 (7 CFR part 1007) to each pool distributing plant regulated pursuant to this Order to which the producer's milk was actually delivered.

(2) Subtract the distance from each producer's farm to the producer's nearest distributing plant as determined in paragraph (b)(2) of this section, from the distance or distances as the case may be determined in paragraph (c)(1) of this section.

(3) Multiply the remaining miles for deliveries to each pool distributing plant as computed in paragraph (c)(2) of this section by the mileage rate for the month computed pursuant to § 1005.84.

(4) Subtract the Class I differential specified in § 1000.52 applicable at the producer's nearest distributing plant as determined in paragraph (b)(1) of this section from the Class I differential specified in § 1000.52 applicable at each distributing plant at which the producer's milk was actually received as determined in paragraph (c)(1) of this section.

(5) If the value in paragraph (c)(4) of this section is greater than or equal to zero, subtract the result computed in paragraph (c)(4) of this section from the result in paragraph (c)(3) of this section. Multiply the resulting amount by the number of hundredweights determined in paragraph (b)(4) of this section. The resulting amount shall be the intra-market transportation credits for each such plant of delivery.

(6) If the value in paragraph (c)(4) of this section is negative, multiply the amount in paragraph (c)(3) of this section by the number of hundredweights determined in paragraph (b)(4) of this section. The resulting amount shall be the intra-market transportation credits for each such plant of delivery.

(d) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or Federal highway mileage. Mileage determinations are subject to re-determination at all times. In the event a handler requests a re-determination of the mileage pertaining to any plant or producer, the market administrator shall notify the handler of such re-determination within 30 days after the receipt of such request. Any financial obligation resulting from a change in mileage shall not be retroactive for any periods prior to the re-determination by the market administrator.

10. Add a new § 1007.83 to read as follows:

§ 1007.83 Payments from the intra-market transportation credit fund.

(a) Payments from the intra-market transportation credit balancing fund to handlers and cooperative associations requesting intra-market transportation credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each month, the market administrator shall pay to each handler that received milk directly from producers' farms as specified in paragraph (b) of this section, a preliminary amount determined pursuant to paragraph (c) of this section to the extent that funds are available in the intra-market transportation credit fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall first reduce the producer-settlement fund by the lesser of the number of dollars necessary to pay the credits or an equal number of dollars that resulted from the funds collected by the assessment as described in § 1007.81(d). If an insufficient balance remains, then the market administrator shall distribute the balance available in the intra-market transportation credit fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) Intra-market transportation credits paid pursuant to paragraph (a)(1) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the intra-market transportation credit fund will remain subject to the proration established pursuant to paragraph (a)(1) of this section; and

(3) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the intra-market transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) Intra-market transportation credits shall apply to receipts of producer milk received at pool distributing plants directly from the farms of producers located within the marketing area or producers located within the marketing area of Order 1005 (7 CFR part 1005), and shall be determined as follows:

(1) Determine for each producer located within the marketing area or located within the marketing area of Federal Order 1005 (7 CFR part 1005) the pool distributing plant regulated pursuant to this Order or the pool distributing plant regulated pursuant to

Federal Order 1005 (7 CFR part 1005) which is nearest to the producer's farm. For purposes of this section, if the two or more plants are determined to be equidistant in determining the plant to which the producer is nearest, the plant with the highest Class I price shall be the used as the plant to which the producer is nearest.

(2) Determine the total pounds of producer milk physically received from the farms of producers located within the marketing area of Order 1005 at each pool distributing plant;

(3) Subtract from the pounds of milk described in paragraph (b)(2) of this section the pounds of bulk unpasteurized milk transferred or diverted from the pool plant receiving the milk if milk was transferred from the pool distributing plant operator on the same calendar day that the milk for which an intra-market transportation credit may be applicable was received. For this purpose, the transferred or diverted milk shall be subtracted from the most distant load of intra-market transportation credit eligible milk received, and then in sequence with the next most distant load until all of the transfers or diversions have been offset. For this purpose, transferred or diverted milk to be offset against milk for which the pool plant or the handler described in § 1007.9(c), respectively, is the responsible party for receipt of intra-market transportation credit; and

(4) Multiply the remaining pounds determined in paragraph (b)(3) of this section by the producer milk Class I utilization percentage of all producer milk received by all pool distributing plants during the month. The resulting pounds are the pounds upon which intra-market transportation credits, as determined in paragraph (c) of this section, may be applicable.

(c) Intra-market transportation credits for pool distributing plant deliveries shall be computed as follows:

(1) Determine the distance from the farm of each producer located within the marketing area or located within the marketing area of Order 1005 (7 CFR part 1005) to each pool distributing plant regulated pursuant to this Order to which the producer's milk was actually delivered.

(2) Subtract the distance from each producer's farm to the producer's nearest distributing plant as determined in paragraph (b)(2) of this section from the distance or distances as the case may be determined in paragraph (c)(1) of this section.

(3) Multiply the remaining miles for deliveries to each pool distributing plant as computed in paragraph (c)(2) of this section by the mileage rate for the month computed pursuant to § 1007.84.

(4) Subtract the Class I differential specified in § 1000.52 applicable at the producer's nearest distributing plant as determined in paragraph (b)(1) of this section from the Class I differential specified in § 1000.52 applicable at each distributing plant at which the producer's milk was actually received as determined in paragraph (c)(1) of this section.

(5) If the value in paragraph (c)(4) of this section is greater than or equal to zero, subtract the result computed in paragraph (c)(4) of this section from the result in paragraph (c)(3) of this section. Multiply the resulting amount by the number of hundredweights determined in paragraph (b)(4) of this section. The resulting amount shall be the intra-market transportation credits for each such plant of delivery.

(6) If the value in paragraph (c)(4) of this section is negative, multiply the amount in paragraph (c)(3) of this section by the number of hundredweights determined in paragraph (b)(4) of this section. The resulting amount shall be the intra-market transportation credits for each such plant of delivery.

(d) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or Federal highway mileage. Mileage determinations are subject to re-determination at all times. In the event a handler requests a re-determination of the mileage pertaining to any plant or producer, the market administrator shall notify the handler of such re-determination within 30 days after the receipt of such request. Any financial obligation resulting from a change in mileage shall not be retroactive for any periods prior to the re-determination by the market administrator.

Proposal No. 3

This proposal seeks to calculate the mileage rate factor using a fuel cost adjustor for the current transportation credit balancing funds and the proposed intra-market transportation credit funds.

1. Amend § 1005.82 by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

§ 1005.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(ii) Multiply the number of miles so determined by the mileage rate factor for the month computed pursuant to § 1005.84(a)(6);

* * * * *

(3) * * *

(iv) Multiply the remaining miles so computed by the mileage rate factor for the month computed pursuant to § 1005.84(a)(6);

* * * * *

2. Amend § 1007.82 by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

§ 1007.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(ii) Multiply the number of miles so determined by the mileage rate factor for the month computed pursuant to § 1007.84(a)(6);

* * * * *

(3) * * *

(iv) Multiply the remaining miles so computed by the mileage rate factor for the month computed pursuant to § 1007.84(a)(6);

* * * * *

3. Add a new § 1005.84 to read as follows:

§ 1005.84 Mileage Rates for the Transportation Credit Balancing Fund and Intra-Market Transportation Credit Fund.

The market administrator shall compute mileage rates each month as follows:

(a) Compute the simple average for the most recent four weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(b) From the result in paragraph (a) in this section subtract $1.42 per gallon;

(c) Divide the result in paragraph (b) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(d) Add the result in paragraph (c) of this section to $1.91;

(e) Divide the result in paragraph (d) of this section by 4.80;

(f) Round the result in paragraph (e) of this section down to three decimal places to compute the mileage rate factor.

4. Add a new § 1007.84 to read as follows:

§ 1007.84 Mileage Rates for the Transportation Credit Balancing Fund and Intra-Market Transportation Credit Fund.

The market administrator shall compute mileage rates each month as follows:

(a) Compute the simple average for the most recent four weeks of the Diesel

Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(b) From the result in paragraph (a) in this section subtract $1.42 per gallon;

(c) Divide the result in paragraph (b) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(d) Add the result in paragraph (c) of this section to $1.91;

(e) Divide the result in paragraph (d) of this section by 4.80;

(f) Round the result in paragraph (e) of this section down to three decimal places to compute the mileage rate factor.

Proposed by Dean Foods Company

Proposal No. 4

This proposal seeks to reduce a handler's ability to utilize transportation credits to help broaden the number of producers that touch base.

1. Amend § 1005.82 by:

(a) Revising paragraph (d)(2)(v);

(b) Adding a new paragraph (d)(2)(vi);

(c) Revising paragraph (d)(3)(vii); and

(d) Adding a new paragraph (d)(3)(viii).

§ 1005.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(v) Divide Z% (currently believed to be close to 30%, may provide evidence for a higher or lower number) by the percent of producer milk delivered to plants other than plants qualified pursuant to § 1005.7(a) and (b) and § 1007.7(a) and (b) of this chapter; if the result is 100% or greater, then the percentage applicable in paragraph (d)(2)(vi) of this section shall be 100%.

(vi) Compute the result of multiplying the remainder computed in paragraph (d)(2)(iv) of this section by the percentage computed in paragraph (d)(2)(v) of this section and by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) * * *

(vii) Divide Z% (currently believed to be close to 30%, may provide evidence for a higher or lower number) by the percent of producer milk delivered to plants other than plants qualified pursuant to § 1005.7(a) and (b) and § 1007.7(a) and (b) of this chapter; if the result is 100% or greater, then the percentage applicable in paragraph (d)(3)(viii) of this section shall be 100%.

(viii) Compute the result of multiplying the remainder computed in paragraph (d)(3)(vi) of this section by the percentage computed in paragraph (d)(3)(vii) and by the hundredweight of milk described in paragraph (d)(3) of this section.

2. Amend § 1007.82 by:

(a) Revising paragraph (d)(2)(v);

(b) Adding a new paragraph (d)(2)(vi);

(c) Revising paragraph (d)(3)(vii); and

(d) Adding a new paragraph (d)(3)(viii).

§ 1007.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(v) Divide Z% (currently believed to be close to 30%, may provide evidence for a higher or lower number) by the percent of producer milk delivered to plants other than plants qualified pursuant to § 1005.7(a) and (b) of this chapter; if the result is 100% or greater, then the percentage applicable in paragraph (d)(2)(vi) of this section shall be 100%.

(vi) Compute the result of multiplying the remainder computed in paragraph (d)(2)(iv) of this section by the percentage computed in paragraph (d)(2)(v) of this section and by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) * * *

(vii) Divide Z% (currently believed to be close to 30%, may provide evidence for a higher or lower number) by the percent of producer milk delivered to plants other than plants qualified pursuant to § 1005.7(a) and (b) of this chapter and § 1007.7(a) and (b); if the result is 100% or greater, then the percentage applicable in paragraph (d)(3)(viii) of this section shall be 100%.

(viii) Compute the result of multiplying the remainder computed in paragraph (d)(3)(vi) of this section by the percentage computed in paragraph (d)(3)(vii) and by the hundredweight of milk described in paragraph (d)(3) of this section.

Proposal No. 5

This proposal seeks to reduce the amount paid to a producer for milk diverted to an out-of-area plant.

1. Revise § 1005.13(d)(6) to read as follows:

§ 1005.13 Producer milk.

* * * * *

(d) * * *

(6) Milk diverted to plants located in the marketing area described in 7 CFR parts 1005 and 1007, shall be priced at the location of the plant to which diverted; milk diverted to plants located outside the marketing area described in either §§ 1005.2 or 1007.2, shall be priced at the location of the closest pool distributing plant located in the marketing area less an adjustment calculated by multiplying Y (currently believe this to be close to 4.0, but may provide evidence for a higher or lower number) cents per cwt. for each 10 miles or fraction thereof (by the shortest hard surface highway as computed by the market administrator) between the plant to which the milk was diverted and the closest pool distributing plant located in the marketing area; and

* * * * *

2. Revise § 1005.75 to read as follows:

§ 1005.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk: Except milk diverted to plants located outside the marketing area described in either §§ 1005.2 or 1007.2 of this chapter, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1005.51 from the Class I price at the plant's location; for milk diverted to plants located outside the marketing area described in either §§ 1005.2 or 1007.2 of this chapter, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1005.51 from the result of the formula found in § 1005.13(d)(6) for such milk. The difference, plus or minus as the case may be, shall be used to adjust the payments require pursuant to §§ 1005.73 and 1000.76.

1. Revise § 1007.13(d)(6) to read as follows:

§ 1007.13 Producer milk.

* * * * *

(d) * * *

(6) Milk diverted to plants located in the marketing area described in 7 CFR parts 1005 and 1007, shall be priced at the location of the plant to which diverted; milk diverted to plants located outside the marketing area described in either §§ 1005.2 or 1007.2, shall be priced at the location of the closest pool distributing plant located in the marketing area less an adjustment calculated by multiplying Y (currently believe this to be close to 4.0, but may provide evidence for a higher or lower number) cents per cwt. for each 10 miles or fraction there of (by the shortest hard surface highway as computed by the market administrator) between the plant to which the milk was diverted and the closest pool distributing plant located in the marketing area; and

* * * * *

2. Revise § 1007.75 to read as follows:

§ 1007.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk: Except for milk diverted to plants located outside the marketing area described in §§ 1005.2 and 1007.2, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1007.51 from the Class I price at the plant's location; for milk diverted to plants located outside the marketing area described in either §§ 1005.2 of this chapter or 1007.2, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1007.51 from the result of the formula found in § 1007.13(d)(6) for such milk. The difference, plus or minus as the case may be, shall be used to adjust the payments require pursuant to §§ 1007.73 and 1000.76.

Proposed by Dairy Programs, Agricultural Marketing Service

Proposal No. 6

For all Federal Milk Marketing Orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the market administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1031, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.

Office of the Administrator, Agricultural Marketing Service.

Office of the General Counsel.

Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: December 22, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–24543 Filed 12–23–05; 10:33 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

[Docket No. PRM–34–06]

Organization of Agreement States; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated November 3, 2005, which was filed with the Commission by Barbara Hamrick, Chair, Organization of Agreement States (OAS). The petition was docketed by the NRC on November 16, 2005, and has been assigned Docket No. PRM–34–06. The petitioner requests that the NRC amend its regulations to require that an individual receive at least 40 hours of radiation safety training before using sources of radiation for industrial radiography, by clarifying the requirements for at least two individuals to be present at a temporary job site, and by clarifying how many individuals are required to meet surveillance requirements. The petitioner also requests that NUREG–1556, Volume 2, be revised to reflect the performance-based changes in the proposed amendments.

DATES: Submit comments by March 13, 2006. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include *PRM–34–06* in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7163 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Petitioner's Interest

The OAS is a non-profit, voluntary, scientific and professional society

incorporated in the District of Columbia. The membership of OAS consists of State radiation control program directors and staff from the 33 Agreement States who are responsible for implementation of their respective radioactive material programs. The purpose of the OAS is to provide a mechanism for the Agreement States to work with each other and with the NRC on regulatory issues associated with their respective agreements.

The petitioner states that Agreement States are those States that have entered into an effective regulatory discontinuance agreement with the NRC under section 274b. of the Atomic Energy Act (Act). The Agreement States regulate most types of radioactive material, including reactor fission byproducts, source material (uranium and thorium) and special nuclear materials in quantities not sufficient to form a critical mass, in accordance with the compatibility requirements of the Act. The petitioner notes that NRC periodically reviews the performance of each Agreement State to assure compatibility with NRC's regulatory requirements.

The petitioner states that Agreement States issue radioactive material licenses and regulations, and enforce these regulations under the authority of each individual State's laws. The Agreement States exercise their licensing and enforcement programs under direction of their governors in a manner that is compatible with the licensing and enforcement programs of the NRC. The 33 existing Agreement States currently license and regulate approximately 16,800 radioactive material licenses, whereas the NRC regulates approximately 4,400 licensees.

The petitioner states that in the report of the NRC/State Working Group on the National Materials Program, the concept of ''Centers of Expertise'' was introduced. The concept optimizes resources of Federal, State, professional, and industrial organizations and reduces duplicate efforts. The petitioner states that some Agreement States and NRC regions have, over time, developed considerable experience and expertise with specific uses of radioactive materials. Examples of areas of expertise include well logging, industrial radiography, positron emission tomography, and intravascular brachytherapy. The petitioner believes that Agreement States and NRC regions that have developed expertise in specific uses should be identified and used as a resource by other regulatory programs.

The petitioner further states that the Centers of Expertise concerning industrial radiography regulation are the States, specifically those States with a large oil and gas industry because industrial radiography is closely tied to that industry. Texas is one of those States and was a leader in promulgating comprehensive industrial radiography requirements in 1986.

Background

Section 34.41(a) (the ''two-person rule''), published on May 28, 1997 (62 FR 28948), became effective on June 27, 1998. The petitioner states that when this rule was developed, there was strong and sustained support from the States, licensees, and industry for the concept of having at least two qualified individuals present whenever radiography is performed at temporary job sites. The petitioner states that Texas has had a requirement for a two-person crew since 1986, which was adopted at that time along with specific training requirements. The petitioner states that by the effective date of the NRC final rule, seven States were already nationally recognized as having comparable industrial radiography program components and were issuing industrial radiographer certifications.

The petitioner states that NRC's regulations require that ''the additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry.'' The petitioner believes that the expectation of the two-person rule, as expressed in the May 28, 1997 final rule, is that at a temporary job site the second qualified individual would be able to secure the restricted area and the source, and provide aid as needed. The petitioner states that in the final rule, the Commission stressed that having a second qualified individual is particularly important when radiography is performed where a radiographer alone may not be able to control access to the restricted area. The petitioner also states that, additionally, the second person should be trained to provide a safe working environment for radiography personnel, workers, and other members of the public at a temporary job site.

The petitioner states that safety was the basis for having two individuals at a job site. The petitioner believes that requiring a trainee/assistant to have more extensive training (*e.g.*, completion of a 40-hour radiation safety training course) before handling radiographic equipment increases the probability that he or she would be able to observe the area and provide assistance if needed. The petitioner states that while there were many comments on the desirability of the trainer/trainee or radiographer/assistant crew combination as opposed to the two radiographer crew, and an acceptance of the requirement that the trainee/assistant be under the direct supervision of the trainer/radiographer, the issue regarding whether both individuals of a two radiographer crew had to be physically present during actual exposures was never addressed by the NRC. The petitioner states that in several States, if a two-person crew consists of two radiographers, one may be in the darkroom while the other is exposing film, provided the surveillance requirement is met.

The petitioner states that during the NRC's 2001 Integrated Materials Performance Evaluation Program (IMPEP) review of the Texas radioactive materials program, the draft IMPEP Report concluded that the Texas implementation of its two-person rule in its Title 25 § 289.255(v)(7)(G), was not compatible with the NRC's two-person rule in § 34.41(a), which is designated as a Category B for compatibility purposes.

The petitioner states that Texas indicated in its response to the IMPEP Report that its rules were a comprehensive set of requirements implemented to directly and prescriptively address the identified root causes of the large number of over exposures that occurred in that State before it implemented the requirements in 1986. The petitioner states that Texas made several revisions to its industrial radiography rules that became effective in April 1999. Texas sent the proposed revisions to the NRC for review on October 23, 1998, and received no comments concerning the two-person crew rule. The petitioner believes that the NRC found the Texas rules to be compatible in this area at that time.

The petitioner states that based on the IMPEP evaluation criteria, in 2001, the review team recommended that Texas' performance with respect to the indicator, Legislation and Program Elements Required for Compatibility, be found satisfactory. The petitioner states that the Management Review Board (MRB) believed that the Texas program presented sufficient information to warrant reconsideration of how the rule could be implemented. Therefore, the petitioner states that in June 2002, the NRC's Office of Nuclear Material Safety and Safeguards coordinated with the Office of State and Tribal Programs, the CRCPD, and the OAS to establish a Working Group (WG) to re-evaluate the two-person rule to assess the effectiveness of the intended outcomes, including experience from past events, and propose a strategy and rule

interpretation that best achieves the goal of safety.

The petitioner presented the following observations made by the WG during its review of the final rule:

- Since its effective date, the NRC has consistently implemented the two-person rule to require both qualified individuals to maintain continuous direct visual surveillance when radiographic operations are being conducted.
- The WG interviewed nine Agreement States that are also radiographer certifying States regarding the implementation of their two-person rule. Six of the nine Agreement States allow licensees the flexibility to determine if radiographic operations can be conducted safely when the first radiographer is able to observe operations and prevent intrusion into the restricted area while the second radiographer is involved in a related activity nearby. The three remaining States indicated that they required both radiographers to provide direct visual surveillance during radiographic operations.
- The actual words of the two-person crew requirement read very similarly for each of these certifying States, and each State is committed to the underlying safety objective for the two-person rule. The differences lie in the latitude given by the various states to their licensees in how efficiency in operations can be accomplished without sacrificing safety. Worksite characteristics are considered, whether it is in a populated or remote area, or is a multi-level structure, and that the darkroom must be close by.
- The nine States interviewed are the Centers of Expertise in the industrial radiography and certification arenas. The Centers of Expertise, concerning industrial radiography regulations, are the States, specifically those States with a large oil and gas industry, because industrial radiography is closely tied to that industry. These nine States, together with Texas, have the clear majority share of the radiography licenses and activity in the U.S. The potential for differences in worksite settings in these States is great. Allowing one of two radiographers to work in the darkroom will not work in all instances. Some of these States have incorporated the opportunity to accommodate these differences in their interpretation of this rule, using a performance-based approach that offers flexibility in the appropriate situations, with accountability to their licensees.
- The WG was not able to attribute events involving industrial radiography to the failure of the two-person rule, much less to isolate the surveillance component of the regulation, because the effectiveness of the two-person rule has not been isolated from the other components in the regulatory framework.
- The WG found that risk information obtained from NUREG/CR–6642 does not support the manner in which the NRC requires the two-person rule to be implemented as a requirement to enhance safety. The WG found that during routine operations, the requirement to have an additional qualified individual present may actually increase overall worker occupational radiation exposure, thereby increasing the overall societal latent cancer risk from routine operations.
- The WG found that using only two persons to provide surveillance of radiography operations may not always be adequate to prevent unauthorized access to restricted areas by members of the public. However, to be present and to be exposed to the radiation field in instances when radiographic operations are performed at temporary job sites merely to meet the requirements of the two-person rule, would not be considered As Low as is Reasonably Achievable (ALARA).
- When the two-person rule was enacted under the previous compatibility designations, the Statements of Consideration indicated Agreement State compatibility for operational safety standards (*i.e.*, Subpart D—Radiation Safety Requirements, which includes § 34.41, as Division 2 Matters of Compatibility). The petitioner states that in 1997, the Joint Working Group on Adequacy and Compatibility transposed those compatibility determinations to the current designations. The petitioner states that while reviewing the compatibility designations, the WG noted a difference in the designations between §§ 34.41 and 34.51 for the same essential objective, surveillance. The petitioner also states that in § 34.41 the surveillance component is designated compatibility Category B, while in § 34.51 it is designated as Category C.

The petitioner states that the WG noted that the final rule, which discusses the requirements for a second qualified individual, also states that this individual should be able to provide assistance when required, rather than whenever radiographic operations are being conducted. The petitioner states that the consensus opinion of the WG provided risk-informed, performance-based implementation guidance for the surveillance component of the two-person rule. The petitioner states that the WG recommended that the NRC issue guidance in a Regulatory Information Summary (RIS), modifying the NRC's current interpretation of the two-person rule, but involving no rulemaking. The RIS would indicate that the second qualified individual must remain at the temporary job site and must be cognizant of the site-specific circumstances when radiographic operations are in progress. The petitioner states that licensees would have the flexibility to allow the qualified individual to engage in other related activities such as developing film in a nearby darkroom, rather than being required to maintain constant visual surveillance when the radiographer alone, can observe the restricted area and prevent unauthorized entry into it. The petitioner believes that under this option, the NRC and the Agreement States would align inspection and licensing guidance with the RIS. The petitioner states that one member of the WG also provided a differing view, which indicated that another approach was not needed to make the rule more effective. The differing view recommended that the NRC notify the Agreement States to align their implementation to be essentially identical to that of the NRC.

The petitioner states that the MRB did not accept the WG's consensus recommendation or the differing view. Instead, the MRB recommended that the State of Texas, or OAS, file a petition for rulemaking in accordance with § 2.802 to revise § 34.41(a). The petitioner states that the MRB agreed that until the final decision is made on the petition for rulemaking, the staff would defer compatibility findings on the implementation of the surveillance component of the two-person rule in Texas, and any other State that is implementing § 34.41(a) in a similar way.

The petitioner states that the final rulemaking has been interpreted in guidance document NUREG–1556, Volume 2, to mean, ''Both individuals must maintain constant surveillance of the operations and be capable of providing immediate assistance to prevent unauthorized entry to the restricted area.'' The petitioner states that if the temporary job site presents a situation in which the surveillance requirement of § 34.51 is met, the NRC interpretation means that even if a two-person crew consists of two certified radiographers, both must be with the camera; or if one of the members is in the darkroom, radiography cannot be performed. The petitioner believes that the impact of this interpretation on the industry is that companies must employ

an additional third person to develop film in the darkroom while two individuals are exposing film and preventing unauthorized entry, regardless of what the situation warrants. The petitioner also believes that the licensee must use additional time at a job site to expose film and then develop it. Either situation results in added, unnecessary cost to the industry. The petitioner contends that in a temporary job site situation in which the crew consists of two qualified radiographers and the surveillance requirement can be met, the second individual is available to provide immediate assistance, whether in the darkroom or performing other job-related duties nearby.

The Proposed Amendment

The petitioner requests that the following amendments be made to the NRC's regulations:

1. Section 34.41(a) would be revised to state: Whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or individual(s) who has at a minimum met the requirements of § 34.43(c). Radiography may not be performed if only one qualified individual is present.''

Section 34.43(a)(1) would be revised to state: ''Has successfully completed an accepted course of at least 40 hours on the applicable subjects outlined in paragraph (g) of this section, in addition to a minimum of 2 months of on-the-job training, and is certified through a radiographer certification program by a certifying entity in accordance with the criteria specified in appendix A of this part. (An independent organization that would like to be recognized as a certifying entity shall submit its request to the Director, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.)''

3. In § 34.43(c), paragraphs (1), (2), and (3) would be redesignated as (2), (3), and (4), respectively, a new paragraph (c)(1) would be added, and redesignated paragraph (c)(4) would be revised. Paragraph (c)(1) would state: ''Has successfully completed the accepted course of at least 40 hours on the applicable subject outlined in paragraph (g) of this section;''. Paragraph (c)(4) would state: ''Has demonstrated understanding of the instructions provided under paragraph (c)(2) of this section by successfully completing a written test on the subjects covered and has demonstrated competence in the use of hardware described in section (c)(3) of this section by successful completion of a practical examination on the use of such hardware.''

4. Section 34.51 would be revised to state: ''During each radiographic operation, the radiographer shall ensure continuous direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, as defined in 10 CFR part 20 of this chapter, except at permanent radiographic installations where all entryways are locked and the requirements of § 34.33 are met.''

5. Change guidance document NUREG–1556, Volume 2. In the first paragraph under the Discussion, Temporary Job Sites, change the words ''Both individuals must maintain'' to ''The radiographer must ensure''.

Justification

The petitioner considers the requirement for a two-person crew to be an important safety requirement, but believes the surveillance component of that rule is more appropriately implemented and enforced as a performance-based requirement, rather than the current prescriptive interpretation of the rule. The petitioner states that at least six Agreement States are currently implementing this component differently than the NRC. The petitioner believes that a shift in the NRC's focus to a performance-based implementation of the final rule, based on its acceptance of the expertise in this arena derived from the States, would foster a regulatory partnership that benefits the licensed community by minimizing confusion for those licensees who operate in multiple jurisdictions. The petitioner states that more than 10 years of information/data exist to demonstrate that the OAS's recommended implementation of the surveillance component of the rule is viable and achieves the safety goals of the regulation. The petitioner states that the WG's review of the incidents that occurred in Texas from January 1986 through May 2002, indicated that 349 incidents involved industrial radiography at temporary field sites. The petitioner states that of the 349 incidents during this 16-year period, 82 resulted in over exposures >5 rem. Causes of the incidents generally fell into the following categories:

- Failure to survey/improper survey—22 percent.
- Unable to determine cause—23 percent.
- Badge in exposure area/not on individual—27 percent.
- Reporting delays from badge processor/heavy workload—11 percent.
- Improper work techniques (other than surveys)—9 percent.
- Equipment malfunction—6 percent.
- Deliberate badge exposure—2 percent.

The petitioner also states that of the 82 incidents that resulted in over exposures >5 rem, 17 occurred from June 1998 (the effective date of the NRC's rule) through May 2002. Causes for these 17 incidents are categorized as:

- Failure to survey/improper survey—4 incidents.
- Unable to determine cause—5 incidents.
- Badge in exposure area/not on individual—2 incidents.
- Reporting delays from badge processor/heavy workload—5 incidents.
- Improper work techniques (other than surveys)—1 incident.

The petitioner states that none of the overexposure incidents in Texas were directly attributable to a lapse in safety due to one certified radiographer being unavailable (*e.g.*, in the darkroom), while the other certified radiographer was using the radiographic equipment. The petitioner states that no negative performance regarding the Texas implementation of the two-person crew requirement surfaced that would warrant a different surveillance strategy.

The petitioner states that the Nuclear Materials Event Database (NMED) information reviewed by the WG did not break down the data to specify what effects the components of the two-person rule had as a cause or a contributing factor (or as a prevention factor) for radiation exposure events involving industrial radiography personnel or members of the public. The petitioner states that, according to the WG report, although NMED contained numerous incidents that involved industrial radiography during a 7-year period from 1995 through 2002, the event descriptions do not correlate the incidents to the two-person rule. The petitioner states that similarly, the WG reviewed data from the Enforcement Action Tracking System (EATS), in which 67 cases occurred that involved industrial radiography during the same 7-year period. The petitioner states that nine cases cited violation of the two-person rule, however, none of the cases involved radiation over exposures to radiography personnel or workers at the site, and other members of the public.

The petitioner agrees with the opinion of the WG, as stated by the petitioner, that the apparent inconsistency in the surveillance component of §§ 34.41(a) and 34.51, along with the conflicting guidance found in NUREG–1556, Volume 2, raise substantial doubts as to whether the NRC's current

interpretation of the rule is, in terms of safety, the most desired approach. The petitioner states that the recommended language that amends § 34.51 puts the access control responsibility with the radiographer, but allows him the latitude to use additional personnel to control radiographic operations if needed. The petitioner believes that this additional personnel may include persons not qualified as a radiographer or radiographer's assistant, but capable of providing needed support to control access to the restricted area while remaining at the perimeter of the restricted area. The petitioner believes that, as the rule recommends, the rule does not require two persons to constantly monitor operations, nor does it limit it to two persons. The petitioner believes that the rule allows the radiographer in charge to make that decision. The petitioner states there is no justification for imposing additional costs and negative impact on an industry that has not demonstrated performance that would warrant this cost and impact.

The petitioner states that to assess the additional cost of implementing the two-person crew as the NRC does, Texas contacted several of its licensees who have both Texas and NRC licenses. The petitioner states that the cost of an additional person would be a minimum of $200 per day (including travel and per diem). The cost of additional time would be $10–12 per hour (not including overtime pay). The petitioner states that the licensees contacted indicated that an even greater impact of enforcing the two-person crew as the NRC does, would be the lack of availability of industrial radiographic personnel to do the work. The petitioner states that the licensees indicated that not only are there not enough certified radiographers to do the amount of work the companies had at that time (one licensee indicated that an average work week is 65 hours), there is a shortage of people interested in obtaining the training and becoming certified.

Conclusion

The petitioner states that, while the OAS agrees with a requirement for a two-person radiography crew at temporary job sites, the organization disagrees with NRC's prescriptive interpretation of the requirements for a two-person crew, the apparent conflict between NRC's surveillance requirement and two-person crew requirement, and NRC's omission of a radiation safety training requirement prior to an individual using sources of radiation.

The petitioner believes that while it was encouraging that the NRC adopted requirements in 1997 similar to those that had previously been adopted by many States, it is disheartening that the NRC industrial radiography requirements in 10 CFR part 34 do not address one of the primary factors identified as a root cause of a large number of industrial radiographer over exposures. The petitioner states that the failure to require safety training before using sources of radiation is failing to address one of the root causes of industrial radiography incidents. The petitioner states that current NRC requirements allow a radiographer assistant to use sources of radiation without attending a safety course that addresses the basic radiation topics outlined in rule. The petitioner believes that it is possible for an individual to work for years as a radiographer assistant and never receive radiation safety training. The petitioner states that the NRC regulations merely require that the assistant pass a written exam on the regulation, license, and the licensee's operating and emergency procedures and pass a practical exam on the use of the radiographic equipment. Both written and practical exams are administered by the licensee. The petitioner believes that it is important to remember that not all radiography is conducted by the larger radiography companies who have the resources to establish and oversee adequate and often exemplary training programs. The petitioner states that in contrast to the NRC's minimum training requirements, many of the States' rules require that prior to using sources of radiation, an individual must complete a 40-hour safety course addressing radiation safety fundamentals specified in rule, in addition to passing a licensee-administered written exam on the rules, license conditions, and operating and emergency procedures and passing a licensee-administered practical exam on the use of the equipment. In many States this requirement applies equally to a radiographer's assistant. The petitioner believes it is critical for an individual to receive radiation safety training prior to operating sources of radiation.

The petitioner states that the proposed actions will use risk-informed, performance based requirements to ensure safety of workers and the public, eliminate current compatibility discrepancies, provide uniformity in regulations nationwide, and ensure consistency in surveillance requirements. Accordingly, the petitioner requests that the NRC amend its regulations concerning radiation safety training before using sources of radiation for industrial radiography, as previously discussed.

Dated at Rockville, Maryland, this 21st day of December 2005.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E5–7974 Filed 12–27–05; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Policy Statement No. ANM–04–115–28]

Policy Statement With Request to an Unreliable Design of Seat Belt Attachment Fittings on Passenger Seats and Compliance With § 25.601

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed certification policy for compliance with 14 CFR 25.601 regarding an unreliable seat belt attachment fitting design installed on passenger seats.

DATES: Send your comments on or before January 27, 2006.

ADDRESSES: Address our comments to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–2194; fax (425) 227–1149; e-mail *jayson.claar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The FAA invites your comments on this proposed policy. We will accept our comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT**.

Mark your comments, ''Comments to Policy Statement No. ANM–04–115–28.''

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The proposed policy will provide Federal Aviation Administration certification policy for compliance with 14 CFR 25.601 regarding an unreliable design of seat belt attachment fitting installed on passenger seats. The FAA has determined that this particular design does not comply with § 25.601. This determination means that the FAA will not approve any additional installations of this design of seat belt attachment fittings on passenger seats.

Issued in Renton, Washington, on December 13, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24501 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 05–22665; Airspace Docket 05–ANM–13]

Proposed Amendment to Class E Airspace; Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would revise Class E airspace at Jackson, WY. Additional Class E airspace is necessary to accommodate aircraft using a new Localizer Performance with Vertical Guidance (LPV) approach procedure, with Lateral/Vertical Navigation (LNAV/VNAV) minimums. This action would improve the safety of Instrument Flight Rules (IFR) aircraft executing the new LPV approach procedure at Jackson Hole Airport, Jackson, WY.

DATES: Comments must be received by February 13, 2006.

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 05–22665; Airspace Docket 05–ANM–13, 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 final 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 Service 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 05–22665; Airspace Docket 05–ANM–13, 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 with the following statement: Comments to Docket FAA 05–22665; Airspace Docket 05–ANM–13. 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 pate 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, Air Traffic Organization, Western En Route and Oceanic Service 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 Jackson Hole Airport, Jackson, WY. Additional Class E controlled airspace is necessary to accommodate aircraft using a new LPV approach procedure with LNAV/VNAV minimums. This airspace revision would improve the safety of IFR aircraft executing the new LPV approach procedure at Jackson Hole Airport, Jackson, WY. 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 7400.9N dated September 1, 2005, and effective September 15, 2005, 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 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).

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 A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; 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 part 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005 is amended as follows:

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

ANM WY E5 Jackson, WY [Revised]

Jackson Hole Airport, WY
(Lat. 43°36′23″ N., long. 110°44′17″ W.)
Jackson VOR/DME
(Lat. 43°36′30″ N., long. 110°44′05″ W.)

That airspace extending upward from 700 feet above the surface within a 4.3 mile radius of Jackson Hole Airport, and within 4.4 miles west and 8.3 miles east of the Jackson VOR/DME 200° radial extending from the VOR/DME to 24.5 miles south of the VOR/DME, and within 4.4 miles each side of the 20° radial from the Jackson VOR/DME extending to 17.8 miles; that airspace extending upward from 1,200 feet above the surface within 15.2 miles west and 18.7 miles east of the Jackson VOR/DME 20° radial extending from the VOR/DME to 44.6 miles north of the VOR/DME, and that airspace west of the Jackson VOR/DME bounded on the northwest by the southeast edge of V–520 extending to 15.2 miles in an arc counterclockwise to the northwest edge of V–465, and that airspace to the south of the Jackson VOR/DME bounded on the northwest by the southeast edge of V–465, on the east by the southwest edge of V–328, on the south by the north edge of V–4 and on the west by long. 112°00′00″ W., and that airspace east of the Jackson VOR/DME between the 52° radial and 156° radial extending to 33.1 miles; excluding that airspace within federal airways; Big Piney, WY; Rock Springs, WY; and Driggs, ID, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on December 7, 2005.

Raul C. Treviño,

Area Director, Western En Route and Oceanic Operations.

[FR Doc. 05–24535 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22024; Airspace Docket No. 05–AAL–38]

RIN–2120–AA66

Proposed Modification of the Norton Sound Low, Woody Island Low and 1234L Offshore Airspace Areas; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Norton Sound Low, Woody Island Low and 1234L Offshore Airspace Areas in Alaska. Specifically, this action proposes to modify the Norton Sound Low Offshore Airspace Area in the vicinity of the Toksook Bay Airport, Toksook Bay, AK, by lowering the Offshore airspace floor to 1,200 feet mean sea level (MSL) within a 35-mile radius from a defined point just south of the airport. This action also proposes to modify the Woody Island Low and 1234L Offshore Airspace Areas in the vicinity of the Chignik Airport, Chignik, AK, by lowering the Offshore airspace floors to 1,200 feet MSL within a 72.8-mile radius from the Chignik Airport. Additional controlled airspace is necessary for the safety of instrument flight rules (IFR) operations at the Toksook Bay and Chignik Airports.

DATES: Comments must be received on or before February 13, 2006.

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 FAA Docket No. FAA–2005–22024 and Airspace Docket No. 05–AAL–38, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

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

SUPPLEMENTARY INFORMATION:

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 (FAA Docket No. FAA–2005–22024 and Airspace Docket No. 05–AAL–38) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

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 FAA Docket No. FAA–2005–22024 and Airspace Docket No. 05–AAL–38.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov,* or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue 14, Anchorage, AK 99513.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the Norton Sound Low Offshore Airspace Area, AK by lowering the floor to 1,200 feet MSL within a 35-mile radius of a point just south of Toksook Bay Airport, AK. The floors of Woody Island Low and 1234L Offshore Airspace Areas, AK will be lowered to 1,200 feet MSL within a 72.8-mile radius of Chignik Airport. The purpose of this proposal is to establish controlled airspace to support instrument flight rules operations at the Toksook Bay and Chignik Airports, in Alaska. The FAA Instrument Flight Procedures Production and Maintenance Branch has developed new instrument approach procedures for the Toksook Bay and Chignik Airports. New controlled airspace extending upward from 1,200 feet MSL above the surface in international airspace would be created by this action. The proposed airspace is sufficient to support the safety of IFR operations at the Toksook Bay and Chignik Airport.

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 Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

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

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

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

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

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, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

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

Paragraph 6007 Offshore Airspace Areas.

* * * * *

Norton Sound Low, AK [Amended]

That airspace extending upward from 1,200 MSL within a 45-mile radius of Deering Airport, AK, and within a 35-mile radius of lat. 60°21′17″ N., long. 165°04′01″ W., and airspace extending upward from 14,500 feet MSL within an area bounded by a line beginning at lat. 59°59′57″ N., long. 168°00′08″ W.; to lat. 62°35′00″ N., long. 175°00″00″ W.; to lat. 65°00′00″ N., long. 168°58′23″ W.; to lat. 68°00′00″ N., long. 168°58′23″ W.; to a point 12 miles offshore at lat. 68°00′00″ N.; thence by a line 12 miles from and parallel to the shoreline to lat. 56°42′59″ N., long. 160°00′00″ W.; to lat. 58°06′57″ N., long. 160°00′00″ W.; to lat. 57°45′57″ N., long. 161°46′08″ W.; to the point of beginning.

* * * * *

Woody Island Low, AK [Amended]

The airspace extending upward from 1,200 MSL within a 72.8-mile radius of Chignik Airport, AK, and that airspace extending upward from 14,500 feet MSL within the area bounded by a line beginning at lat. 53°30′00″ N., long. 160°00′00″ W.; to lat. 56°00′00″ N., long. 153°00′00″ W.; to lat. 56°45′42″ N., long. 151°45′00″ W.; to lat. 58°19′58″ N., long. 148°55′07″ W.; to lat. 59°08′34″ N., long. 147°16′06″ W.; thence clockwise via the arc of a 149.5-mile radius circle centered on the Anchorage, AK, VOR/DME to a point 12 miles offshore; thence southwest by a line 12 miles from and parallel to the shoreline to a point 12 miles offshore at long. 160°00′00″ W.; to the point of beginning.

* * * * *

1234L [Amended]

The airspace extending upward from 1,200 MSL within a 72.8-mile radius of Chignik Airport, AK, and that airspace extending upward from 2,000 feet above the surface within an area bounded by a line beginning at lat. 58°06′57″ N., long. 160°00′00″ W., south along long. 160°00′00″ W. until it intersects the Anchorage Air Route Traffic Control Center boundary; thence southwest, northwest, north, and northeast along the Anchorage Air Route Traffic Control Center boundary to lat. 62°35′00″ N., long.

175°00′00″ W.; to lat. 59°59′57″ N., long. 168°00′08″ W.; to lat. 57°45′57″ N., long. 161°46′08″ W.; to the point of beginning.

* * * * *

Issued in Washington, DC, on December 21, 2005.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E5–7987 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20, 510, 514, and 516

[Docket No. 2005N–0329]

RIN 0910–AF60

Designation of New Animal Drugs for Minor Uses or Minor Species; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until January 27, 2006, the comment period for the proposed rule published in the **Federal Register** of September 27, 2005 (70 FR 56394), proposing implementing regulations for designation of new animal drugs for minor uses and minor species under section 573 of the Federal Food, Drug, and Cosmetic Act (the act). FDA is reopening the comment period to update comments and to receive any new information.

DATES: Submit written or electronic comments by January 27, 2006.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Andrew Beaulieu, Center for Veterinary Medicine (HFV–50), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9090, e-mail: *Andrew.Beaulieu@fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 27, 2005 (70 FR 56394), FDA proposed implementing regulations for designation of new animal drugs for minor uses and minor species under section 573 of the act (21 U.S.C. 360ccc–2). Interested persons were originally given until December 12, 2005, to comment.

II. Request for Comments

Following publication of the September 27, 2005, proposed rule, FDA received requests to allow interested persons additional time to comment. The requesters asserted that the time period of 75 days was insufficient to respond fully to FDA's specific requests for comments and to allow potential respondents to thoroughly evaluate and address pertinent issues.

III. How to Submit 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 to *http://www.fda.gov/dockets/ecomments* or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 21, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–24512 Filed 12–27–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143244–05]

RIN 1545–BE93

Guidance Under Section 7874 for Determining Ownership by Former Shareholders or Partners of Domestic Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the disregard of affiliate-owned stock in determining the percentage of stock of a foreign corporation held by former shareholders or partners of a domestic entity, in order to determine whether the foreign corporation is a surrogate foreign corporation under section 7874 of the Internal Revenue Code (Code). The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 28, 2006. Outlines of topics to be discussed at the public hearing scheduled for April 27, 2006, at 10 a.m., must be received by April 6, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–143244–05), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–143244–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the IRS Internet site at: *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (IRS–REG–143244–05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jefferson VanderWolk at (202) 622–3810; concerning submission and delivery of comments and the public hearing, Robin Jones at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 7874. The temporary regulations set forth rules on disregarding affiliate-owned stock in determining the percentage of stock of a foreign corporation held by former shareholders or partners of a domestic entity by reason of holding stock or a partnership interest in the domestic entity, for purposes of determining whether the foreign corporation is a surrogate foreign corporation under section 7874(a)(2)(B). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section

553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 27, 2006, at 10 a.m., in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by April 6, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Jefferson VanderWolk of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

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

Section 1.7874–1 also issued under 26 U.S.C. 7874(c)(6) and (g).

Par. 2. Section 1.7874–1 is added to read as follows:

§ 1.7874–1 Disregard of affiliate-owned stock.

[The text of proposed § 1.7874–1 is the same as the text of § 1.7874–1T published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–24580 Filed 12–27–05; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2005–AL–0001–200520b; FRL–8014–8]

Approval and Promulgation of Implementation Plans; Alabama; Nitrogen Oxides Budget and Allowance Trading Program, Phase II

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Alabama on February 23, 2005. The revision responds to the EPA's regulation entitled, ''Interstate Ozone Transport: Response to Court Decisions on the Nitrogen Oxides (NO_X) SIP Call, NO_X SIP Call Technical Amendments, and Section 126 Rules,'' otherwise known as the ''NO_X SIP Call Phase II.'' This revision satisfies EPA's rule that requires Alabama to submit NO_X SIP Call Phase II revisions needed to achieve the necessary incremental reductions of NO_X. The intended effect of this SIP revision is to reduce emissions of NO_X in order to help attain the national ambient air quality standard (NAAQS) for ozone. The revision also corrects a typographical error and deletes an expired provision from 2003, pertaining to open burning in Morgan County, Alabama.

In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a non-controversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, 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 rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before January 27, 2006.

ADDRESSES: Comments may be submitted by mail to: Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **ADDRESSES** section which is published in the Rules Section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. DiFrank can also be reached via electronic mail at *difrank.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: December 9, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05–24473 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R08–OAR–2005–CO–0003; FRL–8016–1]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to New Source Review Rules; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a document published on December 7, 2005 (70 FR 72744). In the December 7, 2005 document, EPA proposed to approve those revisions adopted by Colorado on April 16, 2004 to Regulation No. 3 (Stationary Source Permitting and Air Pollutant Emission Notice Requirements) that incorporate EPA's December 31, 2002 NSR Reforms. At the request of several commentors, EPA is extending the comment period through February 6, 2006.

DATES: Comments must be received on or before February 6, 2006.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R08–OAR–2005–CO–0003 by one of the following methods:

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

E-mail: daly.carl@epa.gov.

Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

Mail: You may send written comments to: Richard R. Long, Director, Air and Radiation Program, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202.

Hand Delivery: Deliver your comments to: Richard R. Long, Director, Air and Radiation Program, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, 3rd floor, Denver, Colorado 80202. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:55 p.m. excluding Federal holidays.

For additional information on submitting comments, see the December 7, 2005 (70 FR 72744) notice.

FOR FURTHER INFORMATION CONTACT: Carl Daly, EPA, Region VIII, (303) 312–6416.

Dated: December 19, 2005.

Kerrigan G. Clough,

Acting Regional Administrator, Region VIII.

[FR Doc. E5–7993 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 70, No. 248
Wednesday, December 28, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for Emerging Markets Program

Announcement Type: New.
Catalog of Federal Domestic Assistance (CFDA) Number: 10.603.

SUMMARY: The Commodity Credit Corporation (CCC) announces the availability of approximately $9 million in funding for the Emerging Markets Program (EMP) for fiscal year (FY) 2006. The intended effect of this notice is to solicit applications from the private sector and from government agencies for FY 2006 and awards funds in early July 2006. The EMP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All proposals must be received by 5 p.m. Eastern Standard Time, March 13, 2006. Applications received after this time will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1042, Washington, DC 20250–1042, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *emo@fas.usda.gov*. Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/em-markets/em-markets/html*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The EMP is authorized by section 1542(d)(1)(D) of the Food, Agriculture, Conservation and Trade Act of 1990 (The Act), as amended. EMP regulations appear at 7 CFR part 1486.

1. *Purpose.* The EMP provides funding for technical assistance to assist U.S. organizations, public and private, to improve market access through generic, rather than branded, activities that can develop and promote U.S. agricultural products and/or processes in low- to middle-income countries that offer promise of emerging market opportunities.

Activities funded are those that primarily benefit U.S. industry as a whole. All agricultural products, except tobacco, are eligible for consideration. Proposals which include multiple commodities are also eligible. Only technical assistance activities are eligible for reimbursement.

2. *Appropriate Activities.* The Program does not predetermine priority markets or export-related activities. There are, however, certain types of activities that are especially appropriate for the Program, such as those that focus on trade capacity building and which address technical barriers and other impediments to trade for U.S. agricultural commodities and products.

Examples of types of project activities which may be considered for funding support:

—Projects designed specifically to improve market access in emerging foreign markets. Examples: Activities intended to mitigate the impact of sudden political events or economic and currency crises in order to maintain U.S. market share; responses to time-sensitive market opportunities;
—Marketing and distribution of value-added products, including new products or uses. Examples: Food service development; market research on potential for consumer ready foods or new uses of a product;
—Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports; such studies should be specific in their focus and may include cross-commodity activities which address specific problems. Examples: Grain storage handling and inventory systems development; distribution infrastructure development;
—Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers. Examples: Seminars on U.S. food safety standards and regulations; assessing and addressing pest and disease problems that inhibit U.S. exports;
—Assessments and follow up activities designed to improve country-wide food and business systems, to reduce trade barriers, to increase prospects for U.S. trade and investment in emerging markets, and to determine the potential use for general export credit guarantees for commodities and services. Examples: Product needs assessments and market analysis; assessments to address infrastructural impediments;
—Projects that help foreign governments collect and use market information and develop free trade policies that benefit American exporters as well as the target country or countries. Examples: Agricultural statistical analysis; development of market information systems; policy analysis; and
—Short-term training in broad aspects of agriculture and agribusiness trade that will benefit U.S. exporters, including seminars and training at trade shows designed to expand the potential for U.S. agricultural exports by focusing on the trading system. Examples: Retail training; marketing seminars; transportation seminars; training on opening new or expanding existing markets.

The program funds technical assistance activities on a project-by-project basis. EMP funds may not be used to support normal operating costs of individual organizations, nor as a source by which to recover pre-award costs or prior expenses from previous or ongoing projects.

Ineligible activities include restaurant promotions; branded product promotions (including labeling and supplementing normal company sales activities intended to increase awareness and stimulate sales of branded products); advertising; administrative and operational expenses for trade shows; and the preparation and printing of brochures, flyers, posters, etc., except in connection with specific technical assistance activities such as training seminars. Other items excluded from funding are contained in the EMP Regulations.

3. *Eligible Markets.* The Act defines an emerging market as any country that the Secretary of Agriculture determines:

(a) Is taking steps toward a market-oriented economy through the food,

agriculture, or rural business sectors of the economy of the country; and

(b) Has the potential to provide a viable and significant market for United States agricultural commodities or products of United States agricultural commodities.

Because funds are limited and the range of potential emerging market countries is worldwide, proposals for technical assistance activities will be considered which target those countries or regional groups with per capita income less than $10,065 (the current ceiling on upper middle income economies as determined by the World Bank [World Development Indicators 2005/2006]) and populations of greater than 1 million.

Income limits and their calculation can change from year to year, with the result that a given country may qualify under the legislative and administrative criteria one year but not the next. Therefore, CCC has not established a fixed list of ''emerging market'' countries. For FY 2006, however, the following guidance is provided regarding country eligibility for the EMP:

—Eligible. All of the countries of Central and South America; most in the Caribbean; all of sub-Saharan Africa; some countries in the Middle East; and the developing economies of Asia.

—Ineligible. Canada; Japan; Taiwan; Hong Kong; South Korea; Australia; New Zealand; all countries of Western Europe; Slovenia; Israel; Barbados, Aruba, and Antigua and Barbuda in the Caribbean; and Saudi Arabia, the United Arab Emirates, Dubai, Abu Dhabi, and Qatar in the Middle East.

Some markets can be more difficult to develop and sustain over a period of time; proposed activities in such markets should be considered in terms of whether they provide ''viable and significant markets'' for U.S. agricultural exports.

In the case of some oil-rich countries in the Middle East, e.g., Saudi Arabia, targeted activities may be considered on a case-by-case basis, for example, addressing technical barriers to exporting U.S. commodities.

A few countries technically qualify as emerging markets, but because of political sensitivities may require a separate determination before funding can be considered.

II. Award Information

In general, all qualified proposals received before the application deadline will compete for EMP funding. Priority consideration will be given to proposals that identify and seek to address specific problems or constraints to agricultural exports in emerging markets through technical assistance activities that are intended to expand or maintain U.S. agricultural exports. Priority will also be given to those proposals that include the willingness of the applicant to commit its own funds, or those of the U.S. industry, to seek export opportunities in an emerging market. The percentage of private funding proposed for a project will, therefore, be a critical factor in determining which proposals are funded under the EMP. Proposals will also be judged on their ability to provide benefits to the organization receiving EMP funds and to the broader industry which that organization represents.

The limited funds and the range of emerging markets worldwide in which the funds may be used preclude CCC from approving large budgets for individual projects. While there is no minimum or maximum amount set for EMP-funded projects, most are funded at a level of less than $250,000 and for a duration of one year or less. Multi-year proposals, and at higher cost, may be considered in the context of a strategic detailed plan of implementation. Funding in such cases is normally provided one year at a time, with commitments beyond the first year subject to interim evaluations.

Funding for successful proposals will be provided through specific agreements. The CCC, through FAS, will be kept informed of the implementation of approved projects through the requirement to provide quarterly progress reports and final performance reports. Changes in the original project time lines and adjustments within project budgets beyond a certain amount must be approved by FAS.

III. Eligibility and Qualification Information

1. *Eligible Applicants.* Any United States private or Government entity with a demonstrated role or interest in exports of U.S. agricultural commodities or products may apply to the program. Government organizations consist of Federal, State, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and profit-making entities and consulting businesses. Proposals from research and consulting organizations will be considered if they provide evidence of substantial participation in and financial support by the U.S. industry. For-profit entities are also eligible, but may not use program funds to conduct private business, promote private self-interests, supplement the costs of normal sales activities, or promote their own products or services beyond specific uses approved by CCC in a given project.

U.S. market development cooperators and state regional trade groups (SRTGs) may seek funding to address priority, market specific issues and to undertake activities not suitable for funding under other marketing programs, *e.g.*, the Foreign Market Development Cooperator (Cooperator) Program and the Market Access Program (MAP).

Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for funding assistance from the program.

2. *Cost Sharing.* No private sector proposal will be considered without the element of cost-share from the participant and/or U.S. partners. The EMP is intended to complement, not supplant, the efforts of the U.S. private sector. There is no minimum or maximum amount of cost share, though the range in recent successful proposals has been between 35 and 75 percent. The degree of commitment to a proposed project represented by the amount and type of private funding are both used in determining which proposals will be approved for funding. Cost-share may be actual cash invested or professional time of staff assigned to the project. Proposals in which private industry is willing to commit cash, rather than in-kind contributions such as staff resources, will be given priority consideration.

Cost-sharing is not required for proposals from U.S. Government agencies, but is mandatory for all other eligible entities, even when they may be party to a joint proposal with a U.S. Government agency. Contributions from USDA or other U.S. Government agencies or programs may not be counted toward the stated cost share requirement. Similarly, contributions from foreign (non-U.S.) organizations may not be counted toward the cost share requirement, but may be counted in the total cost of the project.

3. *Other.* Proposals should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance and why participating organization(s) are unlikely to carry out the project without such assistance. Applicants may submit more than one proposal.

IV. Application and Submission Information

1. *Address to Request Application Package.* For 2006, EMP applicants have the opportunity to utilize the Unified Export Strategy (UES) application process, an online system which provides a means for interested applicants to submit a consolidated and strategically coordinated single proposal that incorporates funding requests for any or all of the market development programs administered by FAS.

Applicants are not required to use the UES, but are strongly encouraged to do so because it reduces paperwork and expedites the FAS processing and review cycle. Applicants planning to use the on-line system must contact the Marketing Operations Staff at (202) 720–4327 to obtain site access information including a user of id and password. The Internet-based application, including step-by-step instructions for its use, is located at the following URL address: *http://www.fas.usda.gov/cooperators.html.* A Help file is available to assist applicants with the process. Applicants using the online system should also provide, promptly after the deadline for submitting the on-line application, an electronic version of each application (using Word or compatible format) via e-mail to *emo@fas.usda.gov*.

Applicants electing not to use the online system must submit the application(s) electronically via e-mail to *emo@fas.usda.gov*. A printed copy of the application(s) may be sent to one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, 1250 Maryland Avenue, SW., 4th Floor, Washington, DC 20024.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

2. *Content and Form of Application Submission*. It is highly recommended that any organization considering applying to the program first obtain a copy of the EMP Regulations. The regulations contain information on requirements that a proposal must include in order to be considered for funding under the program, along with other important information. EMP regulations and additional information may be obtained from the Marketing Operations Staff or at the following URL address: *http://www.fas.usda.gov/mos/em-markets/em-markets.html*.

In addition, in accordance with the Office of Management and Budget's policy directive regarding the use of a universal identifier for all Federal grants or cooperative agreements, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number prior to submitting applications. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711.

Applications should be no longer than ten (10) pages and include the following information:

(a) Date of proposal;

(b) Name of organization submitting proposal;

(c) Organization address, telephone and fax numbers;

(d) Tax ID number;

(e) DUNS number;

(f) Primary contact person;

(g) Full title of proposal;

(h) Target market(s);

(i) Current conditions in the target market(s) affecting the intended commodity or product;

(j) Description of problem(s), *i.e.*, constraint(s), to be addressed by the project, such as: inadequate knowledge of the market, insufficient trade contacts, lack of awareness by foreign officials of U.S. products and business practices, impediments in infrastructure, financing, regulatory or other non-tariff barriers, etc.;

(k) Project objectives;

(l) Performance measures: benchmarks for quantifying progress in meeting the objectives;

(m) Rationale: explanation of the underlying reasons for the project proposal and its approach, the anticipated benefits, and any additional pertinent analysis;

(n) Clear demonstration that successful implementation will benefit a particular industry as a whole, not just the applicant(s);

(o) Explanation as to what specifically could not be accomplished without federal funding assistance and why participating organization(s) are unlikely to carry out the project without such assistance;

(p) Specific description of activity/activities to be undertaken;

(q) Time line(s) for implementation of activity, including start and end dates (start date should be no earlier than 15 July 2006);

(r) Information on whether similar activities are or have previously been funded with USDA sources in target country/countries (e.g., under MAP and/or FMD programs); and

(s) Detailed line item activity budget. Cost items should be allocated separately to each participating organization. Expense items constituting a proposed activity's overall budget (e.g., salaries, travel expenses, consultant fees, administrative costs, etc.), with a line item cost for each, should be listed, clearly indicating:

(1) Which items are to be covered by EMP funding;

(2) Which by the participating U.S. organization(s); and

(3) Which by foreign third parties (if applicable). Cost items for individual consultant fees should show calculation of daily rate and number of days. Cost items for travel expenses should show number of trips, destinations, cost, and objective for each trip. Qualifications of applicant(s) should be included as an attachment.

3. *Submission Dates and Times.* All proposals must be received by 5 p.m. Eastern Standard Time on March 13, 2006, in the MOS office. Proposals received after this date and time will not be reviewed or considered for program funding.

4. *Funding Restrictions.* Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses such as indirect overhead charges, travel expenses and consulting fees. CCC will not reimburse expenditures made prior to approval of a proposal or unreasonable expenditures. Full details are available in the EMP regulations.

V. Application Review Information

1. *Criteria.* Key criteria used in judging proposals include:

—The appropriateness of the activities for the targeted market(s), and the extent to which the project identifies market barriers, e.g., a fundamental deficiency in the market, and/or a recent change in market conditions;

—The degree to which the project benefits an entire agricultural industry and does not duplicate or contradict ongoing strategic priorities of national industry organizations;

—Potential of the project to expand U.S. market share, increase U.S. exports or sales, and/or improve awareness of U.S. agricultural commodities and products;

—Quality of the project's performance measures, and the degree to which they relate to the objectives, proposed approach and activities, and deliverables;

—Justification for Federal funding;

—Budget: overall cost and the amount of funding provided by applicants, the U.S. private sector and partners, if any; and

—Evidence that the organization has the knowledge, expertise, ability, and resources to successfully implement the project.

2. *Review and Selection Process.* All applications undergo a multi-phase review within FAS, by appropriate FAS field offices, and by the private sector Advisory Committee on Emerging Markets to determine qualifications, quality and appropriateness of projects, and reasonableness of project budgets prior to making recommendations to the deciding official.

3. *Anticipated Announcement Date.* Announcements of funding decisions for the EMP are anticipated on or about July 1, 2006.

VI. Award Administration Information

1. *Award Notices.* FAS will notify each applicant in writing of the final disposition of its application. FAS will send an approval letter and project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of EMP funding and cost-share contribution requirements.

2. *Administrative and National Policy Requirements.* Interested parties should review the EMP regulations which are available at the following URL address: *http://www.fas.usda.gov/mos/em-markets/em-markets.html.* Printed copies may be obtained by contacting MOS at (202) 720–4327.

3. *Reporting.* Quarterly progress reports for all programs one year or longer in duration are required. Projects of less than one year generally require a mid-term progress report. Final performance reports are due 90 days after completion of each project. Content for both types of reports is contained in the Project Agreement. Final financial reports are also due 90 days after completion of each project, as attachments to the final reports.

VII. Agency Contact(s)

For additional information and assistance, contact the Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *emo@fas.usda.gov.*

Signed at Washington, DC, on December 8, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service, Vice President, Commodity Credit Corporation.

[FR Doc. E5–7949 Filed 12–27–05; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Foreign Market Development Cooperator Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.600.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2007 Foreign Market Development Cooperator (Cooperator) Program. The intended effect of this notice is to solicit applications from eligible applicants and award funds in June 2006. The Cooperator Program is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All applications must be received by 5 p.m. eastern standard time, March 13, 2006. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1042, Washington, DC 20250–1042, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *mosadmin@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/programs/fmd.html.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The Cooperator Program is authorized by title VII of the Agricultural Trade Act of 1978, as amended. Cooperator Program regulations appear at 7 CFR part 1484.

Purpose: The Cooperator Program is designed to create, expand, and maintain foreign markets for U.S. agricultural commodities and products through cost-share assistance. Financial assistance under the Cooperator Program will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. All agricultural commodities, except tobacco, are eligible for consideration.

The FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP.

II. Award Information

Under the Cooperator Program, the FAS enters into agreements with nonprofit U.S. trade organizations which have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations which are nationwide in membership and scope. Cooperators may receive assistance only for the promotion of generic activities that do not involve promotions targeted directly to consumers. The program generally operates on a reimbursement basis.

III. Eligibility Information

1. *Eligible Applicants.* To participate in the Cooperator Program an applicant must be a nonprofit U.S. agricultural trade organization.

2. *Cost Sharing.* To participate in the Cooperator Program, an applicant must agree to contribute resources to its proposed promotional activities. The Cooperator Program is intended to supplement, not supplant, the efforts of the U.S. private sector. The contribution must be stated in dollars and be at least 50 percent of the value of resources provided by CCC for activities conducted under the project agreement.

The degree of commitment of an applicant to the promotional strategies contained in its application, as represented by the agreed cost share contributions specified therein, is considered by the FAS when determining which applications will be approved for funding. Cost-share may be actual cash invested or in-kind contributions, such as professional staff time spent on design and execution of activities. The Cooperator Program regulations, in sections 1484.50 and 1484.51, provide detailed discussion of eligible and ineligible cost-share contributions.

3. *Other.* Applications should include a justification for funding assistance from the program—an explanation as to what specifically could not be

accomplished without federal funding assistance and why participating organization(s) are unlikely to carry out the project without such assistance.

IV. Application and Submission Information

1. *Address to Request Application Package.* Organizations that are interested in applying for Cooperator Program funds are encouraged to submit their requests using the Unified Export Strategy (UES) format. The UES allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade that they face, identify activities, which would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format. Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to the FAS through the Unified Export Strategy (UES) application Internet website. The FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to the FAS on diskette.

Applicants planning to use the Internet-based system must contact the FAS Marketing Operations Staff on (202) 720–4327 to obtain site access information. The Internet-based application, including a Help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

Applicants who choose to submit applications on diskette can obtain an application format by contacting the Marketing Operations Staff on (202) 720–4327.

2. *Content and Form of Application Submission.* To be considered for the Cooperator Program, an applicant must submit to the FAS information required by the Cooperator Program regulations in § 1484.20. In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711. Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs, including the Market Access Program (MAP), Cochran Fellowships, the Emerging Markets Program, the Quality Samples Program, Technical Assistance for Specialty Crops Program, and several Export Credit Guarantee programs. Any organization that is not interested in applying for the Cooperator Program but would like to request assistance through one of the other programs mentioned should contact the Marketing Operations Staff on (202) 720–4327.

3. *Submission Dates and Times.* All applications must be received by 5 p.m. Eastern Standard Time, March 13, 2006. All Cooperator Program applicants, regardless of the method of submitting an application, also must submit by the application deadline, via hand delivery or U.S. mail, an original signed certification statement as specified in 7 CFR 1484.20(a)(14). Applications or certifications received after this date will not be considered.

4. *Funding Restrictions.* Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses. CCC will not reimburse unreasonable expenditures or expenditures made prior to approval. Full details are available in the Cooperator Program regulations in §§ 1484.54 and 1484.55.

5. *Other Submission Requirements and Considerations.* All Internet-based applications must be properly submitted by 5 p.m. eastern standard time, March 13, 2006. Signed certification statements also must be received by that time at one of the addresses listed below.

All applications on diskette (with two accompanying paper copies and a signed certification statement) and any other form of application must be received by 5 p.m. Eastern Standard Time, March 13, 2006, at one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, 1250 Maryland Ave., SW., 4th Floor, Washington, DC 20024.

U.S. Postal Delivery: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1042, Washington, DC 20250–1042.

V. Application Review Information

1. *Criteria and Review Process.* Following is a description of the FAS process for reviewing applications and the criteria for allocating available Cooperator Program funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review

Applications received by the closing date will be reviewed by the FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at sections 1484.14 and 1484.20 of the Cooperator Program regulations. Applications that meet the requirements then will be further evaluated by the proper FAS Commodity Division. The Divisions will review each application against the criteria listed in sections 1484.21 and 1484.22 of the Cooperator Program regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review

Meritorious applications then will be passed on to the Office of the Deputy Administrator, Commodity and Marketing Programs, for the purpose of allocating available funds among the applicants. Applications will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor):

(a) Contribution Level (40)

- The applicant's 6-year average share (2002–2007) of all contributions (contributions may include cash and goods and services provided by U.S. entities in support of foreign market development activities) compared to
- The applicant's 6-year average share (2002–2007) of all Cooperator marketing plan expenditures.

(b) Past Export Performance (20)

- The 6-year average share (2001–2006) of the value of exports promoted by the applicant compared to
- The applicant's 6-year average share (2001–2006) of all Cooperator marketing plan expenditures plus a 6-year average share (2000–2005) of MAP expenditures and a 6-year average share (2000–2005) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(c) Past Demand Expansion Performance (20)

- The 6-year average share (2001–2006) of the total value of world trade of the commodities promoted by the applicant compared to
- The applicant's 6-year average share (2001–2006) of all Cooperator marketing plan expenditures plus a 6-year average share (2000–2005) of MAP expenditures and a 6-year average share (2000–2005) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(d) Future Demand Expansion Goals (10)

- The projected total dollar value of world trade of the commodities being promoted by the applicant for the year 2012 compared to
- The applicant's requested funding level.

(e) Accuracy of Past Demand Expansion Projections (10)

- The actual dollar value share of world trade of the commodities being promoted by the applicant for the year 2005 compared to
- The applicant's past projected share of world trade of the commodities being promoted by the applicant for the year 2005, as specified in the 2002 Cooperator Program application.

The Commodity Divisions' recommended funding levels for each applicant are converted to percentages of the total Cooperator Program funds available then multiplied by each weight factor to determine the amount of funds allocated to each applicant.

2. *Anticipated Announcement Date.* Announcements of funding decisions for the Cooperator Program are anticipated during June 2006.

VI. Award Administration Information

1. *Award Notices.* The FAS will notify each applicant in writing of the final disposition of its application. The FAS will send an approval letter and project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of Cooperator Program funding and cost-share contribution requirements.

2. *Administrative and National Policy Requirements.* Interested parties should review the Cooperator Program regulations which are available at the following URL address: *http://www.fas.usda.gov/mos/programs/fmd.html.* Hard copies may be obtained by contacting MOS at (202) 720–4327.

3. *Reporting.* The FAS requires various reports and evaluations from Cooperators. Reporting requirements are detailed in the Cooperator Program regulations in §§ 1484.53, 1484.70, and 1484.72.

VII. Agency Contact(s)

For additional information and assistance, contact the Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1042, Washington, DC 20250–1042, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *mosadmin@fas.usda.gov.*

Signed at Washington, DC, on December 9, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. E5–7948 Filed 12–27–05; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Market Access Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.601.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2006/2007 Market Access Program (MAP). The intended effect of this notice is to solicit applications from eligible applicants and award funds in June 2006. The MAP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All applications must be received by 5 p.m. Eastern Standard Time, March 13, 2006. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1042, Washington, DC 20250–1042, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *mosadmin@fas.usda.gov*. Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/programs/map.asp*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The MAP is authorized under section 203 of the Agricultural Trade Act of 1978, as amended. MAP regulations appear at 7 CFR part 1485.

Purpose: The MAP is designed to create, expand and maintain foreign markets for United States' agricultural commodities and products through cost-share assistance. Financial assistance under the MAP will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. All agricultural commodities, except tobacco, are eligible for consideration.

The FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP.

II. Award Information

Under the MAP, the CCC enters into agreements with eligible participants to share the costs of certain overseas marketing and promotion activities. MAP participants may receive assistance for either generic or brand promotion activities. The program generally operates on a reimbursement basis.

III. Eligibility Information

1. *Eligible Applicants.* To participate in the MAP, an applicant must be: A nonprofit U.S. agricultural trade organization, a nonprofit state regional trade group (i.e., an association of State Departments of Agriculture), a U.S. agricultural cooperative, or a State agency. A small-sized U.S. commercial entity (other than a cooperative or producer association) may participate through a MAP participant.

2. *Cost Sharing.* To participate in the MAP, an applicant must agree to contribute resources to its proposed promotional activities. The MAP is intended to supplement, not supplant, the efforts of the U.S. private sector. In the case of generic promotion, the contribution must be stated in dollars and be at least 10 percent of the value

of resources provided by CCC for such generic promotion. In the case of brand promotion, the contribution must be stated in dollars and be at least 50 percent of the total cost of such brand promotion.

The degree of commitment of an applicant to the promotional strategies contained in its application, as represented by the agreed cost share contributions specified therein, is considered by the FAS when determining which applications will be approved for funding. Cost-share may be actual cash invested or in-kind contributions, such as professional staff time spent on design and execution of activities. The MAP regulations, in section 1485.13(c), provide detailed discussion of eligible and ineligible cost-share contributions.

3. *Other.* Applications should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance and why participating organization(s) are unlikely to carry out the project without such assistance.

IV. Application and Submission Information

1. *Address to Request Application Package.* Organizations that are interested in applying for MAP funds are encouraged to submit their requests using the UES format. The UES allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade, which they face, identify activities, which would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format. Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to the FAS through the Unified Export Strategy (UES) application Internet website. The FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to the FAS on diskette.

Applicants planning to use the Internet-based system must contact the FAS Marketing Operations Staff on (202) 720–4327 to obtain site access information. The Internet-based application, including a Help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

Applicants who choose to submit applications on diskette can obtain an application format by contacting the Marketing Operations Staff on (202) 720–4327.

2. *Content and Form of Application Submission.* To be considered for the MAP, an applicant must submit to the FAS information required by the MAP regulations in section 1485.13. In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711. Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs including the Foreign Market Development Cooperator (Cooperator) Program, Cochran Fellowships, the Emerging Markets Program, the Quality Samples Program, the Technical Assistance for Specialty Crops Program and several Export Credit Guarantee programs. Any organization that is not interested in applying for the MAP but would like to request assistance through one of the other programs mentioned should contact the Marketing Operations Staff on (202) 720–4327.

3. *Submission Dates and Times.* All applications must be received by 5 p.m. Eastern Standard Time, March 13, 2006. All MAP applicants, regardless of the method of submitting an application, also must submit by the application deadline, via hand delivery or U.S. mail, an original signed certification statement as specified in 7 CFR 1485.13(a)(2)(i)(G). Applications or certifications received after this date will not be considered.

4. *Funding Restrictions.* Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses. CCC will not reimburse unreasonable expenditures or expenditures made prior to approval. Full details are available in the MAP regulations in § 1485.16.

5. *Other Submission Requirements and Considerations.* All Internet-based applications must be properly submitted by 5 p.m. Eastern Standard Time, March 13, 2006. Signed certification statements also must be received by that time at one of the addresses listed below.

All applications on diskette (with two accompanying paper copies and a signed certification statement) and any other form of application must be received by 5 p.m. Eastern Standard Time, March 13, 2006, at one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, 1250 Maryland Ave., SW., 4th Floor, Washington, DC 20024.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

V. Application Review Information

1. *Criteria and Review Process.* Following is a description of the FAS process for reviewing applications and the criteria for allocating available MAP funds.

(1) Phase 1—Sufficiency Review and FAS Divisional Review

Applications received by the closing date will be reviewed by the FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at sections 1485.12 and 1485.13 of the MAP regulations. Applications that meet the requirements then will be further evaluated by the proper FAS Commodity Division. The Divisions will review each application against the criteria listed in section 1485.14 of the MAP regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review

Meritorious applications then will be passed on to the Office of the Deputy Administrator, Commodity and Marketing Programs, for the purpose of allocating available funds among the applicants. Applications will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor):

(a) Applicant's Contribution Level (40)

- The applicant's 4-year average share (2003–2006) of all contributions (cash and goods and services provided by U.S. entities in support of overseas marketing and promotion activities) compared to
- The applicant's 4-year average share (2003–2006) of the funding level for all MAP participants.

(b) Past Performance (30)

- The 3-year average share (2003–2005) of the value of exports promoted by the applicant compared to
- The applicant's 2-year average share (2004–2005) of the funding level for all MAP applicants plus, for those groups participating in the Cooperator program, the 2-year average share (2005–2006) of Cooperator marketing plan budgets, and the 2-year average share (2004–2005) of foreign overhead provided for co-location within a U.S. agricultural office;

(c) Projected Export Goals (15)

- The total dollar value of projected exports promoted by the applicant for 2006 compared to
- The applicant's requested funding level;

(d) Accuracy of Past Projections (15)

- Actual exports for 2004 as reported in the 2006 MAP application compared to
- Past projections of exports for 2004 as specified in the 2004 MAP application.

The Commodity Divisions' recommended funding levels for each applicant are converted to percentages of the total MAP funds available then multiplied by each weight factor as described above to determine the amount of funds allocated to each applicant.

2. *Anticipated Announcement Date.* Announcements of funding decisions for the MAP are anticipated during June 2006.

VI. Award Administration Information

1. *Award Notices.* The FAS will notify each applicant in writing of the final disposition of its application. The FAS will send an approval letter and project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of MAP funding and cost-share contribution requirements.

2. *Administrative and National Policy Requirements.* Interested parties should review the MAP regulations which are available at the following URL address: *http://www.fas.usda.gov/mos/programs/map.asp.* Hard copies may be obtained by contacting MOS at (202) 720–4327.

3. *Reporting.* The FAS requires various reports and evaluations from MAP participants. Reporting requirements are detailed in the MAP regulations in section 1485.20(b) and (c).

VII. Agency Contact(s)

For additional information and assistance, contact the Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1042, Washington, DC 20250–1042, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *mosadmin@fas.usda.gov.*

Signed at Washington, DC, on December 9, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service, Vice President, Commodity Credit Corporation.

[FR Doc. E5–7950 Filed 12–27–05; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Quality Samples Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.605.

SUMMARY: The Commodity Credit Corporation (CCC) announces the availability of $2.5 million in funding for the 2006 Quality Samples Program (QSP). The intended effect of this notice is to solicit applications by March 2006 and award funds in June 2006. The QSP is administered by personnel of the Foreign Agricultural Service (FAS). This notice supercedes any prior notices concerning the QSP.

DATES: All proposals must be received by 5 p.m. Eastern Standard Time, March 13, 2006. Applications received after this date will be considered only if funds are still available.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1042, Washington, DC 20250–1042, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *mosadmin@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/programs/QSP.asp.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The QSP is authorized under Section 5(f) of the CCC Charter Act, 15 U.S.C. 714c(f).

Purpose: The QSP is designed to encourage the development and expansion of export markets for U.S. agricultural commodities by assisting U.S. entities in providing commodity samples to potential foreign importers to promote a better understanding and appreciation for the high quality of U.S. agricultural commodities.

QSP participants will be responsible for procuring (or arranging for the procurement of) commodity samples, exporting the samples, and providing the technical assistance necessary to facilitate successful use of the samples by importers. Participants that are funded under this announcement may seek reimbursement for the sample purchase price and the costs of transporting the samples domestically to the port of export and then to the foreign port, or point, of entry. Transportation costs from the foreign port, or point, of entry to the final destination will not be eligible for reimbursement. CCC will not reimburse the costs incidental to purchasing and transporting samples, for example, inspection or documentation fees. Although providing technical assistance is required for all projects, CCC will not reimburse the costs of providing technical assistance. A QSP participant will be reimbursed after CCC reviews its reimbursement claim and determines that the claim is complete.

General Scope of QSP Projects: QSP projects are the activities undertaken by a QSP participant to provide an appropriate sample of a U.S. agricultural commodity to a foreign importer, or a group of foreign importers, in a given market. The purpose of the project is to provide information to an appropriate target audience regarding the attributes, characteristics, and proper use of the U.S. commodity. A QSP project addresses a single market/commodity combination.

As a general matter, QSP projects should conform to the following guidelines:

- Projects should benefit the represented U.S. industry and not a specific company or brand;
- Projects should develop a new market for a U.S. product, promote a new U.S. product, or promote a new use for a U.S. product, rather than promote the substitution of one established U.S. product for another;
- Sample commodities provided under a QSP project must be in

sufficient supply and available on a commercial basis;

• The QSP project must either subject the commodity sample to further processing or substantial transformation in the importing country, or the sample must be used in technical seminars designed to demonstrate to an appropriate target audience the proper preparation or use of the sample in the creation of an end product;

• Samples provided in a QSP project shall not be directly used as part of a retail promotion or supplied directly to consumers. However, the end product, that is, the product resulting from further processing, substantial transformation, or a technical seminar, may be provided to end-use consumers to demonstrate to importers consumer preference for that end product; and,

• Samples shall be in quantities less than a typical commercial sale and limited to the amount sufficient to achieve the project goal (e.g., not more than a full commercial mill run in the destination country).

QSP projects shall target foreign importers and target audiences who:

• Have not previously purchased the U.S. commodity which will be transported under the QSP;

• Are unfamiliar with the variety, quality attribute, or end-use characteristic of the U.S. commodity which will be transported under the QSP;

• Have been unsuccessful in previous attempts to import, process, and market the U.S. commodity which will be transported under the QSP (e.g., because of improper specification, blending, or formulation; or sanitary or phytosanitary issues);

• Are interested in testing or demonstrating the benefits of the U.S. commodity which will be transported under the QSP; or

• Need technical assistance in processing or using the U.S. commodity that will be transported under the QSP.

II. Award Information

Under this announcement, the number of projects per participant will not be limited. However, individual projects will be limited to $75,000 of QSP reimbursement. Projects comprised of technical preparation seminars, that is, projects that do not include further processing or substantial transformation, will be limited to $15,000 of QSP reimbursement as these projects require smaller samples. Financial assistance will be made available on a reimbursement basis; that is, cash advances will not be made available to any QSP participant.

All proposals will be reviewed against the evaluation criteria contained herein and funds will be awarded on a competitive basis. Funding for successful proposals will be provided through specific agreements. These agreements will incorporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project.

III. Eligibility Information

1. *Eligible Applicants.* Any United States private or government entity with a demonstrated role or interest in exporting U.S agricultural commodities may apply to the program. Government organizations consist of federal, state, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and profit-making entities.

2. *Cost Sharing.* Although a minimum level of cost share contribution is not required under the program, FAS does consider the applicant's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties, when determining which proposals are approved for funding.

IV. Application and Submission Information

1. *Address to Request Application Package.* Organizations can submit applications to the FAS through the Unified Export Strategy (UES) application Internet Web site. Applicants also have the option of submitting electronic versions in the UES format (along with two paper copies) of their applications to the FAS on diskette. However, the UES format is not required.

Applicants planning to use the UES Internet-based system must contact the FAS Marketing Operations Staff on (202) 720–4327 to obtain site access information including a user ID and password. The UES Internet-based application, including a Help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

Applicants who choose to submit applications on diskette can obtain a UES application format by contacting the Marketing Operations Staff, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *mosadmin@fas.usda.gov*.

2. *Content and Form of Application Submission.* To be considered for the QSP, an applicant must submit to the FAS information detailed in this notice. In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402) regarding the need to identify entities that are receiving government awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711. Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

Applicants to the QSP are not required to submit proposals in any specific format; however, FAS recommends that proposals contain, at a minimum, the following:

(a) Organizational information, including:

• Organization's name, address, Chief Executive Officer (or designee), Federal Tax Identification Number (TIN), and DUNS number;

• Type of organization;

• Name, telephone number, fax number, and e-mail address of the primary contact person;

• A description of the organization and its membership;

• A description of the organization's prior export promotion experience; and

• A description of the organization's experience in implementing an appropriate trade/technical assistance component;

(b) Market information, including:

• An assessment of the market;

• A long-term strategy in the market; and

• U.S. export value/volume and market share (historic and goals) for 2002–2007;

(c) Project information, including:

• A brief project title;

• Amount of funding requested;

• A brief description of the specific market development trade constraint or opportunity to be addressed by the project, performance measures for the years 2006–2008 which will be used to measure the effectiveness of the project, a benchmark performance measure for 2005, the viability of long term sales to this market, the goals of the project, and the expected benefits to the represented industry;

• A description of the activities planned to address the constraint or opportunity, including how the sample will be used in the end-use performance trial, the attributes of the sample to be demonstrated and its end-use benefit, and details of the trade/technical servicing component (including who will provide and who will fund this component);

• A sample description (i.e., commodity, quantity, quality, type, and

grade), including a justification for selecting a sample with such characteristics (this justification should explain in detail why the project could not be effective with a smaller sample);

• An itemized list of all estimated costs associated with the project for which reimbursement will be sought; and

• The importer's role in the project regarding handling and processing the commodity sample; and

(d) Information indicating all funding sources and amounts to be contributed by each entity that will supplement implementation of the proposed project. This may include the organization that submitted the proposal, private industry entities, host governments, foreign third parties, CCC, FAS, or other Federal agencies. Contributed resources may include cash or goods and services.

3. *Submission Dates and Times.* All applications must be received by 5 p.m. Eastern Standard Time, March 13, 2006. Applications received after this date will be considered only if funds are still available.

4. *Funding Restrictions.* Proposals which request more than $75,000 of CCC funding for individual projects will not be considered. Projects comprised of technical preparation seminars will be limited to $15,000 in QSP funding. CCC will not reimburse expenditures made prior to approval of a proposal or unreasonable expenditures.

5. *Other Submission Requirements.* All applications on diskette (with two accompanying paper copies) and any other form of application must be received by 5 p.m. Eastern Standard Time, March 13, 2006, at one of the following addresses:

Hand Delivery (including FedEx, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, 1250 Maryland Ave., SW., 4th Floor, Washington, DC 20024.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

V. Application Review Information

1. *Criteria.* FAS will use the following criteria in evaluating proposals:

• The ability of the organization to provide an experienced staff with the requisite technical and trade experience to execute the proposal;

• The extent to which the proposal is targeted to a market in which the United States is generally competitive;

• The potential for expanding commercial sales in the proposed market;

• The nature of the specific market constraint or opportunity involved and how well it is addressed by the proposal;

• The extent to which the importer's contribution in terms of handling and processing enhances the potential outcome of the project;

• The amount of reimbursement requested and the organization's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties; and

• How well the proposed technical assistance component assures that performance trials will effectively demonstrate the intended end-use benefit.

Highest priority for funding under this announcement will be given to meritorious proposals that target countries that meet either of the following criteria:

• Per capita income less than $10,065 (the ceiling on upper middle income economies as determined by the World Bank [World Development Indicators 2005/2006]); and population greater than 1 million. Proposals may address suitable regional groupings, for example, the islands of the Caribbean Basin; or

• U.S. market share of imports of the commodity identified in the proposal of 10 percent or less.

2. *Review and Selection Process.* Proposals will be evaluated by the applicable FAS commodity division. The divisions will review each proposal against the factors described above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Commodity and Marketing Programs.

3. *Anticipated Announcement Date.* Announcements of funding decisions for the QSP are anticipated during June 2006.

VI. Award Administration Information

1. *Award Notices.* The FAS will notify each applicant in writing of the final disposition of its application. The FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of QSP funding and any cost-share contribution requirements.

2. *Administrative and National Policy Requirements.* The agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant, including, but not limited to, procurement (or arranging for procurement) of the commodity sample at a fair market price, arranging for transportation of the commodity sample within the time limit specified in the agreement (organizations should endeavor to ship commodities within 6 months of effective date of agreement), compliance with cargo preference requirements (shipment on United States flag vessels, as required), compliance with the Fly America Act requirements (shipment on United States air carriers, as required), timely and effective implementation of technical assistance, and submission of a written evaluation report within 90 days of expiration of the agreement.

QSP agreements are subject to review and verification by the FAS Compliance Review Staff. Upon request, a QSP participant shall provide to CCC the original documents which support the participant's reimbursement claims. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation.

3. *Reporting.* A written evaluation report must be submitted within 90 days of the expiration of each participant's QSP agreement. Evaluation reports should address all performance measures that were presented in the proposal.

VII. Agency Contact(s)

For additional information and assistance, contact the Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1042, Washington, DC 20250–1042, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *mosadmin@fas.usda.gov.*

Signed at Washington, DC, on December 8th, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. E5–7951 Filed 12–27–05; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition filed by a group of fresh cut snapdragon producers for trade adjustment assistance. The Administrator will determine within 40 days whether or not increasing snapdragon imports contributed importantly to a decline in domestic producer prices of 20 percent or more during the marketing period beginning January 1, 2004, and ending December 31, 2004. If the determination is positive, all producers who produce and market their fresh cut snapdragons in Indiana will be eligible to apply to the Farm Service Agency for no cost technical assistance and for adjustment assistance payments.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: December 9, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. E5–7892 Filed 12–27–05; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Extension With Revision of Currently Approved Information Collection for Special Use Administration

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of information collection 0596–0082 for the administration of special uses on National Forest System lands. The information helps the Forest Service ensure that the authorized use of Federal land is in the public interest and compatible with the mission of the agency. Respondents will include individuals, groups, organizations, businesses, corporations, and Federal, State, and local governments.

DATES: Comments must be received in writing on or before February 27, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Send comments by mail to USDA, Forest Service, Attention: Rita Staton, Lands Staff (2720), 1400 Independence Avenue, SW., Stop 1124, Washington, DC 20250–1124 or by facsimile to Rita Staton, 202–205–1604, or by e-mail to reply *reply_lands_staff@fs.fed.us.* Comments also may be submitted by following the instructions at the federal eRulemaking portal at *http://www.regulation.gov.* If comments are sent by e-mail or facsimile, the public is requested not to send duplicate comments via mail. Please confine comments to issues pertinent to the proposed extension with revision of the currently approved information collection, explain the reasons for any recommended changes, and where possible, reference the specific wording being addressed.

All comments on the request for an extension with revision of the currently approved information collection for special use administration, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on the request for extension in the Office of the Director, Lands Staff, 4th Floor South, Sidney R. Yates Federal Building, 14th and Independence Avenue, SW., Washington, DC., 20024 on business days between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead at (202) 205–1248 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rita Staton, Lands Staff, at (202) 205–1390. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year.

SUPPLEMENTARY INFORMATION:

Title: Special Use Administration.

OMB Number: 0596–0082.

Expiration Date of Approval: 04/30/2006.

Type of Request: Extension with Revision.

Type of Respondents: Individuals, groups, organizations, businesses, corporations, and Federal, State, and local governments.

Background

Several statutes authorize the Forest Service to issue and administer authorizations for use and occupancy of National Forest System (NFS) lands and require the collection of information from the public for those purposes, including the Organic Administration Act of 1897 (16 U.S.C. 551); Title V of the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1761–1771); the Act of March 4, 1915 (16 U.S.C. 497); the National Forest Ski Area Permit Act (16 U.S.C. 497b); section 28 of the Mineral Leasing Act (30 U.S.C. 185); the National Forest Roads and Trails Act (FRTA, 16 U.S.C. 532–538); section 7 of the Granger-Thye Act (16 U.S.C. 480d); the Act of May 26, 2000 (16 U.S.C. 460*l*–6d); and the Federal Lands Recreation Enhancement Act (16 U.S.C. 6801–6814).

Forest Service regulations implementing these authorities, found at 36 CFR part 251, subpart B, contain information collection requirements, including submission of applications, execution of forms, and imposition of terms and conditions that entail information collection requirements, such as the requirement to submit annual financial information; to prepare and update an operating plan; to prepare and update a maintenance plan; and to submit compliance reports and information updates. The information collection requirements described in this request for an extension with revision of a currently approved information collection are necessary for the Forest Service to issue and administer special use authorizations to use and occupy NFS lands under these authorities.

The information collected is evaluated by the Forest Service to ensure that authorized uses of NFS lands are in the public interest and are compatible with the agency mission. The information helps the agency identify environmental and social impacts of special uses for purposes of compliance with the National Environmental Policy Act and program administration. In addition, the agency uses the information to ascertain whether the land use fee being charged for special use authorizations is based on market value. The information is collected through application forms and terms and conditions in special use authorizations and operating plans.

There are six categories of information collected: (1) Information required from proponents and applicants to evaluate proposals and applications to use or occupy NFS lands; (2) information required from applicants to complete special use authorizations; (3) annual financial information required from holders to determine land use fees; (4) information required from holders to prepare and update operating plans; (5) information required from holders to prepare and update maintenance plans; and (6) information required from holders to complete compliance reports and information updates. The six categories cover all information collection requirements involved in administration of the special uses program, including application and

reporting forms; authorization forms; supplemental special use authorization clauses in Forest Service Handbook 2709.11, chapter 50, and information collection requirements not associated with an approved standard form.

These six categories demonstrate the complexity of the special uses program and the importance of standard forms to administration of the program. There are approximately 77,000 special use authorizations in effect, authorizing a variety of activities that range from individual private uses to large-scale commercial facilities and public services. Examples of authorized special uses include public and private road rights-of-way, apiaries, domestic water supply conveyance systems, telephone and electric service rights-of-way, oil and gas pipeline rights-of-way, communications facilities, hydroelectric power-generating facilities, ski areas, resorts, marinas, municipal sewage treatment plants, and public parks and playgrounds. Each year the Forest Service issues approximately 9,000 special use authorizations.

Because of the significance of the forms to program administration, the Forest Service needs the ability to update and modify them through expedited procedures when the agency is not imposing new information collection requirements, *e.g.*, when the agency is proposing purely minor, technical changes; is tailoring an existing standard form to a particular use; or is proposing revisions needed for consistency, updating, or legal sufficiency. Consequently, the agency is proposing to broaden the scope of the currently approved information collection for the special uses program to include these types of changes. These changes would not affect the burden estimate for the special use program's information collection and they would be submitted to the Office of Management and Budget for approval, without publication for public notice and comment. The Forest Service would publish for public notice and comment any new information collection requirements, such as forms created to implement new statutory or regulatory requirements or additional information collection requirements imposed under existing standard forms.

Category 1: The Application Process

1. SF–299: Application for Transportation and Utility Systems and Facilities on Federal Lands. The information provided on this form is used by the authorized officer to evaluate the applicant's technical and financial capability, nature of the proposed operations, and anticipated environmental impacts and proposed mitigation of those impacts. This form is used for most requests for nonrecreational uses of NFS lands.

2. FS–2700–3a: Holder-Initiated Revocation of Existing Authorization and Request for a Special Use Permit. The information provided on this form is used by the authorized officer to facilitate issuance of a new authorization when there is a change in ownership of authorized improvements or a change in control of the holder of a special use authorization.

3. FS–2700–3b: Special Use Application and Permit for Noncommercial Group Use. The information provided on this form is used by the authorized officer to evaluate requests to use NFS lands for noncommercial gatherings involving 75 or more people, such as a wedding or an activity involving the exercise of First Amendment rights.

4. FS–2700–3c: Special Use Application and Permit for Recreation Events. The information provided on this form is used by the authorized officer to evaluate requests to use NFS lands for events involving an entry or participation fee, such as an endurance ride.

5. FS–2700–3e: Special Use Application and Permit for Government-Owned Buildings. The information provided on this form is used by the authorized officer to evaluate requests to use government-owned facilities on NFS lands.

6. FS–2700–10: Technical Data for Communications Uses. The information provided on this form is used by the authorized officer to evaluate the compatibility of communications equipment at a communications site to minimize frequency interference and other compatibility problems.

7. FS–2700–NEW: Application for Permit for Archaeological Investigations. The information provided on this form is used by the authorized officer to evaluate the financial capability and qualifications of an applicant to undertake archaeological investigations on NFS lands.

8. FS–2700–11: Agreement Concerning a Small Business Administration Loan for a Holder of a Special Use Permit. The information provided on this form is used by the authorized officer to enter into an agreement with a holder, a lender, and the United States Small Business Administration (SBA) regarding a loan guaranteed by the SBA.

9. FS–2700–12: Agreement Concerning a Loan for a Holder of a Special Use Permit. The information provided on this form is used by the authorized officer to enter into an agreement with a holder and a lender regarding a loan that is not guaranteed by the SBA.

10. FS–2700–28: Additional Insured Endorsement for a Special Use Authorization. The information provided on this form is used to name the United States as an additional insured in an insurance policy issued to the holder of a special use authorization.

11. FS–6500–24: Financial Statement. The information provided on this form is used by the authorized officer, or financial analyst to evaluate the financial capability of an applicant to undertake the requested use and to comply with the terms and conditions of an authorization. This form is used primarily for requests to operate ski areas, resorts, and government-owned campgrounds on NFS lands.

12. FS–6500–25: Request for Verification. The information provided on this form is used by the authorized officer, or financial analyst to obtain a release of information from a financial institution in order to verify the financial capability of an applicant to undertake the requested use and to comply with the terms and conditions of an authorization. This form is used primarily for requests to operate ski areas, resorts, and government-owned campgrounds on NFS lands.

Category 2: Special Use Authorizations

1. FS–2700–4: Special Use Permit. The information provided on this form is used by the authorized officer to authorize a variety of uses on NFS lands that are not covered by their own standard form.

2. FS–2700–4a: Special Use Permit Granger-Thye Supplement. The information provided on this form is used to modify the standard form FS–2700–4 when used to authorize government-owned improvements.

3. FS–2700–4b: Forest Road Special Use Permit. The information provided on this form is used by the authorized officer to authorize under FLPMA the construction and use of an NFS road, typically to access private property within a national forest for commercial purposes, such as timber hauling or noncommercial purposes such as residential use.

4. FS–2700–4c: Private Road Special Use Permit. The information provided on this form is used by the authorized officer to authorize under FLPMA the construction and use of a road that is not part of the forest transportation system to access non-Federal land, a mining claim, a mineral leasing area, or other uses of NFS lands.

5. FS–2700–4d: Temporary Cost Share Agreement Road Special Use Permit. The information provided on this form is used by the authorized officer to authorize under FLPMA the construction, maintenance, and use of a temporary road on NFS lands covered by a cost share agreement to access private property within a national forest for commercial purposes, such as timber harvesting.

6. FS–2700–4h: Special Use Permit for Campground and Related Granger-Thye Concessions. The information provided on this form is used by the authorized officer to authorize the operation and maintenance of a government-owned recreation site on NFS lands.

7. FS–2700–4h, Appendix B: Annual Granger-Thye Fee Offset Agreement. The information provided on this form is used by the authorized officer and the holder to specify the government maintenance, reconditioning, renovation, and improvement to be used to offset the land use fee for a Campground and Related Granger-Thye Concessions Special Use Permit.

8. FS–2700–4h, Appendix G: Granger-Thye Fee Offset Claim Certification. The information provided on this form is used by the holder to provide a record of the holder's direct and indirect costs attributable to a project enumerated in a Granger-Thye fee offset agreement.

9. FS–2700–4h, Appendix F: Special Use Permit for Campground and Related Granger-Thye Concessions. The information provided on this form describes the Forest Service's drinking water program and the requirements that apply to holders who are authorized to operate a Federally owned drinking water system.

10. FS–2700–4i: Special Use Permit for Outfitting and Guiding. The information provided on this form is used by the authorized officer to authorize the use and occupancy of NFS lands to provide outfitting and guiding services.

11. FS–2700–5: Term Special Use Permit. The information provided on this form is used by the authorized officer to authorize long-term use of NFS lands involving privately owned facilities.

12. FS–2700–5a: Term Special Use Permit for Recreation Residences. The information provided on this form is used by the authorized officer to authorize a privately owned recreation residence on NFS lands.

13. FS–2700–5b: Ski Area Term Special Use Permit. The information provided on this form is used by the authorized officer to authorize ski areas on NFS lands.

14. FS–2700–5c: Resort/Marina Term Special Use Permit. The information provided on this form is used by the authorized officer to authorize resort/marinas on NFS lands.

15. FS–2700–9a: Agricultural Irrigation and Livestock Watering System Easement. The information provided on this form is used by the authorized officer to grant an easement for an agricultural irrigation or a livestock watering system on NFS lands.

16. FS–2700–9b: Cost Share Easement. The information provided on this form is used by the authorized officer to authorize under FRTA the acquisition, construction, or reconstruction and the maintenance and use of an NFS road that is subject to a cost share agreement. The parties to the cost share agreement grant each other easements within the geographic area covered by the agreement. A cost share easement, which is for an NFS road, is subject to the cost sharing provisions of the agreement.

17. FS–2700–9c: Non-Cost Share Easement. The information provided on this form is used by the authorized officer to authorize under FRTA the construction, reconstruction, maintenance, and use of private roads under a cost share agreement. The parties to the cost share agreement grant each other easements within the geographic area covered by the agreement. A non-cost share easement, which is for a private rather than an NFS road, is not subject to the cost sharing provisions of the agreement.

18. FS–2700–9d: Public Road Easement. The information provided on this form is used by the authorized officer to grant easements under FRTA to public road authorities, such as States or counties, to construct and maintain public roads that are not part of the Federal Aid Highway System.

19. FS–2700–9e: Forest Road Easement Issued Under the National Forest Roads and Trails Act The information provided on this form is used by the authorized officer to grant an easement under FRTA to a party to a cost share agreement, or to another non-Federal landowner who is cooperating in the acquisition, construction, or maintenance of an NFS road. The easement is for acquisition, construction, or reconstruction and maintenance and use of an NFS road that is outside the boundaries of a cost share agreement. At the time the easement is granted, the grantor and the grantee share the costs of acquisition, construction, and reconstruction. After the easement is granted, the grantor and the grantee share only the cost of maintenance.

20. FS–2700–9f: Private Road Easement Issued Under the National Forest Roads and Trails Act. The information provided on this form is used by the authorized officer to grant an easement under FRTA to a party to a cost share agreement, or to another non-Federal landowner who is cooperating in the acquisition, construction, or maintenance of an NFS road. The easement is for construction or reconstruction and maintenance and use of a private road that is outside the boundaries of a cost share agreement. Since the easement is for a private rather than an NFS road, the costs of constructing, reconstructing, and maintaining the road are borne by the grantee.

21. FS–2700–9g: Forest Road Easement Issued Under the Federal Land Policy and Management Act. The information provided on this form is used by the authorized officer to grant an easement under FLPMA for construction, reconstruction, maintenance, and use of an NFS road, when the grantee is not a party to a cost share agreement for the acquisition, construction, and maintenance of an NFS road, or when the grantee does not meet the requirements for issuance of a forest road easement under FRTA.

22. FS–2700–9h: Private Road Easement Issued Under the Federal Land Policy and Management Act. The information provided on this form is used by the authorized officer to grant an easement under FLPMA for construction, reconstruction, maintenance, and use of a private road, when the grantee is not a party to a cost share agreement for the acquisition, construction, and maintenance of NFS roads, or when the grantee does not meet the requirements for issuance of a private road easement under FRTA.

23. FS–2700–10b: Communications Site Lease. The information provided on this form is used by the authorized officer to authorize a communications use within a designated communications site on NFS lands.

24. FS–2700–NEW: Electric Transmission Line Easement. The information provided on this form is used by the authorized officer to grant a long-term easement under FLPMA for an electric transmission line.

25. FS–2700–NEW: Permit for Archaeological Investigations. The information provided on this form is used by the authorized officer to grant a permit to a qualified applicant to conduct archeological investigations on NFS lands.

26. FS–2700–23: Amendment for Special Use Authorization. The information provided on this form is

used by the authorized officer to amend an existing special use authorization.

27. FS–2700–25: Temporary Special Use Permit. The information provided on this form is used by the authorized officer to authorize uses of one year or less on NFS lands.

28. FS–2700–26: Major Category Cost Recovery Agreement. The information provided on this form is used to effectuate cost recovery for special use applications or authorizations involving over 50 hours to process or monitor.

29. FS–2700–26b: Cost Recovery Master Agreement. The information provided on this form is used to effectuate cost recovery for special use applications or authorizations involving multiple phases of development or groups of applications or similar applications for a specified geographic area.

30. FS–2700–27: Notice to Alaska Native Corporations Regarding Prospectus for Visitor Services. The information provided on this form is used by the authorized officer to provide notice to Alaska Native Corporations of the issuance of a prospectus to conduct visitor services in Conservation System Units in Alaska so that they may request designation as a most directly affected Native Corporation for purposes of competing for the opportunity.

Category 3: Annual Financial Information

1. FS–2700–6b: Recreation Residence Self-Inspection Report. The information provided on this form is used by the authorized officer to review and record any modifications made to a recreation residence.

2. FS–2700–7: Reconciliation of Sales for Fee Calculation. The information provided on this form is used by the authorized officer to determine land use fees that are based on sales revenue.

3. FS–2700–8: Reconciliation of Gross Fixed Assets to Booked Amounts. The information provided on this form is used by the authorized officer to determine land use fees that are based on the gross fixed assets of the holder.

4. FS–2700–10a: Telecommunications Facility Inventory. The information provided on this form is used by the authorized officer to determine the rent for a communications facility based on the number of tenants in the facility.

5. FS–2700–19: Fee Calculation for Concession Permits. The information provided on this form is used by the authorized officer to determine the land use fee for concession permits under the Graduated Rate Fee System.

6. FS–2700–19a: Fee Calculation for Ski Area Permits. The information provided on this form is used by the authorized officer to determine the land use fee for ski area permits.

7. Business Practices (no standard form). Information regarding various business practices, such as basic accounting or financial records, is provided by the holder when requested by the authorized officer or as a term and condition of an authorization. This type of information is usually maintained in a form that is customary for the type of business involved.

Category 4: Preparing and Updating Operating Plans (No Standard Form).

Special use authorizations may contain a clause requiring the holder to prepare and update an operating plan governing day-to-day operations of the authorized use. This information is useful to the holder and the authorized officer because it specifies procedures and policies for conducting the authorized use. Typically, operating plans contain daily operating guidelines, fire abatement and control procedures, monitoring guidelines, maintenance standards, safety and emergency plans, and inspection standards. Operating plans are usually necessary for complex operations, commercial uses, and uses conducted in environmentally sensitive areas.

Category 5: Preparing and Updating Maintenance Plans (No Standard Form)

A permit or easement issued under FLPMA or FRTA may require the holder or grantee to submit and update a road maintenance plan or information necessary for the preparation of a road maintenance plan. A road maintenance plan governs a holder's or grantee's responsibility to perform or pay for maintenance of an NFS road.

Category 6: Compliance Reports and Information Updates (No Standard Form)

Special use authorizations may contain a clause requiring the holder to provide the authorized officer with compliance reports, information reports, and other information required by Federal law or to manage NFS lands to ensure adequate protection of national forest resources and public health and safety. Examples of compliance and information updates include dam maintenance inspection reports and logs required by the Reclamation Safety of Dams Act of 1978, the Federal Dam Safety Inspection Act of 1979, and the Dam Safety Act of 1983; documentation that authorized facilities passed safety inspections; documentation showing that the United States is named as an additional insured in an insurance policy issued to a holder; notifications involving a change in ownership of authorized improvements or a change in control of the holder; and documentation of compliance with Title VI of the Civil Rights Act of 1964.

Form number	Form name	Estimate of burden (hours)	Estimated number of respondents	Estimated number of responses per respondent	Estimated total annual burden on respondents
CATEGORY 1: APPLICATION PROCESS					
SF–299	Application for Transportation and Utility Systems and Facilities on Federal Lands.	8	5,025	1	40,200
FS–2700–3a	Holder-Initiated Revocation of Existing Authorization and Request for a Special Use Permit.	.5	1,175	1	587.5
FS–2700–3b	Special Use Application and Permit for Noncommercial Group Use.	.25	375	1	93.75
FS–2700–3c	Special Use Application and Permit for Recreation Events	1	1,150	1	1,150
FS–2700–3e	Special Use Application and Permit for Government-Owned Buildings.	.25	250	1	62.5
FS–2700–10	Technical Data for Communications Uses	.25	175	1	43.75
FS–2700-NEW	Application for Permit for Archaeological Investigations	4	50	1	200
FS–2700–11	Agreement Concerning Small Business Administration Loan for Holder of Special Use Permit.	.25	75	1	18.75

Form number	Form name	Estimate of burden (hours)	Estimated number of respondents	Estimated number of responses per respondent	Estimated total annual burden on respondents
FS–2700–12	Agreement Concerning Loan for Holder of Special Use Permit.	.25	75	1	18.75
FS–2700–28	Additional Insured Endorsement for a Special Use Authorization.	.25	2,675	1	668.75
FS–6500–24	Financial Statement	8	100	1	800
FS–6500–25	Request for Verification	.5	100	1	50
CATEGORY 2: SPECIAL USE AUTHORIZATIONS					
FS–2700–4	Special Use Permit	1	1,175	1	1,175
FS–2700–4a	Special Use Permit Granger-Thye Supplement	1	50	1	50
FS–2700–4b	Forest Road Special Use Permit	1	150	1	150
FS–2700–4c	Private Road Special Use Permit	1	275	1	275
FS–2700–4d	Temporary Cost Share Agreement Road Special Use Permit.	1	5	1	5
FS–2700–4h	Special Use Permit for Campground and Related Granger-Thye Concessions.	1	20	1	20
FS–2700–4h, Appendix B.	Appendix B: Annual Granger-Thye Fee Offset Agreement	2	75	1	150
FS–2700–4h, Appendix G.	Appendix G: Granger-Thye Fee Offset Claim Certification	1	75	1	75
FS–2700–4h, Appendix F.	Appendix F: Special Use Permit for Campground and Related Granger-Thye Concessions.	.5	20	1	10
FS–2700–4i	Special Use Permit for Outfitting and Guiding	1	1,000	1	1,000
FS–2700–5	Term Special Use Permit	1	50	1	50
FS–2700–5a	Term Special Use Permit for Recreation Residences	1	1,250	1	1,250
FS–2700–5b	Ski Area Term Special Use Permit	1	10	1	10
FS–2700–5c	Resort/Marina Term Special Use Permit	1	50	1	50
FS–2700–9a	Agricultural Irrigation and Livestock Watering System Easement.	1	50	1	50
FS–2700–9b	Cost Share Easement	1	5	1	5
FS–2700–9c	Non-Cost Share Easement	1	5	1	5
FS–2700–9d	Public Road Easement	1	35	1	35
FS–2700–9e	Forest Road Easement Issued Under the National Forest Road and Trails Act.	1	25	1	25
FS–2700–9f	Private Road Easement Issued Under the National Forest Road and Trails Act.	1	10	1	10
FS–2700–9g	Forest Road Easement Issued Under the Federal Land Policy and Management Act.	1	50	1	50
FS–2700–9h	Private Road Easement Issued Under the Federal Land Policy and Management Act.	1	100	1	100
FS–2700–10b	Communications Site Lease	1	150	1	150
FS–2700-NEW	Electric Transmission Line Easement	1	30	1	30
FS–2700-NEW	Permit for Archaeological Investigations	4	50	1	200
FS–2700–23	Amendment for Special Use Authorization	1	1,175	1	1,175
FS–2700–25	Temporary Special Use Permit	1	1,350	1	1,350
FS–2700–26	Major Category Cost Recovery Agreement	8	875	1	7,000
FS–2700–26b	Cost Recovery Master Agreement	8	225	1	1,800
FS–2700–27	Notice to Alaska Native Corporations Regarding Prospectus for Visitor Services.	20	10	1	200
CATEGORY 3: ANNUAL FINANCIAL INFORMATION					
FS–2700–6b	Recreation Residence Self-Inspection Report	2.5	14,500	1	36,250
FS–2700–7	Reconciliation of Sales for Fee Calculation	1	590	1	590
FS–2700–8	Reconciliation of Gross Fixed Assets to Booked Amounts	1	590	1	590
FS–2700–10a	Telecommunications Facility Inventory	1	1,525	1	1,525
FS–2700–19	Fee Calculation for Concession Permits	1	175	1	175
FS–2700–19a	Fee Calculation for Ski Area Permits	1	125	1	125
	Business Practices (no standard form)	1	1,675	1	1,675
CATEGORY 4: PREPARING AND UPDATING OPERATING PLANS					
	No standard form	1	22,225	1	22,225
CATEGORY 5: PREPARING AND UPDATING MAINTENANCE PLANS					
	No standard form	2	800	1	1,600

Form number	Form name	Estimate of burden (hours)	Estimated number of respondents	Estimated number of responses per respondent	Estimated total annual burden on respondents
CATEGORY 6: COMPLIANCE REPORTS AND INFORMATION UPDATES					
	No standard form	2	15,000	1	30,000

Comment is invited on (1) whether this collection of information is necessary for the stated purposes and proper performance of the agency's functions and mission, including whether the information will have practical or programmatic utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 21, 2005.

Frederick Norbury,

National Forest System.

[FR Doc. E5–7935 Filed 12–27–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Chloride Bush Project, Idaho Panhandle National Forest, Bonner County, ID

AGENCY: Forest Service, USDA.

ACTION: Cancellation notice.

SUMMARY: On October 23, 2003, a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the Chloride Bush Project on the Idaho Panhandle National Forests was published in the **Federal Register** (68 FR 60637–60638).

The NOI is canceled because the Idaho Panhandle National Forests no longer intend to proceed with this project.

FOR FURTHER INFORMATION CONTACT: Albert Helgenberg, Project Team Leader, Sandpoint Ranger District, 1500 Highway 2, Suite 110, Sandpoint, ID 83864, telephone: 208–265–6643.

Dated: December 19, 2005.

Ranotta McNair,

Forest Supervisor, Idaho Panhandle National Forests.

[FR Doc. 05–24516 Filed 12–27–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas National Forest; Plumas County, CA; Empire Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to the environmental impact statement.

SUMMARY: The Forest Service will prepare a supplement to the final Environmental Impact Statement to document and clarify additional analysis of cumulative environmental effects primarily in five resource areas: Vegetation, Fire/Fuels/Air Quality, Wildlife, Watershed, and Botanical Resources/Noxious Weeds. The supplement will also clarify the discussion of planning areas. Additional details will be added to Appendix D: Proposed Actions for Each Road in Each Watershed and Appendix G: Past, Present, and Reasonably Foreseeable Future Actions. Additional maps will be included to provide further information to the public.

DATES: Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)4(4)). The draft supplemental environmental impact statement is expected to be issued in January 2006 and the final supplemental environmental impact statement is expected in April 2006.

ADDRESSES: Plumas National Forest, 159 Lawrence Street, P.O. Box 11500, Quincy, CA 95971; Mount Hough Ranger District, 39696 Highway 70, Quincy, CA 95971.

FOR FURTHER INFORMATION CONTACT: Gary Rotta, Interdisciplinary Team Leader, Mt. Hough Ranger District 39696 Highway 70, Quincy, CA 95971 (530) 283–7687.

SUPPLEMENTARY INFORMATION: The prior notice of intent for this project appeared in the **Federal Register** on February 9, 2005. The Notice of Availability for the Draft Environmental Impact Statement appeared on May 20, 2005. A Final Environmental Impact Statement and Record of Decision were issued on August 9, 2005. The legal notice of the Record of Decision appeared in the Feather River Bulletin on August 24, 2005. The decision was appealed and later reversed on November 18, 2005.

Purpose and Need for Action

The purpose and need remain the same as was described in the FEIS. In the FEIS, the purpose of and need for the project has three elements: (1) To implement fuel reduction in the Wildland Urban Interface (WUI) and, as part of the larger HFQLG fuel treatment strategic network as called for by the HFQLG Act (Section 401(b)(1) and (d)(1)) and the HFQLG amendment to the LRMP, to reduce the potential size and intensity of wildfires and provide fire suppression personnel safe locations for taking action against wildfires; (2) to implement group selection and individual tree selection, as directed in the HFQLG Act (Section 401(b)(1) and (d)(2)) and the HFQLG amendment to the LRMP, to test the effectiveness of an uneven-aged silvicultural system in achieving an all-aged, multistory, fire resilient forest, providing an adequate timber supply that contributes to the economic stability of rural communities, and improving and maintaining ecological health of the forest; and (3) to reduce impacts of the transportation system on forest resources and provide the necessary access for the fuel treatments and the group and individual tree selection harvests.

Proposed Action

The proposed action and all alternatives will remain the same as described in the FEIS. These alternatives include varied levels of fuel treatments, group selection timber harvest, individual tree selection harvest and transportation system improvement.

Responsible Official

Jim Peña, Forest Supervisor, Plumas National Forest, P.O. Box 11500, Quincy, CA 95971.

Nature of Decision To Be Made

Based on the supplement, the responsible official will decide whether to implement the project based on an alternative in the FEIS or not implement the project at this time.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft supplemental environmental impact statement will be prepared for comment. The comment period on the draft supplemental 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 supplemental 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 supplemental environmental impact statement stage but that are not raised until after completion of the final supplemental 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 supplemental environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft supplemental environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages of the draft supplement. Comments may also address the adequacy of the draft supplemental 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: December 20, 2005.

James M. Peña,

Forest Supervisor.

[FR Doc. 05–24517 Filed 12–27–05; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

[USARC 05–123]

Notice of Meeting

December 12, 2005.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 78th Meeting in Seattle, WA on January 19–20, 2006. The Business Session open to the public will convene at 9 a.m. Thursday, January 19. The Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 77th Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will reconvene at 9 a.m. Friday, January 20, 2006. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 793–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 05–24491 Filed 12–27–05; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provision of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Export Assistance Center Internet Web Site Form.

Agency Form Number: ITA–4148P.

OMB Number: 0625–0237.

Type of Request: Regular Submission.

Burden: 700 hours.

Number of Respondents: 7,000.

Avg. Hours Per Response: 5 minutes.

Needs and Uses: U.S. Export Assistance Centers, which are a combined effort of the U.S. Department of Commerce, Export-Import Bank, and Small Business Administration provides a comprehensive array of export counseling and trade finance services to small and medium-sized U.S. exporting firms. It proposes the extension of the Office of Management and Budget's authorization for this information collection form to continue the usefulness of its interactive website. In addition, this generic form will be used in its entirety or with minor modifications by all U.S. Export Assistance Centers and the Office of Domestic Operations. The form will ask U.S. exporting firm respondents to provide general background information and identify which service(s) they are interested in.

Affected Public: Business or other for-profit.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefit.

Dates: Written comments must be submitted on or before October 31, 2005.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 or via the Internet *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent to *David_Rostker@omb.eop.gov* or fax (202) 395–7285 within 30 days of the publication of this notice in the **Federal Register**.

Dated: December 22, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–7970 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2006 Census Test Coverage Followup.

Form Number(s): DD–1301 (CFU) & DD–1301 (HU–V).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 9,266 hours.

Number of Respondents: 55,600.

Avg Hours Per Response: 10 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget to conduct the 2006 Census Test Coverage Followup (CFU) operation. Improving coverage, or how well the Census Bureau counts people and housing units in the census, is one of the major goals for the 2010 Census. To achieve this goal, the Census Bureau is conducting an iterative series of tests that will provide an opportunity to evaluate new or improved question wording, methodology, technology, and questionnaire design.

The 2006 Census Test is part of the testing cycle, which was planned to allow us to finalize methodologies and operational procedures in time to conduct a Dress Rehearsal in 2008 and a successful census in 2010. The 2006 CFU operation is designed to improve coverage by collecting additional information from households that we identify as having potential coverage problems. This includes households where we have reason to believe that persons may have been counted more than once (e.g., students who are counted at their parents' home but also counted where they reside while they are attending school) or persons who might not have been included in the household count (e.g., newborn babies or roommates). During this operation, we also will contact large households containing more than six persons in order to ensure that everyone is included. Similarly, households where the count of persons does not equal the number of persons for which census data are provided will be contacted. We will also attempt to contact households that contain persons identified on administrative records who were not included on the appropriate census questionnaire. Finally, the entire census universe will be matched against itself in an effort to resolve person duplication at the housing level.

The 2006 CFU operation will be conducted in selected locations in Travis County, Texas and the Cheyenne River Reservation and Off Reservation Trust Land, South Dakota. Both telephone interviews and personal visits to gather information are planned.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., sections 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: December 22, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–7971 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Technology Administration.

Title: National Medal of Technology.

Form Number(s): None.

OMB Approval Number: 0692–0001.

Type of Request: Regular submission.

Burden Hours: 2,625.

Number of Respondents: 105.

Average Hours Per Response: 25.

Needs and Uses: This information collection is critical for the Nomination Evaluation Committee to determine nomination eligibility and merit for selection of the Nation's leading technological innovators honored by the President of the United States. The National Medal of Technology Nomination Application solicits nominations that recognize an individual or company's extraordinary leadership and innovation in technological achievement. The information is needed in order to comply with Public Law 96–480 and Public Law 105–309.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; and, Federal Government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Kristy LaLonde, (202) 395–3087.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Kristy LaLonde, OMB Desk Officer, Fax number (202) 395–5806 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

Dated: December 21, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–7972 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–18–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Watch Duty-Exemption and 7113 Jewelry Duty-Refund Program Forms.

Agency Form Number: ITA–340P, 360P, 361P.

OMB Number: 0625–0134.

Type of Request: Revision-Regular Submission.

Burden: 64 hours 16 min.

Number of Respondents: 4 (Form ITA–340P) and 8 (Forms ITA–360P & 361P).

Avg. Hours Per Response: 6 minutes (Forms ITA–340 & 361P) and 0 minutes (Form ITA–360P).

Needs and Uses: Public Law 97–446, as amended by Public Law 103–465, Public Law 106–36 and Public Law 108–429 requires the Department of Commerce and the Interior to administer the distribution of watch duty exemptions and watch and jewelry duty refunds to program producers in the U.S. insular possessions and the Northern Mariana Islands. The primary consideration in collecting information is the enforcement of the law and the information gathered is limited to that necessary to prevent abuse of the program and to permit a fair and equitable distribution of its benefits. Form ITA–340P provides the data to assist in the verification of duty-free shipments and make certain the allocations are not exceeded. Form ITA–360P and ITA–361P are necessary to implement the duty refund program.

Affected Public: Businesses or other for-profit.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Ave., NW., Washington, DC 20230; or via the Internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, at *David_Rostker@omb.eop.gov* or faxed to (202) 395–7285 within 30 days of publication of the **Federal Register** notice.

Dated: December 22, 2005.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. E5–7973 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 051213333–5333–01]

Annual Surveys in the Manufacturing Area

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the 2005 Annual Surveys in the Manufacturing Area. The 2005 Annual Surveys consist of the Current Industrial Reports surveys, the Annual Survey of Manufactures, the Survey of Industrial Research and Development, the Survey of Plant Capacity Utilization, and the Survey of Pollution Abatement Costs and Expenditures. We have determined that annual data collected from these surveys are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other governmental sources.

ADDRESSES: The Census Bureau will furnish report forms to organizations included in the survey. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Mendel D. Gayle, Acting Chief, Manufacturing and Construction Division, on (301) 763–4587.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code, Sections 61, 81, 182, 193, 224, and 225.

These surveys will provide continuing and timely national statistical data on manufacturing for the period between economic censuses. The next economic censuses will be conducted for the year 2007. The data collected in these surveys will be within the general scope and nature of those inquiries covered in the economic censuses.

Current Industrial Reports

Most of the following commodity or product surveys provide data on shipments or production, stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all, or a sample of, establishments engaged in the production of the items covered by the following list of surveys:

Survey Title

MA314Q—Carpets and Rugs
MA321T—Lumber Production and Mill Stocks
MA325F—Paint and Allied Products
MA325G—Pharmaceutical Preparations, except Biologicals
MA327C—Refractories
MA327E—Consumer, Scientific, Technical, and Industrial Glassware
MA331B—Steel Mill Products
MA332Q—Antifriction Bearings
MA333A—Farm Machinery and Lawn and Garden Equipment
MA333D—Construction Machinery
MA333F—Mining Machinery and Mineral Processing Equipment
MA333M—Refrigeration, Air-conditioning, and Warm Air Equipment
MA333P—Pumps and Compressors
MA334A—Analytical and Biomedical Instruments
MA334C—Control Instruments
MA334D—Defense, Navigational and Aerospace Electronics
MA334M—Consumer Electronics
MA334P—Telecommunications
MA334Q—Electronic Components
MA334R—Computers
MA334T—Meters and Test Devices
MA335E—Electric Housewares and Fans
MA335F—Major Household Appliances
MA335J—Insulated Wire and Cable
MA335K—Wiring Devices and Supplies

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed, or do not report, in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports (listed below) will be identical with that of the monthly and quarterly reports:

Survey Title

M311H—Animal and Vegetable Fats and Oils (Stocks)
M311J—Oilseeds, Beans, and Nuts (Primary Producers)
M311L—Fats and Oils (Renderers)
M311M—Animal and Vegetable Fats and Oils (Consumption and Stocks)
M311N—Animal and Vegetable Fats and Oils (Production, Consumption, and Stock)
M313P—Consumption on the Cotton System
M313N—Cotton and Raw Linters in Public Storage
M327G—Glass Containers

M336G—Civil Aircraft and Aircraft Engines
MQ311A—Flour Milling Products
MQ313A—Textiles
MQ315A—Apparel
MQ325A—Inorganic Chemicals
MQ325B—Fertilizer Materials
MQ327D—Clay Construction Products
MQ333W—Metalworking Machinery
MQ335C—Fluorescent Lamp Ballasts

Annual Survey of Manufactures

The Annual Survey of Manufactures collects industry statistics, such as total value of shipments, employment, payroll, workers' hours, capital expenditures, cost of materials consumed, supplemental labor costs, and so forth. This survey, conducted on a sample basis, covers all manufacturing industries, including data on plants under construction, but not yet in operation.

Survey of Industrial Research and Development

The Survey of Industrial Research and Development measures spending on research and development activities in private U.S. businesses. The Census Bureau collects and compiles this information in accordance with a joint project agreement between the National Science Foundation (NSF) and the Census Bureau. The NSF publishes the results in its publication series. Five data items in the survey provide interim statistics collected in the Census Bureau's economic censuses. These items (total company sales, total employment, total expenditures for research and development conducted within the company, federally-funded expenditures for research and development conducted within the company, and total expenditures and federally-funded expenditures for research and development within the company by state) are collected on a mandatory basis under the authority of Title 13, United States Code. Responses to all other data collected are voluntary.

Survey of Plant Capacity Utilization

The Survey of Plant Capacity Utilization is designed to measure the use of industrial capacity. The survey collects information on actual output and estimates of potential output in terms of value of production. These data are the basis for calculating rates of utilization of full production capability and use of production capability under national emergency conditions.

Survey of Pollution Abatement Costs and Expenditures

Under a joint project agreement with the Environmental Protection Agency, the Survey of Pollution Abatement Costs and Expenditures is designed to collect from establishments in manufacturing, mining, and electric utilities industries the total expenditures by industry and geographic area to abate pollutant emissions. The survey covers current operating costs and capital expenditures to abate air and water pollution and solid waste. The survey also will obtain the costs recovered from abatement activities.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C., Chapter 45, the OMB approved the 2005 Annual Surveys under the following OMB control numbers: Current Industrial Reports—0607–0392, 0607–0395, and 0607–0476; Annual Survey of Manufactures—0607–0449; Survey of Industrial Research and Development—0607–0912; Survey of Plant Capacity Utilization—0607–0175, and Survey of Pollution Abatement Costs and Expenditures—0607–0176.

Based upon the foregoing, I have directed that the Annual Surveys in the Manufacturing Area be conducted for the purpose of collecting these data.

Dated: December 21, 2005.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E5–7945 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–558–804, A–559–801]

Ball Bearings and Parts Thereof From Japan and Singapore; Five-Year Sunset Reviews of Antidumping Duty Orders; Preliminary Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 1, 2005, the Department of Commerce (the Department) initiated a sunset review of the antidumping duty orders on ball bearings from Japan and Singapore. On the basis of the notice of intent to participate and adequate substantive responses and rebuttal comments filed on behalf of the domestic and respondent interested parties, the Department is conducting a full sunset review of the antidumping duty orders pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.218(e)(2)(i). As a result of these sunset reviews, the Department preliminarily finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Preliminary Results of Reviews.''

EFFECTIVE DATE: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Fred Aziz, Office 5, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–4114 or (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2005, the Department published the notice of initiation of the second sunset reviews of the antidumping duty orders on ball bearings from Japan and Singapore. See *Initiation of Five-year (''Sunset'') Reviews,* 70 FR 31423 (June 1, 2005). The Department received the Notice of Intent to Participate from the Timken Company, Pacamor Kubar Bearings, RBC Bearings (Collectively, ''the domestic interested parties''), NSK Corporation, and American NTN Bearing Manufacture Corporation (NTN USA) within the deadline specified in 19 CFR 351.218(d)(1)(i). NSK Corp. and NTN USA claimed interested-party status under section 771(9)(C) of the Act as a manufacturer, producer, or wholesaler of the subject merchandise in the United States. We received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). NSK Corp. and NTN USA filed complete substantive responses within the statutory deadlines.

We received complete substantive responses from the following foreign producers of the subject merchandise within the 30-day deadline specified in 19 CFR 351.218(d)(3)(I): *Japan*—Koyo Seiko Co. Ltd. and Koyo Corporation USA (collectively Koyo), NTN Corporation and NTN USA (collectively NTN), and NSK Ltd. and NSK Corp. (collectively NSK) (collectively, the respondents); *Singapore*—NMB/Pelmec.

We received rebuttal comments form the domestic interested parties and the respondents within the proper deadlines as specified in 19 CFR

351.218(d)(4). On September 12, 2005, the Department sent a letter to the respondents asking them to resubmit their substantive responses in order to revise the treatment of certain business-proprietary and public information. We also asked the domestic interested parties to re-submit their rebuttal comments to the respondents' revised responses. The respondents filed their revised substantive responses on September 15, 2005, and the domestic interested parties filed their revised substantive rebuttals on September 27, and October 12, 2005. Based on the responses received from interested parties, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(2)(i), the Department has conducted full (240-day) sunset reviews of these orders.

19 CFR 351.218(e)(1)(ii)(A) provides that the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where the Department receives complete substantive responses from respondent interested parties accounting on average for more than 50 percent, by volume, or value basis, if appropriate, of the total exports of the subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation. On July 21, 2005, the Department released its adequacy determination and found that the respondent interested parties accounted for more than 50 percent of exports by volume of the subject merchandise from Japan and Singapore to the United States. For more information, see Adequacy Determination Memorandum from the Sunset Team to Laurie Parkhill, dated July 21, 2005. In accordance with 19 CFR 351.218(e)(2)(i), the Department determined to conduct full sunset reviewed of these antidumping duty orders. The final results in the full sunset review of these antidumping duty orders are scheduled on or before January 27, 2006.

Scope of the Orders

The products covered by these orders are ball bearings and parts thereof. These products include all bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following *Harmonized Tariff Schedule of the United States* (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010; 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

Although the HTSUS subheadings above are provided for convenience and customs purposes, written descriptions of the scopes of these orders remain dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the ''Issues and Decision Memorandum'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated December 19, 2005 (Decision Memo), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the antidumping duty orders were revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memorandum, which is on file in room B–009 of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn,* under the heading ''December 2005.'' The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Reviews

The Department preliminarily determines that revocation of the antidumping duty orders on ball bearings from Japan and Singapore is likely to lead to continuation or recurrence of dumping at the following weighted-average margins:

Manufacturers/exporters/producers	Weighted-average margin (percent)
Japan:	
Koyo Seiko Co., LtD ..	73.55
Minebea Co., Ltd	106.61
Nachi-Fujikoshi Corp ..	48.69
NSK Ltd	42.99
NTN Corp	21.36
All Other Japanese Manufacturers/ Explorters/Producers	45.83
Singapore:	
NMB/Pelmec	25.08
All Other Singaporean Manufacturers/Exporters/Producers ...	25.08

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Interested parties may submit case briefs no later than 30 days after the date of publication of this notice, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 5 days after the case briefs, in accordance with 19 CFR 351.309(d)(1). Any hearing, if requested, will be held two days after rebuttal briefs are due, in accordance with 19 CFR 351.310(d)(1). The Department will issue a notice of final results of these sunset reviews, which will include the results of its analysis of issues raised in any such briefs, no later than January 27, 2006.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 19, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. 05–24510 Filed 12–27–05; 8:45am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has preliminarily determined that sales by the respondents in this review, covering the period December 1, 2003, through November 30, 2004, have been made at prices less than normal value (NV). In addition, we are preliminarily rescinding this review with respect to

Tianjin Custom Wood Processing Co., Ltd. (TCW), because TCW reported that it made no shipments of subject merchandise to the United States during the period of review (POR).[1] If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. The Department invites interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Cathy Feig, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4474 and (202) 482–3962, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2004, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain cased pencils from the People's Republic of China (PRC) (the order) covering the period December 1, 2003, through November 30, 2004. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 69889 (December 1, 2004).

On December 28, 2004, in accordance with 19 CFR 351.213(b), a PRC exporter, Shandong Rongxin Import and Export Co., Ltd. (Rongxin), requested an administrative review of the order on certain cased pencils from the PRC. On December 30, 2004, CSR Industries, doing business as American Business Technology (CSR), requested that the Department conduct an administrative review of subject merchandise exported by Shanghai Weijun International Trading/Grand World Inc. (Weijun). Also on December 30, 2004, domestic interested parties, Sanford L.P., Musgrave Pencil Company, RoseMoon Inc., and General Pencil Company, requested that the Department conduct an administrative review of exports of subject merchandise made by ten producers/exporters.[2] In addition, on January 3, 2005, China First Pencil Company, Ltd, SFTC, and Shanghai Three Star requested a review of their exports of subject merchandise to the United States.[3]

The Department published a notice announcing its initiation of an antidumping duty administrative review covering the exports of the above–referenced companies during the POR. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005).[4] On February 1, 2005, we issued antidumping duty questionnaires to the exporters/producers subject to this review.

In their respective February 22, 2004, responses to the Department's questionnaire, TCW and GSSG stated that they did not export subject merchandise to the United States during the POR. CFP/Three Star, Orient International Holding Shanghai Foreign Trade Co., Ltd. (SFTC), and Rongxin submitted timely questionnaire responses. On March 10, 2005, in accordance with 19 CFR 351.213(d)(1), CSR withdrew its request for review. The remaining exporters/producers did not submit questionnaire responses and did not request that we extend the applicable deadlines for doing so.[5]

On July 22, 2005, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department extended the time limit for the preliminary results of this review until December 16, 2005. *See Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 42303 (July 22, 2005).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Order

Imports covered by this order are shipments of certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man–made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to the order are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the order are mechanical pencils, cosmetic pencils, pens, non–cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above–referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the order are pencils with all of the following physical characteristics: 1) length: 13.5 or more inches; 2) sheath diameter: not less than one–and-one quarter inches at any point (before sharpening); and 3) core length:

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[1] We reviewed U.S. Customs and Border Protection (CBP) data and found no evidence that TCW made shipments of subject merchandise to the United States during the POR.

[2] The ten producers/exporters covered by the domestic interested parties' request are Anhui Import/Export Group Corporation, Beijing Light Industrial Products Import/Export Corporation, Beijing Yixunda Technology and Trade Co., Ltd., China First Pencil Company, Ltd. (CFP), Guangdong Stationery & Sporting Goods Import & Export Corp. (GSSG), Orient International Holding Shanghai Foreign Trade Co., Ltd., (SFTC), Rongxin, Sichuan Light Industrial Products Import/Export Corporation, Shanghai Three Star Stationery Industry Corp. (Three Star), and TCW.

[3] The Department was closed on December 31, 2004, a legal holiday. January 3, 2005 was the next business day.

[4] The Department initiated separate reviews of China First Pencil Company, Ltd. (CFP) and Shanghai Three Star Stationery Industry Corp. (Three Star) based on timely requests from interested parties. In the final results of the 2001–2002 administrative review the Department collapsed CFP and Three Star for purposes of its antidumping analysis. *See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 69 FR 29266 (May 21, 2004) and the accompanying Issues and Decision Memorandum at Comment 6. The Department continued to collapse CFP and Three Star in the final results of the 2002-2003 administrative review. *See Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42301 (July 22, 2005) and the accompanying Issues and Decision Memorandum at Comment 1 (Pencils 02/03). For this review, the Department continues to consider CFP and Three Star (hereinafter referred to as CFP/Three Star) to be a single entity.

[5] On April 18, 2005, we sent letters by commercial courier to Anhui Import/Export Group Corp. (Anhui), Beijing Yixunda Technology and Trade Co., Ltd. (Yixunda), and Sichuan Light Industrial Products (Sichuan) notifying them that the applicable deadlines for them to respond to our questionnaire had passed and that we had not received their questionnaire responses or requests to extend the deadline for receipt of their questionnaire responses. We confirmed by the courier's shipment tracking that these companies received our questionnaire. We asked them to notify us in writing if they had no shipments, sales or entries of subject merchandise. We notified Anhui, Yixunda, and Sichuan that, if they did not respond, we may use facts available which could be adverse to their interests. We also sent a letter to the Bureau of Fair Trade for Imports & Exports, Ministry of Commerce (MOFCOM) informing it that Anhui, Yixunda, and Sichuan had not responded to our questionnaire and that we may use facts available which could be adverse to the companies' interests. In addition, we informed MOFCOM that the questionnaires that we sent to Beijing Light Industrial Products Import Export Corporation (Beijing Light) and Guangdong Provincial Stationery & Sporting Goods Import & Export Corporation (Guangdong Provincial) had been returned as undeliverable and asked that MOFCOM forward copies of the questionnaire to Beijing Light and Guangdong Provincial. We confirmed using courier tracking that MOFCOM received this letter.

not more than 15 percent of the length of the pencil.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Intent to Rescind Review in Part

We are preliminarily rescinding this review with respect to TCW because it reported that it made no shipments of subject merchandise to the United States during the POR. The Department reviewed CBP data which did not indicate that TCW exported subject merchandise to the United States during the POR.

Rescission of Review

We are rescinding this review in accordance with 19 CFR 351.213(d)(1) with respect to Weijun. CSR withdrew its request for review of Weijun on March 10, 2005. There was no other request for a review of Weijun and CSR's letter withdrawing its request for a review was timely filed.

Verification

As provided in section 782(i) of the Act, during September 2005, the Department conducted verifications of SFTC and Rongxin. During the verification of SFTC and Rongxin, the Department followed standard procedures in order to test the information submitted by the respondents. These procedures include on–site inspection of the manufacturers' facilities, examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. We adjusted reported data used in our preliminary results based on our findings at verification as applicable. *See Memoranda from Charles Riggle, Program Manager, to the file, Margin Calculation Analysis: Orient Holding Shanghai Foreign Trade Co., Ltd. and Margin Calculation Analysis: Shandong Rongxin Import and Export Co., Ltd.*, both dated December 16, 2005 (Calculation Memoranda). Our verification findings are on file in the Department's Central Records Unit, room B099, of the main Commerce building (CRU–Public File). *See Memoranda from Charles Riggle, Program Manager, to Wendy Frankel, Office Director, AD/CVD Operations, Office 8, Verification Reports: U.S. Sales and Factors–of-production*, dated December 13, 2005 (Verification Reports).

Separate–Rates Determination

In proceedings involving non–market-economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to governmental control and thus should be assessed a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that its export activities are sufficiently independent so that it should be granted a separate rate. Rongxin, CFP/Three Star, and SFTC provided the separate–rates information we requested and reported that their export activities are not subject to governmental control.

We examined the separate–rates information the respondents provided in order to determine whether the companies are eligible for separate rates. The Department's separate–rates test, which is used to determine whether an exporter is independent from governmental control, does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See Certain Cut–to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from governmental control of its export activities so as to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*) at Comment 1, as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*). In accordance with the separate–rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both de jure and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20588 (May 6, 1991).

Rongxin, CFP/Three Star, and SFTC reported that the merchandise under review was not subject to restrictive stipulations associated with their business license (*e.g.*, pencils were not on the government's list of products subject to export restrictions or subject to export licensing requirements). Rongxin, CFP/Three Star, and SFTC submitted copies of their business licenses in their questionnaire responses. We found no inconsistencies in their statements regarding the absence of restrictive stipulations associated with their business licenses. Furthermore, Rongxin, CFP/Three Star, and SFTC submitted copies of PRC legislation demonstrating the statutory authority for establishing the *de jure* absence of governmental control over the companies. This legislation included the Company Law of the People's Republic of China, the Foreign Trade Law of the People's Republic of China, and other legislation. Thus, the evidence on the record supports a preliminary finding of the absence of *de jure* governmental control based on an absence of restrictive stipulations associated with the business licenses of Rongxin, CFP/Three Star, and SFTC, and the applicable legislative enactments decentralizing control of PRC companies.

2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide*, 56 FR at 22587 (May 2, 1994). Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Typically, the Department considers the following four factors in evaluating whether a respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or are subject to, the approval of a governmental agency; (2) whether the respondent has the authority to negotiate and sign contracts and other

agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

CFP/Three Star and SFTC reported that they determine prices for sales of the subject merchandise based on market principles, the cost of the merchandise, and profit. Rongxin reported that it set prices ''via direct competitive negotiation.'' Moreover, Rongxin, CFP/Three Star, and SFTC stated that they negotiated their prices directly with their customers. In addition, the record indicates that Rongxin, CFP/Three Star, and SFTC have the authority to negotiate and sign contracts and other agreements. Further, these companies claimed that their negotiations are not subject to review or guidance from any governmental organization. Finally, there is no evidence on the record to suggest that there is any governmental involvement in the negotiation of their contracts.

Furthermore, Rongxin, CFP/Three Star, and SFTC reported that they have autonomy in making decisions regarding the selection of management. All three companies indicated that their selection of management is not subject to review or guidance from any governmental organization.

Finally, Rongxin, CFP/Three Star, and SFTC reported that there are no restrictions on the use of their export revenues. There is no evidence on the record with respect to any of these companies to suggest that there is any governmental involvement in decisions regarding disposition of profits or financing of losses.

Therefore, the evidence on the record supports a preliminary finding of the absence of *de facto* governmental control based on record statements and supporting documentation showing the following: (1) Rongxin, CFP/Three Star, and SFTC set their own export prices independent of the government and without the approval of a governmental authority; (2) Rongxin, CFP/Three Star, and SFTC have the authority to negotiate and sign contracts and other agreements; (3) Rongxin, CFP/Three Star, and SFTC have adequate autonomy from the government regarding the selection of management; and (4) Rongxin, CFP/Three Star, and SFTC retain the proceeds from their sales and make independent decisions regarding the disposition of profits or financing of losses.

The evidence placed on the record of this review by Rongxin, CFP/Three Star, and SFTC demonstrates an absence of governmental control, both in law and in fact, with respect to their exports of the merchandise under review in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, for purposes of these preliminary results, we are granting separate rates to Rongxin, CFP/Three Star, and SFTC.

Fair–Value Comparisons

To determine whether the respondents' sales of subject merchandise were made at less than NV, we compared the export price (EP) to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

In accordance with section 772(a) of the Act, the Department calculated EPs for sales by Rongxin, CFP/Three Star, and SFTC to the United States because the subject merchandise was sold directly to unaffiliated customers in the United States (or to unaffiliated resellers outside the United States with knowledge that the merchandise was destined for the United States) prior to importation, and constructed export–price methodology was not otherwise indicated. In accordance with 19 CFR 351.401(c), we made deductions from the net sales price for foreign inland freight and foreign brokerage and handling. Each of these services was provided by an NME vendor and, thus, as explained in the ''Normal Value'' section below, we based the deductions for these movement charges on values from a surrogate country.

For the reasons stated in the ''Normal Value'' section below, we selected India as the primary surrogate country. To value brokerage and handling, the Department used an average of the publicly summarized data from the following two sources which we have placed on the record of this review: 1) data reported in the U.S. sales listing in the February 28, 2005, submission from Essar Steel Ltd. (Essar Steel) in the antidumping duty administrative review of Certain Hot–Rolled Carbon Steel Flat Products from India, A–533–820 (covering December 2003 - November 2004), and 2) data reported in Pidilite Industries' March 9, 2004, public version response submitted in the AD investigation of Carbazole Violet Pigment 23 from India, A–533–838 (covering the period November 2002 - September 2003). We identify the source used to value foreign inland freight in the ''Normal Value'' section of this notice, below. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for these values using the wholesale price indices (WPI) for India as published in the *International Financial Statistics Online Service* maintained by the Statistics Department of the International Monetary Fund at the website http://www.imfstatistics.org on May 17, 2005 (*IFS*).

For Rongxin we also made deductions to two invoices for billing adjustments discovered by the Department during verification. For a full discussion of these expenses see the Rongxin verification report.

Normal Value

For exports from NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors–of-production (FOP) methodology if the subject merchandise is exported from an NME country and available information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the methodology the Department uses to calculate the NV of merchandise exported from NME countries. The Department has treated the PRC as an NME country in every proceeding involving the PRC. Because none of the parties to this proceeding contested such treatment, we calculated NV in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

In accordance with section 773(c)(3) of the Act, the FOPs the parties used in producing pencils include but are not limited to the following inputs: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOPs, to the extent possible, using the costs of the FOP in one or more market–economy countries that are at a level of economic development comparable to that of the PRC and are significant producers of comparable merchandise. We determined that India is comparable to the PRC in terms of *per capita* gross national product and the national distribution of labor. Furthermore, India is a significant producer of comparable

merchandise. In instances where we were unable to use Indian surrogate–value information, we relied on Indonesian or Filipino import data, and U.S. values as discussed below. Indonesia and the Philippines are also comparable to the PRC in terms of *per capita* gross national product and the national distribution of labor, and both are significant producers of comparable merchandise. See *Memorandum from Ron Lorentzen, Acting Director, Office of Policy, to Wendy Frankel, Office Director, China/NME Group, Office 8*, dated March 15, 2005, regarding potential surrogate countries, and *Memorandum from Paul Stolz to File*, dated December 16, 2005, regarding significant producers of pencils, which are available in the CRU - Public File.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we attempted to value the FOPs using surrogate values that were in effect during the POR. If we were unable to obtain surrogate values that were in effect during the POR, we adjusted the values, as appropriate, to account for inflation or deflation between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, as applicable, except labor, using the WPI for the appropriate surrogate country as published in the *IFS*. We valued the FOPs as follows:

1) For producers that purchased Chinese lindenwood pencil slats, we valued slats using publicly available, published U.S. prices for American basswood lumber because price information for Chinese lindenwood and American basswood is not available from any of the potential surrogate countries.[6] The U.S. lumber prices for basswood are published in the *2005 Hardwood Market Report* for the period December 2003 through November 2004.
2) For producers that manufactured slats from Chinese lindenwood timber, we valued the timber using publicly available, published U.S. prices for American basswood timber because price information for Chinese lindenwood and American basswood is not available from any of the potential surrogate countries. The U.S. timber prices for basswood are published in the *Sawlog Bulletin*. Timber prices contemporaneous with the POR were not available for use in the preliminary results. We will attempt to obtain contemporaneous timber prices for use in the final results. For the preliminary results we inflated timber prices published in the *Sawlog Bulletin* in the months of January, February, April, May, July, August, October, and November 2003 using U.S. WPI data.
3) We valued the following material inputs using Indian import data from the World Trade Atlas (WTA) for December 2003 through November 2004: acetone, alkyds resin, butanes, butanol, butter, butyl ester, calcium carbonate, carbon black, erasers, eraser caps, ethanol, ethyl ester, foam grips, foil, formaldehyde, glitter, glue, graphite powder, gum arabic, hardening oil, heat transfer film, hooks, ink oil, lacquer, lithopone, malice acid ester, methanol, methyl benzene, oxalic acid, penetrating agent, petroleum jelly, plastic, plastic topper, printing ink, propylene, pyroxylin, sawdust/wood, sealing paper, sharpeners, soap, soft agent, stearic acid, syrup, talcum powder, tallow, thinner, titanium, velvet wrap and wooden boxes.
4) We valued the following material inputs using inflated Indian import data from the WTA for December 2002 through November 2003 because contemporaneous data were not available: beeswax, clear wax, dibutyl ester, diluent, dyestuff, ferrules, kaolin clay, key chains, nitro–paint/lacquer, pigment, sticker paper, wax, and yellow dye.
5) We valued the castor oil using inflated Indian import data from the WTA for December 2001 through November 2002 because contemporaneous data were not available.
6) We valued black and color cores using inflated Indonesian import data from the WTA for January 2002 through December 2002 because contemporaneous data were not reliable. We were not able to calculate separate surrogate values for black versus color cores based on information on the record of this review.
7) In accordance with 19 CFR 351.408 (c)(1), we valued color cores, erasers, eraser material, foam grips, and lacquer used by CFP/Three Star at acquisition cost because it purchased these inputs from market–economy suppliers and paid for them using a market–economy currency.
8) We valued the following packing materials using inflated Indian import data from the WTA for December 2002 through November 2003 because contemporaneous data were not available/reliable: cardboard cartons, master cartons, packing boxes, paper labels, plastic boxes, plastic canisters, polypropylene film.
9) We valued the following packing materials using Indian import data from the WTA for December 2003 through November 2004: packing tape, plastic shrink wrap, plastic straps, and polybags.
10) We valued electricity using rates from *Energy Prices and Taxes: Second Quarter 2003 (Energy Prices)*, published by the International Energy Agency. We valued coal using the *Teri Energy Data Directory & Yearbook* (2004). We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR. We valued steam using the value for natural gas, as adjusted, based on the ratio of British thermal units (BTU) generated by natural gas to the BTUs generated by steam. We inflated the surrogate value for steam using the U.S. wholesale price index for the POR as published in the *IFS*.
11) We valued labor, consistent with 19 CFR 351.408(c)(3), using the PRC regression–based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in November 2005, and posted to Import Administration's website at *http://ia.ita.doc.gov/wages*. The source of this wage rate data on Import Administration's website is the Yearbook of Labour Statistics 2003, International Labor Office, (Geneva: 2003), Chapter 5B: Wages in Manufacturing (*http://laborsta.ilo.org*). The years of the reported wage rates range from 1998 to 2003. Because this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent.
12) We derived ratios for factory overhead, selling, general and

[6] In the antidumping investigation of certain cased pencils from the PRC, the Department found Chinese lindenwood and American basswood to be virtually indistinguishable and thus used U.S. prices for American basswood to value Chinese lindenwood. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China*, 59 FR 55625, 55632 (November 8, 1994). This methodology was upheld by the Court of International Trade. *See Writing Instrument Manufacturers Association, Pencil Section, et al. v. United States*, 984 F. Supp. 629, 639 (CIT 1997), *aff'd* 178 F.3d 1311 (Fed. Cir. 1998).

administrative (SG&A) expenses, and profit using the 2003 financial statements of Asia Wood International Corporation (Asia Wood), a wood–products producer in the Philippines. As stated above, the Philippines is a significant producer of comparable merchandise. Asia Wood's financial statements represent the best available record information with which to derive financial ratios because Asia Wood employs a number of the same production processes as those used by the respondents, including, for example, cutting wood, sanding wood, glueing wood, and painting wood. From this information, we were able to calculate factory overhead as a percentage of direct materials, labor, and energy expenses, SG&A expenses as a percentage of the total cost of manufacturing, and profit as a percentage of the sum of the total cost of manufacturing and SG&A expenses.

13) We used the following sources to value truck and rail freight services provided to transport the finished product to the port and direct materials, packing materials, and coal from the suppliers of the inputs to the producers. To value truck freight, we used the freight rates published at *http://www.infreight.com*. We valued rail–freight services using the April 1995 rates published by the Indian Railway Conference Association. We adjusted these values, as appropriate, to account for inflation or deflation between the effective period and the POR using the WPI published by the Reserve Bank of India.

For further discussion of the surrogate values we used for these preliminary results of review, see the *Memorandum From Paul Stolz Regarding Factors–of-Production Valuation for Preliminary Results* (December 16, 2005), which is on file in the CRU - Public File.

Use of Partial Adverse Facts Available

Section 776(a)(1) and (2) of the Act provides that the Department shall apply ''facts otherwise available'' if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

For the reasons explained below, and pursuant to sections 776(a)(2)(A) and 776(b) of the Act, the Department has determined to apply partial AFA for certain U.S. sales that SFTC failed to report. On February 1, 2005, the Department requested that SFTC report all shipments of subject merchandise to the United States during the POR. In section A(4)(a) of the February 1, 2005, questionnaire, the Department requested that SFTC describe the date selected as the date of sale to be used in the POR. In section C of the questionnaire, the Department also requested that SFTC report the date of sale as defined in the Glossary of Terms at Appendix I, which states the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. On March 8, 2005, and April 7, 2005, SFTC submitted questionnaire responses to sections A and C, respectively, and responded that its date of sale is the date of invoice. On July 29, 2005, in a supplemental questionnaire response, SFTC stated that it compiled its reported U.S. sales list through a manual inspection of invoices. On April 7, 2005, SFTC submitted to the Department what it reported to be all sales of subject merchandise sold to the United States during the POR, based upon invoice date.

Prior to the start of verification, SFTC provided the Department with its submission of clerical errors and minor corrections.[7] However, during verification, the Department discovered several sales of subject merchandise to the United States during the POR which were not reported to the Department by SFTC. SFTC explained that it did not report these sales, which it deemed outside the POR, because SFTC did not believe the merchandise associated with these sales would have entered the United States until after the end of the POR. Nevertheless, the sales invoices were clearly dated within the POR. Therefore, because SFTC withheld information the Department requested, that is the sales in question, pursuant to section 776(a)(2)(A) of the Act, the Department is applying facts available to those transactions.

The U.S. Court of Appeals for the Federal Circuit has held that the ''best of its ability'' standard ''requires the respondent to do the maximum it is able to do.'' *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed Cir. 2003) (*Nippon Steel*). The Department has determined that SFTC did not act to the best of its ability because it neither included nor notified the Department in a timely manner that it was not including these sales in its filing. This information was within SFTC's control. The company itself explained that the U.S. sales date should be based on invoice date. Under these circumstances, it is fully reasonable for the Department to expect that SFTC would be forthcoming with this information, and that its failure to do so demonstrates that SFTC failed to put forth the maximum effort. *Nippon Steel*, 337 F.3d at 1382; *see also Neuberg Fertigung GmbH v. United States*, 797 F. Supp. 1020, 1024 (CIT 1992) (''{u}ltimately it is the respondent's responsibility to make sure that {Commerce} understands, and correctly uses, any information provided by the respondent.'')

Section 776(b) of the Act states that AFA may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. As AFA for the preliminary results, and in accordance with section 776(b), the Department is applying the highest transaction margin for SFTC from the current administrative review to SFTC's unreported sales.

Use of Total Adverse Facts Available

The PRC Entity

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements

[7] SFTC placed this submission on the record on September 21, 2005.

established by the administering authority.

Four producers/exporters named in the notice of initiation did not respond to the Department's questionnaire. The PRC–wide rate applies to all entries of subject merchandise except for entries from PRC producers/exporters that have their own calculated rate. Companies that have not demonstrated their entitlement to a separate rate are appropriately considered to be part of the PRC–wide entity. Therefore, we determine it is necessary to review the PRC–wide entity because it did not provide information necessary to the instant proceeding. In doing so, we note that section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.

Because the PRC–wide entity provided no information, we determine that sections 782(d) and (e) of the Act are not relevant to our analysis. According to section 776(b) of the Act, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (SAA) accompanying the URAA, H. Doc. No. 316, 103d Cong., 2d Sess., Vol. 1 (1994) at 870. Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

As above stated, the PRC–wide entity did not respond to our requests for information. Because the PRC–wide entity did not respond to our requests for information in the form or manner requested, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of review for the PRC–wide entity. In addition, pursuant to section 776(b) of the Act, we find that the PRC–wide entity failed to cooperate by not acting to the best of its ability to comply with a request for information. As noted above, the PRC–wide entity failed to respond in the proper format or in a timely manner to the Department's questionnaire, despite repeated requests that it do so. Thus, because the PRC–wide entity refused to participate fully in this proceeding, we find it appropriate to use an inference that is adverse to the interests of the PRC–wide entity in selecting from among the facts otherwise available. By doing so, we ensure that the companies that are part of the PRC–wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review. An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act. It is the Department's practice to assign the highest rate from any segment of the proceeding as total AFA when a respondent fails to cooperate to the best of its ability. *See Honey from the People's Republic of China; Final Results and Final Rescission In Part of Antidumping Duty Administrative Review*, 70 FR 38873 (July 6, 2005). Specifically, as AFA, we have assigned to the PRC–entity 114.90 percent, which is the current PRC–wide rate.

GSSG

Application of AFA to GSSG is appropriate in this review because GSSG withheld or failed to provide information specifically requested by the Department. In our original questionnaire (at C–1) we asked GSSG to ''Report for each U.S. sale of merchandise entered for consumption during the POR, except: (1) for EP sales, if you do not know the entry dates, report each transaction involving merchandise shipped during the POR. . . .'' See the antidumping questionnaire issued to GSSG on February 1, 2005. On February 22, 2005, GSSG submitted a letter requesting an extension of the due date to file its Section A response. GSSG further stated that no extension for Sections C and D was required because ''. . . it had no exports to the United States during the period December 1, 2003 to November 30, 2004, and for at least several months prior to that time.'' On March 4, 2005, GSSG certified that it ''had no exports to the United States during 2003 and 2004.''

We reviewed CBP data and found information indicating that subject merchandise exported by GSSG entered the U.S. during the POR. On November 16, 2005, we issued a supplemental questionnaire (GSSG supplemental) to GSSG which included the CBP entry number, entry date, export date, and the quantity and value of the entry in question. The CBP data indicated that the entry date and export date are clearly within the POR. We specifically asked GSSG to ''Please review GSSG's sales, exports, and shipments made during the POR (and prior to the POR as applicable) and clarify whether GSSG had any exports, sales or entries of subject merchandise to the United States during the POR.'' On November 23, 2005, GSSG responded to our supplemental questionnaire stating that ''Because the date of the invoice is prior to the POR, the transaction is not a 'sale' that need have been reported.'' However, the invoice GSSG submitted as support was undated and did not cover subject merchandise. Moreover, GSSG did not dispute that the subject merchandise was exported during the POR and entered the United States during the POR. Neither did GSSG claim that it was unaware that the merchandise was destined for the United States.

On November 18, 2005, we requested from CBP entry documents covering the transaction in question. We received these documents on December 5, 2005. The entry documents show that the merchandise was destined for the United States and originated in the PRC. The CBP entry documents confirm that GSSG exported subject merchandise during the POR. Although given ample opportunity to provide the requested information which any producer/exporter would be expected to keep in the ordinary course of business, GSSG failed to provide this information. Accordingly, because GSSG failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department is using information adverse to GSSG's interests as facts otherwise available. In its supplemental questionnaire response GSSG stated that ''The reference in GSSG's earlier submission to the fact that it had 'no sales, exports or entries' of subject merchandise was . . . slightly

inaccurate.'' *See* GSSG's supplemental questionnaire response dated November 23, 2005. However, GSSG did not clarify or correct the inaccuracies. Notwithstanding this, evidence on the record clearly substantiates the fact that GSSG exported subject merchandise to the United States during the POR, and that the merchandise entered the United States during the POR. See the GSSG supplemental and the memorandum from Paul Stolz to the file dated December 13, 2005 regarding customs entry documents. GSSG has not disputed these facts. In addition, GSSG stated in its supplemental response dated November 23, 2005, that it is attempting to locate additional records related to this transaction and will attempt to provide them to the Department as they are located. To date, GSSG has not submitted any information in this regard. Moreover, the commercial invoice GSSG submitted in support of its supplemental questionnaire response did not cover the transaction in question and was undated. GSSG made no attempt to explain this or to link this invoice to the sale of subject merchandise. Therefore, because the evidence shows that GSSG had at least one export of subject merchandise to the United States during the POR, but GSSG did not submit any sales or factors of production data as requested in the questionnaire, it is appropriate to use AFA. Furthermore, we find that GSSG does not merit a separate rate and will be subject to the PRC–wide rate. As stated above, with respect to the PRC–wide entity (including GSSG) we are applying as AFA, the current PRC–wide rate, which is 114.90 percent.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, the Department need not prove that the selected facts available are the best alternative information. *Id.* at 869.

In this review, we are using as AFA the highest dumping margin from this or any prior segment of the proceeding, the current PRC–wide rate of 114.90 percent. This rate was calculated in the 1999 - 2000 administrative review of the order on certain cased pencils from the PRC. *See Notice of Amended Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China*, 67 FR 59049 (September 19, 2002). Therefore, the PRC–wide rate of 114.90 percent constitutes secondary information within the meaning of the SAA. *See* SAA at 870. Unlike other types of information such as input costs or selling expenses, however, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as facts available a calculated dumping margin from the current or from a prior segment of the proceeding, it is not necessary to question the reliability of the margin if it was calculated from verified sales and cost data. The 114.90 percent PRC–wide rate is based on verified information provided by Kaiyuan Group Corporation in the 1999 - 2000 administrative review of the order on certain cased pencils from the PRC. This rate has not been invalidated judicially. Therefore, we consider this rate to be reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Nothing in the record of this review calls into question the relevance of the margin we have selected as AFA. Moreover, the selected margin is the current PRC–wide rate and is currently applicable to exporters who do not have a separate rate. Thus, it is appropriate to use the selected rate as AFA in the instant review.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period December 1, 2003, through November 30, 2004:

Manufacturer/exporter	Margin (percent)
Shandong Rongxin Import and Export Co., Ltd	5.47
China First Pencil Company, Ltd./Shanghai Three Star Stationery Industry Corp	7.67
Shanghai First Writing Instrument Co., Ltd	7.67*
Shanghai Great Wall Pencil Co., Ltd	7.67*
China First Pencil Fang Zheng Co., Ltd	7.67*
Orient International Holding Shanghai Foreign Trade Co., Ltd	27.43
PRC–Wide Rate	114.90

* We collapsed CFP with its subsidiaries Shanghai First Writing Instrument Co., Ltd., Shanghai Great Wall Pencil Co., Ltd., and China First Pencil Fang Zheng Co., Ltd. in the previous segment of this proceeding. For this review we consider these parties to constitute a single entity.

In accordance with 19 CFR 351.224(b), the Department will disclose to interested parties within five days of the date of publication of this notice the calculations it performed for the preliminary results. An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. We will issue a memorandum identifying the date of a hearing, if one is requested. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. We have calculated customer–specific antidumping duty assessment amounts for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of sales examined. We calculated these

assessment amounts because there is no information on the record which identifies entered values or the importers of record. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct CBP to assess the resulting assessment amounts, calculated as described above, on each of the applicable entries during the review period.

Cash Deposit Requirements

The following deposit requirements will apply to all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies named above will be the rates for those firms established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non–PRC exporter, not covered in this review, with a separate rate, the cash deposit rate will be the company–specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will be the PRC–wide rate established in the final results of this review; and (4) the cash deposit rate for any non–PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections section 751(a)(1) and 777(i)(1) of the Act.

Dated: December 16, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–7881 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822, A–428–815]

Initiation of Antidumping Duty Changed Circumstances Reviews: Certain Corrosion–Resistant Carbon Steel Flat Products from Canada and Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), and section 351.216(b) of the U.S. Department of Commerce's (the Department's) regulations, Eutectic Corporation (Eutectic), a U.S. importer, filed a request for a changed circumstances review of the antidumping duty (AD) orders on certain corrosion–resistant carbon steel flat products from Canada and Germany. Petitioners and domestic interested parties have affirmatively expressed a lack of interest in the continuation of the orders with respect to this product.[1] In response to this request, the Department is initiating changed circumstances reviews on certain corrosion–resistant carbon steel flat products from Canada and Germany with respect to ''wear plate'' (marketed as ''CastoDur Diamond Plate'') as described below.

EFFECTIVE DATE: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Abdelali Elouaradia, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–3019 and (202) 482–1374, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 2005, Eutectic, a U.S. importer, requested that the Department exclude a product commonly known as ''wear plate'' and marketed under the name of ''CastoDur Diamond Plate.'' *See* Eutectic's letters to the Secretary, dated November 7, 2005 (Eutectic Request Letters). Specifically, Eutectic requested that the Department exclude from the AD orders on certain corrosion–resistant carbon steel flat products from Canada and Germany, imports meeting the following description: certain flat–rolled wear plate ranging from 30 inches to 50 inches in width, from 45 inches to 110 inches in length and from 0.187 inch to 0.875 inch in total thickness, having a layer on one side composed principally of a combination of boron carbides, chromium carbides, nickel carbides, silicon carbides, manganese carbides, niobium carbides, iron carbides, tungsten carbides, vanadium carbides, titanium carbides and/or molybdenum carbides fused to a non–alloy flat–rolled steel substrate. The carbides are in the form of MxCx where M stands for the metal and x for the atomic ratio. An example of a common carbide would be (Cr7C3). The carbide layer will be a visually distinct layer ranging in thickness from 0.062 inch to 0.312 inch with hardness at the surface of the carbide layer in excess of 55 HRC. *See* Eutectic Request Letters at 1.

Additionally, Eutectic included in its request letters from petitioners and domestic interested parties attesting to their lack of interest in having this merchandise, as described above, continue to be subject to the AD orders on corrosion–resistant carbon steel flat products from Canada and Germany. *See* Eutectic Request Letters at Attachments 1–4. The Department contacted these parties and confirmed their expressed lack of interest for this merchandise to be subject to the AD orders. *See* Memorandum to the File, from Angelica L. Mendoza, Senior Case Analyst, Office 7, ''Confirmation of Interested Parties' Lack of Interest for ''Wear Plate'' (marketed as ''CastoDur Diamond Plate'') to Be Subject to the Above–Captioned Antidumping Duty Orders,'' dated December 7, 2005.

Scope of the Orders

The products covered by each of these orders are corrosion–resistant carbon steel flat products (corrosion–resistant steel) from Canada and Germany, respectively. This scope includes flat–rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion–resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron–based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively

[1] Petitioners include: United States Steel Corporation (U.S. Steel) and Mittal Steel USA ISG Inc. (formerly Bethlehem Steel Corporation, Ispat Inland Steel, and LTV Steel Company, Inc.). Domestic interested parties include: Nucor Plate Group of Nucor Corporation and Ipsco Inc.

superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in these orders are flat–rolled products of non–rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. Excluded from these orders are flat–rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin–free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these orders are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from these orders are certain clad stainless flat–rolled products, which are three–layered corrosion–resistant carbon steel flat–rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat–rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

On September 22, 1999, the Department issued the final results of a changed circumstances review partially revoking the order with respect to certain corrosion–resistant steel from Germany.[2] This partial revocation applies to certain corrosion–resistant deep–drawing carbon steel strip, roll–clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise's chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08; manganese is less than 0.30; phosphorous is less than 0.20; sulfur is less than 0.015; aluminum is less than 0.01; and the cladding material is a minimum of 99% aluminum with silicon/copper/iron of less than 1%. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3%/94%/3% to 10%/80%/10%.

The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Initiation of Changed Circumstances Reviews

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an AD duty order which shows changed circumstances sufficient to warrant a review of the order. As noted above, on November 7, 2005, Eutectic requested a ruling from the Department in accordance with 19 CFR 351.216(b) to exclude the ''wear plate'' product described above from these AD orders. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(b), we are initiating changed circumstances reviews. Although petitioners and domestic interested parties have expressed a lack of interest in the orders with respect to the ''wear plate'' product in question, they did not claim that they represent substantially all of the production of the domestic like product, nor has the Department made such a determination. Therefore, the Department is not, at this time, preliminarily revoking the AD orders with respect to the product in question pursuant to 19 CFR 351.222(g)(1)(i). Interested parties are invited to comment on this initiation, or to demonstrate that the petitioners and domestic interested parties account for substantially all of the production of the domestic like product.

Public Comment

Interested parties may submit comments which the Department will take into account in the preliminary results of these reviews. The due date for filing any such comments is no later than 15 days after publication of this notice. Responses to those comments may be submitted not later than 7 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances reviews in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is published in accordance with sections 751(b)(1) and 777(i)(1) of the Act and section 351.221(b) of the Department's regulations.

Dated: December 21, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–7983 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Notice of Extension of Final Results of the 2003–2004 Antidumping Duty Administrative Review of Certain Cut–to-Length Carbon Steel Plate from Romania

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–8029.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2005, the Department of Commerce (''the

[2] *See Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, 64 FR 51292 (September 22, 1999). The Department noted that the affirmative statement of no interest by petitioners, combined with the lack of comments from interested parties, is sufficient to warrant partial revocation.

Department'') published the preliminary results of this administrative review of certain cut–to-length carbon steel plate (''cut–to-length plate'') from Romania. *See Certain Cut–to-Length Carbon Steel Plate from Romania: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission*, 70 FR 53333 (September 8, 2005) (''*Preliminary Results*''). In the *Preliminary Results* we stated that we would make our final determination for the antidumping duty review no later than 120 days after the date of publication of the preliminary results (*i.e.*, January 6, 2006).

Extension of Time Limit for Final Results

The Department is extending the time limit for the final results of the administrative review of the antidumping duty order on cut–to-length plate from Romania. This review covers the period August 1, 2003, through July 31, 2004.

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Due to the complexity of issues raised in this review segment, including the respondent's notification of unreported sales following the Department's preliminary results, and the respondent's withdrawal of its business proprietary versions of all information submitted on the record of this review, the completion of the final results within the 120-day period is not practicable.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by an additional 31 days until no later than February 6, 2006.

Dated: December 21, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–7985 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–831

Fresh Garlic From the People's Republic of China; Initiation of New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 28, 2005.

SUMMARY: The Department of Commerce (the ''Department'') has determined that requests for new shipper reviews of the antidumping duty order on fresh garlic from the People's Republic of China (''PRC''), received in September and November 2005, meet the statutory and regulatory requirements for initiation. The period of review (''POR'') of these new shipper reviews is November 1, 2004, through October 31, 2005.

FOR FURTHER INFORMATION CONTACT: Ryan A. Douglas or Jim Nunno, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1277 and (202) 482–0783, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on fresh garlic from the PRC was published on November 16, 1994. *See Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209 (November 16, 1994). The Department received five timely requests for a new shipper review in accordance with 19 CFR 351.214(d)(1), dated as follows:

Date	Requester
September 30, 2005	Qingdao Camel Trading Co., Ltd.(''Qingdao Camel'')
November 2, 2005	Qingdao Xintianfeng Foods Co., Ltd.(''Qingdao Xintianfeng'')
November 15, 2005	XuZhou Simple Garlic Industry Co., Ltd.(''XuZhou Simple'')
November 29, 2005	Qingdao Saturn International Trade Co., Ltd.(''Qingdao Saturn'')
November 30, 2005	Shandong Longtai Fruits and Vegetables Co., Ltd. (''Longtai'')

Qingdao Xintianfeng, XuZhou Simple, and Longtai certified that they grew and exported the garlic on which they based their requests for a new shipper review. Qingdao Camel certified that Jinxiang County Lufeng Agricultural Production Material Co., Ltd. (''Lufeng'') grew the subject merchandise it exported. Qingdao Saturn certified that Changshan County Taifeng Agricultural By–Products Processing Co., Ltd. (''Taifeng'') grew the subject merchandise that it exported.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.214(b)(2), Qingdao Camel, Qingdao Saturn, Qingdao Xiantianfeng, Longtai, and XuZhou Simple certified that they did not export fresh garlic to the United States during the period of investigation (''POI''). In addition, Lufang and Taifeng, producers of the subject merchandise, exported by Qingdao Camel and Qingdao Saturn, respectively, provided certifications that they did not export the subject merchandise to the United States during the POI, pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(ii)(B). Pursuant to section 751(a)(2)(B)(i)(II) and 19 CFR 351.214(b)(2)(iii)(A), all companies discussed above certified that, since the initiation of the investigation, they have never been affiliated with any exporter or grower who exported fresh garlic to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), these companies also certified that their export activities are not controlled by the central government of the PRC.

In addition to the certifications described above, each exporter submitted documentation establishing the following: (1) the date on which it first shipped fresh garlic for export to the United States and the date on which the fresh garlic was first entered, or withdrawn from warehouse, for consumption; (2) the volume of its first shipment and the volume of subsequent shipments; and (3) the date of its first sale to an unaffiliated customer in the United States.

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), we are initiating five new shipper reviews for shipments of fresh garlic from the PRC:

(1) grown by Lufeng and exported by Qingdao Camel,

(2) grown by Taifeng and exported by Qingdao Saturn,

(3) grown and exported by Qingdao Xiantianfeng,

(4) grown and exported by XuZhou Simple, and

(5) grown and exported by Longtai.

See Memoranda to the File titled, ''New Shipper Initiation Checklist'' for Qingdao Camel, Qingdao Saturn, Qingdao Xiantianfeng, Longtai, and XuZhou Simple, dated December 20, 2005.

The POR is November 1, 2004, through October 31, 2005. *See* 19 CFR 351.214(g)(1)(i)(A). We intend to issue preliminary results of these reviews no later than 180 days from the date of initiation, and final results of these reviews no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

Because Qingdao Xiantianfeng, Longtai, and XuZhou Simple have certified that they grew and exported the fresh garlic on which they based their requests for a new shipper review, we will instruct U.S. Customs and Border Protection (''CBP'') to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of fresh garlic both grown and exported by Qingdao Xiantianfeng, Longtai, and XuZhou Simple, respectively, until the completion of the new shipper review, pursuant to section 751(a)(2)(B)(iii) of the Act.

With respect to Qingdao Camel and Qingdao Saturn, they have certified that they exported, but did not grow, the subject merchandise on which they based their requests for a new shipper review. Therefore, until completion of these new shipper reviews, we will instruct CBP to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for entries of subject merchandise (1) grown by Lufeng and exported by Qingdao Camel, or (2) grown by Taifeng and exported by Qingdao Saturn. Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: December 20, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–7882 Filed 12–27–05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-812]

Honey from Argentina: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent Not to Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping order on honey from Argentina. The review covers six firms. The period of review (POR) is December 1, 2003, through November 30, 2004.

We preliminarily determine that sales of honey from Argentina have been made below the normal value (NV) in the case of Asociacion de Cooperativas Argentinas (ACA). For Seylinco S.A. (Seylinco), we preliminary find a zero margin. In addition, we have preliminarily determined to rescind the review with respect to Nutrin S.A. (Nutrin), Radix S.A. (Radix), Compania Europea Americana S.A. (CEASA), and HoneyMax S.A. (HoneyMax) because they had no shipments of subject merchandise to the United States during the period of review. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: 1) a statement of the issues, 2) a brief summary of the argument, and 3) a table of authorities.

EFFECTIVE DATE: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Angela Strom for ACA, Brian Sheba for Seylinco, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone (202) 482-2704, (202) 482-0145, or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published the antidumping duty order on honey from Argentina. *See Notice of Antidumping Duty Order: Honey from Argentina*, 66 FR 63672 (December 10, 2001). On December 1, 2004, the Department published its opportunity to request a review. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 69889. On December 30, 2004, the petitioners[1] requested an administrative review of the antidumping duty order on honey from Argentina in response to the Department's notice of opportunity to request a review. Petitioners requested that the Department review entries of subject merchandise made by 24 Argentine producers/exporters. In addition, the Department received individual requests for review from four Argentine exporters, three of which were included as part of petitioners' request for review.[2] The Department initiated the review for all 24 companies included in petitioners' request for review plus El Mana S.A. (El Mana), a Argentine exporter of honey. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005), *corrected in Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 7143 (February 10, 2005).

On February 22, 2005, petitioners withdrew their request for review with respect to fifteen of the 24 exporters that comprised petitioners' request for administrative review. On March 3, 2005, El Mana, an exporter not included in petitioners' request for review, submitted a withdrawal of its request for administrative review. On March 24, 2005, petitioners and Nexco S.A. (Nexco) submitted a withdrawal of request for administrative review for Nexco. On March 31, 2005, petitioners submitted a withdrawal request for a further two companies. On April 15, 2005, the Department rescinded its administrative review for El Mana and eighteen of the 24 companies in petitioners' December 30, 2004, request for review. *See Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 19927 (April 15, 2005).

The following exporters submitted letters claiming no shipments of the subject merchandise during the POR: Nutrin on March 9, 2005; Radix on March 14, 2005; CEASA on March 14,

[1] The petitioners are American Honey Producers Association and the Sioux Honey Association.

[2] The one Argentine exporter not included in petitioners' request for review was El Mana S.A. (El Mana).

2005; and HoneyMax on March 16, 2005. For further discussion, see the ''Partial Rescission of Review'' section of this notice, below.

On February 23, 2005, the Department issued Sections A, B, and C of the antidumping questionnaire to all exporters subject to the review.[3] We received responses on March 29 and April 22, 2005, for ACA and on March 24 and April 8, 2005, for Seylinco.

The Department issued supplemental questionnaires for ACA on May 17, 2005, and on May 18, 2005, for Seylinco. We received responses to these supplemental questionnaires from ACA on May 31, 2005, and from Seylinco on June 1, 2005. On July 8, 2005, petitioners filed comments on ACA's questionnaire responses and on July 13, 2005, ACA filed a response to petitioners' comments. On August 2, 2005, the Department issued a second supplemental questionnaire to ACA. On August 19, 2005, ACA filed its response to the Department's second supplemental questionnaire. On August 25, 2005, the Department determined a ''particular market situation'' existed in Argentina during the POR. *See* the discussion of ''Selection of Comparison Market'' under ''Normal Value'' below. On November 10, 2005, the Department issued a third supplemental questionnaire to ACA, which ACA timely responded to on November 28, 2005.

On July 1, 2005, the Department extended the time limit for issuance of the preliminary results of the administrative review to December 20, 2005. *See Honey from Argentina; Extension of Time Limit for Preliminary Results of Administrative Review*, 70 FR 38102 (July 1, 2005).

Scope of the Review

The merchandise covered by this order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise covered by this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under this order is dispositive.

Partial Rescission of Review

As noted above, Nutrin, Radix, CEASA, and HoneyMax informed the Department that they did not have shipments of subject merchandise to the United States during the POR. We have confirmed with CBP that these exporters did not have shipments of subject merchandise during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Nutrin, Radix, CEASA, and HoneyMax. *See e.g.*, *Frozen Concentrated Orange Juice from Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 51008, 51009 (October 5, 2001) and *Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35190, 35191 (June 29, 1998).

Intent Not To Revoke In Part

Section 351.222(e) of the Department's regulations requires, inter alia, that a company requesting revocation submit the following: (1) a certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold subject merchandise in commercial quantities in each of the three years forming the basis of the receipt of such a request; and (3) an agreement that the order will be reinstated if the company is subsequently found to be selling the subject merchandise at less than fair value. In determining whether to revoke an antidumping duty order in part, the Department must ascertain that the party sold merchandise at not less than normal value (*i.e.*, zero or *de minimis* margins) for a period of at least three consecutive years. *See* 19 CFR 351.222(b)(2). *See, e.g., Oil Country Tubular Goods From Mexico: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 66 FR 15832 (March 21, 2001).

On December 27, 2004, ACA submitted a request for revocation of the antidumping duty order with the requisite certifications set forth in 19 CFR 351.222(e). ACA based its request on the absence of dumping for three consecutive review periods, that is, the first, second and current administrative reviews. The Department found zero dumping margins in both the first and second administrative reviews. *See Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 70 FR 19926 (April 15, 2005) *and Honey from Argentina: Final Results of Antidumping Duty Administrative Review*, 69 FR 30283 (May 27, 2004).

In the current administrative review, we have preliminarily determined a weighted-average margin of 2.95 percent for ACA. The margin calculated during the current review period constitutes one of the three consecutive reviews cited by ACA to support its request for revocation. Consequently, we preliminarily find that ACA is not eligible for revocation of the order under section 351.222(b) of the Department's regulations and preliminarily determine not to revoke the order with respect to ACA. Furthermore, pursuant to 19 CFR 351.222(d)(1) we have examined ACA's shipments over the past three PORs and have preliminarily determined that ACA has not shipped in commercial quantities in each of the three years forming the basis of the request for revocation. *See* Memorandum to Richard Weible, Director, through Robert James, Program Manager, from Angela Strom, Case Analyst: ''Request by Asociation of Coopertivas Argentinas (ACA) for Revocation in the Antidumping Duty Administrative Review on Honey from Argentina,'' dated December 20, 2005.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Tariff Act), we verified sales information provided by ACA, using standard verification procedures such as the examination of relevant sales and financial records. Our verification results are outlined in the public and proprietary versions of our verification reports, which are on file in the Central Records Unit (CRU) in room B-099 of the main Department building. *See* ACA's Sales Verification Report, dated December 13, 2005.

Product Comparison

In accordance with section 771(16) of the Tariff Act, we considered all sales of

[3] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales.

honey covered by the description in the ''Scope of the Review'' section of this notice, *supra*, which were sold in the respective third-country markets during the POR to be the foreign like product for the purpose of determining appropriate product comparisons to honey sold in the United States. We matched products based on the physical characteristics reported by ACA and Seylinco. Where there were no sales of identical merchandise in the third-country market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the antidumping duty questionnaire and instructions, or to constructed value (CV), as appropriate.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as EP or the CEP. The NV LOT is that of the starting-price sales in the home market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Tariff Act. In this review, both ACA and Seylinco claimed only EP sales.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Tariff Act.

ACA reported two LOTs in the third-country market corresponding to differing channels of distribution: 1) sales to packers and 2) sales to importers. Differing channels of distribution, alone, do not qualify as separate LOTs when selling functions performed for each customer class are sufficiently similar. *See* 19 CFR 351.412(c)(2). We found that the selling functions ACA provided to its reported channels of distribution in the third-country and U.S. markets were virtually the same, varying only by the degree to which testing and warranty services were provided. We do not find the varying degree of testing and warranty services alone sufficient to determine the existence of different marketing stages. *See Final Determination of Sales at Less than Fair Value; Honey from Argentina*, 66 FR 50611 and accompanying Decision Memo at Comment 18 (October 4, 2001); *Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 621 (January 6, 2004). Thus, we have determined that there is only one LOT for ACA's sales to all markets. *See* ACA's Analysis Memorandum, dated December 20, 2005.

Seylinco reported a single LOT for all U.S. and third-country sales. Seylinco claimed that its selling activities in both markets are identical, although we note Seylinco sold to two general classes of customers in both the U.S. and its comparison market. For Seylinco, we preliminarily determine that all reported sales are made at the same LOT, and we therefore have no need to make an LOT adjustment. *See* Seylinco's Analysis Memorandum, dated December 20, 2005.

Transactions Investigated

Section 351.401(i) of the Department's regulations states that the Department normally will use date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the date of invoice if it better reflects the date on which material terms of sale are established. For ACA, the Department, consistent with its practice, used the reported shipment date as the date of sale for both its third-country and U.S. markets since shipment occurred prior to invoice date. *See Notice of Final Determinations of Sales at Less than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 68 FR 52741 (September 5, 2003), and accompanying Decision Memo at Comment 3. For Seylinco, the Department used the invoice date as the date of sale for both its comparison and U.S. market sales.

Export Price and Constructed Export Price

Section 772(a) of the Tariff Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. . . .,'' as adjusted under section 772(c). Section 772(b) of the Tariff Act defines CEP as ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. . . .,'' as adjusted under sections 772(c) and (d). ACA and Seylinco have classified their U.S. sales as EP because all of their sales were made before the date of importation directly to unaffiliated purchasers in the U.S. market. For purposes of these preliminary results, we have accepted these classifications.

Normal Value

1. Selection of Comparison Market

In accordance with section 773(a)(1)(C) of the Tariff Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compare each company's aggregate volume of home market sales of the foreign like product to its aggregate volume of U.S. sales of subject merchandise. Because Seylinco did not have home market sales, we preliminarily find that Seylinco's home market did not provide a viable basis for calculating NV. ACA, however, did have home market sales in excess of five percent of the aggregate volume of U.S. sales.

Section 773(a)(1)(C)(iii) of the Tariff Act provides that the Department may determine that home market sales are inappropriate as a basis for determining NV if a particular market situation would not permit a proper comparison with EP or CEP. During the first and second reviews of this order, the Department found a particular market situation rendered the Argentine market inappropriate for the calculation of NV because of, among other reasons, the export-oriented nature of the Argentine honey industry.[4] In the first supplemental questionnaire dated May 17, 2005, the Department asked ACA to provide further information in order to

[4] *See Honey from Argentina: Preliminary Results of Anti-Dumping Duty Administrative Review*, 69 FR 621 (January 6, 2004); *Honey From Argentina: Final Results of Antidumping Duty Administrative Review*, 69 FR 30283 (May 27, 2004); *Honey from Argentina: Preliminary Results of Anti-Dumping Duty Administrative Review*, 69 FR 77195 (December 27, 2004); and *Honey From Argentina: Final Results of Antidumping Duty Administrative Review*, 70 FR 19926 (April 15, 2005).

evaluate the market situation in Argentina with respect to honey, and on May 31, 2005, ACA responded to the Department's request. ACA states that the circumstances in this review are the same as in the first two reviews and that the Department should find a ''particular market situation'' in Argentina.

On August 25, 2005, the Department determined that a particular market situation does, in fact, exist with respect to ACA's sales of honey in Argentina, rendering the Argentine market inappropriate for purposes of determining NV. *See* Decision Memorandum ''Analysis of Particular Market Place Situation'' from Angela Strom through Robert James to Richard Weible, dated August 25, 2005.

When sales in the home market are not suitable to serve as the basis for NV, section 773(a)(1)(B)(ii) of the Tariff Act provides that sales to a third-country market may be utilized if (i) the prices in such market are representative; (ii) the aggregate quantity of the foreign like product sold by the producer or exporter in the third-country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (iii) the Department does not determine that a particular market situation in the third-country market prevents a proper comparison with the U.S. price. ACA reported France as its largest third-country market during the POR, in terms of volume of sales (and the aggregate quantity of such sales is five percent or more of sales to the United States). Seylinco reported Germany as its largest third-country market during the POR, in terms of volume of sales (and the aggregate quantity of such sales is five percent or more of sales to the United States). *See*, *e.g.*, *Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination To Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile*, 67 FR 51186, 51186 (August 7, 2002) (selecting the largest third-country market as the basis for NV). The Department preliminarily determines that the prices in France and Germany are representative and no particular market situation exists that would prevent a proper comparison to EP. As a result, for ACA, NV is based on sales to France and for Seylinco NV is based on sales to Germany.

In summary, therefore, NV for all companies is based on third-country market sales to unaffiliated purchasers made in commercial quantities and in the ordinary course of trade. For NV, we used the prices at which the foreign like product was first sold for consumption in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same LOT as the EP. We calculated NV as noted in the ''Price-to-Price Comparisons'' section of this notice.

2. Cost of Production

The Department disregarded certain sales made by ACA to its comparison market at prices below the cost of producing the subject merchandise during the investigation. *See Notice of Final Determination of Sales at Less Than Fair Value; Honey from Argentina*, 66 FR 50611 (October 4, 2001) and *Notice of Amended Final Determination of Sales at Less Than Fair Value; Honey from Argentina*, 66 FR 58434 (Nov 21, 2001) (Final Determination). However, because we did not find sales below cost in the most recently completed segment of this proceeding and because petitioners made no allegation of sales below cost in the context of this review, the Department determined there were not reasonable grounds to believe or suspect that ACA made sales in the comparison market at prices below the cost of producing the merchandise in this review. *See* section 773(b)(2)(A) of the Tariff Act. As a result, on May 17, 2005, we informed ACA that ACA would not be required to submit cost information.

Price-to-Price Comparisons

ACA

We based NV on the third-country market prices to unaffiliated purchasers. In accordance with section 773(a)(6)(B) of the Tariff Act, we made adjustments, where applicable, for movement expenses. In accordance with section 773(a)(6)(C) of the Tariff Act, we made circumstance-of-sale adjustments for credit and other direct selling expenses, where appropriate. We note that for certain claimed direct expenses in the third-country market, the Department has re-classified them as indirect for the reasons outlined in the accompanying Analysis Memorandum.

As in previous segments of this proceeding, ACA originally reported warranty expenses on a customer-specific basis. ACA allocated warranty claims corresponding to POR sales to total tons of honey sold to a particular customer during the POR. In response to our first request for information, ACA also submitted transaction-specific warranty expenses. *See* Supplemental Questionnaire Response dated May 31, 2005. In response to our most recent request for information, ACA reported its historical experience for warranties by market. *See* Supplemental Questionnaire Response dated November 28, 2005.

Notwithstanding ACA's reporting of warranty expenses both on a customer-specific and transaction-specific basis, the Department finds that these allocation methodologies fail to reflect the nature and terms of warranty costs as incurred by ACA, *i.e.*, at the time of sale, warranty claims for specific customers or transactions cannot be known or quantified and the terms for such claims did not vary from customer to customer. Indeed, in the less than fair value investigation involving honey from Argentina, the Department recalculated ACA's warranty expense over total sales to the market in question. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from Argentina*, 66 FR 24108 (May 11, 2001), *unchanged in Notice of Final Determination of Sales at Less than Fair Value; Honey from Argentina*, 66 FR 50611 (October 4, 2001). In the second administrative review, the Department accepted ACA's reported warranty expenses on a customer-specific basis. *See* ACA's Sales Verification Report, dated November 26, 2004,and ACA's Analysis Memorandum, dated December 20, 2004. However, based upon our review of the facts in this case, this is not the appropriate methodology.

If the warranty terms offered by a respondent at the time of sale vary significantly from customer to customer, a customer-specific allocation of warranty expenses may be appropriate. However, as in this case, if the warranty terms offered by the respondent at the time of sale are not significantly different from customer to customer, an allocation of warranty expenses over total sales or sales to the market in question is more reflective of the nature of the expense and the respondent's expectation that its pricing behavior will allow it to recoup these costs over time. Furthermore, because warranty expenses are not incurred until after a warranty claim has been received from a customer, can vary greatly from year to year, and can occur months or years after the relevant date of sale, the Department often bases warranty expenses on historical data rather than the expenses incurred during a single POR. (*See*, *e.g.*, *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Final Results of Antidumping Duty Administrative Review*, 66 FR 11557 (February 26, 2001) and accompanying Decision Memorandum at Comment 6.)

Based on the foregoing considerations, we have re-calculated ACA's reported warranty expenses. In order to capture warranty expenses reflective of ACA's historical experience for the market in question, we used warranty expenditures incurred in that market in the three most recently completed fiscal years[5] and allocated those expenses over ACA's total sales to that market for the same three-year period. The resulting ratio which we applied to the gross unit price for these Preliminary Results represents a three year historical average of ACA's warranty expenses with respect to the market in question. In addition, we revised certain warranty expenses for the reasons outlined in the accompanying Analysis Memorandum. *See* ACA's Analysis Memorandum, dated December 20, 2005.

Seylinco

We based NV on the third-country prices to unaffiliated purchasers. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Tariff Act. Where appropriate, we made circumstance-of-sale adjustments for credit pursuant to section 773(a)(6)(C) of the Tariff Act. We also made adjustments, where applicable, for other direct selling expenses, in accordance with section 773(a)(6)(C) of the Tariff Act. *See* Seylinco's Analysis Memorandum, dated December 20, 2005.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 68 FR 47049, 47055 (August 7, 2003). However, the Federal Reserve Bank does not track or publish exchange rates for the Argentine peso. Therefore, we made currency conversions based on the daily exchange rates from Factiva, a Dow Jones & Reuters Retrieval Service. Factiva publishes exchange rates for Monday through Friday only. We used the rate of exchange on the most recent Friday for conversion dates involving Saturday through Sunday where necessary.

[5] The three most recent fiscal years were chosen as the calculated time period because this is in accord with the Department's standard questionnaire. Furthermore, the three-year average is not inconsistent with ACA's historical warranty claims for the market in question. *See* Supplemental Questionnaire Response dated November 28, 2005.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margins exist for the period December 1, 2003, through November 30, 2004:

Manufacturer / Exporter	Weighted-Average Margin (percentage)
Asociacion de Cooperativas Argentinas	2.95
Seylinco S.A.	0.00
All Others	30.24

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit arguments in these proceedings are requested to submit with the argument: (1) a statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities. Further, we would appreciate it if parties submitting case briefs, rebuttal briefs, and written comments would provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we calculated importer-specific ad valorem assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appropriate appraisement instructions directly to CBP upon completion of the review.

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

(1) the cash deposit rates for all companies reviewed will be the rates established in the final results of review;

(2) for any previously reviewed or investigated company not listed above, the cash deposit rate will continue to be the company-specific rate published in the most recent period;

(3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate from the investigation (30.24 percent). *See Notice of Final Determination of Sales at Less Than Fair Value; Honey From Argentina*, 66 FR 50611 (Oct. 4, 2001), *Notice of Amended Final Determination of Sales at Less Than Fair Value; Honey From Argentina*, 66 FR 58434 (Nov. 21, 2001), and *Notice of Antidumping Duty Order; Honey From Argentina*, 66 FR 63672 (Dec. 10, 2001).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: December 20, 2005.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–7981 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–806]

Individually Quick Frozen Red Raspberries from Chile: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on individually quick frozen red raspberries from Chile. This review covers sales of individually quick frozen red raspberries to the United States during the period July 1, 2004, through June 30, 2005. Based on the withdrawal of requests for review with respect to certain companies, we are rescinding, in part, the third administrative review.

EFFECTIVE DATE: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Yasmin Bordas, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington DC. 20230; telephone (202) 482–3813.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2005, the Department of Commerce (''the Department'') published in the **Federal Register** the *Notice of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 38099 (July 1, 2005), for the above–cited segment of this antidumping duty proceeding. We received a timely filed request for review for 57 companies from the Pacific Northwest Berry Association, Lynden, Washington, and each of its individual members, Curt Maberry Farm; Enfield Farms, Inc.; Maberry Packing; and Rader Farms, Inc. (collectively, ''the petitioners''). We also received timely filed requests for review from Fruticola Olmue, S.A. (''Olmue''); Santiago Comercio Exterior Exportaciones, Ltda. (''SANCO''); Valles Andinos, S.A. (''Valles Andinos''); Vital Berry Marketing, S.A. (''VBM''); and Alimentos Naturales Vitafoods S.A. (''Vitafoods'').

On August 29, 2005, the Department published in the **Federal Register** the *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (August 29, 2005), initiating this review for all 57 companies. On September 23, 2005, we received a submission from the petitioners withdrawing their request for review for all of the companies for which they had requested an administrative review, except for the following companies: Arlavan, S.A. (''Arlavan''), Sociedad Agroindustrial Valle Frio, Ltda. (''Valle Frio''), Olmue, Valles Andinos, VBM, SANCO, and Vitafoods.

Partial Rescission of Antidumping Administrative Review

The petitioners filed their withdrawal request within the deadline established by the Department. Therefore, we are rescinding the above–cited administrative review with respect to the following companies in accordance with 19 CFR 351.213(d)(1):

Agricola Nova, Ltda.
Agrocomercial Las Tinajas, Ltda.
Agrofruta Chilena, Ltda.
Agroindustria Framberry, Ltda.
Agroindustria Niquen, Ltda.
Agroindustria Sagrada Familia, Ltda.
Agroindustria y Frigorifico M y M, Ltda.
Agroindustrial Frisac, Ltda.
Agroindustrial Frutos del Maipo, Ltda.
Agroindustrial Merco Trading, Ltda.
Agroindustrias San Francisco, Ltda.
Agross, S.A.
Alimentos Prometeo, Ltda.
Alimentos y Frutos, S.A.
Andesur, S.A.
Angloeuro Comercio Exterior, S.A.
Armijo Carrasco, Claudio del Carmen
Bajo Cero, S.A.
Certified Pure Ingredients (Chile) Inc. y Cia., Ltda.
Chile Andes Foods, S.A.
Comercializadora Agricola Berries & Fruit, Ltda.
Comercializadora de Alimentos del Sur, Ltda.
Comercio y Servicios, S.A.
Copefrut, S.A.
C y C Group, S.A.
Exportaciones Meyer, S.A.
Exportadora Fragaria Ltda.
Exportadora Pentagro, S.A.
Exportadora South Berries Ltda.
Francisco Nancuvilu Punsin
Frigorifico Ditzler, Ltda.
Frutas de Guaico, S.A.
Fruticola Viconto, S.A.
Hassler Monckeberg, S.A.
Hortifrut, S.A.
Interagro Comercio y Ganado, S.A.
Kugar Export, Ltda.
Maria Teresa Ubilla Alarcon
Multifrigo Valparaiso, S.A.
Nevada Export, S.A.
Prima Agrotrading, Ltda.
Procesadora y Exportadora de Frutas y Vegetales
Rio Teno, S.A.
Sociedad Agricola Valle del Laja, Ltda.
Sociedad Comercial C y C, S.A.
Sociedad Exportaciones Antiquina, Ltda.
Sociedad San Ernesto, Ltda.
Surfrut
Terra Natur, S.A.
Terrazas Export, S.A.

The following companies remain subject to this administrative review: Olmue, SANCO, VBM, Valles Andinos, Vitafoods, Arlavan and Valle Frio. We intend to issue our preliminary results in this administrative review for Olmue, SANCO, VBM, Valles Andinos, Vitafoods, Arlavan, and Valle Frio by April 3, 2006.

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For those companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Cash Deposit Rates

For the companies for which this review is rescinded, the cash deposit rate will continue to be 6.33 percent, the ''all others'' rate established in the less–than-fair–value investigation. *See Notice of Amended Final Determination of Sales at Less Than Fair Value: IQF Red Raspberries from Chile*, 67 FR 40270 (June 12, 2002).

These cash deposit requirements shall remain in effect until publication of the final results of this administrative review.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation

of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: December 21, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–7978 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms from the People's Republic of China: Notice of Second Amended Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 17, 2005, the Department of Commerce (the ''Department'') published the notice of amended final results of the antidumping duty administrative review: certain preserved mushrooms from the People's Republic of China (''PRC''), covering the period of review (POR) February 1, 2003, through January 31, 2004. *See Notice of Amended Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from the People's Republic of China*, 70 FR 60280 (October 17, 2005) (''*Amended Final Results*'').[1] We are amending the final results of certain preserved mushrooms from the PRC to correct ministerial errors made in the calculations of the dumping margins for China Processed Food Import & Export Company and its affiliates (collectively, ''COFCO'') pursuant to section 751(h) of the Tariff Act of 1930, as amended (the Act). *See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 54361 (September 14, 2005) (''Final Results'').

EFFECTIVE DATE: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Joshua Pierce or Christopher Riker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0961 or (202) 482–3441, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus and Agaricus bitorquis*. ''Certain Preserved Mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[2]

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Background

On September 14, 2005, the Department published the final results of this administrative review in the **Federal Register**. *See Final Results*.

After analyzing all interested parties' comments, we have determined, in accordance with 19 CFR 351.224(e), that ministerial errors existed in the calculations for the *Final Results*, with respect to COFCO. A ministerial error is defined in Section 751(h) of the Act and further clarified in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' For a detailed discussion of these ministerial errors, as well as the Department's analysis, *see* memorandum from Christopher D. Riker to James C. Doyle, *Analysis of COFCO Ministerial Error Allegations*, dated December 21, 2005, on file in the Central Records Unit, room B–099 in the main Department building.

Therefore, in accordance with Section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of the administrative review of certain preserved mushrooms from the PRC for COFCO. The revised weighted–average dumping margin is detailed in the chart below. For the company–specific calculation *see* memorandum from

[1] The Department did not address comments pertaining to clerical error allegations relating to COFCO's margin in the *Amended Final Results* because the U.S. Court of International Trade had obtained jurisdiction of those results pursuant to COFCO's complaint. *See China Processed Food Import & Export Company v. United States*, Court No. 05-00515 (Complaint filed September 19, 2005); *see also*, *Zenith Elecs. Corp. v. United States*, 884 F.2d 556, 561 (Fed. Cir. 1989). However, on December 14, 2005, the Court granted leave to the Department to make the necessary corrections to COFCO's margin. *See China Processed Food Import & Export Company v. United States*, Court No. 05-00515 (Order issued December 14, 2005).

[2] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat v. United States*, 396 F.3d 1378 (Fed. Cir. 2005).

Christopher D. Riker to the File, *Analysis for the Second Amended Final Results of Certain Preserved Mushrooms from the People's Republic of China: COFCO*, dated December 21, 2005.

Exporter	Percent
COFCO	2.67

The Department shall determine, and U.S. Customs and Border Protection shall assess, antidumping duties on all appropriate entries based on the amended final results. For details on the assessment of antidumping duties on all appropriate entries, *see Final Results*.

These amended final results are published in accordance with sections 751(h) and 777(I)(1) of the Act.

Dated: December 21, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–7982 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–820]

Rescission of Antidumping Duty Administrative Review: Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by United States Steel Corporation (''US Steel''), petitioner in this review, the U.S. Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty order on small diameter seamless carbon and alloy steel standard, line and pressure pipe (''seamless line and pressure pipe'') from Germany with respect to Vallourec & Mannesmann Tubes - V&M Deutschland GmbH (''VMD''), Mannesmann Pipe & Steel Corporation (''Mannesmann''), Benteler Stahl/Rohr GmbH (''Benteler Stahl''), and Benteler Steel and Tube Corporation (''Benteler Tube'') (collectively, ''respondents''). No other interested party requested a review. The period of review (''POR'') is August 1, 2004, through July 31, 2005. On December 13, 2005, US Steel withdrew its request for an administrative review of the four respondents. Accordingly, the Department is now rescinding the administrative review of these companies.

EFFECTIVE DATE: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Patrick Edwards, AD/CVD Operations, Office 7, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3019 and (202) 482–8029, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1995, the Department published an antidumping duty order on seamless line and pressure pipe from Germany. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less than Fair Value: Small Diameter Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany*, 60 FR 39704 (August 3, 1995).

On August 1, 2005, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order covering seamless line and pressure pipe from Germany. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity to Request Administrative Review*, 70 FR 44085 (August 1, 2005). On August 31, 2005, the Department received a timely filed request for an administrative review of the antidumping duty order on seamless line and pressure pipe from Germany with respect to VMD, Mannesmann, Benteler Stahl, and Benteler Tube from US Steel, a domestic producer of the subject merchandise. On September 28, 2005, in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), the Department published a notice of initiation of the administrative review of VMD, Mannesmann, Benteler Stahl and Benteler Tube, covering the period August 1, 2004, through July 31, 2005. *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 56631 (September 28, 2005).

On October 6, 2005, the Department released the antidumping duty questionnaire to VMD, Mannesmann, Benteler Stahl, and Benteler Tube. On December 13, 2005, the petitioner withdrew its request in a timely manner for an administrative review of the four named respondents. No other party requested a review.

Scope of the Order

The products covered by the order are seamless pipes produced to the ASTM A–335, ASTM A–106, ASTM A–53 and API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters below, regardless of specification. For purposes of this order, seamless pipes are seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness, manufacturing process (hot–finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish. These pipes are commonly known as standard pipe, line pipe or pressure pipe, depending upon the application. They may also be used in structural applications. Pipes produced in non–standard wall thickness are commonly referred to as tubes.

The seamless pipes subject to this antidumping duty order are currently classifiable under subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The following information further defines the scope of this order, which covers pipes meeting the physical parameters described above.

Specifications, Characteristics and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM standard A–106 may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (''ASME'') code stress levels. Alloy pipes made to ASTM standard A–335 must be used if temperatures and stress levels exceed those allowed for A–106 and the ASME codes. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A–106 standard. Seamless standard pipes are most commonly produced to the ASTM A–53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of

water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipelines. Seamless line pipes are produced to the API 5L specification. Seamless pipes are commonly produced and certified to meet ASTM A–106, ASTM A–53 and API 5L specifications. Such triple certification of pipes is common because all pipes meeting the stringent ASTM A–106 specification necessarily meet the API 5L and ASTM A–53 specifications. Pipes meeting the API 5L specification necessarily meet the ASTM A–53 specification. However, pipes meeting the A–53 or API 5L specifications do not necessarily meet the A–106 specification. To avoid maintaining separate production runs and separate inventories, manufacturers triple–certify the pipes. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A–106 pressure pipes and triple–certified pipes is in pressure piping systems by refineries, petrochemical plants and chemical plants. Other applications are in power generation plants (electrical–fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, A–106 pipes may be used in some boiler applications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and whether or not also certified to a non–covered specification. Standard, line and pressure applications and the above–listed specifications are defining characteristics of the scope of this order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A–335, ASTM A–106, ASTM A–53, or API 5L standards shall be covered if used in a standard, line or pressure application. For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in A–106 applications. These specifications generally include A–162, A–192, A–210, A–333, and A–524. When such pipes are used in a standard, line or pressure pipe application, such products are covered by the scope of this order.

The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Rescission of the Administrative Review

Pursuant to the Department's regulations, the Department will rescind an administrative review ''if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review.'' *See* 19 CFR 351.213(d)(1). Since the petitioner withdrew its request for an administrative review on December 13, 2005, which is within the 90-day deadline, and no other party requested a review with respect to these companies, the Department is rescinding this administrative review in accordance with 19 CFR 351.213(d)(1).

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. The Department is issuing and publishing this notice in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: December 21, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–7980 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Certain Softwood Lumber Products from Canada: Notice of Initiation of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 28, 2005.

SUMMARY: The Department of Commerce (the Department) has received a request to conduct a new shipper review of the antidumping duty (AD) order on certain softwood lumber from Canada. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d) (2005), we are initiating an AD new shipper review for International Forest Products Corporation (IFP Corp.).

FOR FURTHER INFORMATION CONTACT: Constance Handley or Alexander De Filippi at (202) 482–0631 and (202) 482–1832, respectively; Office 1, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 2005, the Department received a timely request from IFP Corp., in accordance with 19 CFR 351.214, for a new shipper review of the AD order on certain softwood lumber products from Canada, which has a May anniversary month.[1] IFP Corp. is a U.S. corporation that purchases Canadian dimensional hemlock lumber for export to customers in the United States. IFP Corp. buys the subject merchandise at the mill from Terrace Lumber Company (Terrace), a newly–opened mill in British Columbia, Canada. IFP Corp. is the exporter (and importer), and Terrace is the producer. Terrace was incorporated in Canada on April 7, 2005.

As required by 19 CFR 351.214(b)(2)(ii) (A) and (iii)(A), IFP Corp. certified that it did not export certain softwood lumber to the United States during the period of investigation (POI), and that it has never been affiliated with any exporter or producer which exported certain softwood

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Softwood Lumber Products From Canada*, 67 FR 36068, 36070 (May 22, 2002).

lumber during the POI.[2] Furthermore, pursuant to 19 CFR 351.214 (b)(2)(ii)(B), Terrace certified that it did not export certain softwood lumber to the United States during the period of investigation (POI). Pursuant to 19 CFR 351.214(b)(2)(iv), the company submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that and subsequent shipments and, the date of the first sale to an unaffiliated customer in the United States. In the context of this review, the Department intends to solicit and carefully examine information concerning the first party in the chain of distribution with knowledge of U.S. destination and IFP Corps.' role as the exporter of the shipment(s) under review. Our findings may result in the rescission of this review if we find the party requesting the review was not eligible to make the request.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and based on information on the record, we are initiating an AD new shipper review for IFP. We intend to issue the preliminary results of this new shipper review not later than 180 days after initiation of this review. We intend to issue final results of this review no later than 90 days after the date on which the preliminary results are issued. See 19 CFR 351.214(i).

New Shipper Review Proceeding	Period to be Reviewed
International Forest Products Corporation Ltd.	05/01/05 - 10/31/05

We will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from the above–listed company in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because IFP Corp., certified that it exports the subject merchandise produced by Terrace, the sale of which is the basis for these new shipper review request, we will permit the bonding privilege only with respect to entries of subject merchandise produced by Terrace and exported by IFP Corp.

[2] *See* Submission from IFP Corp. to the Department regarding Request for New Shipper Review, dated November 18, 2005.

Interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act, 19 CFR 351.214(d) and 19 CFR 351.221(c)(i).

Dated: December 21, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–7979 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Notice of Rescission of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by Allegheny Ludlum Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Armco Independent Organization, Inc. and the United Steelworkers (collectively, petitioners), the U.S. Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on stainless steel sheet and strip in coils (SSSS in coils) from Italy with respect to ThyssenKrupp Acciai Speciali Terni S.p.A. (TKAST), and its affiliates. No other interested party requested a review. The period of review (POR) is July 1, 2004, through June 30, 2005. On December 6, 2005, all of the petitioners withdrew their request for an administrative review of TKAST. Accordingly, the Department is now rescinding the administrative review of TKAST.

EFFECTIVE DATE: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Judy Lao, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3019 and (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 1999, the Department published an antidumping duty order on SSSS in coils from Italy. *See Amended Final Determination of Sales at Less than Fair Value and Antidumping Order; Stainless Steel Sheet and Strip in Coils from Italy*, 64 FR 40567 (July 27, 1999). On July 1, 2005, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on SSSS in coils from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 38099 (July 1, 2005). On July 29, 2005, the Department received a timely request for an administrative review from petitioners of the antidumping duty order on SSSS in coils from Italy with respect to TKAST and its affiliates for the period July 1, 2004, through June 30, 2005. On August 29, 2005, the Department published the initiation of an administrative review of SSSS in coils from Italy covering the period of July 1, 2004, through June 30, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation In Part*, 70 FR 51009 (August 29, 2005). This review covers imports of SSSS in coils from one producer/exporter, TKAST.

On November 28, 2005, three of the five original petitioners withdrew their request for review (i.e., Allegheny Ludlum Corporation, North American Stainless, and the United Steelworkers). On December 1, 2005, the Department informed petitioners' counsel that it would not rescind the review unless all five petitioners withdraw their request. *See* Memorandum to the File from Richard O. Weible, Office Director, Regarding ''Phone Conversation with David Hartquist,'' dated December 6, 2005. On December 6, 2005, all five of the petitioners withdrew their request that the Department conduct an administrative review of TKAST.

Scope of the Order

The products covered by the order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be

further processed (*e.g.*, cold–rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81,[1] 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled (cold–reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, ''Additional U.S. Note'' 1(d).

Flapper valve steel is also excluded from the scope of this order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this review. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[2]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[3]

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[4]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the

[1] Due to changes to the HTSUS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

[2] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[3] ''Gilphy 36'' is a trademark of Imphy, S.A.

[4] ''Durphynox 17'' is a trademark of Imphy, S.A.

scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[5] This steel is similar to American Iron and Steel Institute (AISI) grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.''[6] The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5''[7] steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6.''[8]

Rescission of Review

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of the initiation of the requested review, the Secretary will rescind the review. It further states that the Secretary may extend this time limit if the Secretary finds it reasonable to do so. As noted above, three of the five petitioners that requested this review timely withdrew their request for review. On December 1, 2005, the Department informed counsel to petitioners that the instant review cannot be rescinded unless all five petitioners withdraw their request. *See* Memorandum to the File from Richard O. Weible, Office Director, Regarding ''Phone Conversation with David Hartquist,'' dated December 6, 2005. By December 6, 2005, one week after the 90-day deadline, all five petitioners (Allegheny Ludlum Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Armco Independent Organization, Inc., and the United Steelworkers), withdrew their request for review.

The Department finds it reasonable to extend the time limit by which a party may withdraw its request for review in the instant proceeding. The Department has not yet devoted considerable time and resources to this review, all five petitioners have withdrawn their request, and no other party requested the review. Therefore, we are rescinding this review of the antidumping duty order on SSSS in coils from Italy covering the period July 1, 2004, through June 30, 2005. The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection within 15 days of publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification of Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return on destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversation to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This notice is issued and published in accordance with sections 751 and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: December 21, 2005.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–7984 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–05–S

[5] This list of uses is illustrative and provided for descriptive purposes only.

[6] ''GIN4 Mo'' is the proprietary grade of Hitachi Metals America, Ltd.

[7] ''GIN5'' is the proprietary grade of Hitachi Metals America, Ltd.

[8] ''GIN6'' is the proprietary grade of Hitachi Metals America, Ltd.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120805B]

Notice of Intent to Conduct Public Scoping Meetings and Prepare an Environmental Impact Statement on the Activities of the National Marine Mammal Health and Stranding Response Program

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

ACTION: Notice of Intent to prepare environmental impact statement; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces its intent to prepare an Environmental Impact Statement (EIS) to analyze the environmental impacts of the national administration of the Marine Mammal Health and Stranding Response Program (MMHSRP).

Publication of this notice begins the official scoping process that will help identify alternatives and determine the scope of environmental issues to be addressed in the EIS. This notice requests public participation in the scoping process, provides information on how to participate, and identifies a set of preliminary alternatives to serve as a starting point for discussions.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific dates, times, and locations of public scoping meetings for this issue.

FOR FURTHER INFORMATION CONTACT: All comments, written statements and questions regarding the scoping process, NEPA process, and preparation of the EIS must be postmarked by February 28, 2006, and should be mailed to: P. Michael Payne, Chief, Marine Mammal and Sea Turtle Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13635, Silver Spring, MD 20910–3226, Fax: 301–427–2584 ATTN: MMHSRP EIS or e-mail at *mmhsrpeis.comments@noaa.gov* with the subject line MMHSRP EIS.

SUPPLEMENTARY INFORMATION:

Background

NMFS proposes to continue to coordinate and operate the National Marine Mammal Health and Stranding Response Program (MMHSRP) for response to stranded marine mammals and research into questions related to marine mammal health, including causes and trends in marine mammal health and the causes of strandings, pursuant to Title IV of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1421). Title IV of the MMPA established the MMHSRP under NMFS. The mandated goals and purposes for the program are to: (1) facilitate the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild; (2) correlate the health of marine mammals and marine mammal populations, in the wild, with available data on physical, chemical, and biological environmental parameters; and (3) coordinate effective responses to unusual mortality events by establishing a process in the Department of Commerce in accordance with section 404.

To meet the goals of the MMPA, the MMHSRP carries out several important activities, including the National Marine Mammal Stranding Network, the John H. Prescott Marine Mammal Rescue Assistance Grant Program, the Marine Mammal Disentanglement Program, the Marine Mammal Unusual Mortality Event and Emergency Response Program, the Marine Mammal Biomonitoring Program, the Marine Mammal Tissue and Serum Bank Program, the Marine Mammal Analytical Quality Assurance Program, the MMHSRP Information Management Program, and the facilitation of several regional health assessment programs on wild marine mammals.

A marine mammal is defined as ''stranded'' under the MMPA if it is dead and on the beach or shore or floating in waters under US jurisdiction, or alive and on the beach and unable to return to the water, in need of medical assistance, or out of its natural habitat and unable to return to its natural habitat without assistance. NMFS is currently developing and plans to issue national protocols that will help standardize the stranding network across the country while maintaining regional flexibility. These protocols are proposed to be issued in one consolidated manual, titled *Policies and Best Practices for Marine Mammal Stranding Response, Rehabilitation and Release* (Policies and Practices). This document is currently released on an interim basis, and will be available on our website after January 9, 2006, at: *http://www.nmfs.noaa.gov/pr/health/* for reference and review. The future development of these policies may involve issuance of regulations, but none are currently proposed.

Individuals, groups and organizations throughout the country have been responding to stranded marine mammals for decades. After the passage of Title IV, NMFS codified the roles and responsibilities of participant organizations in the National Marine Mammal Stranding Network through a Letter of Agreement (LOA) or Stranding Agreement (SA), issued under MMPA section 112(c). By issuing SAs, NMFS allows stranding network response organizations, acting as 'agents' of the government, an exemption to the prohibition on ''takes'' of marine mammals established under the MMPA. Federal, state and local government officials already have an exemption to the take prohibition under section 109(h) of the MMPA, which allows the taking of marine mammals (not listed as threatened or endangered) during the course of official duties, provided such taking is for the protection or welfare of the mammal, for public health, or for the nonlethal removal of nuisance animals. SAs (as conceived) extend the same exemption to organizations and individuals that are outside of the government.

Stranding Agreements are issued by NMFS Regional Administrators, and in the past a high level of variability has occurred between regions. A standardized national template for the format of the SA has been developed, including sections that may be customized by each region in order to maintain flexibility. This SA template has been subject to public comment on several occasions after publication on NMFS' public website and distribution to interested parties (most recently on Nov. 8, 2004). NMFS has also developed a list of minimum criteria for organizations wishing to obtain a SA and participate in the stranding network, and these have also been distributed for public comment. These criteria differ based on the level of involvement of the participant (response only; response and transport; rehabilitation, etc.). Substantive comments received on these documents have been either incorporated or responded to, if the authors chose not to incorporate them. The LOA Template and Minimum Eligibility Criteria are the first two elements of the ''Policies and Practices'' manual.

While the MMPA provides an exception to the take prohibition for the health and welfare of stranded marine mammals, no similar exemption is contained in the Endangered Species Act (ESA). Not all, but many, species of marine mammals are listed as threatened or endangered under the ESA, and are therefore protected by both laws. Therefore, the MMHSRP has obtained a permit from the Permits, Conservation and Education Division of the NMFS Office of Protected Resources, issued under the MMPA and section 10(a)(1)(A) of the ESA, to provide the necessary exemption to the take prohibition where the stranded animal in question is listed under the ESA, or when response to a stranded animal would or could incidentally harass a listed species. The permit covers stranding and emergency response activities, including for example, disentanglement, hazing, close approaches, and humane euthanasia. Captures of wild (presumably healthy) animals are also permitted to conduct health assessment studies, where such activities are part of an investigation into a morbidity or mortality issue in the wild population, but this is a rare occurrence (not routine procedure). Stranding network responders are listed as co-investigators under this permit. The permit also authorizes a variety of research projects utilizing stranded animals, tissue samples, and marine mammal parts for investigations into die-offs and other questions regarding marine mammal health and stranding. The current permit issued to the MMHSRP will expire on June 30, 2007, and a NEPA analysis of the activities covered under the permit must be completed prior to the issuance of a new permit. This EIS will serve as the NEPA analysis of these permitted activities.

Marine mammals that are undergoing rehabilitation, and the facilities that are conducting rehabilitation activities, are not subject to inspection or review by the Animal and Plant Health Inspection Service (APHIS) under the United States Department of Agriculture, provided that they are not also a public display facility (separate from their rehabilitation activities) or a research facility. These facilities are therefore not subject to APHIS minimum requirements for facilities, husbandry, or veterinary standards. NMFS has developed minimum standards for marine mammal rehabilitation facilities that will be required of all facilities operating under a SA with NMFS, and the interim rehabilitation facility standards document is the third element of the Policies and Practices manual.

Section 402 (a) of the MMPA charges NMFS with providing ''guidance for determining at what point a rehabilitated marine mammal is

releasable to the wild.'' Interim standards for release of rehabilitated marine mammals have been developed by NMFS and the US Fish and Wildlife Service in consultation with marine mammal experts through review and public comments, including publication in the **Federal Register** on April 8, 1998 (63 FR 17156). Three panels of experts were also assembled in 2001 to provide individual recommendations, which have been incorporated into the current interim document. These guidelines provide an evaluative process for the veterinarians and animal husbandry staff at rehabilitation facilities to use in determining if a stranded marine mammal is suitable for release to the wild, and under what conditions such a release should occur. The interim standards are provided in the Policies and Practices manual.

Purpose and Scope of the Action

NMFS will prepare an EIS to evaluate the cumulative impacts of the activities of the MMHSRP, including the issuance of a final Policies and Procedures manual and a new MMPA/ESA permit for the program. This EIS will assess the likely environmental effects of marine mammal health and stranding response under a range of alternatives characterized by different methods, mitigation measures, and level of response. In addition, the EIS will identify potentially significant direct, indirect, and cumulative impacts on geology and soils, air quality, water quality, other fish and wildlife species and their habitat, vegetation, socioeconomics and tourism, treaty rights and Federal trust responsibilities, environmental justice, cultural resources, noise, aesthetics, transportation, public services, and human health and safety, and other environmental issues that could occur with the implementation of the proposed action. For all potentially significant impacts, the EIS will identify avoidance, minimization and mitigation measures to reduce these impacts, where feasible, to a level below significance.

Major environmental concerns that will be addressed in the EIS include: NMFS' information needs for the conservation of marine mammals; the types and levels of stranding response and rehabilitation activities, including level of effort; and the cumulative impacts of MMHSRP activities on marine mammals and the environment. Comments and suggestions are invited from all interested parties to ensure that the full range of issues related to the MMHSRP and its activities are identified. NMFS is therefore seeking public comments especially in the following areas:

(1) *Types of activities.* What sort of activities in response to stranded marine mammals or outbreaks of disease in marine mammals should be conducted on a national level? Are there critical research needs that may be met by stranding investigations, rehabilitation, biomonitoring, disentanglement, and other health-related research activities? If so, are these needs currently being met? If there are additional needs, what are they, how are they likely to benefit the marine mammal species, and how should they best be met?

(2) *Level of response effort.* For example, should there be different standards or levels of effort for different species or groups of species (i.e. pinnipeds vs. cetaceans; threatened or endangered species vs. increasing populations, etc.)? How should NMFS set these standards or limits?

(3) *Organization and qualifications.* How should the national stranding network be organized at the local, state, regional, eco-system, and national levels? How should health assessment research be coordinated or organized nationally? What should the minimum qualifications of an individual or organization be prior to becoming an SA holder or researcher (utilizing samples from stranded animals) to ensure that animals are treated successfully, humanely, and with the minimum of adverse impacts?

(4) *Effects of activities.* NMFS will be assessing possible effects of the activities conducted by, for, and under the authorization of the MMHSRP using all appropriate available information. Anyone having relevant information they believe NMFS should consider in its analysis should provide a complete citation or reference for retrieving the information. We seek public input on the scope of the required NEPA analysis, including th range of reasonable alternatives; associated impacts of any alternatives on the human environment, including geology and soils, air quality, water quality, other fish and wildlife species and their habitat, vegetation, socioeconomics and tourism, treaty rights and Federal trust responsibilities, environmental justice, cultural resources, noise, aesthetics, transportation, public services, and human health and safety, and suitable mitigation measures. We ask that comments be as specific as possible.

Alternatives

NMFS has identified several preliminary alternatives for public comment during the scoping period and encourage information on additional alternatives to consider. Alternative 1, the Proposed Action Alternative, would result in the publication of the Practices and Protocols Handbook and the establishment of required minimum standards for the national marine mammal stranding and disentanglement networks. The MMHSRP permit would also be issued under this alternative to permit response activities for endangered species, disentanglement activities, biomonitoring projects, other research projects conducted by or in cooperation with the program, and import and export of tissue and other diagnostic or research samples.

Alternative 2, the No Action Alternative, would continue the activities of the national stranding and disentanglement networks without issuance of the Policies and Practices. No new or renewal Stranding Agreements would be issued or extended, and the MMHSRP would not apply for or receive a new permit. As Stranding Agreements with organizations expired, the network would cease to function. The No Action Alternative is required to be included for consideration by CEQ regulations.

Alternative 3 is considered the Status Quo alternative and would allow for the continuation of the stranding and disentanglement networks currently in place in the country, and the Policies and Practices documents would not be issued. However, under the Status Quo alternative, Stranding Agreements could be renewed or extended (though not modified), such that the current level of response would continue. No new SAs would be issued to facilities that are not currently part of the national stranding network. This would preclude adaptive changes in the stranding network as organizations change priorities and wish to leave the network, or as new facilities are created and wish to become involved. The MMHSRP permit could be renewed or reissued as written, with no modifications. There could be no adaptive changes to the research protocols as new issues were raised or advances made in technology.

Other alternatives considered by NMFS may be eliminated from detailed study because they would limit or prohibit activities necessary for the conservation of the species by NMFS. The other alternatives that have been considered but may be eliminated from further study are: (1) An alternative that allows for biomonitoring activities only (tissue sampling and study of animals caught during targeted health assessment projects, subsistence hunts, and as incidental bycatch in fishery activities only); (2) an alternative that allows for a stranding response only (no

rehabilitation activities; response to live animals would be limited to euthanasia or release; no disentanglement or health assessment activities;); (3) an alternative that allows for response and rehabilitation for cetaceans only; and (4) an alternative that allows for response and rehabilitation for ESA-listed marine mammals only. The elimination of any of these activities would impede data collection regarding strandings and the health of marine mammals that is necessary for NMFS conservation and recovery efforts for many species.

In addition to the alternatives listed above, NMFS will also utilize the scoping process to identify other alternatives for consideration. It should be noted that although several of the listed alternatives would not allow for the mandated activities listed in the MMPA, under 40 CFR 1506.2(d), reasonable alternatives cannot be excluded strictly because they are inconsistent with Federal or state laws, but must still be evaluated in the EIS.

For additional information about the MMHSRP, the national stranding network, and related information, please visit our website at *http://www.nmfs.noaa.gov/pr/health/*.

Public Involvement and Scoping Meetings Agenda

Public scoping meetings will be held at the following dates, times, and locations:

1. Tuesday, January 24, 2006, 7 – 10 p.m., Santa Barbara Natural History Museum, 2559 Puesta del Sol, Santa Barbara, CA;

2. Wednesday, January 25, 2006, 2 – 5 p.m.; Bay Conservation and Development Commission, 50 California Street, Suite 2600, San Francisco, CA;

3. Friday, January 27, 2006, 3 – 6 p.m., Hawaiian Islands Humpback Whale National Marine Sanctuary O'ahu Office, 6600 Kalaniana'ole Highway, Honolulu, HI;

4. Monday, January 30, 2006, 2 – 5 p.m., NMFS Northwest Regional Office, Building 9, 7600 Sand Point Way NE, Seattle, WA;

5. Wednesday, February 1, 2006, 2 – 5 p.m., U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK;

6. Tuesday, February 7, 2006, 5 – 8 p.m., NMFS Southeast Regional Office, 263 13th Avenue, South, St. Petersburg, FL;

7. Monday, February 13, 2006, 5 – 8 p.m., New England Aquarium, Conference Center, Central Wharf, Boston, MA;

8. Friday, February 17, 2006, 2 – 5 p.m., Silver Spring Metro Center, Building 4, Science Center, 1301 East-West Highway, Silver Spring, MD.

Comments will be accepted at these meetings as well as during the scoping period, and can be mailed to NMFS by February 28, 2006 (see **FOR FURTHER INFORMATION CONTACT**).

We will consider all comments received during the comment period. All hardcopy submissions must be unbound, on paper no larger than 8 1/2 by 11 inches (216 by 279 mm), and suitable for copying and electronic scanning. We request that you include in your comments:

(1) Your name and address;

(2) Whether or not you would like to receive a copy of the Draft EIS (please specify electronic or paper format of the Draft EIS); and

(3) Any background documents to support your comments as you feel necessary.

All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sarah Howlett or Sarah Wilkin, 301–713–2322 (voice) or 301–427–2522 (fax), at least 5 days before the scheduled meeting date.

P. Michael Payne,

Chief, Marine Mammal and Sea Turtle Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E5–7990 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122005C]

Notice of Intent to Prepare an Environmental Impact Statement on Impacts of Research on Steller Sea Lions and Northern Fur Seals Throughout Their Range in the United States

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

ACTION: Notice of Intent to prepare environmental impact statement.

SUMMARY: The National Marine Fisheries Service (NMFS) announces its intent to prepare an Environmental Impact Statement (EIS) to analyze the environmental impacts of administering grants and issuing permits associated with research on endangered and threatened Steller sea lions (*Eumetopias jubatus)* and depleted northern fur seals (*Callorhinus ursinus*). Publication of this notice begins the official scoping process that will help identify alternatives and determine the scope of environmental issues to be addressed in the EIS. This notice requests public participation in the scoping process and provides information on how to participate.

The purpose of conducting research on threatened and endangered Steller sea lions is to promote the recovery of the species' populations such that the protections of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) are no longer needed. Consistent with the purpose of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*), the purpose of conducting research on northern fur seals is to contribute to the basic knowledge of marine mammal biology or ecology and to identify, evaluate, or resolve conservation problems for this depleted species.

Research on Steller sea lions and northern fur seals considered in this EIS is funded and permitted by NMFS, which are both federal actions requiring National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance. The need for these actions is to facilitate research to: (1) Prevent harm and avoid jeopardy or disadvantage to the species; (2) promote recovery; (3) identify factors limiting the population; (4) identify reasonable actions to minimize impacts of human-induced activities; (5) implement conservation and management measures; and (6) make data and results available in a timely manner for management of the species. As part of this action, NMFS is developing measures that will improve efficiency and avoid unnecessary redundancy in Steller sea lion and northern fur seal research, utilize best management practices, facilitate adaptive management, and standardize research protocols.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific dates, times, and locations of public scoping meetings for this issue.

FOR FURTHER INFORMATION CONTACT: Written statements and questions regarding the scoping process must be postmarked by February 13, 2006, and should be mailed to: Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910–3226,

Fax: 301–427–2583 or e-mail at *ssleis.comments@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS is the Federal agency responsible for management of Steller sea lions and northern fur seals under the ESA and the MMPA. NMFS currently administers grants and issues permits to various individuals and institutions to conduct research on Steller sea lions and northern fur seals in lands and waters under U.S. jurisdiction.

The grant monies administered by NMFS have been designated by Congress and allocated within NMFS annual budgets for the purpose of facilitating research on Steller sea lions and northern fur seals. The agency has determined that the act of awarding grants is a federal action requiring NEPA compliance. Similarly, issuance of permits for research activities on marine mammals is a federal action requiring NEPA compliance. These permits are issued pursuant to the provisions of the ESA, the MMPA, and NMFS regulations implementing these statutes. This EIS would satisfy the NEPA compliance requirements for awarding grants and issuing permits for research on Steller sea lions and northern fur seals.

The statutory requirements for permits to allow research on marine mammals and on threatened and endangered species are described in Section 104 of the MMPA and Section 10 of the ESA, respectively. Specifically, Section 104(c)(3)(A) of the MMPA states that NMFS may issue a permit for scientific research purposes to an applicant, which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose. The MMPA defines bona fide scientific research as scientific research on marine mammals, the results of which: (1) likely would be accepted for publication in a refereed scientific journal; (2) are likely to contribute to the basic knowledge or marine mammal biology or ecology; or (3) are likely to identify, evaluate, or resolve conservation problems. Section 104 of the MMPA specifies additional conditions and requirements for permits including requiring permit applicants to demonstrate that the permit will be consistent with the purposes of the MMPA, which are specified in Section 2 of the statute.

For marine mammals listed as threatened or endangered, the provisions of Section 10 of the ESA apply to permit issuance in addition to the provisions of the MMPA. Section 10(a)(1)(A) of the ESA states that NMFS may issue permits for otherwise prohibited acts for scientific purposes or to enhance the propagation or survival of the affected species. Section 10(d) of the ESA further states that NMFS may grant exceptions under subsection 10(a)(1)(A) only if the agency finds that: (1) Such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policies set forth in Section 2 of the Act. The purposes of the ESA, which are stated in Section 2 of the statute, are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, to provide a program for the conservation of such endangered and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in section 2(a) of the ESA.

In addition to the requirements of section 10 of the ESA, NMFS must comply with section 7 of the ESA in issuing permits. According to Section 7 of the ESA, NMFS must insure that any action it authorizes (such as by permit), funds (such as by grants), or carries out, is not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat.

The purpose of issuing permits is to allow an exemption to the prohibitions on ''takes'' established under the ESA and MMPA. The ESA and the MMPA prohibit ''takes'' of threatened and endangered species, and of marine mammals, respectively. The ESA defines ''take'' as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' Under the MMPA, ''take'' is defined as to ''harass, hunt, capture, collect or kill, or attempt to harass, hunt, capture, collect or kill any marine mammal.'' Many research activities, including aerial and vessel-based surveys, tagging and marking procedures, attachment of scientific instruments, and collection of tissue samples require approaching or capturing animals and may result in harassment or other acts prohibited under the ESA and MMPA except where allowed by permit.

Because some of the proposed research may result in adverse effects on threatened and endangered Steller sea lions and depleted northern fur seals, NMFS has decided to prepare an EIS to evaluate the cumulative impacts of continuing to fund and permit research activities on these species. This EIS will assess the likely environmental and socioeconomic effects of funding and permitting research under a range of alternatives and will address compliance of the alternatives with the ESA, MMPA, and other applicable laws.

This notice initiates a public scoping period that will help determine the structure of each alternative considered in the EIS. The final scope and structure of the alternatives will reflect the combined input from the public, research institutions, affected state and federal agencies, and NMFS administrative and research offices. Based on comments received on Environmental Assessments prepared in 2002 and 2005 for permitting research on Steller sea lions, the following issues that NMFS is seeking public comments on have been identified and may be incorporated into the analysis of alternatives in the EIS:

(1) *Types of research methods and protocols permitted.* For example, are there critical research needs for these species other than those identified in the Recovery or Conservation Plans? If so, what are they and how are they likely to benefit the species? Of the research, information, and monitoring needs identified in the Recovery and Conservation Plans, what are the most appropriate methods to conduct the study or obtain the information? What criteria for developing and incorporating new research techniques should be used?

(2) *Level of research effort.* For example, how much of a specific research activity (e.g., aerial survey, tagging, biopsy sampling, etc.) is enough for management and conservation needs? Can there be too much? If so, how should NMFS set limits? Are the current methods to assess and document numbers of different ''takes'' that occur as a result of permitted research appropriate? Should there be different standards or more restrictions placed on research conducted on certain age, sex, or life-history stages or on the geographic or temporal distribution of research effort? If so, what should those limitations be?

(3) *Coordination of research.* For example, assuming permits are issued to multiple individuals, what are the most appropriate mechanisms for ensuring research is coordinated to maximize information and reduce adverse impacts? Alternatively, should NMFS consider limiting the number of permits to increase coordination and cooperation? If so, how should this be accomplished? Should researchers operating under different permits (but studying the same or related questions such as aerial survey for population census or biopsy for population

genetics) be required to use the same or similar methods to ensure the information collected is comparable and useful for NMFS conservation of the species? If so, what methods are most appropriate (e.g., for aerial surveys; capture and restraint; tissue sampling; marking; etc.)? If not, how should NMFS compare or use the data from various permit holders in its management decisions?

(4) *Effects of research.* NMFS will be assessing possible effects of the various research methods using all appropriate available information. Anyone having relevant information they believe NMFS should consider in its analysis should provide a complete citation or reference for retrieving the information. In addition, NMFS is seeking recommendations for study designs that could detect or predict the effects of research on Steller sea lions and northern fur seals.

(5) *Qualification of researchers.* For example, to ensure the study is conducted successfully and with the minimum of adverse impacts, how much prior experience should a permit applicant, principal investigator, or anyone else operating under a permit have with the specific methods for which they seek a permit?

(6) *Criteria for allowing modifications or amendments to existing grants and permits; for denying permit amendments; and for suspending or revoking permits.* In addition to the existing statutory and regulatory criteria for permit issuance and denial, should there be restrictions on the number or type of permit modifications or amendments issued over the life of a permit? With respect to environmental impacts, under what conditions should a permit be modified, revoked or suspended by NMFS?

The exact number and structure of the alternatives that are analyzed in the EIS will be determined based on information gathered during scoping. To provide a framework for public comments, the range of potential alternatives currently includes the Proposed Action and several other action alternatives, as well as a No Action alternative. The Proposed Action alternative would result in issuance of permits to qualified individuals and institutions to conduct those research activities determined critical or essential to NMFS' conservation and recovery of Steller sea lions and northern fur seals. To minimize the cumulative impacts of research on these species, no permits would be issued for lower priority research activities until the highest priority tasks identified for species conservation and recovery were completed or unless there was sufficient information to determine that the cumulative impacts of allowing additional takes for research would not adversely impact, disadvantage, or jeopardize the continued existence of the species. The Proposed Action could thus be viewed as a minimum take alternative, allowing the least amount of research practicable to meet NMFS' needs for recovery and conservation of the species.

In addition to the Proposed Action, NMFS will consider other alternatives for issuing permits for research on Steller sea lions and northern fur seals. One alternative to the Proposed Action is to issue all permits requested regardless of their relative potential contribution to conservation and recovery of the species, provided they meet all permit issuance criteria and would not jeopardize the continued existence of threatened or endangered species or result in significant adverse effects on depleted species. In contrast to the Proposed Action, this could be viewed as the maximum allowable take alternative.

Another alternative to the Proposed Action is the No Action alternative, which CEQ regulations require be included for consideration. The No Action alternative would only allow conduct of that research on Steller sea lions and northern fur seals already allowed under existing permits, which are valid through 2010. No new permits would be issued to replace the expiring permits, nor would existing permits be amended to allow modifications in research activities, sample sizes, or objectives.

A fourth alternative considered is the Status Quo. As with the No Action alternative, the Status Quo alternative would allow conduct of research on Steller sea lions and northern fur seals already identified under existing permits, and no permits would be amended to change research activities, sample sizes, or objectives. However, under the Status Quo Alternative, new permits would be issued to replace existing permits as they expire such that the current level of research and types of research activities would continue. Since the Status Quo would not allow issuance of permits for any research activities, objectives, or sample sizes not currently permitted, it would preclude adaptive changes in the research program that may be responsive to changes in the population status or threats to the recovery of the species.

The Status Quo and two other alternatives considered by NMFS may be eliminated from detailed study because they would not allow conduct of research identified by NMFS as necessary for conservation of the species. The other two alternatives that may be eliminated from further study are: (1) imposing a research permit moratorium (i.e., suspending or revoking existing permits and not issuing new ones) and (2) suspending all intrusive research activities (i.e., stopping biopsy sampling, instrument attachment, and other activities that could result in physical injury). In addition to preventing collection of information about Steller sea lions and northern fur seals needed for NMFS conservation and recovery efforts for these species, a research permit moratorium would hinder NMFS ability to monitor the status of these populations, which is important in making informed management decisions. Suspending permits for intrusive research would impede collection of information on Steller sea lion and northern fur seal habitat use and population structure which is needed for NMFS' conservation and recovery efforts for these species.

The EIS will assess the direct and indirect effects of the alternative approaches to funding and permitting Steller sea lion and northern fur seal research. The EIS will assess the effects on these species as well as other components of the marine ecosystem and human environment. The EIS will assess the contribution of research activities to the cumulative effects on these resources, including effects from past, present, and reasonably foreseeable future events and activities that are external to the research activities. The EIS will also assess the potential beneficial impacts of the research as it relates to conservation of Steller sea lions and northern fur seals. Anyone having relevant information they believe NMFS should consider in its analysis should provide a description of that information along with complete citations for supporting documents.

For additional information about Steller seal lions, northern fur seals, the permit process, and related information for these species, please visit our website at: *http://www.nmfs.noaa.gov/pr/permits/eis/steller.htm*.

Scoping Meetings Agenda

Public scoping meetings will be held at the following dates, times, and locations:

1. January 18, 2006, 1 – 4 p.m., Silver Spring Metro Center, Building 4, Science Center, 1301 East-West Highway, Silver Spring, MD;

2. January 20, 2006, 4 – 7 p.m., Alaska Fisheries Science Center, 7600 Sand

Point Way NE, Building 9, Seattle, WA; and

3. January 23, 2006, 5 – 8 p.m., Hilton Anchorage, 501 West 3rd Avenue, Anchorage, AK.

Comments will be accepted at these meetings as well as during the scoping period, and can be mailed to NMFS by February 13, 2006 (see **FOR FURTHER INFORMATION CONTACT**).

NMFS will consider all comments received during the comment period. All hardcopy submissions must be unbound, on paper no larger than 8 1/2 by 11 inches (216 by 279 mm), and suitable for copying and electronic scanning. NMFS requests that you include in your comments:

(1) Your name and address;

(2) Whether or not you would like to receive a copy of the Draft EIS; and

(3) Any background documents to support your comments as you feel necessary.

Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tammy Adams or Andrew Wright, 301–713–2289 (voice) or 301–427–2583 (fax), at least 5 days before the scheduled meeting date.

Dated: December 20, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E5–7989 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121905E]

Pacific Fishery Management Council; Public Meetings/Workshop

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) will hold a public workshop to review and critique its groundfish stock assessment process in 2005.

DATES: The Groundfish Stock Assessment Process Review Workshop will commence at 8 a.m., Friday, January 13, 2006, and continue until business for the day is completed.

ADDRESSES: The Groundfish Stock Assessment Process Review Workshop meeting will be held at the Sheraton Portland Airport Hotel, Columbian A Room, 8235 NE Airport Way, Portland, OR 97220; telephone: (503) 281–2500.

Council address: Pacific Fishery Management Council, 7700 N.E. Ambassador Place, Suite 200, Portland, OR 97220–1384; telephone: (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Groundfish Stock Assessment Process Review Workshop is for participants in the Council's 2005 stock assessment process to consider the procedures used in 2005 to assess and update groundfish stock abundance and develop recommendations for improving the process for future assessments. No management actions will be decided in this workshop. Any recommendations developed at the workshop will be submitted for consideration by the Council at its March meeting in Seattle, WA.

Although non-emergency issues not identified in the workshop agenda may come before the workshop participants for discussion, those issues may not be the subject of formal action during this workshop. Formal action at the workshop will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the workshop participants' intent to take final action to address the emergency.

Special Accommodations

This workshop is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the workshop date.

Dated: December 21, 2005.

Emily Menashes,

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

[FR Doc. E5–7851 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122005A]

50 CFR Part 660

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of availability of reports; public meetings, and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 2006 ocean salmon fisheries. This document announces the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

DATES: Written comments on the salmon management options must be received by March 28, 2006, at 4:30 p.m. Pacific Time.

ADDRESSES: Documents will be available from and written comments should be sent to Mr. Donald Hansen, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384, telephone: 503–820–2280 (voice) or 503–820–2299 (fax). Comments can also be submitted via e-mail at *PFMC.comments@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include the I.D. number in the subject line of the message. For specific meeting and hearing locations, see supplementary information.

Council Address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION:

Schedule for Document Completion and Availability

February 28, 2005: ''Review of 2005 Ocean Salmon Fisheries'' and

''Preseason Report I-Stock Abundance Analysis for 2006 Ocean Salmon Fisheries'' will be available to the public from the Council office and posted on the Council website at *http://www.pcouncil.org.*

March 21, 2006: ''Preseason Report II-Analysis of Proposed Regulatory Options for 2006 Ocean Salmon Fisheries'' and public hearing schedule will be mailed to the public and posted on the Council website at *http://www.pcouncil.org.* The report will include a description of the adopted salmon management options and a summary of their biological and economic impacts.

April 21, 2006: Council adopted ocean salmon fishing management measures will be posted on the Council website at *http://www.pcouncil.org.*

May 1, 2006: Federal regulations will be implemented and ''Preseason Report III-Analysis of Council-Adopted Ocean Salmon Management Measures for 2006 Ocean Salmon Fisheries'' will be available from the Council office and posted on the Council web site at *http://www.pcouncil.org.*

Meetings and Hearings

January 17–20, 2006: The Salmon Technical Team (STT) will meet at the Council office in a public work session to draft ''Review of 2005 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2006 ocean salmon fisheries.

February 7–10, 2006: The STT will meet at the Council office in a public work session to draft ''Preseason Report I-Stock Abundance Analysis for 2006 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2006 ocean salmon fisheries.

March 5–10, 2006: The Council and advisory entities will meet at the Seattle Marriott Hotel, Sea Tac, 3201 S. 176th Street, Seattle, WA 98188 Phone: 206–241–2000, to adopt the 2006 salmon management options for public review.

March 27–28, 2006: Public hearings will be held to receive comments on the proposed ocean salmon fishery management options adopted by the Council. All public hearings begin at 7 p.m. at the following locations:

March 27, 2006: Chateau Westport, Beach Room, 710 W Hancock, Westport, WA 98595, telephone 360–268–9101.

March 27, 2006: Red Lion Hotel, South Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR 97420, telephone 541–267–4141.

March 28, 2006: Flamingo Hotel, Flamingo Ballroom, 2777 Fourth Street, Santa Rosa, CA 95405, telephone 707–545–8530.

April 3–7, 2006: Council and advisory entities meet at the Doubletree Hotel Sacramento, 2001 Point West Way, Sacramento, CA 95815, Phone: 916–929–8855, to adopt 2006 management measures for implementation by NMFS.

April 4, 2006: Testimony on the management options is taken during the Council meeting at the Doubletree Hotel Sacramento, Sacramento, CA.

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

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 (voice), or 503–820–2299 (fax) at least five days prior to the meeting date.

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

Dated: December 22, 2005.

Alan D. Risenhoover

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

[FR Doc. E5–7988 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Belarus

December 21, 2005.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, U.S. Customs and Border Protection adjusting limits.

EFFECTIVE DATE: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 344-2650, or refer to the Bureau of Customs and Border Protection website at *http://www.cbp.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing pursuant to paragraph 5(A) of the Memorandum of Understanding agreement between the governments of the Republic of Belarus and the United States.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States. See 69 FR 57270 (September 24, 2004).

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 21, 2005.

Commissioner,
U.S. Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 20, 2004, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Belarus and exported during the twelve-month period which began on January 1, 2005 and extends through December 31, 2005.

Effective on December 28, 2005, you are directed to adjust the limits for the following categories, pursuant to paragraph 5(A) of the Memorandum of Understanding agreement between the Governments of the United States and Belarus, dated January 10, 2003, as amended May 13, 2004:

Category	Twelve-month restraint limit [1]
435	72,099 dozen.
448	28,943 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2004.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–7946 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–DS–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Entry of Shipments of Wool and Man-Made Fiber Textiles and Apparel in Excess of 2005 Agreement Limits

December 21, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee).

ACTION: Directive to Commissioner, Customs and Border Protection.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In the letter to the Commissioner of U.S. Customs and Border Protection published below, U.S. Customs and Border Protection is directed to implement staged entry limits for Belarus for shipments in excess of 2005 agreement limits.

CITA has previously established a policy of only allowing entry of shipments in excess of quota limits once a new quota year has begun, and there is an agreement with the exporting country that allows overshipments to be charged to the subsequent year's quotas. In a **Federal Register** Notice published on June 25, 2004, CITA announced that it had come to CITA's attention that some textile and apparel products may be shipped in excess of agreed quota limits in 2004 with the expectation that those shipments will be allowed entry upon the expiration of the limits, and CITA noted that shipments exported in excess of agreed limits are a violation of the terms of those agreements. (69 FR 35586) In that Notice, CITA expressly reserved the right to deny entry to goods that have been shipped in excess of agreed limits or to stage entry for goods exported in excess of agreed limits. In the absence of an arrangement with Belarus to allow the entry in 2006 of overshipments of the 2005 textile agreement limits, to be charged to 2006 quota limits, and until such time as such an arrangement is agreed upon, shipments in excess of the 2005 limits for imports of textile products from Belarus will be subject to delayed and staged entry.

For all shipments exported in 2005 that exceed the applicable 2005 agreed quota limits from Belarus, entry will not be permitted until February 1, 2006. From February 1 through February 28, 2006, entry will be permitted to goods in an amount equal to 5 percent of the applicable 2005 base quota limit. For each succeeding month, beginning on the first day of the month and extending through the last day of the month, entry will be permitted to goods in an amount equal to 5 percent of the applicable base 2005 quota limit, until all shipments in excess of the quota limits have been entered.

The 5 percent staged entry limits described above are published in the following letter to the Commissioner of U.S. Customs and Border Protection.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 21, 2005.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive provides instructions on permitting entry to goods shipped in excess of 2005 quota limits for Belarus.

For all shipments exported in 2005 that exceed the applicable 2005 agreed quota limits for Belarus, you are directed to deny entry until February 1, 2006, subject to the following procedure. From February 1 through February 28, 2006, you are directed to permit entry to goods in an amount equal to 5 percent of the applicable 2005 base quota limit. For each succeeding month, beginning on the first day of the month and extending through the last day of the month, you are directed to permit entry to goods in an amount equal to 5 percent of the applicable base 2005 quota limit, until all shipments in excess of the quota limits have been entered.

The monthly 5 percent staged entry limits described above are listed below:

Category	5 percent of 2005 base limit
435	3,433 dozen.
448	1,769 dozen.
622	511,238 square meters.
(622-L) [1]	84,270 square meters.
(622-N) [2]	32,400 square meters.

[1] Category 622-L: only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010.

[2] Category 622-N: only HTS numbers 7019.52.40.21, 7019.52.90.21, 7019.59.40.21, 7019.59.90.21.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. E5–7947 Filed 12–27–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Headquarters United States Air Force (HQ USAF) Scientific Advisory Board; Sunshine Act Meeting

AGENCY: Department of the Air Force (Air Force), DoD.

ACTION: Notice of Closed Meeting of the HQ USAF Scientific Advisory Board.

SUMMARY: Pursuant to Sunshine Act, Public Law 94–409, and in keeping with one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(1), and (4); notice is hereby given of the forthcoming meeting of the Air Force Scientific Advisory Board. The purpose of the meeting is to present the findings/results of the Science and Technology Quality reviews accomplished in FY 2005 to the assembled SAB. Because contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: Closed Meeting is scheduled for Tuesday, January 10, 2006.

FOR FURTHER INFORMATION CONTACT: Major Kyle Gresham, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Room 5D982, Washington, DC 20330–1180, (703) 697–4811.

Lawrence Shade,

Acting, Air Force Federal Register Liaison Officer.

[FR Doc. 05–24600 Filed 12–23–05; 11:59 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Extension of Public Comment Period for the Draft Supplemental Environmental Impact Statement for the Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

AGENCY: Department of Navy, DoD.

ACTION: Notice.

SUMMARY: Under the National Environmental Policy Act, the U.S. Environmental Protection Agency published a notice of availability in the **Federal Register**, 70 FR 68443 on November 10, 2005, for the Draft Supplemental Environmental Impact Statement (Draft SEIS) for the Department of the Navy's deployment of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar systems (EIS No. 20050460). This notice announces the extension of the public comment period from December 27, 2005 to February 10, 2006.

DATES: Comments must be postmarked or received via e-mail not later than February 10, 2006, to ensure they become part of the official record.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Skrupky, Marine Acoustics, Inc., 703–465–8404.

SUPPLEMENTARY INFORMATION: Comments on the SURTASS LFA Draft SEIS should be addressed to Mr. J.S. Johnson, Program Manager, 4100 Fairfax Drive, Suite 730, Arlington, VA 22203. Comments can also be sent via e-mail to *eisteam@mindspring.com*. All comments will be addressed in the Final SEIS.

An electronic copy of the Draft SEIS, as well as further information on SURTASS LFA, is available on the Internet at *http://www.surtass-lfa-eis.com*.

Dated: December 21, 2005.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. E5–7942 Filed 12–27–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Extension of Public Comment Period for the Draft Environmental Impact Statement for the Undersea Warfare Training Range (USWTR)

AGENCY: Department of Navy, DoD.

ACTION: Notice.

SUMMARY: Under the National Environmental Policy Act, the U.S. Environmental Protection Agency published an amended notice of availability in the **Federal Register**, 70 FR 67166 on November 4, 2005, for the Draft Environmental Impact Statement (Draft EIS) for the Department of the Navy's Undersea Warfare Training Range (USWTR), Installation and Operation, Preferred Site (in the Cherry Point Operating Area) and the Alternate Sites (within the Virginia Capes and Jacksonville Operating Areas), NC, VA, and FL (EIS No. 20050446). This notice announces the extension of the public comment period from December 28, 2005 to January 30, 2006.

DATES: Comments must be postmarked or received via fax not later than January 30, 2006 to ensure they become part of the official record.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Jenkins, Naval Facilities Engineering Command Atlantic, 757–322–4046.

SUPPLEMENTARY INFORMATION: Comments on the USWTR Draft EIS should be addressed to Mr. Keith Jenkins, Naval Facilities Engineering Command Atlantic, (Code EV21KJ), 6506 Hampton Boulevard, Norfolk, VA 23508–1278; Fax 757–322–4894. All comments will be addressed in the Final EIS.

An electronic copy of the Draft EIS, as well as further information on USWTR, is available on the Internet at *http://projects.earthtech.com/uswtr.*

Dated: December 21, 2005.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. E5–7943 Filed 12–27–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 27, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 20, 2005.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.
Title: Evaluation of Reading Comprehension Interventions.
Frequency: Semi-Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:

Responses: 700.
Burden Hours: 4,100.

Abstract: The Evaluation of Reading Comprehension Interventions addresses

the questions of whether reading comprehension interventions can improve student reading achievement in content subject areas and what interventions are most effective.

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 2912. 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 *Kim.Rudolph@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 electronically mailed to the e-mail address *IC_DocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E5–7880 Filed 12–27–05; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Parental Information and Resource Centers

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice of proposed priorities and eligibility requirements.

SUMMARY: The Assistant Deputy Secretary for Innovation and Improvement proposes priorities and eligibility requirements under the Parental Information and Resource Centers (PIRC) program. The Assistant Deputy Secretary may use one or more of the priorities for and apply these eligibility requirements to competitions in fiscal year (FY) 2006 and in later years. We intend these priorities and requirements to help ensure that funded projects will effectively address the purposes of the PIRC program.

DATES: We must receive your comments on or before January 27, 2006.

ADDRESSES: Address all comments about these proposed priorities and requirements to Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W229, Washington, DC 20202–5970. If you prefer to send your comments through the Internet, use the following address: *steve.brockhouse@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Steven L. Brockhouse. Telephone: (202) 260–2476 or via Internet: *steve.brockhouse@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed priorities and requirements. To ensure that your comments have maximum effect in developing the notice of final priorities and eligibility requirements, we urge you to identify clearly the specific proposed priority or requirement that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities and requirements. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities and requirements in room 4W229, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities and requirements. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

General Information

PIRC projects help implement successful and effective parental involvement policies, programs, and activities that lead to improvements in student academic achievement and strengthen partnerships among parents, teachers, principals, administrators, and other school personnel in meeting the education needs of children. Section 5563(b) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), describes project requirements for the recipients of PIRC grants, including requirements to serve both rural and urban areas; to use at least one-half of the funds awarded to a project to serve areas with high concentrations of low-income children; and to use at least 30 percent of the funds awarded to a project to establish, expand, or operate early childhood parent education programs.

In this notice, we are proposing four separate priorities. We are also proposing eligibility requirements that define the nonprofit organizations that may apply and clarify the types of entities that may serve as the applicant and fiscal agent if the application is submitted by a consortium that includes a nonprofit organization and one or more local educational agencies (LEAs).

Background on Proposed Priorities

The first and second proposed priorities, addressing the geographic distribution of awards and statewide impact, respectively, would help ensure that, to the extent possible, PIRC project services would be widely available.

Proposed Priority 1, Geographic Distribution of Awards, is designed to help ensure that there will be a high-quality PIRC in most or all States. The highest-ranking application from a State would receive priority for an award, provided that the application is of sufficient quality that the proposed project will likely succeed in meeting the purposes of the PIRC program, in implementing effective activities, and in achieving intended results. Additionally, we are proposing that to meet this proposed priority an applicant must provide services in a single State only.

Under the ESEA, each State establishes its own policies, standards, and requirements in a number of areas, including standards for adequate yearly progress under section 1111 of Title I of the ESEA, procedures for parental involvement and communication under section 1118 of Title I of the ESEA, and requirements related to supplemental educational services and other educational options available to parents under section 1116 of that title. It is important that there is a high-quality federally funded PIRC in most or all States to help ensure that PIRC services

addressing these subject areas are tailored to the particular standards, policies, and requirements of the State in which the PIRC project operates.

Furthermore, the proposed priority would help ensure that PIRC grants would be distributed in all geographic regions of the United States, consistent with section 5562(b) of the ESEA.

Use of this priority would permit the Department to fund additional applications of exceptional quality from any State, even though only the highest-ranking application from a State could qualify for this priority.

Proposed Priority 2, Statewide Impact of PIRC Services, encourages projects that propose broad statewide services. Currently, some PIRCs operate on a statewide basis while others focus activities and services only on specific local communities. The Department believes that it is important that each PIRC provide statewide services.

This priority would help to ensure that parents from across a State, whether in urban or rural areas, would have access to information and essential services. A grantee could provide statewide services through a variety of approaches, including the Internet.

We believe that having PIRC projects with identifiable statewide responsibilities would help to facilitate the development of more effective relationships between PIRC projects and State educational agency officials, especially those responsible for the implementation of Title I of the ESEA.

Proposed Priority 2 would not restrict a project to providing services exclusively on a statewide basis. PIRC projects would continue to have the flexibility to include other activities that are tailored to meet the needs of particular communities, geographic regions, or LEAs in their State. Finally, the priority would not require that a project provide all services to all communities in the State, because such an approach would be impractical based on the resources that are likely to be available for PIRC grants.

Proposed Priority 3, Understanding State and Local Report Cards and Opportunities for Public School Choice and Supplemental Educational Services, builds on our experience in using a similar priority for the most recent PIRC program competition held in FY 2003. Through this priority, we would focus specifically on helping parents (particularly parents of children attending schools identified for school improvement, corrective action, or restructuring under Title I of the ESEA) to understand the information contained in State and local report cards so that they can make informed decisions about the public school choice and supplemental educational services options that may be available to them to help their children achieve academically.

State and local school report cards are critical tools for promoting accountability for LEAs and schools and for helping parents see where schools and districts are succeeding and where there is still work to do. The more parents know about the academic achievement of their children and their schools, the more likely they are to be involved in their local schools and the public school system. Further, when parents are equipped with information on academic results, they can also make better decisions regarding the options for public school choice and supplemental educational services that are available to them.

(Guidance on report cards under Title I of the ESEA is available at: *http://www.ed.gov/programs/titleiparta/reportcardsguidance.doc*; guidance on supplemental educational services is available at: *http://www.ed.gov/policy/elsec/guid/suppsvcsguid.doc*; and guidance on public school choice is available at: *http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.doc*.)

Proposed Priority 4, Technical Assistance in the Implementation of LEA and School Parental Involvement Policy under section 1118 of the ESEA helps to focus attention on the needs of school districts and schools that continue to face challenges in implementing effective policies and activities for parental involvement-especially for those activities that afford parents substantial and meaningful opportunities to participate in the education of their children and to contribute to their children's academic growth and improvement.

Research on effective parental involvement provides substantial evidence that families have a major influence on their children's achievement in school and through life. When schools, families, and community groups work together to support learning, children tend to do better in school, stay in school longer, and like school more.

Title I of the ESEA requires that parents be afforded substantial and meaningful opportunities to participate in the education of their children. Specifically, section 1118 of the ESEA provides the framework for parental involvement policies, plans, and activities at the local level. For example, section 1118 requires that every school district and every school receiving Title I funds have a written parental involvement policy; that LEAs and schools develop the written parental involvement policy jointly with parents of children participating in Title I programs; and that LEAs work in cooperation with their Title I schools to build the capacity of parents and school staff for strong parental involvement, which in turn should improve academic achievement.

Background on Proposed Eligibility Requirements

We are also proposing to clarify the PIRC eligibility requirements. The history of the PIRC program has focused on the involvement of nonprofit organizations as applicants for awards under the PIRC program. Section 5563(b)(1) of the ESEA generally provides that any nonprofit organization that submits an application for a PIRC project must focus on parents in its governance or organizational interest. The references to the inclusion of parents and representation of the interests of parents in section 5563(b)(1) of the ESEA do not further define the types of parents to be included or represented. Other provisions in section 5563, as well as sections 5561, 5562 and 5564 of the ESEA, clarify that the parents whose interests are of concern to the PIRC program are parents of pre-school and school-aged children, including those parents who are educationally or economically disadvantaged.

The proposed eligibility requirements would define the term ''nonprofit organization'' for purposes of the PIRC program to clarify that in order to be an eligible applicant for a PIRC project, a nonprofit organization must, at a minimum, be one that either represents the interests of parents of pre-school and school-aged children, including parents who are educationally or economically disadvantaged or includes parents of pre-school and school-aged children, including parents who are educationally or economically disadvantaged, on the organization's board of directors.

Faith-based and community organizations that meet the standards in the proposed definition would continue to be eligible applicants for the PIRC program.

Additionally, section 5563(a) of the ESEA permits the submission of an application from a consortium that includes a nonprofit organization and one or more LEAs. In the case of an application from a consortium, we propose to require that a nonprofit organization serve as the applicant and fiscal agent. Under the proposed clarification, State and local governments, including LEAs,

intermediate school districts, and schools, therefore, would not be eligible to submit an application on behalf of a consortium or serve as the fiscal agent of a PIRC grant.

We will announce the final priorities and eligibility requirements in a notice in the **Federal Register**. We will determine the final priorities and eligibility requirements after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities or establishing additional requirements, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Proposed Priority 1—Geographic Distribution of Awards

This proposed priority supports an application that meets the following three conditions:

(1) The application is the highest-ranking application proposing to implement a PIRC project in a State, based on the selection criteria and competitive preference priorities used for this competition.

(2) The application's PIRC project proposes to provide services only in that State.

(3) The application is of sufficient quality to show that the proposed project is likely to succeed in meeting the purposes of the PIRC program, in implementing effective activities, and in achieving intended results.

For the purpose of selecting applications under this priority, we use the definition of the term ''State'' in 34 CFR 77.1(c).

Proposed Priority 2—Statewide Impact of PIRC Services

This proposed priority supports applications that would implement broad statewide strategies to provide parents from across the State, particularly parents who are educationally or economically disadvantaged, with services that enhance their ability to participate effectively in their child's education, including their ability to communicate effectively with public school personnel in the school that their child attends.

Proposed Priority 3—Understanding State and Local Report Cards and Opportunities for Public School Choice and Supplemental Educational Services

This priority supports applications that would implement activities that effectively assist parents in understanding State and local report cards under Title I of the ESEA and, in cases where their child attends a school identified as in need of improvement, corrective action, or restructuring under Title I, in understanding their options for public school choice or supplemental educational services.

Proposed Priority 4—Technical Assistance in the Implementation of Local Educational Agency and School Parental Involvement Policy Under Section 1118 of the ESEA

This priority supports applications that would provide technical assistance in the implementation of LEA and school parental involvement policies under Title I of the ESEA in order to improve student academic achievement and school performance.

Requirements

Proposed Eligibility Requirements

We propose to define the term ''nonprofit organization'' for purposes of the PIRC program as an organization that:

(1) Is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity, as set forth in 34 CFR part 77; and

(2) Is an organization that:

(a) Represents the interests of parents of pre-school and school-age children (including parents who are educationally or economically disadvantaged); or

(b) Is governed by a board of directors whose membership includes such parents.

We also propose that for an application submitted by a consortium that includes a nonprofit organization and one or more LEAs, that the nonprofit organization must serve as the applicant and fiscal agent for the consortium. State and local governments, including LEAs, intermediate school districts, and schools, would not be eligible to submit an application on behalf of a consortium or serve as the fiscal agent of a PIRC grant.

Executive Order 12866

This notice of proposed priorities and eligibility requirements has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities and eligibility requirements are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities and eligibility requirements, we have determined that the benefits of the proposed priorities and requirements justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of potential costs and benefits: The potential cost associated with these proposed priorities and eligibility requirements is minimal while the benefits are significant. Applicants may anticipate costs with completing the application process in terms of staff and partner time, copying, and mailing or delivery. The use of E-Application technology would reduce mailing and copying costs significantly.

The benefit of the proposed priorities and requirements is that they will help applicants prepare higher-quality proposals that are better focused on critical information needs for parents.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text at the following site: *http://www.ed.gov/programs/pirc/applicant.html.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.310A)

Program Authority: 20 U.S.C. 7273 *et seq.*

Dated: December 22, 2005.

Nina Shokraii Rees,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E5–7986 Filed 12–27–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Fund for the Improvement of Postsecondary Education—Special Focus Competition: Program for North American Mobility in Higher Education

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2006; Correction.

SUMMARY: On December 7, 2005, we published in the **Federal Register** (70 FR 72796) a notice inviting applications for new awards for FY 2006 for the Fund for the Improvement of Postsecondary Education—Special Focus Competition: Program for North American Mobility in Higher Education. The notice contained incomplete information about the submission of applications. The following language should be inserted on page 72798, column one, as the fourth bulleted paragraph:

''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.''

FOR FURTHER INFORMATION CONTACT: Sylvia W. Crowder, Fund for the Improvement of Postsecondary Education, Program for North American Mobility in Higher Education, 1990 K Street, NW., 6th floor, Washington, DC 20006–8544. Telephone: (202) 502–7514.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 21, 2005.

Sally Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–24537 Filed 12–22–05; 2:26 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Nuclear Energy, Science and Technology; Nuclear Energy Research Advisory Committee; Notice of Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, App. 2, and section 102–3.65, title 41, Code of Federal Regulations and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Nuclear Energy Advisory Committee has been renewed for a two year period.

The Committee will provide advice to the Office of Nuclear Energy, Science and Technology on long-range planning and priorities in the nuclear energy program. The Secretary of Energy has determined that resetablishment of the Nuclear Energy Research Advisory Committee is essential to conduct the business of the Department of Energy and is in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC, on December 19, 2005.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. E5–7975 Filed 12–27–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, January 17, 2006, 8 a.m.–6 p.m., Wednesday, January 18, 2006, 8 a.m.–5 p.m.

Opportunities for public participation will be held Tuesday, January 17, from 12:15 to 12:30 p.m. and 5:45 to 6 p.m.; and Wednesday, January 18, from 11:45 a.m. to 12 p.m. and 4:00 to 4:15 p.m. Additional time may be made available for public comment during the presentations.

These times are subject to change as the meeting progresses, depending on the extent of comment offered. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Ameritel Inn, 645 Lindsay Boulevard, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Shannon A. Brennan, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1216, Idaho Falls, ID 83415. Phone (208) 526–3993; Fax (208) 526–1926 or e-mail: *Shannon.Brennan@nuclear.energy.gov* or visit the Board's Internet home page at: *http://www.inelemcab.org.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Shannon A. Brennan for the most current agenda):

- Fiscal Year 2006 budget for the Idaho Cleanup Project
- Radioactive Waste Management Complex topics, including stakeholder involvement planning, buried waste excavation status, and management of low-level radioactive waste
- Groundwater monitoring
- Deactivation of the Loss of Fluid Test reactor containment facility
- Sodium Bearing Waste Record of Decision

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Shannon A. Brennan at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Shannon A. Brennan, Federal Coordinator, at the address and phone number listed above.

Issued at Washington, DC, on December 21, 2005.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E5–7976 Filed 12–27–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, February 2, 2006, 9 a.m.–5 p.m.; Friday, February 3, 2006, 8:30 a.m.–4 p.m.

ADDRESSES: Red Lion Hotel, Columbia Center, 1101 North Columbia Center Boulevard, Kennewick, Washington 99336, Phone Number: (509) 783–0611.

FOR FURTHER INFORMATION CONTACT: Erik Olds, Federal Coordinator, Department of Energy Richland Operations Office, 2440 Stevens Drive, P.O. Box 450, H6–60, Richland, WA, 99352; Phone: (509) 376–8656; Fax: (509) 376–1214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Tutorial on Health and Worker Safety
- 2006 Hanford Advisory Board Priority Discussion
- Update on Bulk Vitrification
- Estimate at Completion Discussion on the Waste Treatment and Immobilization Plant
- Budget Prioritization and Allocations for Fiscal Years 2006, 2007 and 2008
- Emerging Issues from the River and Plateau Committee

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Erik Olds' office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Erik Olds' office at the address or telephone number listed above.

Issued at Washington, DC, on December 21, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E5–7977 Filed 12–27–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF06–31–000]

Air Products, L.P.; Notice of Filing

December 19, 2005.

Take notice that on December 7, 2005, Air Products, L.P. (Air Products) filed with the Commission an application for certification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(b) of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 6, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7917 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–479–002]

Alliance Pipeline L.P.; Notice of Compliance Filing

December 20, 2005.

Take notice that on December 12, 2005, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Substitute Third Revised Sheet No. 277, proposed to become effective September 1, 2005.

Alliance states that the referenced sheet is being filed in compliance with the delegated order issued herein on December 1, 2005.

Alliance further states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7927 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–147]

CenterPoint Energy Gas Transmission Company

Notice of Negotiated Rate Filing and Proposed Changes in FERC Gas Tariff

December 20, 2005.

Take notice that on December 15, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval an amended negotiated rate and non-conforming agreement between CEGT and Kiowa Power Partners, LLC to be effective February 1, 2006. CEGT also has submitted the following tariff sheets to be included as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, also to be effective February 1, 2006:

Fourth Revised Sheet No. 685
First Revised Sheet No. 890.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7930 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–148]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

December 20, 2005.

Take notice that on December 15, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and SteelScape, Inc. CEGT has entered into an agreement to provide firm transportation service to this shipper under Rate Schedule FT and requests the Commission accept and approve the transaction under which transportation service will commence upon the later of March 1, 2006, or the ''in-service'' date following completion of necessary delivery facilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7931 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–145–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

December 20, 2005.

Take notice that on December 15, 2005, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, bearing a proposed effective date of January 14, 2006.

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 § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7929 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2618–015–Maine]

Domtar Maine Corporation; Notice Soliciting Applications

December 21, 2005.

On August 21, 1995, Georgia-Pacific Corporation, the licensee for the West Branch Project No. 2618, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (FPA).[1] The original license was issued September 4, 1980, became effective April 1, 1962, and expired September 30, 2000. The project is currently operating under an annual license.[2] The project is a storage reservoir located on the St. Croix River in Washington County, Maine.

The West Branch Project includes two developments, West Grand Lake and Sysladobsis Lake. The West Grand Lake development consists of a 13-foot-high, 485-foot-long dam and a 23,825-acre reservoir. The Sysladobsis Lake development consists of a 5.5-foot-high, 25-foot-long dam and a 5,400-acre reservoir. There are no generating facilities at either of these developments. Water flows from the Sysladobsis Lake development to the West Grand Lake development, and from there travels ten miles downstream to the Grand Falls project and on to the Woodland project. The Grand Falls and Woodland Projects, both of which generate electricity, have been found not to require licensing, because they were authorized by a 1916 Act of Congress that predated the 1920 enactment of what is now part I of the FPA.[3]

Pursuant to § 16.9 of the Commission's regulations, the deadline for filing an application for new license and any competing license application was September 30, 1998. No application for license for this project was filed. Normally, pursuant to section 16.25 of the Commission's regulations, the Commission would solicit applications from potential applicants other than the existing licensee. However, the Commission's Order On Rehearing, On Clarification, and Lifting Stay,[4] concludes that it would be in the public interest to allow Domtar the opportunity to file an application for new license for

[1] The project was transferred to Domtar Maine Corporation (Domtar) on October 26, 2001. 97 FERC ¶ 62,078.

[2] Notice authorizing continued project operation was issued October 17, 2000.

[3] 39 Stat. 534. 45 FERC ¶ 62,070 and 45 FERC ¶ 62,071.

[4] 99 FERC ¶ 61,276.

this project and confirms that the incumbent preference will apply in any licensing proceedings that ensue. In the rehearing order, the Commission waived those parts of 18 CFR 16.24(a)(2) and 16.25(a) that would otherwise bar Domtar from filing an application in response to this notice.

The licensee is required to make available certain information described in section 16.7 of the Commission's regulations. Such information is available from the licensee at Domtar Industries, Inc., Woodland Mill, 144 Main Street, Baileyville, Maine 04694.

A potential applicant that files a notice of intent and pre-application document within 90 days from the date of issuance of this notice: (1) May apply for a license under part I of the FPA and part 4 (except section 4.38) of the Commission's regulations within 36 months of the date on which it files its notice; [5] and (2) must comply with the requirements of section 16.8 of the Commission's regulations.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7938 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2660–016–Maine]

Domtar Maine Corporation; Notice Soliciting Applications

December 21, 2005.

On August 21, 1995, Georgia-Pacific Corporation, the licensee for the Forest City Project No. 2660, filed a notice of intent to file an application for a new license, pursuant to section 15(b)(1) of the Federal Power Act (FPA).[1] The original license was issued August 27, 1980, became effective April 1, 1962, and expired August 31, 2000. The project is currently operating under an annual license.[2] The project is a storage reservoir located on the east branch of the St. Croix River in Washington County, Maine, along the United States-Canadian border.

The Forest City Project consists of a 16-foot-high, 500-foot-long dam and a 16,070-acre reservoir. There are no generating facilities at the project. Water is discharged from the Forest City Dam and enters Spednick Lake, which is regulated by the licensed Vanceboro Project No. 2492.[3] The water then flows to Domtar's unlicensed Grand Falls Project, located 35 miles downstream from the Forest City Project, and thence an additional 12 miles to the unlicensed Woodland generating project. The Grand Falls and Woodland Projects, both of which generate electricity, have been found not to require licensing, because they were authorized by a 1916 Act of Congress that predated the 1920 enactment of what is now part I of the FPA.[4]

Pursuant to section 16.9 of the Commission's regulations, the deadline for filing an application for new license and any competing license application was August 31, 1998. No application for license for this project was filed. Normally, pursuant to section 16.25 of the Commission's regulations, the Commission would solicit applications from potential applicants other than the existing licensee. However, the Commission's Order On Rehearing, On Clarification, and Lifting Stay,[5] concludes that it would be in the public interest to allow Domtar the opportunity to file an application for new license for this project and confirms that the incumbent preference will apply in any licensing proceedings that ensue. In the rehearing order, the Commission waived those parts of 18 CFR 16.24(a)(2) and 16.25(a) that would otherwise bar Domtar from filing an application in response to this notice.

The licensee is required to make available certain information described in section 16.7 of the Commission's regulations. Such information is available from the licensee at Domtar Industries, Inc., Woodland Mill, 144 Main Street, Baileyville, Maine 04694.

A potential applicant that files a notice of intent and pre-application document within 90 days from the date of issuance of this notice: (1) May apply for a license under part I of the FPA and part 4 (except section 4.38) of the Commission's regulations within 36 months of the date on which it files its notice; [6] and (2) must comply with the requirements of section 16.8 of the Commission's regulations.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7939 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–13–022]

East Tennessee Natural Gas, LLC; Notice of Termination of Negotiated Rates

December 20, 2005.

Take notice that on December 15, 2005, East Tennessee Natural Gas, LLC (East Tennessee) filed for authorization to terminate negotiated rates applicable to East Tennessee's FT–A service agreements with Eastman Chemical Company (Eastman) and AFG Industries, Inc. (AFG), effective November 1, 2005.

East Tennessee states that it is filing to terminate the identified negotiated rate agreements in order to avoid confusion and to make clear that the settlement rates approved in Docket No. RP05–672 apply to Eastman's Contract No. 31096 and AFG's Contract No. 31095.

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

[5] The Commission's regulation requires license applications to be filed within 18 months of the date a license applicant files its notice of intent. However, because the Commission's Integrated Licensing Process calls for a three year pre-application process, section 16.25(b)(1) is extended for this project.

[1] The project was transferred to Domtar Maine Corporation (Domtar) on October 26, 2001. 97 FERC ¶ 62,078.

[2] Notice authorizing continued project operation was issued November 21, 2000.

[3] The Vanceboro Project is a storage project with no generating facilities.

[4] 39 Stat. 534. 45 FERC ¶ 62,070 and 45 FERC ¶ 62,071.

[5] 99 FERC ¶ 61,276.

[6] The Commission's regulation requires license applications to be filed within 18 months of the date a license applicant files its notice of intent. However, because the Commission's Integrated Licensing Process calls for a three year pre-application process, section 16.25(b)(1) is extended for this project.

''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7925 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–29–000]

Entergy Louisiana, Inc.; Notice of Filing

December 21, 2005.

Take notice that on December 13, 2005, Entergy Louisiana, Inc. (ELI) submitted a Petition for Declaratory Order in which ELI has requested a determination that the payment of dividends by Entergy Louisiana, LLC out of Membership Interest accounts after it completes a corporate restructuring on or about December 31, 2005 will not violate section 305(a) of the Federal Power Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to 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 on December 29, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7937 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–218–000 and ER06–219–000]

Liberty Power New York LLC and Liberty Power District of Columbia LLC; Notice of Issuance of Order

December 16, 2005.

Liberty Power New York LLC (Liberty Power New York) and Liberty Power District of Columbia LLC (Liberty Power District) filed application for market-based rate authority, with accompanying rate tariffs. The proposed rate tariffs provide for the sales of capacity and energy at market-based rates. Liberty Power New York and Liberty Power District also requested waiver of various Commission regulations. In particular, Liberty Power New York LLC and Liberty Power District requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Liberty Power New York and Liberty Power District.

On December 13, 2005, the Commission granted the request for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuance of securities or assumptions of liability by Liberty Power New York and Liberty Power District should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protests is January 12, 2006.

Absent a request to be heard in opposition by the deadline above, Liberty Power New York and Liberty Power District are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Liberty Power New York and Liberty Power District, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Liberty Power New York's and Liberty Power District's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also 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 filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7907 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1021–006]

Ontario Energy Trading International Corporation; Notice of Filing

December 19, 2005.

Take notice that on December 1, 2005, Ontario Energy Trading International Corporation (Ontario Energy) tendered for filing developments constituting a non-material change in status related to market rate authority. Ontario Energy states this is pursuant to Order No. 652.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on December 27, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7918 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–143–000]

Pepperell Realty, LLC; Notice of Issuance of Order

December 16, 2005.

Pepperell Realty, LLC (Pepperell) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of energy and capacity at market-based rates. Pepperell also requested waiver of various Commission regulations. In particular, Pepperell requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Pepperell.

On December 13, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Liberty Power New York and Liberty Power District should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is January 12, 2006.

Absent a request to be heard in opposition by the deadline above, Liberty Power New York and Liberty Power District are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Liberty Power New York and Liberty Power District, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Liberty Power New York's and Liberty Power District's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also 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 filed to access the document. 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7906 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–525–003]

Tennessee Gas Pipeline Company; Notice of Refund Report

December 20, 2005.

Take notice that on December 14, 2005, Tennessee Gas Pipeline Company (Tennessee) tendered for filing with the Commission its Statement of Refunds Report (Refund Report), which reflects refunds owed to shippers for Tennessee's collection of the GSR interruptible transportation surcharge.

Tennessee states that the Refund Report includes: (a) Schedule 1 reflecting the name of each shipper receiving a refund, the GSR revenue contributed by each applicable shipper, the principal amount owed to each applicable shipper, and the total interest on each principal refund amount; and (b) Schedule 2, which illustrates the calculation of interest.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible On-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on December 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7928 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–36–000]

Texas Gas Transmission, LLC; Notice of Application

December 16, 2005.

Take notice that on December 12, 2005, Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed with the Federal Energy Regulatory Commission an application under section 7(b) of the Natural Gas Act to abandon by sale to Natural Gas Pipeline Company of America (NGPL) certain supply lateral facilities and appurtenances consisting of the NGPL-Lowery Receipt Meter Station and the Lowery-NGPL 10-inch diameter tie-over pipeline, located near Mile 11.16 on the Roanoke-Grand Cheniere 12-inch and 20-inch diameters pipeline system, in Cameron Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web 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 FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Kathy D. Fort, Manager of Certificates and Tariffs, Texas Gas Transmission, LLC, P.O. Box 20008, Owensboro, Kentucky, 42304, at (270) 688–6825.

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 with the Commission and must mail a copy to the applicant and to every other party in the proceeding. 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 commenters 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 commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters 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.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: January 6, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7905 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–34–000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

December 16, 2005.

Take notice that on December 7, 2005, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an abbreviated application, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations for a certificate of public convenience and necessity authorizing Transco to construct and operate its Leidy to Long Island Expansion Project (Project). The Project is an expansion of Transco's existing pipeline system under which Transco will provide 100,000 dekatherms per day (dt/day) of incremental firm transportation service to KeySpan Gas East Corporation (KeySpan).

The application is on file with the Commission and open for public inspection. This filing 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202) 502–8659.

Transco requests authorization to construct and operate the following facilities:

• 3.41 miles of 42-inch pipeline loop from Mile Post 131.19 to Mile Post 134.60 on Transco's existing Leidy Line in Lycoming County, Pennsylvania (Hughesville Loop);

• 5.25 miles of 42-inch pipeline loop from Mile Post 28.02 to Mile Post 33.27 on Transco's existing Leidy Line in Luzerne County, Pennsylvania (Berwick Loop);

• 3.23 miles of 42-inch pipeline loop from Mile Post 1786.55 to Mile Post 1789.78 on Transco's existing Mainline ''B'' in Somerset County, New Jersey (Neshanic Loop);

• The replacement of approximately 2.45 miles of 42-inch pipeline and the uprating of approximately 3.53 miles of 42-inch pipeline between Mile Post 8.50 and Mile Post 12.03 on Transco's existing onshore portion of the Lower New York Bay Mainline ''C'' in Middlesex County, New Jersey (Morgan Replacement Segment);

• The uprating of 33.66 miles of Transco's existing 26-inch Lower New York Bay Extension, from Mile Post 12.05 to Mile Post 45.71; Transco's Lower New York Bay Extension begins onshore in Middlesex County, New Jersey, continues offshore across Monmouth County, New Jersey and Queens County, New York, and terminates on Long Island, Nassau County, New York (Lower Bay Uprate);

• The installation of two 5,000 HP electric motor-driven compressor units (10,000 total HP) at a new compressor station in Middlesex County, New Jersey (Compressor Station No. 207); and Modifications to: Transco's Delaware Regulator Station in Northampton County, Pennsylvania; Morgan Regulator Station in Middlesex County, New Jersey; and Long Beach Meter Station in Nassau County, New York.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, 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). 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 with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments 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: January 5, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7904 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–35–000]

Trunkline Gas Company, LLC; Notice of Application

December 19, 2005.

Take notice that on December 8, 2005, Trunkline Gas Company, LLC (Trunkline), P.O. Box 4967, Houston, Texas 77210–4967, filed an application in Docket No. CP06–35–000, pursuant to section 7(b) and (c) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations, for authorization to abandon an existing 2,000 horsepower (hp) reciprocating gas compressor unit located at Trunkline's existing Cypress Compressor Station (Cypress Station) in Harris County, Texas. Additionally, Trunkline also requests authorization to install and operate a new 7,000 hp electric motor driven centrifugal compressor unit and a new emergency generator at the Cypress Station. The proposal is designed to decrease the NO_X emission rate of the Cypress Station and enable Trunkline to meet the required air emission limitations for this site. The proposal would not increase the currently certificated hp level of the Cypress Station nor would it affect the capacity of Trunkline's South Texas mainline system, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web 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, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application may be directed to Stephen T. Veatch, Sr. Director, Certificates and Tariffs, at (713) 989–2024, Trunkline Gas Company, LLC, 5444 Westheimer Road, Houston, Texas 77056.

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 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. Unless filing electronically, a party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. 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.

Comment Date: December 30, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7923 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–37–000]

Trunkline Gas Company, LLC and Gulf South Pipeline Company, LP; Notice of Filing

December 21, 2005.

Take notice that on December 14, 2005, Trunkline Gas Company, LLC (Trunkline Gas), P.O. Box 4967, Houston, Texas 77210–4967, and Gulf South Pipeline Company, LP (Gulf South), 20 East Greenway Plaza, Houston, Texas 77046, filed a joint abbreviated application pursuant to the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations requesting authorization for Trunkline Gas to abandon by sale and Gulf South to acquire an undivided 38.46 percent interest in 1.7 miles of Trunkline Gas' 2000–1 Lateral and appurtenances located in Calcasieu Parish, Louisiana. The application is on file with the Commission and open for public inspection. This filing 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The undivided 38.46 percent ownership is equivalent to 500,000 dekatherms per day of capacity on the 1.7 miles of the 2000–1 Lateral. Trunkline Gas will continue to own 100 percent of the 2000–2 Lateral. Trunkline Gas will remain the operator of the 2001–1 Lateral. Gulf South and Trunkline Gas will be responsible for paying its share of all operating and maintenance expenses in accordance with an Operating Agreement. Shippers will be able to execute transportation service agreements with each respective pipeline owner pursuant to the terms of its tariff up to each pipeline's share of the capacity on the 2000–1 Lateral. The transfer of the ownership from Trunkline Gas to Gulf South costs $1,900,000.

Any questions regarding the application are to be directed to Stephen T. Veatch, Regulatory Affairs, at (713) 989–7000, Trunkline Gas Company, LLC, 5444 Westheimer Road, Houston, Texas 77056 and to J. Kyle Stephens, Director of Certificates for Gulf South Pipeline Company, LP, 20 East Greenway Plaza, Suite 900, Houston, Texas 77046.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, 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 with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments 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: January 11, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7940 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR06–1–000]

State of Alaska, Complainants v. TAPS Carriers, Respondents; Notice of Complaint

December 19, 2005.

Take notice that on December 14, 2005, the State of Alaska filed a formal complaint against the TAPS Carriers pursuant to 49 U.S.C. 1 *et seq.* (1994), and 18 CFR 385.206(a), 385.207, 385.211 and 385.214 (2003) alleging that the TAPS Carriers impermissibly included imprudently incurred costs in their 2004, 2005 and 2006 interstate tariffs, that those rates constitute unjust discrimination under the Interstate Commerce Act, and that those rates are inconsistent with the terms of the TAPS Interstate Settlement Agreement and are otherwise unlawful.

The State of Alaska states that copies of the complaint were served on the contacts for the TAPS Carriers.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on January 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7919 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–144]

Union Electric Company d/b/a AmerenUE; Notice Dismissing Complaint

December 20, 2005.

On December 5, 2005, Osage River Flood Control Association, Inc. filed a formal complaint against Union Electric Company, doing business as AmerenUE, licensee of the Osage Hydroelectric Project No. 459. The project is located on the Lake of the Ozarks in Missouri. The pleading generally alleges that Osage River Flood Control Association's concerns raised during the Alternative Licensing Process were ignored by AmerenUE, and requests consideration of certain issues in the relicense proceeding for the Osage Project.[1]

The issues raised in the pleading relate to conditions to be considered in the ongoing relicense proceeding. As such, they are not properly the subject of a formal complaint. Accordingly, the complaint is dismissed and the comments raised in the pleading will be considered in the relicense proceeding.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7926 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

[1] They request consideration of the following: a 30-year license term rather than the 40-year term requested by AmerenUS; earlier release of water in anticipation of rain than proposed by AmerenUE; continuation in the new license of current maximum flow levels while the project generates power rather than unlimited flow levels which may increase erosion; creation of a new flood management process; the effect of project on lower river recreation; and assistance by the licensee to downstream farmers in raising the height of the access to their islands of farm land in the lower river.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OR06–2–000; IS06–70–000; IS06–63–000; IS06–71–000; IS06–66–000; IS06–47–000]

Anadarko Petroleum Corporation, Tesoro Corporation, and Tesoro Alaska Company v. TAPS Carriers, BP Pipelines (Alaska) Inc., ConocoPhillips, Transportation Alaska, Inc., ExxonMobil Pipeline Company, Koch Alaska Pipeline Company LLC, Unocal Pipeline Company; Notice of Complaint

December 19, 2005.

Take notice that on December 14, 2005, Anadarko Petroleum Corporation, Tesoro Corporation, and Tesoro Alaska Company (collectively, Anadarko/Tesoro) filed a protest, complaint, motion to intervene, motion to consolidate, and request for hearing and other relief, against BP Pipelines (Alaska) Inc., ConocoPhillips Transportation Alaska, Inc., ExxonMobil Pipeline Company, Koch Alaska Pipeline Company LLC, and Unocal Pipeline Company (collectively, TAPS Carriers), pursuant to Rules 206, 211, 212, and 214 of the Commission's Rules of Practice and Procedures and sections 8, 9, 13, 15, and 16 of the Interstate Commerce Act , and the Commission's oil pipeline regulations at 18 CFR 343. Anadarko/Tesoro allege that the rates filed by TAPS Carriers for oil transportation on the TAPS are unjust, unreasonable, and unduly discriminatory under the ICA, and the Commission should suspend those rates, declare those rates subject to refund, initiate hearing procedures, establish just and reasonable rates as required by the ICA, and grant Anadarko/Tesoro refunds, reparations, damages (with interest), and other appropriate relief. Anadarko/Tesoro request that the Commission consolidate this protest and complaint with the ongoing proceedings concerning the TAPS Carriers' rates in Docket Nos. IS05–82 *et al.*

Anadaro/Tesoro states that copies of the complaint were served on the designated contacts for BP Pipelines (Alaska), Inc. ConocoPhillips Transportation Alaska, Inc., ExxonMobile Pipeline Compnay, Koch Alaska Pipeline Company LLC., and Unocal Pipeline Company as listed in the individual company tariff filings, as well as on all persons on the official Commission service list.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on January 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7920 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL06–28–000]

City of Sioux Falls, South Dakota and Heartland Consumers Power District, Complainant, v. Xcel Energy Services, Inc., Northern States Power Company (Minnesota), and Midwest Independent Transmission System Operator, Inc., Respondents; Notice of Complaint

December 20, 2005.

Take notice that on December 19, 2005, the City of Sioux Falls, South Dakota and Hearland Consumers Power District (City/Heartland) filed a Complaint against Northern States

Power Company (Minnesota), Xcel Energy Services, Inc. (Xcel), and the Midwest Independent System Operator, Inc. (MISO), for their alleged refusal to provide transmission service to the City for service under the City/NPS Interconnection & Inter-change Agreement, Service Schedule F.

City/Heartland states that a copy of this complaint and supporting documents have been served upon NSP, Xcel and MISO.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on December 29, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7932 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ES06–10–000, et al.]

Southern Power Company, et al.; Electric Rate and Corporate Filings

December 16, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Southern Power Company

[Docket No. ES06–10–000]

Take notice that on December 6, 2005, Southern Power Company (Southern Power) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue: (1) Common stock, preferred stock, preference stock, preferred securities, secured and unsecured long-term debt securities and revenue bonds in an amount not to exceed $500 million; and (2) short-term and term loan notes and commercial paper in an amount not to exceed $500 million outstanding at any one time.

Southern Power also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: 5 p.m. Eastern Time on January 4, 2006.

2. Old Dominion Electric Cooperative

[Docket No. ES06–11–000]

Take notice that on December 6, 2005, Old Dominion Electric Cooperative (Old Dominion) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization for certain transactions in order to refinance an existing lease and leaseback transaction.

Old Dominion also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: 5 p.m. Eastern Time on January 4, 2006.

3. Central Maine Power Company

[Docket No. ES06–12–000]

Take notice that on December 7, 2005, Central Maine Power Company (Central Maine) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue secured and unsecured short-term debt in an amount not to exceed $150 million outstanding at any one time.

Comment Date: 5 p.m. Eastern Time on January 5, 2006.

4. New York State Electric & Gas Corporation

[Docket No. ES06–13–000]

Take notice that on December 7, 2005, New York State Electric and Gas Corporation (New York) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue secured and unsecured short-term debt in an amount not to exceed $275 million outstanding at any one time.

Comment Date: 5 p.m. Eastern Time on January 5, 2006.

5. Rochester Gas and Electric Corporation

[Docket No. ES06–14–000]

Take notice that on December 7, 2005, Rochester Gas and Electric Corporation (Rochester) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue secured and unsecured short-term debt in an amount not to exceed $200 million outstanding at any one time.

Comment Date: 5 p.m. Eastern Time on January 5, 2006.

6. Commonwealth Edison Company

[Docket No. ES06–15–000]

Take notice that on December 7, 2005, Commonwealth Edison Company (Commonwealth Edison) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue promissory notes and other evidences of secured and unsecured indebtedness in an amount not to exceed $2.5 billion outstanding at any one time.

Comment Date: 5 p.m. Eastern Time on January 5, 2006.

7. PECO Energy Company

[Docket No. ES06–16–000]

Take notice that on December 7, 2005, PECO Energy Company (PECO) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue promissory notes and other evidences of secured and unsecured indebtedness in an amount not to exceed $1.5 billion outstanding at any one time.

Comment Date: 5 p.m. Eastern Time on January 5, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7902 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 19, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–826–004; ER00–828–004; ER98–421–015; ER98–4055–012; ER01–1337–007; ER04–288–001; ER02–177–008; ER03–1212–006; ER01–1820–006; ER96–2506–008.

Applicants: Brownsville Power I, L.L.C.; Caledonia Power I, L.L.C., CinCap IV, LLC; CinCap V, LLC; Cinergy Capital & Trading, Inc.; Cincinnati Gas & Electric Co.; Cinergy Power Investments, Inc.; St Paul Cogeneration, LLC; Cinergy Operating Companies; PSI Energy, Inc.

Description: Cinergy submits revised sheets for the joint PSI/Cincinnati Gas & Electric market-based rate tariff.

Filed Date: 11/16/2005.

Accession Number: 20051121–0144.

Comment Date: 5 p.m. eastern time on Tuesday, December 27, 2005.

Docket Number: ER00–1928–002.

Applicant: Western New York Wind Corp.

Description: Western New York Wind Corp submits Substitute First Revised Sheets No. 2 and 3 of FERC Electric Rate No. 1 pursuant to Ordering Paragraph (B) of FERC's 11/3/05 order.

Filed Date: 12/05/2005.

Accession Number: 20051213–0343.

Comment Date: 5 p.m. eastern time on Tuesday, December 27, 2005.

Docket Number: ER01–2692–004.

Applicant: Canastota Windpower, LLC.

Description: Canastota Windpower LLC submits substitute First Revised Sheets No. 2 and 3 of FERC Electric Rate Schedule No. 1 pursuant to Ordering Paragraph (B) of FERC's 11/3/05 order.

Filed Date: 12/05/2005.

Accession Number: 20051213–0344.

Comment Date: 5 p.m. eastern time on Tuesday, December 27, 2005.

Docket Number: ER02–2458–006.

Applicant: Midwest Independent Transmission System Operator, Inc.

Description: Midwest ISO submits Settlement Parties compliance filing of Amended and Restated Settlement Agreement.

Filed Date: 12/01/2005.

Accession Number: 20051201–5076.

Comment Date: 5 p.m. eastern time on Thursday, December 22, 2005.

Docket Number: ER05–795–003.

Applicant: New England Power Pool.

Description: ISO New England, Inc. and New England Power Pool submit a compliance report on Ancillary Services Market.

Filed Date: 12/05/2005.

Accession Number: 20051205–5097.

Comment Date: 5 p.m. eastern time on Tuesday, December 27, 2005.

Docket Number: ER05–1076–002; ER99–2311–006.

Applicant: Carolina Power & Light Company.

Description: Carolina Power & Light Co dba Progress Energy Carolinas, Inc submits a mitigation proposal tailored to its particular circumstances regarding wholesale sales made by CP&L for the period 7/19/05 & 8/6/05.

Filed Date: 12/05/2005.

Accession Number: 20051213–0339.

Comment Date: 5 p.m. eastern time on Tuesday, December 27, 2005.

Docket Number: ER05–1082–002.

Applicant: Carolina Power & Light Company.

Description: Carolina Power & Light Co dba Progress Energy Carolinas, Inc submits a revision to its Cost-Based Wholesale Power Sales Tariff.

Filed Date: 12/05/2005.

Accession Number: 20051213–0337.

Comment Date: 5 p.m. eastern time on Tuesday, December 27, 2005.

Docket Number: ER05–1422–003.

Applicant: Calpine Merchant Services Company, Inc.

Description: Notice of Change in Status of Calpine Merchant Services Company, Inc.

Filed Date: 12/05/2005.

Accession Number: 20051205–5042.

Comment Date: 5 p.m. eastern time on Tuesday, December 27, 2005.

Docket Number: ER06–146–001.

Applicant: Alliance Energy Marketing, LLC.

Description: Alliance Energy Marketing, LLC's errata to the revised tariff sheets submitted on 11/2/05.

Filed Date: 12/07/2005.

Accession Number: 20051212–0068.

Comment Date: 5 p.m. eastern time on Wednesday, December 28, 2005.

Docket Number: ER06–292–000.

Applicant: Public Service Company of New Mexico.

Description: Public Service Co of New Mexico submits the revised Network Integration Transmission Service Agreement (First Revised Service Agreement 134–PNM) and the revised Network Operating Agreement etc.

Filed Date: 12/06/2005.

Accession Number: 20051207–0075.

Comment Date: 5 p.m. eastern time on Tuesday, December 27, 2005.

Docket Number: ER06–293–000.

Applicant: Idaho Power Company.

Description: Idaho Power Co submits a Capacitor Joint Ownership Agreement with NorthWestern Corp & PacifiCorp designated as Rate Schedule 148 etc.

Filed Date: 12/06/2005.

Accession Number: 20051208–0058.

Comment Date: 5 p.m. eastern time on Tuesday, December 27, 2005.

Docket Number: ER06–294–000.

Applicant: NRG Ilion LP.

Description: NRG Ilion Limited Partnership submits a notice of cancellation for FERC Rate Schedule 1.

Filed Date: 12/06/2005.

Accession Number: 20051208–0070.

Comment Date: 5 p.m. eastern time on Tuesday, December 27, 2005.

Docket Number: ER06–295–000.

Applicant: ISO New England Inc.

Description: ISO New England Inc submits the revised pricing formula for its sales of Emergency Energy to Hydro-Quebec TransEnergie (HQTE) under the Interconnection Operators Agreement.

Filed Date: 12/07/2005.

Accession Number: 20051208–0069.

Comment Date: 5 p.m. eastern time on Wednesday, December 28, 2005.

Docket Number: ER06–298–000.
Applicant: Energy Group of America, Inc.
Description: Petition of the Energy Group of America, Inc for order accepting market-based rate schedule for filing and granting waivers and blanket approval.
Filed Date: 12/07/2005.
Accession Number: 20051212–0069.
Comment Date: 5 p.m. eastern time on Wednesday, December 28, 2005.

Docket Number: ER95–1278–016; ER05–698–004.
Applicant: NAP Trading and Marketing, Inc.
Description: NAP Trading and Marketing, Inc and San Joaquin Cogen, L.L.C., submit amendments to the market-based rate tariffs and notification of a non-material change in status.
Filed Date: 12/05/2005.
Accession Number: 20051212–0009.
Comment Date: 5 p.m. eastern time on Tuesday, December 27, 2005.

Docket Number: ER96–2640–016.
Applicant: CHI Power Marketing, Inc.
Description: CHI Power Marketing Inc., submits Second Revised Sheets No. 2 and 3 of FERC Electric Rate Schedule No.1 pursuant to ordering Paragraph (B) of FERC's 11/3/05 order.
Filed Date: 12/05/2005.
Accession Number: 20051213–0341.
Comment Date: 5 p.m. eastern time on Tuesday, December 27, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to 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 *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E5–7916 Filed 12–27–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined of Filings #1

December 20, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Number: ER02–971–000.
Applicant: DTE East China, LLC.
Description: DTE East China, LLC withdraws their petition for blanket authorizations, certain waivers, and order approving market based rate tariff filed on 2/6/02.
Filed Date: 12/09/2005.
Accession Number: 20051214–0028.
Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER05–1165–004.
Applicant: South Carolina Electric & Gas Company.
Description: South Carolina Electric and Gas Co submits two agreements with the City of Orangeburg and Carolina Department of Public Utilities in compliance with Order 614.
Filed Date: 12/09/2005.
Accession Number: 20051213–0326.
Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER05–718–000.
Applicant: California Independent System Operator.
Description: California Independent System Operator Corp submits the thirty-first report on market impacts of Amendments 66.
Filed Date: 12/09/2005.
Accession Number: 20051213–0313.
Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER06–52–001.
Applicant: Southern Company Services, Inc.
Description: Southern Company Services, Inc submits First Revised Service Agreement No. 391 for Network Integration Service with Southern Company Generation and Energy Marketing.
Filed Date: 12/09/2005.
Accession Number: 20051213–0328.
Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER06–182–001.
Applicant: MidAmerican Energy Company.
Description: MidAmerican Energy Co submits an amended Electric Transmission Interconnection Agreement with Corn Belt Power Cooperative dated 10/31/05.
Filed Date: 12/09/2005.
Accession Number: 20051213–0346.
Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER06–216–001.
Applicant: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits a supplement and errata to its 11/16/05 filing of Large Generator Interconnection Agreement.
Filed Date: 12/09/2005.
Accession Number: 20051213–0325.
Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER06–255–001.
Applicant: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits a supplement to its 11/29/05 filing of Large Generator Interconnection Agreement.
Filed Date: 12/09/2005.
Accession Number: 20051213–0327.
Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER06–260–001.
Applicant: Midwest Independent Transmission System Operator, Inc.
Description: The Midwest Independent Transmission System Operator, Inc submits a supplement to its 11/30/05 filing of revised & restated Generator Interconnection & Operating Agreement.
Filed Date: 12/09/2005.
Accession Number: 20051213–0334.

Comment Date: 5 p.m. eastern time on Wednesday, December 28, 2005.

Docket Number: ER06–299–000.

Applicant: Southern California Edison Company.

Description: Southern California Edison Co submits First Revised Sheet No. 4 to the Interconnection Facilities Agreement et al. with California Department of Water and Power.

Filed Date: 12/08/2005.

Accession Number: 20051213–0342.

Comment Date: 5 p.m. eastern time on Thursday, December 29, 2005.

Docket Number: ER06–300–000.

Applicant: Dartmouth PPA Holdings LLC.

Description: Dartmouth PPA Holdings LLC requests that FERC cancel its sole FERC-jurisdictional rate schedule.

Filed Date: 12/08/2005.

Accession Number: 20051213–0336.

Comment Date: 5 p.m. eastern time on Thursday, December 29, 2005.

Docket Number: ER06–301–000.

Applicant: Xcel Energy Services Inc.

Description: Xcel Energy Operating Co's et al. submit Service Schedule H (transfer of Non-System sales and purchases to facilitate non-system marketing) to the First Amended Joint Operating Agreement etc.

Filed Date: 12/08/2005.

Accession Number: 20051213–0345.

Comment Date: 5 p.m. eastern time on Thursday, December 29, 2005.

Docket Number: ER06–302–000.

Applicant: Wayne-White Counties Electric Cooperative.

Description: Wayne-White Counties Electric Cooperative notifies FERC that due to an amendment to section 201(f) of the Federal Power Act, Wayne-White ceased to be a public utility under the FPA as of 8/8/05.

Filed Date: 12/08/2005.

Accession Number: 20051213–0335.

Comment Date: 5 p.m. eastern time on Thursday, December 29, 2005.

Docket Number: ER06–303–000.

Applicant: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits revisions to the PJM FERC Electric Tariff Third Revised Rate Schedule FERC No. 24 and Sixth Revised Volume No. 1.

Filed Date: 12/08/2005.

Accession Number: 20051213–0329.

Comment Date: 5 p.m. eastern time on Thursday, December 29, 2005.

Docket Number: ER06–304–000.

Applicant: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits revisions to the PJM FERC Electric Tariff, Third Revised Rate Schedule FERC No. 24 & Sixth Revised Volume No. 1 under.

Filed Date: 12/09/2005.

Accession Number: 20051213–0333.

Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER06–305–000; ER04–212–002

Applicant: University Park Energy, LLC

Description: University Park Energy, LLC submits a notice of cancellation of its FERC Electric Tariff, Original Volume No. 2.

Filed Date: 12/09/2005.

Accession Number: 20051214–0019.

Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER06–306–000.

Applicant: Jersey Central Power and Light Company, et al.

Description: Jersey Central Power & Light Co et al submits an amendment to their Energy Procedure Manual for Determining Supplier Peak Load Share.

Filed Date: 12/09/2005.

Accession Number: 20051213–0331.

Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER06–307–000.

Applicant: DTE East China, LLC.

Description: DTE East China, LLC submits a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 3.

Filed Date: 12/09/2005.

Accession Number: 20051213–0332.

Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER06–308–000.

Applicant: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed Construction Service Agreement with Laurel Hill Energy, LLC et al.

Filed Date: 12/09/2005.

Accession Number: 20051213–0340.

Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER06–309–000.

Applicant: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits amendments to the Amended and Restated Operating Agreement, the Reliability Assurance Agreement Among Load Serving Entities in MAAC Control Zone etc.

Filed Date: 12/09/2005.

Accession Number: 20051213–0330.

Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER06–310–000.

Applicant: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits proposed revisions to FERC Rate Schedule No. 5 of its Market Administration and Control Area Services Tariff etc.

Filed Date: 12/09/2005.

Accession Number: 20051213–0338.

Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER06–311–000.

Applicant: New York Independent System Operator, Inc.

Description: The New York Independent System Operator, Inc. et al submits standard interconnection procedures and a standard interconnection agreement pursuant to Order 2006 and Order 2006–A, FERC's Final Rule etc.

Filed Date: 12/08/2005.

Accession Number: 20051214–0059.

Comment Date: 5 p.m. eastern time on Thursday, December 29, 2005.

Docket Number: ER06–312–000.

Applicant: Pacific Gas & Electric Company.

Description: Pacific Gas & Electric Co submits revisions to its market-based rate tariff in connection with its updated market power analysis etc.

Filed Date: 12/09/2005.

Accession Number: 20051214–0005.

Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Docket Number: ER06–313–000.

Applicant: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to their Open Access Transmission and Energy Markets Tariff.

Filed Date: 12/09/2005.

Accession Number: 20051214–0006.

Comment Date: 5 p.m. eastern time on Friday, December 30, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to 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 *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7924 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC06–42–000, et al.]

Entergy Services, Inc. et al.; Electric Rate and Corporate Filings

December 20, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Entergy Services, Inc. et al.

[Docket Nos. EC06–42–000; ES06–20–000]

Take notice that on December 16, 2005, Entergy Services, Inc. (Entergy Services) filed with the Federal Energy Regulatory Commission (Commission) an application on behalf of its associate companies, Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States, Inc. (Entergy Gulf States), Entergy Louisiana, LLC (as successor to Entergy Louisiana, Inc.), Entergy Mississippi, Inc. (Entergy Mississippi), System Energy Resources, Inc. (System Energy), Entergy Corporation (Entergy) and Entergy Louisiana Holdings, Inc. (Entergy Louisiana Holdings) (collectively the Applicants) pursuant to section 204 of the Federal Power Act to issue and sell short-term debt securities. Applicants are also requesting pursuant to section 203(a) of the Federal Power Act a blanket authorization to acquire securities issued by associate companies having a value in excess of $10 million, subject to various conditions.

Comment Date: 5 p.m. eastern time on January 6, 2006.

2. Duke Energy Trading and Marketing, L.L.C.

[Docket No. EC06–43–000]

Take notice that on December 16, 2005, Duke Energy Trading and Marketing L.L.C. (DETM) and BP Energy Company, (BP) filed with the Commission an application pursuant to section 203 of the Federal Power Act for authorization of the transfer by DETM of a wholesale power transaction to BP. DETM and BP have requested privileged treatment for commercially sensitive information contained in the application.

Comment Date: 5 p.m. eastern time on January 6, 2006.

3. Duke Energy Marketing America, LLC and J. Aron & Company

[Docket No. EC06–44–000]

Take notice that, on December 16, 2005, Duke Energy Marketing America, LLC (DEMA) and J. Aron & Company (J. Aron) filed with the Commission an application pursuant to section 203 of the Federal Power Act for authorization of the transfer by DEMA of a wholesale power transaction to J. Aron. Pursuant to 18 CFR 388.112, DEMA and J. Aron have requested privileged treatment for commercially sensitive information contained in the application.

Comment Date: 5 p.m. eastern time on January 6, 2006.

4. City of Pasadena, California

[Docket No. EL05–18–001]

Take notice that on October 11, 2005, the City of Pasadena, California confirmation that it has paid to the California Independent System Operator Corporation refunds required under the Commission's July 26, 2005 ''Order Approving Uncontested Settlement''.

Comment Date: 5 p.m. eastern time on December 28, 2005.

5. Snohomish County, Washington v. Enron Power Marketing, Inc.

[Docket No. EL05–139–001]

Take notice that on December 7, 2005, Public Utility District No. 1 of Snohomish County, Washington (Snohomish) pursuant to sections 205, 206, 306, and 309 of the Federal Power Act, and 18 CFR 385.206(e), tendered for filing an amendment to supplement its Petition originally filed on August 5, 2005. Snohomish further request privileged treatment for this filing.

Comment Date: 5 p.m. eastern time on January 17, 2006.

6. The Goldman Sachs Group, Inc.

[Docket No. EL06–27–000]

Take notice that on December 12, 2005, The Goldman Sachs Group, Inc. (GS Group) tendered for filing a Petition for Declaratory Order stating that section 203 of the Federal Power Act, as amended, will not apply to certain acquisitions of utility and holding company securities. GS Group further states that accompanying this filing is an Application for Blanket Authorization to Acquire Utility and/or Holding Company Securities, pursuant to, amended section 203(a)(2) of the Federal Power Act, but that the Commission need not act on this latter Application if the Commission grants the declaratory relief.

Comment Date: 5 p.m. eastern time on January 11, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to

receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7933 Filed 12–27–05; 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; Notice of Availability of the Draft Environmental Impact Statement for the Creole Trail LNG Terminal and Pipeline Project

December 16, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this draft Environmental Impact Statement (EIS) for the construction and operation of the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities, referred to as the Creole Trail LNG Terminal and Pipeline Project (Creole Trail Project) as proposed by Creole Trail LNG, L.P. and Cheniere Creole Trail Pipeline (collectively referred to as Creole Trail) in the above-referenced dockets.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the Creole Trail Project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The draft EIS evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives. The draft EIS also contains our Essential Fish Habitat Analysis.

The purpose of the Creole Trail Project is to provide the facilities necessary to meet growing demand for natural gas in the United States by providing access to a reliable and stable supply of natural gas from diverse areas of the world and to allow natural gas delivery to the Gulf of Mexico coast, midwest, northeast, and Atlantic markets using existing interstate and intrastate natural gas pipeline systems.

The draft EIS addresses the potential environmental effects of the construction and operation of the following facilities in Cameron, Calcasieu, Beauregard, Allen, Jefferson Davis, and Acadia Parishes, Louisiana:

- A ship unloading slip with two protected berths, each equipped with three liquid unloading arms and one vapor return arm;
- Four LNG storage tanks, each with a usable volume of 1,006,000 barrels (160,000 cubic meters (m^3));
- Twenty-one high pressure LNG sendout pumps, each with a capacity of 1,686 gallons per minute (384 m^3 per hour);
- Twenty-one high pressure submerged combustion vaporizers, each with a capacity of 183 million cubic feet per day;
- Three boil-off gas compressors;
- Ancillary utilities, buildings, and service facilities at the LNG terminal;
- 116.8 miles of dual 42-inch-diameter natural gas pipeline;
- 6.8 miles of 20-inch-diameter lateral line natural gas pipeline;
- 18 meter and regulation facilities; and
- Associated pipeline facilities including pig launcher and receiver facilities, two mainline valves (MLV) on the 20-inch-diameter pipeline, and eight MLVs along each of the individual pipelines in the dual pipeline system.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To expedite the FERC's receipt and consideration of your comments, electronic submission of comments is strongly encouraged. See Title 18 CFR 385.2001(a)(1)(iii) and the instructions on the FERC's Internet Web site (*http://www.ferc.gov*) under the eFiling link and the link to the User's Guide. Before you can submit comments, you will need to create a free account by clicking on ''Sign-up'' under ''New User.'' You will be asked to select the type of submission you are making. This type of submission is considered a ''Comment on Filing.'' Comments submitted electronically must be submitted by February 21, 2006.

If you wish to mail comments on the draft EIS, please mail your comments so that they will be received in Washington, DC on or before February 21, 2006 and carefully follow these instructions:

- Send an original and two copies of your comments to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Reference Docket No. CP05–357–000 et al. on the original and both copies;
- Label one copy of your comments for the attention of Gas Branch 2, PJ–11.2; and
- Mail your comments so that they will be received in Washington, DC on or before February 21, 2006.

After these comments have been reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

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). Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

Recent hurricane activities have affected infrastructure in the project area. In addition, the Commission has received relatively few comments on the Creole Trail Project to date, and comments that were received have been addressed in this draft EIS. For these reasons, the staff does not plan to hold public comment meetings on the draft EIS for the Creole Trail Project. If it is determined at a later date that public meetings are necessary, a separate notice will be issued and posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

The draft EIS has been placed in the public files of the FERC and is 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.

A limited number of copies of the draft EIS are available from the Public Reference and Files Maintenance Branch identified above. In addition, copies of the draft EIS have been mailed to Federal, state, and local agencies; elected officials; public interest groups; individuals and affected landowners who requested a copy of the draft EIS; libraries; newspapers; and parties to these proceedings.

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

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 at (202) 502–8659. The eLibrary link on the FERC Internet website 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 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 the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7915 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7321–018–New York]

Erie Boulevard Hydropower, L.P.; Notice of Availability of Environmental Assessment

December 19, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a subsequent license for the 1.0-megawatt Macomb Project, located on the Salmon River, in Franklin County, New York, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a subsequent license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also 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 documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Macomb Project No. 7321–018'' to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website under the ''eFiling'' link. For further information, contact Kristen Murphy at (202) 502–6236.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7922 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2630–004]

PacifiCorp; Notice of Extension of Time To File Comments

December 19, 2005.

On November 18, 2005, the Federal Energy Regulatory Commission (Commission) issued a Notice of Availability of Draft Environmental Assessment (EA) for the Prospect Nos. 1, 2, and 4 Hydroelectric Project (Project No. 2630). The Notice requested that comments regarding the Draft EA be filed with the Commission by no later than 45 days from the date of the Notice, which is January 2, 2006. Please take notice that the deadline for comments is now extended to January 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7921 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2085–000]

Southern California Edison Company; Notice of Application and Preliminary Draft Environmental Assessment Tendered For Filing With the Commission, and Establishing Deadline for Submission of Final Amendments

December 16, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New—Major License.

b. *Project No.:* 2085–000.

c. *Date Filed:* November 29, 2005.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Mammoth Pool Hydroelectric Power Project.

f. *Location:* On the San Joaquin River, near North Fork, California. The project affects 2,036 acres of federal land administered by the Sierra National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Russ W. Krieger, Vice President Power Production, Southern California Edison Company, 300 N. Lone Hill Ave., San Dimas, CA 91773. Phone: 909–394–8667.

i. *FERC Contact:* Jim Fargo at (202) 502–6095, or e-mail: *james.fargo@ferc.gov.*

j. *Cooperating Agencies:* We are asking federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below. Agencies granted cooperating status will be precluded from being an intervenor in this proceeding consistent with the Commission's regulations.

k. *Deadline for requests for cooperating agency status:* 60 days from the 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. Comments 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 (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing and process. The Commission strongly encourages electronic filing.

l. *Status:* This application has not been accepted for filing. We are not soliciting motions to intervene, protests, or final terms and conditions at this time.

m. *Description of project:* The Project is located in the central Sierra Nevada, within the San Joaquin River watershed, about 50 miles northeast of the City of Fresno. The Project is operated as a reservoir-storage type plant with an installed operating capacity of 190.0 MW and a dependable operating capacity of 187.0 MW. Water for the Project is taken from the San Joaquin River, Ross Creek, and Rock Creek and conveyed to the Mammoth Pool Powerhouse through the Mammoth Pool Tunnel.

The Project facilities include: The Mammoth Pool Dam forming Mammoth Pool Reservoir, with a capacity of about 119,940 acre-feet at an elevation of about 3,330 feet above mean sea level; one power tunnel about 7.5 miles long, to convey water from Mammoth Pool Reservoir to Mammoth Pool Powerhouse; two small diversions on Rock Creek and Ross Creek; and one 230 kV transmission line about 6.7 miles long that connects the Mammoth Pool Powerhouse to the non-project Big Creek No. 3 Switchyard.

n. 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 (P–2085), 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 e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are initiating consultation with the CALIFORNIA STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

p. *Final amendments:* Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice soliciting final terms and conditions.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7909 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF05–17–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Maritimes Phase IV Project and Request for Comments on Environmental Issues and Notice of Scoping Meetings

December 16, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that discusses the environmental impacts of the Maritimes & Northeast, L.L.C. (Maritimes) proposed Maritimes Phase IV Project which involves the construction of 146.2 miles of various diameter pipeline loops; [1] six new compressor stations; and modifications at one existing compressor station and four existing meter stations in Maine and Massachusetts. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

The Maritimes Phase IV Project is currently in the preliminary stages of design and at this time a formal application has not been filed with the Commission. For this project, the Commission is initiating the National Environmental Policy Act (NEPA) review prior to receiving the application. This allows interested stakeholders to become involved early in the project planning and to identify and resolve issues before a formal application is filed with the FERC. A docket number (PF05–17–000) has been established to place information filed by Maritimes and related documents issued or received by the Commission, into the public record.[2] Once a formal application is filed with the FERC, a new docket number will be established.

This notice is being sent to residents within 0.5 mile of the existing and proposed compressor stations; landowners along the pipeline routes under consideration; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers.

With this notice, we [3] are asking Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues, especially those in Appendix 2, to cooperate with us in the preparation of the EIS.[4] These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies which would like to request cooperating status should follow the instructions for filing comments described later in this notice. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Some affected landowners may be contacted by a project representative about the acquisition of an easement to construct, operate, and maintain the proposed pipeline. If so, the company should seek to negotiate a mutually acceptable agreement. In the event that the project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the pipeline. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing

[1] A pipeline loop is a segment of pipeline that general parallels an existing pipeline. The loop is connected to the existing pipeline and serves to increase the capacity of the pipeline system.

[2] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects.

[4] Agencies which have previously requested cooperating status for this project need not request it again.

on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Maritimes wants to expand the capacity of its facilities in Maine and Massachusetts to transport an additional 1.5 billion cubic feet per day of natural gas from two liquefied natural gas (LNG) import terminals presently under construction in Canada to markets in the Northeast United States. Specifically Maritimes would construct: [5]

Pipeline Loops in Maine

- Approximately, 1.7 miles of 30-inch-diameter pipeline and 25.5 miles of 36-inch-diameter pipeline in Washington County (Baileyville Loop);
- 26.7 miles of 36-inch-diameter pipeline in Hancock and Penobscot Counties (Woodchopping Ridge Loop);
- 23.6 miles of 36-inch-diameter pipeline in Penobscot and Waldo Counties (Brewer Loop);
- 21.7 miles of 36-inch-diameter pipeline in Waldo, Knox, Lincoln and Kennebec Counties (Searsmont Loop);
- 28.6 miles of 36-inch-diameter pipeline in Sagadahoc, Androscoggin and Cumberland Counties (Richmond Loop);
- 3.3 miles of 36-inch-diameter pipeline in Cumberland County (Falmouth Loop); and
- 15.1 miles of 36-inch-diameter pipeline in Cumberland and York Counties (Westbrook Loop).

New Compressor Stations in Maine and Massachusetts

Maine

- Woodchopping Ridge Compressor Station in Hancock County;
- Brewer Compressor Station in Penobscot County;
- Searsmont Compressor Station in Waldo County;
- Westbrook Compressor Station in Cumberland; and
- Eliot Compressor Station in York County.

Massachusetts

- New Compressor Station in Methuen, Middlesex County or in Haverhill, Essex County.

Additional Compression in Maine

- Richmond Compressor Station in Sagadahoc County.

Other Modifications in Maine and Massachusetts

Maine

- Addition of a meter station at the existing Baileyville Compressor Station in Washington County; and
- Modification of the existing Westbrook Meter Station in Cumberland County.

Massachusetts

- Modification of the existing Methuen Meter Station in Essex County; and
- Modification of the existing Dracut Meter Station in Middlesex County.

A map depicting the general location of the project facilities is provided in Appendix 1.[6] If you are interested in obtaining detailed maps of a specific portion of the project please contact Rebecca Kimball with Maritimes at 800–738–4880.

Non-Jurisdictional Facilities

Non-jurisdictional facilities associated with this proposal include two LNG terminals presently under construction (Canaport LNG in New Brunswick and Bear Head LNG in Nova Scotia). Both terminals anticipate being in service in 2008. Four new compressor stations and additional pipeline would also be required in Canada.

Land Requirements for Construction

It is estimated that the construction of the proposed facilities would disturb about 1,948 acres of land. About 579 acres of the total would be retained for the operation of the pipeline loops and the aboveground facilities (compressor/meter stations). The pipeline loops would be constructed on either a 95- or 105-foot-wide right-of-way with occasional increases in the right-of-way width for additional workspace at waterbody, wetland, road, and railroad crossings. Extra workspaces may also be required in areas with site specific constraints, such as side slope construction or areas requiring topsoil segregation. Other temporary land requirements would include land for pipe storage and equipment yards. Operation of the pipeline facilities would require a nominal 25- or 50-foot-wide permanent right-of-way.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity under section 7 of the Natural Gas Act. NEPA also requires us to discover and address concerns the public would have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues and reasonable alternatives. By this Notice of Intent, the Commission staff requests agency and public comments on the scope of the issues to address in the EIS. All comments received are considered during the preparation of the EIS. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EIS discusses impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Hazardous waste.
- Public safety.

We may also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues are included in the draft EIS. Depending on the comments received during the scoping process, the draft EIS would be published and mailed to Federal, state, and local agencies, Native American tribes, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period would be allotted for review of the draft EIS. All comments on the draft EIS would be considered and the document revised before issuing a final EIS. This draft EIS is used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

[5] The Westbrook Loop, the Eliot Compressor Station, the Westbrook Meter and Compressor Stations, and the Dracut Meter Station would be or are adjacent to the Joint Facilities which are a segment of the existing pipeline which is owned jointly by Maritimes and Portland Natural Gas Transmission System. The remaining facilities would be or are adjacent to existing pipeline which is solely owned by Maritimes.

[6] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch at (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice.

Currently Identified Environmental Issues

We have identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Maritimes. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils.

—Blasting and disposal of excess rock.

- Water Resources.

—Impacts of construction on water quality.

—Impact of construction on wetlands.

- Fish, Wildlife, and Vegetation.

—Impacts of construction on cold water fisheries and anadromous fisheries (including Atlantic salmon).

—Impacts of construction on wildlife habitat (including deer wintering areas).

—Disposal of timber and stumps.

- Endangered and Threatened Species.

—Impacts of construction on Atlantic salmon, shortnosed sturgeon, and bald eagles.

—Impacts on essential fish habitat.

- Reliability and Safety.

—Safety and reliability of the compressor stations and pipeline loops.

- Air Quality and Noise.

—Impacts of construction and operation of the pipeline and compressor stations on residences.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns may be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they may be. 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 letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2; and
- Reference Docket No. PF05–17–000 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before January 20, 2006.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we would 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 should open a free account which can be created on-line.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the attached Mailing List Retention Form (Appendix 3). If you do not return the form, you will be taken off the mailing list.

Additional Information

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 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*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Public Scoping Meeting

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings we will conduct in the area. The locations and times for these meetings are listed below:

January 9, 2006, 7 p.m., Jeff's Catering Brewer, 5 Coffin Avenue, Brewer, ME 04412

January 10, 2006, 7 p.m., Liberty Town Hall, 7 Waters Street, Liberty, ME 04949

January 11, 2006, 7 p.m., American Legion Hall, 17 Dunn Street, Westbrook, ME 04092

January 12, 2006, 7 p.m., Metheun High School Cafeteria, 1 Ranger Road, Methuen, MA 01844

The public scoping meetings are designed to provide state and local agencies, interested groups, affected landowners, and the general public with more detailed information and another opportunity to offer your comments on the proposed project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meetings will be made so that your comments will be accurately recorded.

Finally, public meetings will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7903 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

December 16, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2067–024.

c. *Date Filed:* June 2, 2005.

d. *Applicant:* Oakdale and San Joaquin Irrigation District.

e. *Name of Project:* Tulloch Project.

f. *Location:* Stanislaus River in Calaveras and Tuolumne Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Steve Felte, General Manager, P.O. 1158, Pinecrest, CA 95364, (209) 785–3838.

i. *FERC Contacts:* Any questions on this notice should be addressed to Ms. Shana High at (202) 502–8674.

j. *Deadline for filing comments and or motions:* January 17, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2067–024) on any comments or motions filed. 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 e-filings.

k. *Description of Proposal:* Oakdale and San Joaquin Irrigation District filed an application requesting Commission authorization to transfer fee title of certain project lands to resolve some encroachments and solve issues regarding the use of project lands for private purposes.

l. *Location of the Applications:* The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's website 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 call the Helpline at (866) 208–3676 or contact *FERCOnLineSupport@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments 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 comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7908 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

December 16, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2145–069.

c. *Date Filed:* December 1, 2005.

d. *Applicant:* Public Utility District No. 1 of Chelan County.

e. *Name of Project:* Rocky Reach Hydroelectric Project.

f. *Location:* The proposed action would take place near river mile 493 on the Douglas County (east) shoreline of the project reservoir. The project is located on the Columbia River in Douglas and Chelan Counties, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Ms. Michelle Smith, Licensing and Compliance Manager; Public Utility District No. 1 of Chelan County; P.O. Box 1231; Wenatchee, WA; 98807–1231; (888) 663–8121, Ext. 4180.

i. *FERC Contact:* Any questions on this notice should be addressed to Isis Johnson at (202) 502–6346, or by e-mail: *Isis.Johnson@ferc.gov*.

j. *Deadline for filing comments and or motions:* January 17, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2145–069) on any comments or motions filed. 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 e-filings.

k. *Description of Request:* Public Utility District No. 1 of Chelan County, licensee for the Rocky Reach Hydroelectric Project, has requested Commission approval to permit Lake Entiat Lodge Associated (applicant) to expand the number of docks at the Lake Entiat Estates Marina (also known as Sun Cove Marina). The existing marina can accommodate 62 watercrafts, and was built in the mid-1960s within three small adjoining basins connected to the project reservoir. The applicant proposes a multi-year development plan designed to improve the marina for recreational use by the Lake Entiat Estates residential community. The development plan includes: (1) The installation of 12 new boat slips to accommodate a total of 24 boats; (2) dredging of fine sediment accumulation within the three existing basins; (3) extending two existing boat ramps; and (4) the expansion/replacement of certain existing marina float facilities.

l. *Location of the Application:* This filing is available for review at the Commission 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 (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit

comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments 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 comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7910 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend Shoreline Management Plan and Soliciting Comments, Motions To Intervene, and Protests

December 16, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Shoreline Management Plan.

b. *Project No.:* 2232–499.

c. *Date Filed:* November 9, 2005.

d. *Applicant:* Duke Power, a division of Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* This project is located on the Catawba and Wateree Rivers, in nine counties in North Carolina (Burke, Alexander, McDowell, Iredell, Caldwell, Lincoln, Catawba, Gaston, and Mecklenburg Counties) and five counties in South Carolina (York, Chester, Lancaster, Fairfield and Kershaw Counties). This project does not occupy any Tribal or federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative; Duke Energy Corporation; P.O. Box 1006; Charlotte, NC 28201–1006; 704–382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175 or by e-mail: *Brian.Romanek@ferc.gov.*

j. *Deadline for filing comments and or motions:* January 17, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2232–499) on any comments or motions filed. 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 e-filings.

k. *Description of Request:* Duke Power, licensee for the Catawba-Wateree Hydroelectric Project, has requested Commission authorization to relocate the existing Cane Creek Boat Landing located on Fishing Creek Lake off of Road 296 in Lancaster County, SC. The new location would be off of Highway 200 about three miles south of the existing site which is also in Lancaster County. Other recreational improvements are planned at the new location in the near future.

l. *Location of the Application:* This filing is available for review at the Commission 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 (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments 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 comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7911 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

December 16, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of Project Lands.

b. *Project No.:* 2232–503.

c. *Date Filed:* November 21, 2005.

d. *Applicant:* Duke Power, a division of Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* The project is located on Lake Norman, in Catawba County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Joe Hall, Lake Management Representative, Duke Energy Corporation, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Ms. Rebecca Martin at (202) 502–6012, or e-mail address: *Rebecca.martin@ferc.gov.*

j. *Deadline for filing comments and or motions:* January 17, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2232–503) on any comments or motions filed. 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 at *http://www.ferc.gov* under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power is seeking authorization to lease to Syn-R–G, LLC, 0.973 acres of Project lands on Lake Norman for a Commercial/Residential Marina which will consist of a cluster dock with thirty-six boat docking locations. The proposed dock will consist of three individual piers to accommodate twelve boats each for a total of thirty-six docking locations. The cluster dock will be constructed off-site and floated into place during low peak lake recreation usage. These slips will serve the residents of the Long Island Airport Subdivision.

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments 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 comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. Copies of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7912 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

December 16, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2503–091.

c. *Date Filed:* November 15, 2005.

d. *Applicant:* Duke Power.

e. *Name of Project:* Keowee-Toxaway Hydroelectric Project.

f. *Location:* The project is located on Lake Keowee in Oconee County, South Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William S. Ambrose, Lake Management Representative, Duke Power, Lake Management, P.O. Box 1006, Charlotte, NC 28201–1006. Phone: (704) 382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674.

j. *Deadline for filing comments and/or motions:* January 17, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2503–091) on any comments or motions filed. 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 e-filings.

k. *Description of Proposal:* Duke Power proposes to lease 63 acres of land inside the project boundary to Warpath Development, Inc. to construct and maintain a public park and/or public recreation area at the Warpath Access Area on Lake Keowee in Pickens County, South Carolina, for use by residents and visitors of Pickens County. By letter issued December 12, 2005, Duke Power was notified that the proposal is beyond the scope of license article 49, the Commission's standard land use article, and will be processed as a formal application.

l. *Locations of the Application:* This filing is available for review at the Commission 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 (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments 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 comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the project number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7913 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Land Waters and Soliciting Comments, Motions To Intervene, and Protests

December 16, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 271–083.

c. *Date filed:* October 24, 2005.

d. *Applicant:* Entergy Arkansas, Inc.

e. *Name of Project:* Carpenter-Remmel Project.

f. *Location:* The project is located on the Quachita River in Hot Springs and Garland Counties, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) through 825(r) and 799 and 801.

h. *Applicant Contact:* Blake Hogue 141 West County Line Rr, Malvern, AR 72104, (501) 844–2148.

i. *FERC Contact:* Hillary Berlin at 202–502–8915, or e-mail *hillary.berlin@ferc.gov.*

j. *Deadline for filing comments and or motions:* January 3, 2006.

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. Please include the project number (P–271–083) on any comments or motions filed. 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 e-filings.

k. *Description of Application:* The licensee requested Commission approval of a permit application, filed by Mike Tankersly of SJT Properties, Inc., to build three stationary, covered boat docks (13 slips total) and associated boardwalks on Lake Hamilton.

l. *Location of Application:* The filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, 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 (866) 208–3676 or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments 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 comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7914 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend Recreation Plan and Soliciting Comments, Motions To Intervene, and Protests

December 21, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 7161–053.

c. *Date Filed:* October 14, 2005.

d. *Applicant:* Douglas County, Oregon.

e. *Name of Project:* Galesville Project.

f. *Location:* The project is located on Cow Creek in Douglas County, Oregon. This project occupies federal lands administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. W. Brian Connors, Hydroelectric Plant Manager, Douglas County Public Works Department, 1036 SE Douglas, Room 219, Roseburg, Oregon 97470, (541) 440–4255.

i. *FERC Contacts:* Any questions on this notice should be addressed to Mr. Jon Cofrancesco at (202) 502–8951, or e-mail address: *jon.cofrancesco@ferc.gov*.

j. *Deadline for filing comments and or motions:* January 23, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–7161–053) on any comments or motions filed. 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 e-filings.

k. *Description of the Application:* On October 14, 2005, Douglas County (licensee) filed an application to amend the project's recreation plan to provide for a campground adjacent to Galesville reservoir. Specifically, the licensee proposes to construct a campground with seven rustic cabin sites and 19 sites for recreational vehicles on a narrow strip of land between the county road and the reservoir adjacent to an existing developed picnic area and boat launch.

l. *Location of the Application:* The filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, 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 (866) 208 3676 or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments 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 comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7936 Filed 12–27–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8016–2]

Notice of an Initial Scoping Workshop on the Development of Regulations for Aircraft Public Water Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of a public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is holding an initial workshop on the development of regulations for aircraft public water systems. This workshop will examine and discuss the various aspects of aircraft public water systems, including an overview of aircraft water systems and watering points, existing drinking water regulations for aircraft water systems, the scope of issues for proposing regulations tailored to aircraft water systems, as well as preliminary options for a proposed rulemaking. This is the first workshop in a series designed to gain perspectives from representatives from industry, government, public interest groups, and the general public. The EPA has been working with the Food and Drug Administration and the Federal Aviation Administration to plan this event.

DATES: The workshop will be held from 9 a.m. to 4:30 p.m., Eastern Time, on Wednesday, January 18 and Thursday, January 19, 2006. There will be a one-hour break for lunch each day.

ADDRESSES: The meeting will be held at the Hotel Washington, 515 15th Street, NW., Washington, DC 20004. The hotel is located two blocks west of the Metro Center stop on the orange, blue, and red lines. The hotel's telephone number is (202) 638–5900.

FOR FURTHER INFORMATION CONTACT: For general information about this workshop or to pre-register, please contact Travis Creighton by phone at (202) 564–3858, by email at *creighton.travis@epa.gov,* or by mail at: U.S. Environmental Protection Agency, Mail Code 4606M, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also preregister and obtain an agenda for the meeting online at *http://www.epa.gov/airlinewater.* For technical inquiries regarding the development of an aircraft drinking water rule, contact Rick Naylor at (202) 564–3847, or by email: *naylor.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: There is no charge for attending this workshop as an observer, but seats are limited, so register as soon as possible. Attendees will have an opportunity to make oral remarks (limited to five minutes) at specific points during the meeting. EPA also welcomes written remarks received by January 31, 2006, which can be sent to Travis Creighton by email or by mail at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

Special Accommodations

Any person needing special accommodations at this meeting, including wheelchair access, should contact Travis Creighton at the phone number or email address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for special accommodations should be made at least five business days in advance of the public meeting.

Dated: December 21, 2005.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E5–7992 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2002–0001; FRL–7754–5]

National Pollution Prevention and Toxics Advisory Committee (NPPTAC); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act (FACA), 5 U.S. App.2 (Pub. L. 92–463), EPA gives notice of a 2–day meeting of the National Pollution Prevention and Toxics Advisory Committee (NPPTAC). The purpose of the meeting is to provide advice and recommendations to EPA regarding the overall policy and operations of the programs of the Office of Pollution Prevention and Toxics (OPPT).

DATES: The meeting will be held on January 25, 2006 from 8:30 a.m. to 5:30 p.m., and January 26, 2006, from 10:30 a.m. to 3:30 p.m.

Registration to attend the meeting identified by docket identification (ID) number EPA–HQ–OPPT–2002–0001, must be received on or before January 20, 2006. Registration will also be accepted at the meeting.

Request to provide oral comments at the meeting, identified as (NPPTAC) January 2006 meeting, must be received in writing on or before January 20, 2006.

Request to participate in the meeting, identified by docket ID number OPPT–2002–0001, must be received on or before January 20, 2006.

For information on access or services for individuals with disabilities, please contact John Alter at (202) 564–9891 or *npptac.oppt@epa.gov.* To request accommodation of a disability, please contact John Alter, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Meetings of two Work Groups of the Committee will take place as follows. The High Production Volume (HPV) Work Group will meet on January 24, 2006, from 8:30 a.m. to 10:30 a.m., to discuss activities related to EPA's HPV Challenge Program. The Pollution Prevention (P2) Work Group will meet on January 24, 2006 from 10:45 a.m. to 12:45 p.m., to discuss activities related to EPA's Pollution Programs.

ADDRESSES The meeting will be held at the Hyatt Regency Crystal City, located at 2799 Jefferson Davis Highway, Arlington, VA. Requests to participate in the meeting may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: John Alter, (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–9891; e-mail address: *npptac.oppt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons who have an interest in or may be required to manage pollution prevention and toxic chemical programs, individual groups concerned with environmental justice, children's health, or animal welfare, as they relate to OPPT's programs under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act (PPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in the activities of the NPPTAC. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number EPA–HQ–OPPT–2002–0001. 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 EPA docket center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA docket center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA docket center reading room telephone number is (202) 566–1744 and the telephone number for the OPPT docket, which is located in the EPA docket center, is (202) 566–0280.

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/.*

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http//www.regulations.gov/.* Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA dockets at *http://www.epa.gov/edocket/,* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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 EPA–HQ–OPPT–2002–0001, include NPPTAC January 2006 meeting in the subject line on the first page of your comment.

1. *By mail.* OPPT Document Control Office, Environmental Protection Agency, (7407M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001.

2. *Electronically.* At *http://www.epa.gov/edocket/*, search for EPA–HQ–OPPT–2002–0001, and follow the directions to submit comments.

3. *Hand delivery/courier.* OPPT Document Control Office in EPA East Bldg., Rm. (6428M), 1201 Constitution Ave., NW., Washington DC.

II. Background

The proposed agenda for the NPPTAC meeting includes: The High Production (HPV) Volume Challenge Program;

Pollution Prevention, Risk Assessment; Risk Management; Risk Communication; and Coordination with Tribes and other Stakeholders. The meeting is open to the public.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPPT–2002–0001, must be received on or before January 20, 2006.

For information on access, or services for individuals with disabilities, please contact John Alter at (202) 564–9891 or e-mail *npptac.oppt@epa.gov.* To request accommodation of a disability, please contact John Alter, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

List of Subjects

Environmental protection, NPPTAC, pollution prevention, toxics, toxic chemicals, and chemical health and safety.

Dated: December 19, 2005.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. E5–7995 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0255; FRL–7754–1]

Pesticide Program Dialogue Committee Performance Measures Work Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC) Performance Measures Work Group on January 18 to 19, 2006. An agenda for this meeting is being developed and will be posted on EPA's website (*http://www.epa.gov/pesticides/ppdc*). The work group is developing advice and recommendations concerning performance management measures for EPA's pesticide program.

DATES: The meeting will be held on Wednesday, January 18, 2005 and Thursday, January 19, 2005. The meeting is tentatively scheduled from 9 a.m. to 5 p.m. on both days; please check the agenda posted on EPA's website for any revisions to the scheduled times.

ADDRESSES: The meeting will be held in EPA's offices at Crystal Mall 2, 1801 S. Bell St., Arlington, VA in room 1123.

FOR FURTHER INFORMATION CONTACT: Sherry Sterling, Office of Pesticide Programs (7501C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0387; fax number: (703) 308–4776; e-mail address: *sterling.sherry@epa.gov*.

Information on services for the handicapped: For information on facilities or services for the handicapped or to request special assistance at the meetings, contact Sherry Sterling at (703) 305–0387 as soon as possible.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to persons who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996. Potentially affected entities may include, but are not limited to: agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number EPA-HQ-OPP–2005–0255. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

Agency Website. EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov*. Follow the online instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

The Office of Pesticide Programs is entrusted with responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

III. How Can I Request to Participate in this Meeting?

PPDC meetings are open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Foods, Pesticides and pests,

Public health, Risk assessment, Tolerance reassessment.

Dated: December 14, 2005.

Marty Monell,

Acting Director, Office of Pesticide Programs

[FR Doc. 05–24466 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0293; FRL–7752–4]

Cypermethrin Risk Assessments; Notice of Availability and Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments and related documents for the pyrethroid pesticide cypermethrin, and opens a 60 day public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a RED for cypermethrin through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0293, must be received on or before February 27, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Yan Donovan, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; Phone: (703) 605–0194; fax number: (703) 308–8041; e-mail address: *donovan.yan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP–2005–0293. 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/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Docket at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to

consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPP–2005–0293. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number EPA–HQ–OPP–2005–0293. 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 EPA-HQ- OPP–2005–0293.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number EPA–HQ–OPP–2005–0293. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for cypermethrin, a pyrethroid pesticide, and soliciting public comment on risk management ideas or proposals. EPA developed the risk assessments and risk characterization for cypermethrin through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

The majority of cypermethrin use is non-agricultural. Cypermethrin is registered for indoor and outdoor use on industrial, commercial, and residential sites, including use by homeowners. When applied indoors, cypermethrin is used to control insect pests such as ants, cockroaches, termites, spiders. Other non-food-contact uses include outdoor application to structures and lawns (e.g., as a soil residual termiticide), application to commercial storage facilities (indoor and outdoor), eating establishments (indoor and outdoor, non food contact only), dairy facilities (indoor and outdoor, non food contact only), food stores or processing plants (indoor and outdoor, non food contact only), poultry processing facilities (indoor and outdoor, non food contact only), motor vehicles, and swimming pool water systems. In agriculture, cypermethrin is applied as a foliar spray to control insect pests primarily in cotton, with lesser use on pecans, cole crops, lettuce, onions, and other minor

crops. Cypermethrin can be applied directly to cattle (ear tags) and horses, and to pet (dog, horse) sleeping quarters.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for cypermethrin. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as information on indoor and outdoor residential and other non-agricultural uses, including typical application rates and total pounds of active ingredient applied, methods of application, and frequency of re-application.

From the human health effects assessment, there is the potential for short-term risk to toddlers exposed to cypermethrin following indoor crack and crevice treatments. From the environmental fate assessment, there is the potential for acute and chronic risk to aquatic invertebrates and fish from agricultural applications, with the highest potential acute risk to estuarine/marine invertebrates. Although exposure to aquatic organisms from outdoor, non-agricultural uses of cypermethrin could not be assessed at this time, data recently submitted to EPA from a study of an urban creek in California suggest the potential for aquatic exposure and risk from urban runoff, as well. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures, such as specific application procedures and other measures to reduce runoff from outdoor applications to structures and lawns.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to cypermethrin, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide. For cypermethrin, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

Cypermethrin is a member of the pyrethroid class of pesticides. Although all pyrethroids alter nerve function by modifying the normal biochemistry and physiology of nerve membrane sodium channels, EPA is not currently following a cumulative risk approach based on a common mechanism of toxicity for the pyrethroids. Although all pyrethroids interact with sodium channels, there are multiple types of sodium channels and it is currently unknown whether the pyrethroids have similar effects on all channels. The Agency does not have a clear understanding of effects on key downstream neuronal function e.g., nerve excitability, nor do we understand how these key events interact to produce their compound specific patterns of neurotoxicity. There is ongoing research by EPA's Office of Research and Development and pyrethroid registrants to evaluate the differential biochemical and physiological actions of pyrethroids in mammals. This research is expected to be completed by 2007. When available, the Agency will consider this research and make a determination of common mechanism as a basis for assessing cumulative risk. Information regarding EPA's procedures for assessing cumulative effects of substances found to have a common mechanism of toxicity is available on EPA's website at *http://www.epa.gov/pesticides/cumulative/*. The decisions presented in the Reregistration Eligibility Decision (RED) may be supplemented by further risk mitigation measures when EPA considers the cumulative risks of the pyrethroid pesticides.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for cypermethrin. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 15, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–24407 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0479; FRL–7754–4]

Dicamba Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's risk assessments and related documents for the pesticide dicamba, and opens a public comment period on these documents. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for dicamba through a modified, 4–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before February 27, 2006.

ADDRESSES: Comments identified by docket identification (ID) number EPA–

HQ–OPP–2005–0479, 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: Kendra Tyler, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0125; fax number: (703) 308–8041; e-mail address: *tyler.kendra@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP–2005–0479. 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/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPP–2005–

0479. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov,* Attention: Docket ID Number EPA–HQ–OPP–2005–0479. 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 EPA–HQ–OPP–2005–0479.

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 12, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number EPA–HQ–OPP–2005–0479. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is releasing for public comment its human health and environmental fate and effects risk assessments and related documents for dicamba, and soliciting public comment on risk management ideas or proposals. Dicamba is a selective benzoic acid herbicide registered for the control of certain broadleaf weeds and woody plants before their emergence. EPA developed the risk assessments and risk characterization for dicamba through a modified version of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Dicamba causes sensitive plants to exhibit rapid uncontrolled growth. There are six different forms of dicamba acid and salts being considered for reregistration including the dicamba acid, dimethylamine (DMAS) salt, sodium (Na) salt, isopropylamine (IPA) salt, diglycolamine (DGA) salt, and potassium (K) salt. Dicamba is registered for use on rights of way areas, asparagus, barley, corn (field and pop), grasses, oats, proso millet, rye, sorghum, soybeans, sugarcane, wheat, golf courses, and residential lawns.

EPA is providing an opportunity, through this notice, for interested parties to provide comments and input on the Agency's risk assessments for dicamba. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific pesticide.

Through this notice, EPA also is providing an opportunity for interested parties to provide risk management proposals or otherwise comment on risk management for dicamba. Risks of concern associated with the use of dicamba are for plants, birds, and small mammals. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical, unusually high exposure to dicamba, compared to the general population.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of the issues, and degree of public concern associated with each pesticide.

For dicamba, a modified, 4–Phase process with one comment period and ample opportunity for public consultation seems appropriate in view of its relatively low risks. However, if as a result of comments received during this comment period EPA finds that additional issues warranting further discussion are raised, the Agency may lengthen the process and include a second comment period, as needed.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments will become part of the Agency Docket for dicamba. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 15, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–24409 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0478; FRL–7752–3]

Imazaquin; Tolerance Reassessment Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Tolerance Reassessment Decision (TRED) for the pesticide Imazaquin, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide imazaquin through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide tolerance reassessment and reregistration decisions. Through the tolerance reassessment program, EPA is ensuring that all pesticides meet current health and food safety standards.

DATES: Comments, identified by docket ID number OPP–2005–0478, must be received on or before February 27, 2006.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Wilhelmena Livingston, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8025; fax number: (703) 308–8005; e-mail address: *livingston.wilhelmena@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0478. 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/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly

available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0478. 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–2005–0478. 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–2005–0478.

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–2005–0478. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA has reassessed the uses of imazaquin and the one existing tolerances or legal residue limits. On December 20, 2005, EPA reached a tolerance reassessment decision for this low risk pesticide. Imazaquin is an imidazolinone herbicide which controls weeds by inhibiting the synthesis of specific amino acids (valine, leucine and isoleucine) necessary for plant growth. It is registered as a pre-plant, preemergence and early postemergence herbicide for use on soybeans, primarily across the central Midwest from Kentucky to Illinois and across the mid-South in Arkansas, Louisiana and Mississippi. It is also registered for pre- and postemergence weed control on ornamentals and warm season turfgrass in both residential and non-residential settings. The turf and ornamental uses are concentrated across the southern U.S. because of imazaquin's lack of selectivity on cool season grasses. The Agency is now issuing for comment the resulting Report on Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision for imazaquin, known as a TRED, as well as related risk assessments and technical support documents.

EPA developed the imazaquin TRED through a modified, streamlined version of its public process for making tolerance reassessment and reregistration eligibility decisions. Through these programs, the Agency is ensuring that pesticides meet current standards under the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by FQPA. EPA must review tolerances and tolerance exemptions that were in effect when the FQPA was enacted, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the imazaquin tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** of May 14, 2004 (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like imazaquin, which pose no risk concerns, and require no risk mitigation. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the imazaquin TRED.

The tolerance reassessment program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Imazaquin, however, poses no risks that require mitigation. The Agency therefore is issuing the imazaquin TRED, its risk assessments, and related support documents simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the TRED. All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for imazaquin. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and electronic EDOCKET. If any comment significantly affects the document, EPA also will publish an amendment to the TRED in the **Federal Register**. In the absence of substantive comments requiring changes, the decisions reflected in the TRED will be implemented as presented. These decisions may be supplemented by risk mitigation measures when EPA considers its cumulative assessment of the cumulative group pesticides.

B. What is the Agency's Authority for Taking this Action?

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 19, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E5–7991 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP–2005–0512; FRL–7749–6]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval ofapplications to register the pesticide products, Dutch Trig® and Heads Up Plant Protectant, containing active ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA),as amended.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), listed in the following table:

File Symbol	Regulatory Action Leader	Mailing Address	Telephone number and E-mail Address
71927–1	Sharlene R. Matten	USEPA/OPP/BPPD (7511C) 1200 Pennsylvania Ave., NW Washington D.C. 20460	(703) 605–0514 matten.sharlene@epa.gov

File Symbol	Regulatory Action Leader	Mailing Address	Telephone number and E-mail Address
81853–1	Todd Peterson	USEPA/OPP/BPPD (7511C) 1200 Pennsylvania Ave., NW Washington D.C. 20460	(703) 308–7224 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 are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

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

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

1. *Docket*. EPA has established a docket for this action under Docket identification number (ID) EPA–HQ–OPP–2005–0512; FRL–7749–6. Publicly available docket materials are available either electronically through *www.regulations.gov* 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.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom ofInformation Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. The request should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

Agency Website. EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket mangement and comment system located at *http://www.regulations.gov*. Follow the online instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of *Verticillium* isolate WCS 850 and Saponins of *Chenopodium quinoa*, and information on social, economic, and environmental benefits to be derived from its use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Verticillium* isolate WCS 850 and Saponins of *Chenopodium quinoa* in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Application

EPA issued a notice, published in the **Federal Register** of August 10, 2005 (70 FR 46507) (FRL–7724–3), which announced that ARCADIS Innovative Tree Services, 1114 Benfield Boulevard, Suite A, Millersville, MD 21108, had submitted an application to register the pesticide product, Dutch Trig®, a fungicide. (EPA File Symbol 71927–R), containing the active ingredient, *Verticillium* isolate WCS 850. This product is intended to protect elm trees from Dutch elm disease. The application was approved on October 19, 2005, as Dutch Trig® (EPA Registration Number 71927–1).

EPA issued another notice, published in the **Federal Register** of December 15, 2004 (69 FR 75063–75065) (FRL–7687–7), which announced that Heads Up Plant Protectants Inc., c/o Walter G. Talarek, PC, 1008 Riva Ridge Drive, Great Falls, VA, 22066, had submitted an application to register the pesticide product, Heads Up Plant Protectant, a fungicide. (EPA File Symbol 81853–R), containing Saponins of *Chenopodium quinoa*, with saponins at 49.65%. This product was not previously registered. The application was approved on September 16, 2005, as Heads Up Plant Protectant, (EPA Registration Number 81853–1).

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: December 15, 2005.

Phil Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 05–24467 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2002–0247; FRL-7752–5]

Azinphos-methyl; Order to Amend Registrations to Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the order to amend registrations to terminate certain uses, voluntarily requested by the registrant(s) and accepted by the Agency, of products containing the pesticide azinphos-methyl, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a September 30, 2002 **Federal Register** Notice of Receipt of Requests (67 FR 61337) (FRL–7199–6) from the azinphos-methyl registrants to amend their product registrations to terminate certain uses of azinphos-methyl from their product registrations. In the September 30, 2002 Notice, EPA indicated that it would issue an order implementing the amendments to terminate uses, unless the Agency received substantive comments within the 30–day comment period that would merit its further review of these requests. The Agency did not receive any comments on the Notice. Accordingly, EPA approved new labels without the uses in August 2003. Any distribution, sale, or use of the azinphos-methyl products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Diane Isbell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8154; fax number: (703) 308–8041; e-mail address: *isbell.diane@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number EPA–HQ–OPP–2002–0247. 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/*.

EDOCKET, EPA's electronic public and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

On May of 2002, Bayer CropScience, Makheteshim Chemical Works, Gowan Company, and Micro-Flo Corporation signed a Memorandum of Agreement with EPA implementing the provisions of the Azinphos-methyl IRED by dividing the universe of uses into three groups. Group 1 contained 23 crops with little use that were deleted from product labels immediately. Group 2 consists of seven uses that are scheduled to be phased out. Group 3 is comprised of 10 uses which have time-limited registrations pending the submission and evaluation of renewal applications and biomonitoring, product efficacy, and other data.

In August 2003, the Agency approved the requested amendments to terminate the Group 1 uses of azinphos-methyl from the product registrations. New labels were approved without the Group 1 uses. The Group 1 uses, requested for termination by the registrant, consisted of the following: Alfalfa, beans (succulent and snap), birdsfoot trefoil, broccoli, cabbage (including Chinese), cauliflower, celery, citrus, clover, cucumbers, eggplant, filberts, grapes, melons (honeydew, muskmelon, cantaloupe, watermelons, and other melons), onions (green and dry bulb), pecans, peppers, plums and dried plums, quince, spinach, strawberries, and tomatoes.

Table 1 includes the names and addresses of record for the registrants that requested use terminations for their products, in sequence by EPA company number.

EPA Company No.	Company Name and Address
264	Bayer CropScience 2 T.W. Alexander Drive Research Triangle Park, North Carolina 27709
10163	Gowan Company P.O. Box 5569, Yuma, Arizona 85366–5569
11678	Makhteshim Chemical Works, 4515 Falls of Neuse Road, Suite 300, Raleigh, North Carolina 27609
51036	Micro-Flo Corporation, LLC., 530 Oak Court Drive, Memphis, Tennessee 38117

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the September 30, 2002

Federal Register notice announcing the Agency's receipt of the requests to terminate certain uses of azinphos-methyl.

IV. Use Termination Order

Pursuant to FIFRA section 6(f), EPA is issuing this cancellation order as a follow-up to the Agency's August 2003, approval of the requested amendments to terminate the Group 1 uses of azinphos-methyl from the product registrations. As noted above, new labels were approved without the Group 1 uses. Accordingly, this order incorporates the Agency's approval of the amended labels terminating the affected uses.

Any distribution, sale, or use of existing stocks of the affected products in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth below in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request. This order reflects the Agency's August 2003, approval of that request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this Notice includes the following existing stocks provision.

All sale, distribution and use of existing stocks by registrants of manufacturing-use products bearing these uses was prohibited 90–calender days after receipt of EPA approved revised labels reflecting the use deletions. All sale and distribution of existing stocks of end-use products bearing these uses by registrants was prohibited 90–calender days after receipt of EPA approved revised labels reflecting the use deletions. Use of existing stocks of end use products bearing these uses is not prohibited provided the users follow the labeling instructions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 15, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–24469 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0176; FRL–7748–8]

Mancozeb Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide mancozeb. The Agency's risk assessments and other related documents are also available in the mancozeb Docket. Mancozeb is a member of the ethylene bisdithiocarbamate (EBDC) group of fungicides, which also includes the related fungicides maneb and metiram. Mancozeb is used as a broad spectrum fungicide on a variety of agricultural crops, ornamentals, and turf. As a part of this process, the Agency announced the availability of the EBDCs preliminary risk assessments and supporting documents for a 90–day comment period and requested risk reduction options under docket identification (ID) number EPA–HQ–OPP;2004–0078. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Christina Scheltema, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2201; fax number: (703) 308–8005; e-mail address: *scheltema.christina@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0176. 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/*.

EDOCKET, epa's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docketmanagement and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'' then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide

Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, mancozeb under section 4(g)(2)(A) of FIFRA. Mancozeb is an EBDC fungicide used on a variety of agricultural crops, ornamentals, and turf. EPA has determined that the data base to support reregistration is substantially complete and that products containing mancozeb are eligible for reregistration depending on their specific uses, provided that the risk mitigation measures outlined in the RED are adopted, and labels are amended to reflect these measures. Registrants have requested cancellations and/or deletions of mancozeb use as a foliar treatment for cotton, use in pineapple propagation, and use on residential lawns, athletic fields, and pachysandra; these uses are not eligible for reregistration. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing mancozeb.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the mancozeb tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, mancozeb was reviewed through the modified 4–Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for mancozeb.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Opportunities for public comment were offered as this decision was being developed. Additionally, all issues related to this pesticide were resolved through consultations with stakeholders. The Agency, therefore, is issuing the mancozeb RED without a comment period.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Mancozeb, EBDC fungicides, Environmental protection, Pesticides and pests.

Dated: December 15, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–24465 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0178; FRL–7748–7]

Maneb Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide maneb. The Agency's risk assessments and other related documents also are available in the maneb Docket. Maneb is registered for use on a wide variety of food/feed crops, including fruit and nut crops, vegetable crops, field and forage crops, grapes, field crop seeds, and others; ornamental plants in nurseries and greenhouses; and sod farms. Maneb is a member of the ethylene bisdithiocarbamate (EBDC) group of fungicides, which also includes the related active ingredients mancozeb and metiram. Maneb and the two other fungicides share the common metabolite/degradate ethylene thiourea (ETU), which has been considered in the maneb RED. EPA has reviewed maneb through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. As a part of this process, the Agency announced the availability of the EBDCs preliminary risk assessments and supporting documents for a 90–day comment period and requested risk reduction options under docket ID number OPP–2004–0078. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Tawanda Spears, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–001; telephone number: (703) 308–8050; fax number: (703) 308–8005; e-mail address: *Spears.Tawanda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0178. 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*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enchanced Federal-wide electronic docket management and comment system loacted at *http;// www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, maneb under section 4(g)(2)(A) of FIFRA. Maneb is registered for use on a wide variety of food/feed crops, including fruit and nut crops, vegetable crops, field and forage crops, grapes, field crop seeds, and others; ornamental plants in nurseries and greenhouses; and sod farms. Maneb is a member of the ethylene bisdithiocarbamate (EBDC) group of fungicides, which also includes the related active ingredients mancozeb and metiram.

EPA has determined that most uses of the active ingredient maneb are eligible for reregistration provided that the risk mitigation measures outlined in the RED are adopted, and labels are amended to reflect these measures. The following uses of maneb are not eligible for reregistration and are being voluntarily canceled by technical registrant and deleted from all maneb labels: Sweet corn, grapes, apples, Kadota figs and seed treatment use on rice and peanuts. Additionally, use of maneb as a wettable powder formulation on sod farms is not eligible for reregistration and is being voluntarily canceled by the registrant and deleted from maneb wettable powder labels. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing maneb.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the maneb tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, maneb was reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for maneb.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Opportunities for public comment were offered as this decision was being developed. Additionally, all issues related to this pesticide were resolved through consultations with stakeholders. The Agency therefore is issuing the maneb RED without a comment period.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Maneb, EBDC fungicides, Environmental protection, Pesticides and pests.

Dated: December 15, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–24468 Filed 12–27–05; 8:45 am]

BILLING CODE 656050–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0177; FRL–7748–7]

Metiram Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide metiram. The Agency's risk assessments and other related documents also are available in the metiram Docket. Metiram is registered for use on apples, potatoes, and ornamental plants (leatherleaf ferns) in nurseries and greenhouses. Metiram is a member of the ethylene bisdithiocarbamate (EBDC) group of

fungicides, which also includes the related active ingredients mancozeb and maneb. Metiram and the two other fungicides share the common metabolite/degradate ethylene thiourea (ETU), which has been considered in the metiram RED. EPA has reviewed metiram through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. As a part of this process, the Agency announced the availability of the EBDC's preliminary risk assessments and supporting documents for a 90–day comment period and requested risk reduction options under docket ID number OPP–2004–0078. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Tawanda Spears, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8050; fax number: (703) 308–8005; e-mail address: *spears.tawanda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0177. 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/.*

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005 by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a RED for the pesticide, metiram under section 4(g)(2)(A) of FIFRA. Metiram is registered for use on apples, potatoes, and ornamental plants (leatherleaf ferns) in nurseries and greenhouses. Metiram was previously registered for use on tobacco seedlings and roses, but these uses have since been voluntarily canceled. There are no residential labels, and no agricultural uses that could result in exposure to metiram in residential settings. Metiram is a member of the EBDC group of fungicides, which also includes the related active ingredients mancozeb and maneb.

EPA has determined that the data base to support reregistration is substantially complete and that products containing metiram are eligible for reregistration, provided that the risk mitigation measures outlined in the RED are adopted, and labels are amended to reflect these measures. Upon submission of any required product-specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product-specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing metiram.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the metiram tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, metiram was reviewed through the modified 4-Phase process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for metiram.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Opportunities for public comment were offered as this decision was being developed. Additionally, all issues related to this pesticide were resolved through consultations with stakeholders. The Agency therefore is issuing the metiram RED without a comment period.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering

products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 15, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–24464 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2002–0009; FRL–7753–2]

Propargite; Modification and Closure of Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the modification of certain provisions of the Reregistration Eligibility Decision (RED) for the pesticide propargite. EPA conducted this reassessment of the propargite RED in response to public comments received. The commentors requested that the Agency make certain modifications in the restricted entry intervals, spray intervals, use rates, and spray buffers.

FOR FURTHER INFORMATION CONTACT: Dayton Eckerson, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8038; fax number: (703) 308–8041; e-mail address: *eckerson.dayton@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP –2002–0009. 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/*.

EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced Federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. In September 2001, EPA issued a RED for propargite under section 4(g)(2)(A) of FIFRA. In response to a notice of availability published in the **Federal Register** on April 18, 2002, (67 FR 19178) (FRL–6832–6), the Agency received comments from the registrant and several grower groups. The Agency has reviewed those comments and, where appropriate, has amended the provisions of the RED to address the issues raised in the comments. A full description of the comments and their resolution is contained in the December 2005 response to public comments, available in the docket, along with the revised RED.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 15, 2005.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–24408 Filed 12–27–05; 8:45 am]

BILLING CODE 6560–50–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SES Performance Review Board Members

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of members of the U.S. Equal Employment Opportunity

Commission Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the reappointment of members of the PRB for the Equal Employment Opportunity Commission (EEOC). The Board makes recommendations to the appointing official on the performance of executives, including recommendations on performance ratings, bonuses and other appropriate personnel actions.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Angelica E. Ibarguen, Chief Human Capital Officer, Equal Employment Opportunity Commission, 1801 L Street, NW., Washington, DC 20507, 202.663.4306.

Composition of PRB: The Board shall consist of at least three voting members. When appraising a career appointee's performance or recommending a career appointee for a performance award, more than half of the members must be SES career appointees. The names and titles of the PRB members are as follows:

Primary Members

Angelica E. Ibarguen, Chief Human Capital Officer, EEOC—(Chairperson), Reuben Daniels, Jr., Director, Charlotte District Office, EEOC—(Member), James L. Lee, Deputy General Counsel, EEOC—(Member).

Signed at Washington, DC, on this 21st day of December, 2005.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 05–24514 Filed 12–27–05; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

December 15, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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 the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 27, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0810.

Title: Procedures for Designation of Eligible Telecommunications Carriers (ETCs) Pursuant to section 214(e)(6) of the Communications Act of 1934, as amended.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated Time Per Response: 20–100 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 6,200 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance.

Section 214(e)(6) states that a telecommunications carrier that is not subject to the jurisdiction of a state may request that the Commission determine whether it is eligible to be designated as an Eligible Telecommunications Carrier (ETC) pursuant to section 214(e)(6) of the Communications Act, as amended. The Commission must evaluate whether such telecommunications carriers meet the eligibility criteria set forth in the Act. Petitioners seeking ETC designation must follow the procedures outlined in the Twelfth Report and Order (FCC 00–208) prior to submitting a request for designation to the Commission under section 214(e)(6). In this Order, the Commission concluded that petitions relating to tribal lands and as a result, petitioners seeking ETC designation must follow the procedures in the Twelfth Report and Order for non-tribal lands prior to submitting a request for designation to the Commission under section 214(e)(6).

OMB Control No.: 3060–0859.

Title: Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 80.

Estimated Time Per Response: 63–125 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 6,280 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance.

Section 253 of the Communications Act of 1934, as amended, requires the Commission, with certain important exceptions, to preempt the enforcement of any state or local statute or regulation, or other state or local legal requirement (to the extent necessary) that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. The Commission's consideration of preemption begins with the filing of a petition by an aggrieved party. The petition is placed on public notice and commented on by others. The Commission's decision is based on the public record, generally composed of the petition and comments received.

The Commission has considered a number of preemption items since the passage of the Telecommunications Act of 1996, and believes it in the public interest to inform the public of the information necessary to support its full consideration of the issues likely to be involved in preemption actions.

The Commission will use the information to discharge its statutory mandate relating to the preemption of state or local statutes or other state or local legal requirements.

OMB Control No.: 3060–0876.

Title: USAC Board of Directors Nomination Process (47 CFR Section 54.703) and Review of Administrator's Decision (47 CFR Sections 54.719–54.725).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 1,312.

Estimated Time Per Response: 20–32 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 41,840 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance. Pursuant to 47 CFR 54.703, industry and non-industry groups may submit to the Commission for approval nominations for individuals to be appointed to the Universal Service Administrative Company (USAC) Board of Directors. Sections 54.719 through 54.725 contain the procedures for Commission review of USAC decisions, including the general filing requirements which parties must file requests for review. The information is used by the Commission to select the USAC Board of Directors and to ensure that requests for review are filed properly with the Commission.

OMB Control No.: 3060–1031.

Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems—Petition of the City of Richardson, TX, Order on Reconsideration II.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 1,158.

Estimated Time Per Response: 2–4 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 6,576 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance.

This collection contains various reporting and third party disclosure requirements. Under the Commission's E911 rules, a wireless carrier must provide E911 service to a particular Public Safety Answering Point (PSAP) within six months only if that PSAP makes a request for the service and is capable of receiving and utilizing the information provided. In the City of Richardson Order on Reconsideration, the Commission adopted rules clarifying what constitutes a valid PSAP request so as to trigger a wireless carrier's obligation to provide service to a PSAP within six months. The Order on Reconsideration modified the E911 rules to provide additional clarification on the issue of PSAP readiness. The Commission's actions were intended to facilitate the E911 implementation process by encouraging parties to communicate with each other early in the implementation process, and to maintain a constructive, on-going dialogue throughout the implementation process.

The Order on Reconsideration contained three new public information collection burdens subject to the Paperwork Reduction Act (PRA). First, the Commission adopted procedural guidelines for requesting documentation predictive of a PSAP's readiness to receive and utilize the enhanced 911 service it has requested. Specifically, we provide that, where a wireless carrier requests such documentation from a PSAP within 15 days of receiving the PSAP's request for E911 service, the PSAP must respond within 15 days or the carrier's six-month implementation period will be tolled until such documentation is provided. Second, the Commission clarified that the readiness showing is for the purpose of *commencing* the wireless carrier's six-month implementation obligation; and we established a procedure whereby wireless carriers that have completed all necessary steps toward E911 implementation are not dependent on PSAP readiness may have their compliance obligation temporarily tolled, if the PSAP is not ready to receive the information at the end of the six-month period and carrier files a certification to that effect with the Commission. Finally, the Commission clarified that nothing in our rules precludes wireless carriers and PSAPs from mutually agreeing to an implementation schedule different from that prescribed by our rules.

The Commission will use the certification filings from wireless carriers to determine each carrier's compliance with its E911 obligations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E5–7871 Filed 12–27–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

December 15, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (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 the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by February 27, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit you comments by e-mail send them to: *PRA@fcc.gov.* To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1036.

Title: Potential Reporting Requirements on Local Exchange Carriers (LECs) to Assist Expeditious Implementation of Wireless E911 Service.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 6 respondents; 24 responses.

Estimated Time Per Response: 8 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 192 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance.

In the City of Richardson reconsideration order released November 2002, the Commission indicated its concern about the potential threat to timely wireless E911 deployment posed by a delay or lack of cooperation on the part of the LECs. To ensure that LECs timely perform their role in the successful deployment of wireless E911 services, the Commission gathers information, on a periodic basis, from six of the nation's largest Local Exchange Carriers (LECs) regarding the status of their efforts in connection with wireless E911 deployment. The information will be used by the Commission to determine whether the LECs are meeting their responsibilities to provide access to, and interconnection with, their networks for E911 purposes.

OMB Control No.: 3060–0910.

Title: Third Report and Order in CC Docket No. 94–102, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit and not-for-profit institutions.

Number of Respondents: 4,000 respondents; 8,000 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 4,000 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance.

Commission rules allows wireless carriers to permit the use of handset-based solutions, or hybrid solutions that require changes both to handsets and wireless networks, in providing caller location information as part of enhanced 911 services. Those rules also require carriers to report changes in their deployment plans. The information in these reports will provide public service answering points (PSAPs), providers of location technology, investors, manufacturers, local exchange carriers (LECs), and the Commission with valuable information necessary for preparing for full Phase II E911 implementation. These reports will provide helpful, if not essential information, for coordinating carrier plans with those manufacturers and PSAPs. It will also assist the Commission's efforts to monitor Phase II developments and to take necessary actions to maintain the Phase II implementation schedule.

OMB Control No.: 3060–1027.

Title: Section 27.602, Guard Band Manager Agreements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 62.

Estimated Time Per Response: 6 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 372 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance.

The Commission adopted service rules for 27 megahertz of electromagnetic spectrum in the 216–220 MHz, 1390–1395 MHz, 1427–1429.5 MHz, 1429.5–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz bands, which have been reallocated for non-Government use. The service rules adopted establish a flexible regulatory and licensing framework. The Commission believes that this decision will provide opportunities for new services to utilize this spectrum, thus addressing spectrum scarcity concerns, as well as to promote the delivery of technologically innovative services to the public. The originally exempt frequencies of Private Land Mobile licensees are now required to obtain guard band manager agreements with other licensees who plan on using their licensed spectrum. Guard Band Managers are required to enter into written agreements regarding the use of their licensed spectrum by others, subject to certain conditions outlined in Commission rules, and retain such records for at least two years after the date such agreements expire. Such records need to be kept current and be made available upon request for inspection by the Commission or its representatives.

OMB Control No.: 3060–0400.

Title: Tariff Review Plan.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 40.

Estimated Time Per Response: 61 hours.

Frequency of Response: Biennial and annual reporting requirements.

Total Annual Burden: 2,440 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance.

Certain local exchange carriers are required to submit a biennial or annual Tariff Review Plan in partial fulfillment of cost support material required by 47 CFR part 61. The information is used by FCC and the public to determine the justness and reasonableness of rates, terms and conditions in tariffs as required by the Communications Act of 1934, as amended.

OMB Control No.: 3060–0514.

Title: Section 43.21(b), Holding Company Annual Report.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 17.

Estimated Time Per Response: 1 hour.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 17 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance.

The filing of SEC Form 10–K is required by section 1.785 and 43.21(b) of the Commission's rules and authorized by section 219 of the Communications Act of 1934, as amended. Each company, not itself a communications common carrier, that directly or indirectly controls any communications common carrier having annual revenues equal to or above the indexed revenue threshold, as defined in section 32.9000, shall file annually with the Commission, not later than the date prescribed by Security and Exchange Commission (SEC), for its purposes, two complete copies of any SEC Form 10–K annual report (or any superseding form) filed with that Commission.

The information filed pursuant to section 43.21(b) is used by staff members to regulate and monitor the telephone industry and by the public to analyze the industry. Selected information is compiled and published in the Commission's annual common carrier statistical publication.

OMB Control No.: 3060–0755.

Title: Sections 59.1 through 59.4, Infrastructure Sharing.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 75.

Estimated Time Per Response: 2–24 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 2,325 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted as an extension (after this 60 day comment period) to OMB in order to obtain the full three year clearance.

Section 259 requires incumbent local exchange carriers (LECs) to file any arrangements showing the conditions under which they share infrastructure. Section 259 also requires incumbent LECs to provide information on deployments of new services and equipment to qualifying carriers. Finally, the Commission requires incumbent LECs to provide 60 day notice prior to terminating section 259 agreements.

The Commission uses the information in the following ways: (1) The information collected under the requirement that LECs file any tariffs, contracts or other arrangements for infrastructure sharing will be made available for public inspection; (2) the information collected under the requirement that incumbent LECs provide timely information on planned deployments of new services and equipment will be provided to third parties (qualifying carriers); and (3) the information collected under the requirement that providing incumbent LECs furnish 60 days notice prior to termination of a section 259 sharing agreement will be provided to third parties, i.e., qualifying carriers, to protect customers from sudden changes in service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E5–7873 Filed 12–27–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–05–64–B (Auction No. 64); DA 05–2987]

Auction of Full Power Television Construction Permits Scheduled for March 15, 2006, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 64

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of eleven full power television station construction permits. This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for Auction No. 64.

DATES: Auction No. 64 short-form applications are due before 6 p.m. Eastern Time (ET) on January 20, 2006. Upfront payments are due before 6 p.m. ET on February 17, 2006. Competitive bidding is scheduled to begin on March 15, 2006.

FOR FURTHER INFORMATION CONTACT: Auction and Spectrum Access Division, Wireless Telecommunications Bureau: *for legal questions:* Lynne Milne at (202) 418–0660; *for general auction questions:* Debbie Smith or Lisa Stover at (717) 338–2888. Video Division, Media Bureau: *for service rule questions:* Shaun Maher at (202) 418–2324 or Shaleim Henry at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 64 Procedures Public Notice* released on November 23, 2005. The complete text of the *Auction No. 64 Procedures Public Notice*, including attachments and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 p.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 64 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 Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 05–2987 for the Auction No. 64 Procedures Public Notice). The *Auction No. 64 Procedures Public Notice* and related documents are available also on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/64/.*

I. General Information

A. Introduction

1. The Media Bureau (MB) and the Wireless Telecommunications Bureau (WTB) (collectively the *Bureaus*) announce the procedures and minimum opening bid amounts for the auction of 11 full power television station construction permits in Auction No. 64, scheduled to begin on March 15, 2006. On September 23, 2005, in accordance with 47 U.S.C. 309(j)(4), 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. 64. The Bureaus received comments from one commenter in response to the *Auction No. 64 Comment Public Notice*, 70 FR 58700 (October 7, 2005).

i. Background

2. The Commission's competitive bidding rules will be used to select among mutually exclusive applications for these construction permits in Auction No. 64. When two or more short-form applications are accepted for filing for the same construction permit

in Auction No. 64, mutual exclusivity exists for auction purposes. Once mutual exclusivity exists for auction purposes, even if only one applicant for a particular construction permit submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its status as an applicant in Auction No. 64 and will remain subject to the Commission's anti-collusion rules, but, having purchased no bidding eligibility, will not be eligible to bid.

ii. Television Station Construction Permits To Be Auctioned

3. Auction No. 64 will offer 11 construction permits for full power television stations. Ten of these construction permits are *open* to any interested party. The locations and channels of the ten *open* construction permits are designated as: Greeley, Colorado (DTV 45), Pueblo, Colorado (NTSC 48), Apalachicola, Florida (DTV 3), Derby, Kansas (DTV 46), Topeka, Kansas (NTSC 22+), Duluth, Minnesota (NTSC 27), Osage Beach, Missouri (NTSC 49+), Bend, Oregon (NTSC 51), Victoria, Texas (NTSC 31), and Medical Lake, Washington (DTV 51). The remaining permit, with a location and channel designated as Jackson, Mississippi (NTSC 51), is *closed*, and only the five listed parties that previously filed long-form applications may participate in the bidding for this permit, provided such parties submit an acceptable short-form application pursuant to the Commission's rules and procedures described in the *Auction No. 64 Procedures Public Notice*.

4. A complete list of construction permits available in Auction No. 64 is included in Attachment A of the *Auction No. 64 Procedures Public Notice*. Interested parties should note that some of the stations listed in Attachment A of the *Auction No. 64 Procedures Public Notice* are single channel, digital-only television stations and are indicated as DTV. These stations must be operated in digital television mode. Those stations indicated as NTSC are single-channel stations that must be operated as either NTSC analog stations or, if they meet the Commission's interference requirements, may be operated as digital only television stations.

5. To be eligible to participate in competitive bidding for any of the construction permits identified in Attachment A of the *Auction No. 64 Procedures Public Notice*, each interested party, including those individuals or entities with a pending long-form application listed in Attachment A of the *Auction No. 64 Procedures Public Notice*, must submit before the deadline of January 20, 2006, a complete and correct short-form application and otherwise comply with the deadlines and requirements outlined in the *Auction No. 64 Procedures Public Notice*. The Media Bureau will dismiss the pending long-form application (FCC Form 301) listed in Attachment A of the *Auction No. 64 Procedures Public Notice* of any applicant which fails to file a short-form application (FCC Form 175) to participate in Auction No. 64 before the deadline specified in the *Auction No. 64 Procedures Public Notice* or which fails to submit a sufficient upfront payment before the deadline specified in the same public notice.

a. Open Construction Permits

6. Pursuant to the policies established in the *Broadcast Competitive Bidding First Report and Order*, 63 FR 48615 (September 11, 1998), any interested party may apply for any of the ten *open* construction permits listed in Attachment A of the *Auction No. 64 Procedures Public Notice*. Long-form applications were filed previously for some of these *open* television station construction permits. The pending applications for these open construction permits also are listed in Attachment A of the *Auction No. 64 Procedures Public Notice*.

7. Any party filing for an open construction permit with a pending long-form application should understand that it is likely that its application will be mutually exclusive with the previously-filed application. Even if there is no pending long-form application for an open construction permit listed in Attachment A of the *Auction No. 64 Procedures Public Notice*, short-form applications specifying the same open construction permit will be considered mutually exclusive.

8. In response to the *Auction No. 64 Comment Public Notice*, one individual filed comments requesting that the construction permit for the new television station on Channel 31 at Victoria, Texas be removed from the auction and that there be no opportunity to file a competing application against his pending application for station TV–NTS009–31. The commenter expressed concern that the Commission will be allowing other parties to file competing applications for a full power television station that may cause interference to his licensed Class A low power television (LPTV) station KVHM–LP, on Channel 31 at Victoria, Texas. The commenter maintained that only his application for Victoria can be granted because the issue of interference to his Class A LPTV station can only be resolved with his consent. The commenter requests that his application for Channel 31 at Victoria be withdrawn from the auction and granted outside of the auction process.

9. The commenter essentially requests that the staff review the technical qualifications of all proposals for the new Victoria television station prior to auction. In the *Broadcast Competitive Bidding First Report and Order*, the Commission rejected such a pre-auction review of technical proposals to minimize the potential for delay and promote the deployment of new broadcasting service to the public. The Bureaus will not, therefore, consider whether other proposals for a new Victoria television station would be technically qualified prior to the auction.

10. Moreover, the Bureaus declined to remove the Victoria construction permit from this auction based on speculation that a long-form application filed by a winning bidder may fail to protect from harmful interference the Class A low power television station (KVHM–LP) licensed to the commenter. After the close of competitive bidding, the winning bidder for the Victoria construction permit for TV–NTS009–31, if any, will be required to submit a long-form application and demonstrate *inter alia* compliance with all of the technical rules concerning operation of a full-power television station. As part of its long-form application review, the staff will determine whether the winning bidder's proposed facility would cause harmful interference to all relevant stations, including the commenter's Class A LPTV station. For this reason, the Bureaus declined to remove from Auction No. 64 the construction permit for station TV–NTS009–31 at Victoria, Texas. However, the Bureaus take this opportunity to remind potential bidders to undertake appropriate due diligence, including engineering studies, site inspections, and other research, prior to participating in this auction to ensure that their desired facility may be implemented.

b. Closed Construction Permit

11. Participation in competitive bidding for the TV–NTS011–51 construction permit will be limited to those applicants identified for the closed construction permit in Attachment A of the *Auction No. 64 Procedures Public Notice*, provided

such parties submit an acceptable short-form application pursuant to the Commission's rules and procedures described in the *Auction No. 64 Procedures Public Notice*.

12. In the *Auction No. 64 Comment Public Notice*, the Bureaus required each of the nine specified auction applicants for this closed construction permit to submit its FCC registration number (FRN) before 5 p.m. Eastern Time (ET) on November 16, 2005. Four out of the nine specified applicants failed to submit the required FRN. Accordingly, on November 23, 2005, the Video Division of the Media Bureau dismissed four long-form applications for a construction permit for station TV–NTS011–51, on NTSC channel 51, at Jackson, Mississippi. A separate public notice announcing that action was released December 1, 2005 (Broadcast Actions, *Public Notice*, Report No. 46122 (Media Bur. Dec. 1, 2005)).

B. Rules and Disclaimers

i. Relevant Authority

13. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including recent amendments and clarifications. Broadcasters also should familiarize themselves with the Commission's rules relating to the television broadcast service contained in 47 CFR 73.601–73.699 and 73.1001–73.4280. Prospective applicants also must be familiar with the rules relating to competitive bidding proceedings contained in 47 CFR 1.2001–1.2112 and broadcast auctions contained in 47 CFR 73.5000–73.5009. Prospective applicants also must be thoroughly familiar with the procedures, terms and conditions (collectively, terms) contained in the *Auction No. 64 Procedures Public Notice*, the *Auction No. 64 Comment Public Notice*, the *Broadcast Competitive Bidding First Report and Order*, the *Broadcast Competitive Bidding First Reconsideration Order*, 64 FR 24523 (May 7, 1999), the *New Entrant Bidding Credit Reconsideration Order*, 64 FR 44856 (August 18, 1999), and the *Noncommercial Educational Second Report and Order*, 68 FR 26220 (May 15, 2003).

14. 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 each applicant to remain current with all Commission rules and with all public notices pertaining to this auction.

ii. Prohibition of Collusion

15. The Commission's Part 1 rules prohibit applicants competing for construction permits in the same geographic license area from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii). Thus, applicants competing for construction permits in the same geographic license area 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. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction, 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.

16. In Auction No. 64, the rule would apply to applicants bidding for any of the same construction permits. Therefore, two applicants that apply to bid for any one common television station construction permit would be precluded from engaging in prohibited communications during the period from the short-form application deadline until the down payment deadline following the close of the auction. In addition, even if auction applicants select to bid on their short-form applications for only one common television station construction permit, they may not discuss with each other their bids or bidding strategies relating to any television station construction permit for which either applicant selected to bid on the applicant's short-form application.

17. For purposes of this prohibition, 47 CFR 1.2105(c)(7)(i) defines applicant as including all officers and directors of the entity submitting a short-form application to participate in the auction, as well as all controlling interests of that entity, 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.

18. Applicants competing for construction permits for any of the same television stations must not communicate indirectly about bids or bidding strategy. Accordingly, such applicants 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 that 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. In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. Similarly, the Bureaus noted that a violation of the anti-collusion rule could occur in other contexts, such as, an individual serving as an officer for two or more competing applicants.

19. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for any of the same construction permits. However, applicants may enter into bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations, discussions or communications with other applicants for construction permits for the same designated market. Applicants that are winning bidders will be required pursuant to 47 CFR 1.2107(d) to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.

20. By electronically submitting its short-form application, each applicant certifies 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.

21. 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.

22. Any applicant found to have violated the anti-collusion rule may be subject to sanctions. Applicants are reminded that they are subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of the Commission's anti-collusion rule will not necessarily insulate a party from enforcement of the antitrust laws. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions.

23. 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 F of the *Auction No. 64 Procedures Public Notice* and these documents are available on the Commission's auction anti-collusion Web page.

iii. Due Diligence

24. Potential bidders are reminded that they 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.

25. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 64 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision regarding participation in bidding in the auction. Participants in Auction No. 64 are strongly encouraged to continue such research throughout 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 comply fully with the Commission's technical and legal requirements.

26. 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 construction permittees or incumbent licensees or the construction permits available in Auction No. 64. In addition, pending and future judicial proceedings may relate to particular applicants, incumbent construction permittees, or incumbent licensees, or the construction permits available in Auction No. 64. 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.

27. In particular, potential bidders are strongly encouraged to review all underlying Commission orders, such as the specific report and order amending the television and digital television Tables of Allotments and allotting the analog or digital television channel(s) on which they plan to bid. Bidders are also responsible for reviewing all pending rulemaking petitions and open proceedings that might affect the construction permit(s) on which they plan to bid.

28. Prospective bidders should perform due diligence to identify and consider all proceedings that may affect the construction permits being auctioned. The Bureaus note that resolution of such matters could have an impact on the availability of spectrum for construction permits included in Auction No. 64. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the beginning of bidding in this auction.

29. 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. 64. 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 as described in 47 CFR 1.1305—1.1319.

30. Potential bidders for any new television facility in Auction No. 64 should note that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities proposed in this auction.

31. In response to the enactment of the Community Broadcasters Protection Act of 1999, in the *Class A Report and Order*, 65 FR 29985 (May 10, 2000), the Commission adopted rules to establish a new Class A television service, including rules to provide interference protection for eligible Class A television stations from new full power television stations. As required by the rulemaking order, a winning bidder in Auction No. 64, upon submission of its long-form application, will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate any full power television station proposed in this auction.

32. Potential bidders may research the Media Bureau's Consolidated Data Base System (CDBS) on the Internet in order

to determine which channels are licensed already to incumbent licensees or previously authorized to construction permittees, including information about the identity and location of Class A television stations. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases. 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

33. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 64 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.

v. National Environmental Policy Act Requirements

34. 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 construction permittee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the construction 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 construction 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 construction permittee also must 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

35. Bidding in this auction will begin on Wednesday, March 15, 2006. 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

36. Auction No. 64—Full Power Television.

iii. Bidding Methodology

37. The bidding methodology for Auction No. 64 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—January 11, 2006
FCC Form 175 Filing Window Opens—January 11, 2006; 12 p.m. ET
FCC Form 175 Filing Window Deadline—January 20, 2006; 6 p.m. ET
Upfront Payments (via wire transfer)—February 17, 2006; 6 p.m. ET
Mock Auction—March 13, 2006
Auction Begins—March 15, 2006

v. Requirements for Participation

38. Those wishing to participate in the auction must submit a short-form application (FCC Form 175) electronically prior to 6 p.m. ET, January 20, 2006, following the electronic filing procedures set forth in Attachment C of the *Auction No. 64 Procedures Public Notice*; submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, February 17, 2006; and comply with all provisions outlined in this 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)
AUCTION BIDDER LINE
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
Chelsea Fallon (202) 418–7991
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*
FCC INTERNET SITES
http://www.fcc.gov
http://wireless.fcc.gov/auctions
http://wireless.fcc.gov/uls
http://www.fcc.gov/mb

II. Short-Form Application (FCC Form 175) Requirements

39. Entities seeking construction permits available in Auction No. 64

must file electronically via the FCC Auction System an application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, before 6 p.m. ET on January 20, 2006, following the procedures prescribed in Attachment C to the *Auction No. 64 Procedures Public Notice.* For Auction No. 64, if an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submission of accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license. Applicants should read carefully the instructions provided in Attachment C of the *Auction No. 64 Procedures Public Notice* and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their short-form applications.

40. An entity may not submit more than one short-form application in a single auction. In the event that a party submits multiple short-form applications, such additional applications will be dismissed.

41. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. New Entrant Bidding Credit

42. The Commission adopted a tiered New Entrant Bidding Credit for broadcast auction applicants with no, or very few, other media interests. The determination of an auction applicant's eligibility for the New Entrant Bidding Credit considers the interests of the applicant, and of any individuals or entities with an attributable interest in the applicant, in other media of mass communications. The applicant's attributable interests shall be determined as of the short-form application filing deadline, January 20, 2006. Thus, the applicant's maximum new entrant bidding credit eligibility will be determined as of the short-form application filing deadline. Any applicant intending to divest a media interest or make any other ownership changes, such as resignation of positional interests, in order to avoid attribution for purposes of qualifying for the New Entrant Bidding Credit must have consummated such divestment transactions or have completed such ownership changes by no later than the short-form filing deadline, January 20, 2006. An applicant cannot qualify for a bidding credit, nor upgrade a previously claimed bidding credit, based upon ownership or positional changes occurring after the short-form application filing deadline. Prospective applicants are reminded, moreover, that events occurring after the short-form filing deadline, such as the acquisition of attributable interests in media of mass communications, may cause diminishment or loss of the bidding credit, and must be reported immediately.

43. Under traditional broadcast attribution rules, those entities or individuals with an attributable interest in an applicant include, all officers and directors of a corporate applicant; any owner of 5 percent or more of the voting stock of a corporate applicant; all partners and limited partners of a partnership bidder, unless the limited partners are sufficiently insulated; and all members of a limited liability company, unless sufficiently insulated.

44. In cases where an applicant's spouse or close family member holds other media interests, such interests are not automatically attributable to the applicant. The Commission decides attribution issues in this context based on certain factors traditionally considered relevant. Applicants should note that the mass media attribution rules were revised in 1999.

45. Applicants also are reminded that, by the *New Entrant Bidding Credit Reconsideration Order*, the Commission further refined the eligibility standards for the New Entrant Bidding Credit, judging it appropriate to attribute the media interests held by very substantial investors in, or creditors of, an applicant claiming new entrant status. Specifically, the attributable mass media interests held by an individual or entity with an equity and/or debt interest in an applicant shall be attributed to that auction applicant for purposes of determining its eligibility for the New Entrant Bidding Credit, if the equity and debt interests, in the aggregate, exceed 33 percent of the total asset value of the applicant, even if such an interest is non-voting.

46. Generally, media interests will be attributable for purposes of the New Entrant Bidding Credit to the same extent that such other media interests are considered attributable for purposes of the broadcast multiple ownership rules. However, attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the winning bidder's other mass media interests in determining its eligibility for a New Entrant Bidding Credit. A medium of mass communications is defined in 47 CFR 73.5008(b). Full service noncommercial educational stations, on both reserved and non-reserved channels, are included among media of mass communications as defined in 47 CFR 73.5008(b).

B. Application Requirements

47. In addition to the ownership information required pursuant to 47 CFR 1.2105 and 1.2112, applicants are required to establish on their short-form applications that they satisfy the eligibility requirements to qualify for a New Entrant Bidding Credit. In those cases where a New Entrant Bidding Credit is being sought, a certification under penalty of perjury must be provided in completing the applicant's short-form application. An applicant claiming that it qualifies for a 35 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in any other media of mass communications. An applicant claiming that it qualifies for a 25 percent new entrant bidding credit must certify that neither it nor any of its attributable interest holders have any attributable interests in more than three media of mass communications, and must identify and describe such media of mass communications.

i. Bidding Credits

48. Applicants that qualify for the New Entrant Bidding Credit, as specified in the applicable rule, are eligible for a bidding credit that represents the amount by which a bidder's winning bid is discounted. The size of a New Entrant Bidding Credit depends on the number of ownership interests in other media of mass communications that are attributable to the bidder-entity and its attributable interest-holders. A 35 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has no attributable interest in any other media of mass communications, as defined in 47 CFR

73.5008. A 25 percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, has an attributable interest in no more than three mass media facilities, as defined in 47 CFR 73.5008. No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast station, as defined in 47 CFR 73.5007(b), or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, has attributable interests in more than three mass media facilities.

49. Bidding credits are not cumulative; qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both. Attributable interests are defined in 47 CFR 73.3555 and Note 2 of that section.

ii. Unjust Enrichment

50. Applicants should note that unjust enrichment provisions apply to a winning bidder that utilizes a bidding credit and subsequently seeks to assign or transfer control of its license or construction permit to an entity not qualifying for the same level of bidding credit.

C. Permit Selection

51. There is no opportunity to change construction permit selection after the short-form filing deadline. It is critically important that each applicant confirms its construction permit selection because the FCC Auction System will not accept bids on construction permits that an applicant has not selected on its short-form application. In addition, prospective applicants should note that participation in competitive bidding for a construction permit for station TV–NTS011–51 (closed permit) will be limited to those applicants identified under the closed construction permit in Attachment A of the *Auction No. 64 Procedures Public Notice*, provided such parties submit an acceptable short-form application pursuant to the Commission's rules and procedures described in the *Auction No. 64 Procedures Public Notice.*

D. Consortia and Joint Bidding Arrangements

52. Applicants will be required to indicate on their applications whether they have entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. Applicants also will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings that relate in any way to the construction permits being auctioned, including any agreements relating to post-auction market structure. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its applications and may not continue such discussions with applicants for the same construction permit after the deadline.

53. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same market provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies. Such subject areas include, but are not limited to, issues such as management, sales, local marketing agreements, rebroadcast agreements, and other transactional agreements.

E. Ownership Disclosure Requirements

54. The Commission specified in the *Broadcast Competitive Bidding First Report and Order* that, for purposes of determining eligibility to participate in a broadcast auction, the uniform Part 1 ownership disclosure standards would apply. Therefore, all applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by 47 CFR 1.2105 and 1.2112. Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the bidding entity. The ownership disclosure standards for the short-form application are prescribed in 47 CFR 1.2105 and 1.2112. Each applicant is responsible for information submitted in its short-form application being complete and accurate.

55. To simplify filling out its short-form application, an applicant's most current ownership information on file with the Commission in an electronic format compatible with the short-form application, such as information submitted in an on-line FCC Form 602 in connection with wireless services or in a short-form application filed for a previous auction, will be entered automatically into the applicant's short-form application for Auction No. 64. An applicant should review carefully any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that needs to be changed directly in the short-form application.

F. Provisions Regarding Former and Current Defaulters

56. Each applicant in Auction No. 64 must state under penalty of perjury on its short-form application whether or not the applicant, its affiliates, its controlling interests, or any affiliate of its controlling interests, have ever been in default on any Commission construction permit or license or have ever been delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must certify under penalty of perjury on its short-form application that the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests, as of the filing deadline for applications to participate in a specific auction, are not in default on any payment for a Commission construction permit or license (including a down payment) and that they are not delinquent on any non-tax debt owed to any Federal agency. Affiliates and controlling interests are defined in 47 CFR 1.2110. Prospective applicants 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.

57. Former defaulters—*i.e.*, applicants, including any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, that in the past have defaulted on any Commission construction permit or license 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. 64, provided that they are otherwise qualified. However, former defaulters are required pursuant to 47 CFR 1.2106(a) to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

58. In contrast, an applicant is not eligible to participate in competitive bidding in Auction No. 64 if the applicant, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests, is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency as of the filing deadline for applications to participate in this auction.

59. Applicants are encouraged to review the Wireless Telecommunications Bureau's previous guidance on default and delinquency disclosure requirements in the context of the auction short-form application process. For example, it has been determined that to the extent that Commission rules permit late payment of regulatory or application fees accompanied by late fees, such debts will become delinquent for purposes of 47 CFR 1.2105(a) and 1.2106(a) only after the expiration of a final payment deadline. Therefore, with respect to regulatory or application fees, the sanctions 47 CFR 1.2105(a) and 1.2106(a) impose with respect to competitive bidding are limited to circumstances in which the relevant party has not complied with a final Commission payment deadline.

60. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the red light rule, that implement the Commission's obligations under the Debt Collection Improvement Act of 1996, which governs the collection of claims owed to the United States. Under the red light rule, the Commission will not process applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission. In the same rulemaking order, the Commission explicitly declared, however, that the Commission's competitive bidding rules are not affected by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of the Commission's competitive bidding rules, including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies. Applicants are reminded, however, 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. Thus, while the red light rule may ultimately prevent the processing of long-form applications by auction winners, an auction applicant's red light status is not necessarily determinative of its eligibility to participate in this auction or to its upfront payment obligation.

61. Prospective applicants in Auction No. 64 should note that any long-form applications filed after the close of competitive bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application.

G. Other Information

62. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may identify themselves in filling out their short-form applications regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of designated entities in its auctions.

H. Minor Modifications to Short-Form Applications (FCC Forms 175)

63. Following the deadline for filing short-form applications on January 20, 2006, applicants in Auction No. 64 are permitted to make only minor changes to their applications. As explained in 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, increase a previously claimed bidding credit, or change their self-identification as a noncommercial educational entity). Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons.

64. Any application amendment and related statements of fact must be certified by: (1) The applicant, if the applicant is an individual, (2) one of the partners if the applicant is a partnership, (3) by an officer, director, or duly authorized employee, if the applicant is a corporation, (4) by a member who is an officer, if the applicant is an unincorporated association, (5) by the trustee if the applicant is an amateur radio service club, or (6) a duly elected or appointed official who is authorized to do so under the laws of the applicable jurisdiction, if the applicant is a governmental entity.

65. An applicant must make permissible minor changes to its short-form application, as defined by 47 CFR 1.2105(b), on-line. 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.

66. In addition, applicants must 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: *auction64@fcc.gov.* The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 64 and the name of the applicant.

I. Maintaining the Accuracy of Short-Form Application Information

67. Each applicant must maintain the accuracy and completeness of information furnished in its pending application and notify the Commission within 30 days of any substantial change that may be of decisional significance to that application as specified in 47 CFR 1.65. Changes that cause a loss of or reduction in eligibility for a new entrant bidding credit must be reported immediately. For example, if ownership changes result in the attribution of new interest holders that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the applicant's notification. 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 result in the dismissal of the short-form application.

68. Applicants must report 47 CFR 1.65 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: *auction64@fcc.gov.* The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 64 and the name of the applicant.

III. Pre-Auction Procedures

A. Auction Seminar—January 11, 2006

69. On Wednesday, January 11, 2006, the FCC will sponsor a seminar for parties interested in participating in Auction No. 64 at the Federal Communications Commission headquarters, located at 445 12th Street, SW., Washington, DC. The seminar will provide attendees with information about pre-auction procedures, completing the FCC Form 175, auction conduct, the FCC Auction System, auction rules, and the full power television broadcast service rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

70. To register, complete the registration form, Attachment B of the *Auction No. 64 Procedures Public Notice,* and submit it by Monday, January 9, 2006. Registrations are accepted on a first-come, first-served basis. The seminar is free of charge.

71. For individuals who are unable to attend, an Audio/Video of this seminar will be available via Webcast from the FCC's Auction 64 Web page at *http://wireless.fcc.gov/auctions/64/.* Select the Auction Seminar link.

B. Short-Form Application (FCC Form 175)—Due Before 6 p.m. ET on January 20, 2006

72. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application electronically via the FCC Auction System. This application must be submitted electronically and received at the Commission prior to 6 p.m. ET on January 20, 2006. Late applications will not be accepted. There is no application fee required when filing FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment.

73. Applications generally may be filed at any time beginning at noon ET on January 11, 2006, until 6 p.m. ET on January 20, 2006. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on January 20, 2006.

74. Applicants must always click on the SUBMIT button on the Certify and Submit screen of the electronic form to successfully submit their FCC Forms 175 or modifications. Any form that is not submitted will not be reviewed by the FCC. Information about accessing, completing, and viewing the FCC Form 175 is included in Attachment C of the *Auction No. 64 Procedures Public Notice.*

C. Application Processing and Minor Corrections

75. After the deadline for filing the FCC Form 175 applications has passed, 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.

76. Non-mutually exclusive applications will be listed in a subsequent public notice to be released by the Bureaus. Such applications will not proceed to auction, but will proceed in accordance with instructions set forth in the subsequent public notice. All mutually exclusive applications will be considered under the relevant procedures for conflict resolution. Mutually exclusive commercial applications will proceed to auction. However, any applications for non-commercial educational full power television stations on non-reserved spectrum that are mutually exclusive with any applications specifying commercial facilities will be returned as unacceptable for filing pursuant to 47 CFR 73.5002(b).

77. As described more fully in the Commission's rules, after the short-form filing deadline on January 20, 2006, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their construction permit selections, change control of the applicant, increase a previously claimed bidding credit, or change their self-identification as non-commercial educational (NCE)).

D. Upfront Payments—Due February 17, 2006

78. 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). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and sent by facsimile to Mellon Bank in Pittsburgh, PA. All upfront payments must be received in the proper account at Mellon Bank before 6 p.m. ET on February 17, 2006.

i. Making Auction Payments by Wire Transfer

79. Wire transfer payments must be received before 6 p.m. ET on February 17, 2006. 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 payment is provided in the *Auction No. 64 Procedures Public Notice.*

80. At least one hour before placing the order for the wire transfer (but on the same business day), applicants must send by facsimile a completed FCC Form 159 (Revised 2/03) to Mellon Bank at (412) 209–6045. On the cover sheet of the facsimile, write ''Wire Transfer—Auction Payment for Auction No. 64.'' In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account before 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.

81. All payments must be made in U.S. dollars and by wire transfer. Upfront payments for Auction No. 64 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 specified deadline on February 17, 2006, will result in dismissal of the application and disqualification from participation in the auction.

ii. FCC Form 159

82. A completed FCC Remittance Advice Form (FCC Form 159) must be sent by facsimile to Mellon Bank to accompany each upfront payment. Proper completion of the FCC Form 159 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. 64 Procedures Public Notice.* An electronic pre-filled version of the FCC Form 159 is available after submitting the FCC Form 175. 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

83. In the *Auction No. 64 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, an otherwise qualified bidder that applied for that construction permit on its FCC Form 175, 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 selected on its FCC Form 175, 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 for which the applicant has applied on FCC Form 175, but rather to cover the 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 winning bids if the auction were to close after the given round.)

84. In the *Auction No. 64 Comment Public Notice,* the Bureaus proposed upfront payments for each construction permit. The specific upfront payment and bidding units for each construction permit are specified in Attachment A of the *Auction No. 64 Procedures Public Notice.*

85. In calculating its upfront payment amount, an applicant should determine the maximum number of bidding units on which it may wish to be active (bid or hold provisionally winning bids) 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. Information about an upfront payment calculation, including an example, is provided in the *Auction No. 64 Procedures Public Notice.*

86. In the *Fifth Report and Order,* 65 FR 52323 (August 29, 2000), the Commission specified that an applicant be required to make upfront payments 50 percent greater than the amount set for each construction permit or license if the applicant ever has been in default on any Commission construction permit or license or ever has been delinquent on any non-tax debt owed to any Federal agency. 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.

87. Pursuant to 47 CFR 1.2106(a), former defaulters should calculate their upfront payment for all construction permits 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 for which the applicant has applied on its FCC Form 175, the applicant will not be eligible to participate in the auction.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

88. The Commission will use wire transfers for all Auction No. 64 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information specified in the *Auction No. 64 Procedures Public Notice* be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions also can be manually sent by facsimile to the FCC, Financial Operations Center, Auctions Accounting Group, Attention: Gail Glasser, at (202) 418–2843. All refunds will be returned to the payor of record as identified on the FCC Form 159, unless the payor submits written authorization instructing otherwise. Applicants should note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.

E. Auction Registration

89. Approximately ten days before the auction, the FCC 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.

90. 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 that will be required to place bids, the Integrated Spectrum Auction System (ISAS) Bidder's Guide, and the Auction Bidder Line phone number.

91. 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, March 9, 2006, should call (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.

92. In the event that SecurID cards are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant's short-form application may request replacement registration material.

F. Remote Electronic Bidding

93. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically and telephonically. Each applicant should indicate its bidding 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. 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. 64.

G. Mock Auction—March 13, 2006

94. All qualified bidders will be eligible to participate in a mock auction on Monday, March 13, 2006. The mock

auction will enable applicants to become familiar with the FCC Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

95. The first round of bidding for Auction No. 64 will begin on Wednesday, March 15, 2006. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction

96. Auction No. 64 will be conducted using a simultaneous multiple round auction. Unless otherwise announced, bids will be accepted from eligible qualified bidders on all construction permits in each round of the auction.

ii. Eligibility and Activity Rules

97. The amount of the upfront payment submitted by a bidder determines a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 64 Procedures 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 selected on its FCC Form 175 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 or hold provisionally winning bids 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 for any given construction permit.

98. 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 are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

99. 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. In Auction No. 64, a bidder will be 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, 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.

iii. Auction Stages

100. Auction No. 64 will be conducted in two stages and employ an activity rule.

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 75 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 in 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 four-thirds (4/3).

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 in 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).

101. The Bureaus, however, reserve the discretion to further alter the activity percentages before and/or during the auction.

iv. Stage Transitions

102. The auction will start in Stage One and will generally advance 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.

v. Activity Rule Waivers and Reducing Eligibility

103. 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.

104. 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 eligibility will be permanently reduced, possibly curtailing the bidder's ability to bid on some construction permit(s) or eliminating the bidder from further bidding in the auction.

105. 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.

106. 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 waiver (using the

apply waiver function in the FCC Auction System) during a bidding round in which no bids 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 will not keep the auction open.

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

107. Auction No. 64 will begin under the simultaneous stopping rule approach, and the Bureaus will retain the discretion to invoke the other versions of the stopping rule. Under a modified version of the simultaneous stopping rule the auction for all construction permits would close after the first round in which no bidder applies a waiver 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.

108. The Bureaus retain the discretion to keep the auction open even if no new bids or proactive waivers are submitted 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.

109. In addition, 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, bids will be accepted in the specified final round(s) and the auction will close.

110. The Bureaus propose to exercise these options only in certain 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 these options, 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.

vii. Auction Delay, Suspension, or Cancellation

111. 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 and competitive conduct of competitive 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 emphasize 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

112. 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 following by the release of round results. Multiple bidding rounds may be conducted on any given day. Details regarding round results formats and locations also will be included in a future public notice.

113. 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

114. The specific minimum opening bid amounts for each construction permit available in Auction No. 64 are specified in Attachment A of the *Auction No. 64 Procedures Public Notice.* The minimum opening bid amounts adopted for Auction No. 64 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.

iii. Bid Amounts

115. In each round, each eligible bidder will be able to place a bid on a particular construction permit for which it applied in any of nine different amounts. The FCC Auction System will list the nine bid amounts for each construction permit. The nine bid amounts for each construction permit consist of the minimum acceptable bid amount calculated using a smoothing formula and additional amounts calculated using a bid increment percentage.

a. Minimum Acceptable Bid Amounts

116. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount for that construction permit will be equal to the amount of the provisionally winning bid plus an additional amount calculated using a smoothing formula. The smoothing formula calculates minimum acceptable bid amounts by first calculating a percentage increment. The percentage increment for each construction permit is a function of bidding activity on that construction permit in prior rounds; therefore, a construction permit that has received many bids will have a higher percentage increment than a construction permit that has received few bids. This allows the minimum acceptable bid amounts to be tailored to the activity on a construction permit, decreasing the number of rounds it takes for construction permits receiving many bids to reach their final prices. Smoothing formula equations and examples are shown in Attachment E of the *Auction No. 64 Procedures Public Notice*.

117. The calculation of the percentage increment used to determine the minimum acceptable bid amounts for each construction permit for the next round is made at the end of each round. The computation is based on an activity index, which is a weighted average of the number of bids in that round and the activity index from the prior round (except for round 1 when the activity index from the prior round is set at 0). The current activity index is equal to a weighting factor times the number of bidders that submit bids on the construction permit in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage

increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The weighting factor initially will be set at 0.5, the minimum percentage increment at 0.1 (10%), and the maximum percentage increment at 0.2 (20%). Hence, at these initial settings, the percentage increment will fluctuate between 10% and 20% depending upon the number of bids for the construction permit. The Bureaus will round the result using our standard rounding procedures.

118. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount for that construction permit will be equal to the amount of the provisionally winning bid plus an additional amount. Using the smoothing formula, the FCC Auction System will calculate a percentage increment at the end of each round to determine the minimum acceptable bid amount for each construction permit for the next round.

b. Additional Bid Amounts

119. The acceptable bid amounts in addition to the minimum acceptable bid amount for each construction permit are calculated using a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded—*e.g.*, if the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.10), rounded, or (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.

120. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the smoothing formula parameters, and the bid increment percentage if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System. The Bureaus also may use their discretion to change the minimum acceptable bid amounts, the smoothing formula parameters, and the bid increment percentage without prior notice if circumstances warrant.

iv. Provisionally Winning Bids

121. At the end of each bidding round, a provisionally winning bid will be determined based on the highest bid amount received for each construction permit. 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. Provisionally winning bids at the end of the auction become the winning bids. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

122. A pseudo-random number generator based on the L'Ecuyer algorithms will be used to assign a random number to each bid and to break tied bids. 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. In Auction No. 64, if no bidder submits a higher bid in subsequent rounds, the provisionally winning bid from the previous round will win the construction permit. 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

123. During a round in Auction No. 64, a bidder may submit bids for as many construction permits as it wishes (subject to its eligibility), remove bids placed in the current bidding round, or permanently reduce eligibility. In Auction No. 64, bidders also have the option of submitting and removing multiple bids during a 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 in Auction No. 64 should note that the bidding units associated with construction permits for which the bidder has removed its bid do not count towards the bidder's current activity.

124. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction No. 64. Please note that 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, five to ten minutes are necessary to complete a telephonic bid submission.

125. A 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 for which the applicant applied in its FCC Form 175 and (2) the bidder's upfront payment amount. The bid submission screens will allow bidders to submit bids only on those construction permits for which the bidder applied on its FCC Form 175.

126. In order to access the bidding function of the FCC Auction System, bidders must be logged in during the bidding round using the passcode 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.

127. If the bidder has sufficient eligibility to place a bid on that construction permit, an eligible bidder will be able in each round to place bids on a given construction permit in any of nine different amounts. For each construction permit, the FCC Auction System will list the nine acceptable bid amounts in a drop-down box. Bidders use the drop-down box to select from among the acceptable bid amounts. The FCC Auction System also includes an upload function that allows bidders to upload text files containing bid information.

128. 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.

vi. Bid Removal

129. 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. After a round closes, a bidder may no longer remove a bid. 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.

vii. Bid Withdrawal

130. For Auction No. 64, bidders will not be permitted to withdraw any bid after the close of the round in which the bid was submitted.

V. Post-Auction Procedures

A. Down Payments

131. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments, and final payments due. 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. 64 to 20 percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

B. Final Payments

132. Absent a change to the existing payment rules applicable to broadcast permits won at auction, 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 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 Applications

133. Within thirty days after the release of the auction closing notice, winning bidders must submit electronically a properly completed long-form application (FCC Form 301), and required exhibits, for each construction permit won through Auction No. 64. A winning bidder claiming new entrant status must include an exhibit demonstrating its eligibility for the bidding credit. Further filing instructions will be provided to auction winners at the close of the auction.

D. Default and Disqualification

134. 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 timely a 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 amount. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may 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

135. All applicants that submit upfront payments but are not winning bidders for a construction permit in Auction No. 64 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. In Auction No. 64, no refund will be made unless there are excess funds on deposit from the applicant. All refunds will be returned to the payor of record, as identified on the FCC Form 159, unless the payor submits written authorization instructing otherwise.

136. 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 and have no remaining bidding eligibility must submit a written refund request. If the applicant has completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request also must include wire transfer instructions, Taxpayer Identification Number (TIN) 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.

Federal Communications Commission.

William Huber,

Associate Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E5–7872 Filed 12–27–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2005–N–09]

Notice of Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions, the Limits on Annual Compensation for Federal Home Loan Bank Directors, and the Maximum Dollar Limits on Certain Allocations by a Federal Home Loan Bank of Its Annual Required Affordable Housing Program Contributions

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: Based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U), as published by the Department of Labor (DOL), the Federal Housing Finance Board (Finance Board) has adjusted the cap on average total assets that defines a ''Community Financial Institution'', the limits on annual compensation for Federal Home Loan Bank (Bank) directors, and the maximum dollar limits on certain allocations by a Bank of its annual required Affordable Housing Program (AHP) contributions. These changes will become effective on January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Scott L. Smith, Associate Director, Research, Office of Supervision, by telephone at 202–408–2991, by electronic mail at *smiths@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

A. Statutory and Regulatory Background

Section 2(13) of the Federal Home Loan Bank Act (Bank Act) and § 925.1 of the Finance Board regulations define a member that is a ''Community Financial Institution'' (CFI) by the member's total asset size. See 12 U.S.C. 1422(13)(A) and 12 CFR 925.1. The Bank Act requires the Finance Board annually to adjust the CFI asset cap to reflect any percentage increase in the

preceding year's CPI–U, as published by the DOL. See 12 U.S.C. 1422(13)(B).

Section 7(i)(2)(B) of the Bank Act and § 918.3(a)(1) of the Finance Board regulations require the Finance Board to make similar annual adjustments to the annual compensation limits for members of the boards of directors of the Banks. See 12 U.S.C. 1427(i)(2) and 12 CFR 918.3(a).

Under the AHP regulation, the Finance Board must make three similar annual adjustments that may affect how a Bank allocates its yearly required AHP contributions. See 12 CFR 951.3(a)(1)–(2). The first annual adjustment sets the maximum dollar limit a Bank may set aside annually for the current year and the subsequent year towards homeownership set-aside programs. The second adjustment sets the maximum dollar limit a Bank may set aside annually for the current year and the subsequent year towards an additional first-time homebuyer set-aside program. The third adjustment sets the maximum dollar limit a Bank may allocate from its annual required AHP contribution for the subsequent year to the current year's competitive application program.

B. Calculating the Annual Adjustments

All of these annual adjustments—to the CFI asset cap, annual Bank director compensation limits, and maximum dollar limits on Bank allocations from annual required AHP contributions—reflect the percentage by which the CPI–U published for November of the preceding calendar year exceeds the CPI–U published for November of the year before the preceding calendar year (if at all). For example, the adjustments that will become effective on January 1, 2006, are based on the percentage increase in the CPI–U from November 2004 to November 2005. The Finance Board uses November data to ensure publication of the changes to the annual limits before the January 1st effective date. This practice is consistent with that of other federal agencies.

The DOL encourages use of CPI–U data that has not been seasonally adjusted in ''escalation agreements'' because seasonal factors are updated annually and seasonally adjusted data are subject to revision for up to 5 years following the original release. Unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered. Accordingly, the Finance Board is using data that has not been seasonally adjusted.

The unadjusted CPI–U increased 3.5 percent between November 2004 and November 2005. Based on this change, and effective on January 1, 2006, the Finance Board has made the following adjustments:

CFI Asset Cap: The CFI Asset Cap, which was $567 million for 2005, will be $587 million in 2006. The Finance Board arrived at the adjusted limit of $587 million by rounding to the nearest million.

Annual compensation limits: The annual compensation limits for members of the Bank boards of directors will be as follows in 2006: For a Chairperson—$29,357; for a Vice-Chairperson—$23,486; for any other member of a Bank's board of directors—$17,614. The Finance Board arrived at the adjusted annual compensation limits by rounding to the nearest dollar.

Dollar limits on Bank allocations from annual required AHP contributions. The maximum dollar limit on the amount a Bank may set aside from its annual required AHP contributions, for the current year and the subsequent year, toward homeownership set-aside programs, which was $3.2 million in 2005, will be $3.3 million in 2006.

The maximum dollar limit on the amount a Bank may set aside from its annual required AHP contributions towards an additional first-time homebuyer set-aside program, for the current year and subsequent year, which was $1.6 million in 2005, will be $1.7 million in 2006.

The maximum dollar limit on the amount a Bank may allocate from its annual required AHP contribution, for the subsequent year to the current year's competitive application program, which was $3.2 million in 2005, will be $3.3 million in 2006.

The Finance Board arrived at the adjusted AHP limits by rounding to the nearest $100,000.[1]

Dated: December 21, 2005.

By the Federal Housing Finance Board.

Ronald A. Rosenfeld,

Chairman.

[FR Doc. E5–7890 Filed 12–27–05; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site 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 January 20, 2006.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Bay View Capital Corporation, San Mateo, California; to become a bank holding company by acquiring 100 percent of the voting shares of Great Lakes Bancorp, Buffalo, New York, and thereby acquiring Greater Buffalo Savings Bank, Buffalo, New York.

2. TrustCo Bank Corp NY, Glenville, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Ballston Spa Bancorp and thereby acquire Ballston Spa National Bank, both of Ballston Spa, New York.

In connection with this application, Applicant also has applied to retain control of TrustCo Bank, Schenectady, New York, and thereby continue to engage in operating a savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

B. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Sky Financial Group, Inc., Bowling Green, Ohio; to acquire up to 9.99

[1] While all adjusted limits in this Notice have been rounded to some dollar level, the calculations of new limits are based on cumulative CPI–U changes applied to the limits as they first appeared in Finance Board regulations, and hence are not distorted over time by rounding.

percent of the voting shares of LNB Bancorp, Inc., Lorain, Ohio, and thereby indirectly acquire voting shares of the Lorain National Bank, Lorain, Ohio.

Board of Governors of the Federal Reserve System, December 22, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E5–7944 Filed 12–27–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005P–0244]

Determination That DECADRON (Dexamethasone) Tablets, 1.5 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that DECADRON (dexamethasone) tablets, 1.5 milligrams (mg), were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for dexamethasone tablets, 1.5 mg.

FOR FURTHER INFORMATION CONTACT: Janice L. Weiner, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (the 1984 amendments) (Public Law 98–417), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is typically a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under 21 CFR 314.161(a)(1), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

DECADRON (dexamethasone) tablets, 1.5 mg, are the subject of approved NDA 11–664 held by Merck & Co., Inc. (Merck). According to Merck's 1997 annual report, the 1.5–mg dose strength, among others, of DECADRON (dexamethasone) tablets, a synthetic adrenocortical steroid, was discontinued in 1997. In a citizen petition dated June 16, 2005 (Docket No. 2005P–0244), submitted under 21 CFR 10.30, ECR Pharmaceuticals requested that the agency determine whether DECADRON (dexamethasone) tablets, 1.5 mg, were withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that Merck's DECADRON (dexamethasone) tablets, 1.5 mg, were not withdrawn from sale for reasons of safety or effectiveness. FDA has reviewed its files for records concerning the withdrawal of DECADRON (dexamethasone) tablets, 1.5 mg, from sale. There is no indication that the decision not to market DECADRON (dexamethasone) tablets, 1.5 mg, commercially is a function of safety or effectiveness concerns. FDA has independently evaluated relevant literature and data for possible concerns regarding the safety or effectiveness of this drug product. FDA has found no information that would indicate that this product was withdrawn for reasons of safety or effectiveness.

After considering the citizen petition and reviewing agency records, FDA determines that for the reasons outlined previously, DECADRON (dexamethasone) tablets, 1.5 mg, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list DECADRON (dexamethasone) tablets, 1.5 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs for dexamethasone tablets, 1.5 mg, that comply with relevant legal and regulatory requirements may be approved by the agency.

Dated: December 19, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–7875 Filed 12–27–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0488]

Animal Drug User Fee Act; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting on the Animal Drug User Fee Act (ADUFA) to seek public comments relative to the program's overall performance and reauthorization as directed by Congress.

Date and Time: The public meeting will be held on February 24, 2006, from 9 a.m. to 5 p.m. Requests to make a presentation at the meeting must be received by February 10, 2006. Written comments regarding this meeting may be made by March 26, 2006, to the Division of Dockets Management (see **ADDRESSES**).

Location: The meeting will be held at the DoubleTree Hotel, Plaza II and III, 1750 Rockville Pike, Rockville, MD 20852. Registration is not required to attend the meeting. Parking is limited, so we recommend arriving by subway (Metro rail) if possible. The DoubleTree Hotel is accessible from the Metro rail's red line at the Twinbrook station.

ADDRESSES: You may submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Aleta Sindelar, Center for Veterinary

Medicine (CVM) (HFV–3), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9004, FAX: 240–276–9020, e-mail: *asindela@cvm.fda.gov*.

Transcripts: Meeting transcripts will be made available on CVM's Web site (*http://www.fda.gov/cvm/adufa.htm*) approximately 30 working days after the meeting. The transcript will also be available for public examination at the Division of Dockets Management (see **ADDRESSES**), between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

In the language authorizing the Animal Drug User Fee Act, Congress directed the Secretary of Health and Human Services (the Secretary) to consult with the Committee on Energy and Commerce of the House of Representatives, the Committee on Health, Education, Labor and Pensions of the Senate, appropriate scientific and academic experts, veterinary professionals, representatives of consumer advocacy groups, and the regulated industry in developing recommendations to Congress for the reauthorization of ADUFA and for the goals and plans for meeting the goals associated with the process for review of animal drug applications. As directed by Congress, FDA is holding a public meeting to gather information on what features we should propose to include in the ADUFA program (*http://www.fda.gov/cvm/4218.htm*) and hear stakeholder views on this subject.

We are offering the following two general questions for consideration, and we are interested in responses to these questions and any other pertinent information stakeholders would like to share:

1. What is your assessment of the overall performance of the ADUFA program thus far?

2. What suggestions or changes would you make relative to the reauthorization of ADUFA?

ADUFA, amended the Federal Food, Drug, and Cosmetic Act (the act) and authorized FDA to collect fees for certain animal drug applications, establishments, products, and sponsors in support of the review of animal drugs. These additional resources support FDA's responsibilities under the act to ensure that new animal drug products are safe and effective for animals as well as for the public with respect to animals intended for food consumption.

FDA's animal drug user fee program was authorized in 2003 and implemented in 2004. A significant part of the preparations for the program included determining the fee levels for fiscal year (FY) 2004. ADUFA provides for the following four fees: (1) A sponsor fee, (2) an establishment fee, (3) a product fee, and (4) an application fee. The act also provides for specific waivers and exemptions from fees. FDA prepared guidance for the industry regarding the fees, billings and submission of fees, and waivers and exemptions (*http://www.fda.gov/cvm/adufa.htm*).

The total amounts of monies expected for collection were as follows: $5 million for FY 2004; $8 million in FY 2005; and, $10 million in each FY 2006 through 2008. Each fee type was expected to be 25 percent of the total amount collected. Thus, in FY 2006, we expect to receive $2,500,000 from sponsor fees, establishment fees, product fees, and application fees, for a total of $10,000,000 dollars (figures are subject to inflation and workload adjustments). The user fees are used to achieve shorter, more predictable review times by increasing the review staff at FDA and building better management systems. As a result, we anticipate substantial savings to the industry in regulatory review and developmental expenses.

FDA's animal drug premarket review program is making continual and substantial improvements in the animal drug review process as a result of user fees. This helps ensure an adequate supply of safe and effective therapeutic and production animal drugs.

We have published a number of reports that may help inform the public about the ADUFA program. Key documents such as ADUFA-related guidance, legislation, performance reports, and financial reports, can be found at *http://www.fda.gov/cvm/adufa.htm*.

II. Meeting

FDA will conduct the meeting on February 24, 2006, at the DoubleTree Hotel (see *Location*). In general, the meeting format will include presentations by FDA and a series of panels representing different stakeholder interest groups (scientific and academic experts, veterinary professionals, representatives of consumer advocacy groups, and the regulated industry). FDA and panel presentations are planned from 9 a.m. until 12 noon. The open public comment portion of the meeting for registered speakers is planned to begin at 1 p.m. An opportunity for public comments from meeting attendees will commence following the registered presentations, if time permits. The docket will remain open for written comments through March 26, 2006, 30 days following the meeting.

If you wish to reserve time to make a presentation at the meeting, please contact Aleta Sindelar (see **FOR FURTHER INFORMATION CONTACT**) by February 10, 2006. Your request to make a presentation should include the following information: Name, company, company address, company phone number, and e-mail address. We will try to accommodate all persons who wish to make a presentation. The time allotted for presentations may depend on the number of persons who wish to speak.

If you require special accommodations due to a disability, please contact the DoubleTree Hotel (see *Location*) at least 7 days in advance of the meeting.

III. Comments

If you would like to submit written comments to the docket regarding ADUFA, please send your comments to the Division of Dockets Management (See **ADDRESSES**). Submit a single copy of electronic comments or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be reviewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 20, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E5–7876 Filed 12–27–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Heritable Disorders and Genetic Diseases in Newborns and Children; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Heritable Disorders and Genetic Diseases in Newborns and Children (ACHDGDNC).

Dates and Times: February 13, 2006, 9 a.m. to 5 p.m.; February 14, 2006, 8:30 a.m. to 3 p.m.

Place: Ronald Reagan Building and International Trade Center, Rotunda Room,

1300 Pennsylvania Avenue, NW., Washington, DC 20004.

Status: The meeting will be open to the public with attendance limited to space availability.

Purpose: The Advisory Committee provides advice and recommendations concerning the grants and projects authorized under the Heritable Disorders Program and technical information to develop policies and priorities for this program. The Heritable Disorders Program was established to enhance the ability of State and local health agencies to provide for newborn and child screening, counseling and health care services for newborns and children having or at risk for heritable disorders. The Committee was established specifically to advise and guide the Secretary regarding the most appropriate application of universal newborn screening tests, technologies, policies, guidelines and programs for effectively reducing morbidity and mortality in newborns and children having or at risk for heritable disorders.

Agenda: The first day will be devoted to a presentation on the National Coordination Center for the Regional Genetics and Newborn Screening Collaboratives, presentations on newborn screening projects of the Regional Collaboratives, and reports from the Committee's subcommittees on laboratory standards and procedures, follow-up and treatment and education and training. The second day will include discussions on the nomination process for candidate conditions on the Newborn Screening Panel and presentations by organizations representing policy makers and legislation. Proposed agenda items are subject to change.

Time will be provided each day for public comment. Individuals who wish to provide public comment or who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACHDGDNC Executive Secretary, Michele A. Lloyd-Puryear, M.D., Ph.D. (contact information provided below).

Contact Person: Anyone interested in obtaining a roster of members or other relevant information should write or contact Michele A. Lloyd-Puryear, M.D., Ph.D., Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1080. Information on the Advisory Committee is available at *http://mchb.hrsa.gov/programs/genetics/committee.*

Dated: December 20, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. E5–7934 Filed 12–27–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–23333]

Random Drug Testing Rate for Covered Crewmembers

AGENCY: Coast Guard, DHS.

ACTION: Notice of minimum random drug testing rate.

SUMMARY: The Coast Guard has set the calendar year 2006 minimum random drug testing rate at 50 percent of covered crewmembers. Based upon an evaluation of the 2004 Management Information System (MIS) data collection forms submitted by marine employers, we will maintain the minimum random drug testing at 50 percent of covered crewmembers for the calendar year 2006. The purpose of setting a minimum random drug testing rate is to establish a measure of deterrence for the illegal use of controlled substances.

DATES: The minimum random drug testing rate is effective January 1, 2006 through December 31, 2006. You must submit your 2005 MIS reports no later than March 15, 2006.

ADDRESSES: The annual MIS report may be submitted in writing to Commandant (G–MOA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 2404, Washington, DC 20593–0001 or by electronic submission to the following Internet address: *http://www.uscg.mil/hq/g-m/moa/dapip.htm.*

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Robert C. Schoening, Drug and Alcohol Program Manager, Office of Investigations and Analysis (G–MOA), U.S. Coast Guard Headquarters, telephone 202–267–0684. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Dockets Operations, Department of Transportation, telephone 202–366–0402.

SUPPLEMENTARY INFORMATION: Under 46 CFR 16.230, the Coast Guard requires marine employers to establish random drug testing programs for covered crewmembers on inspected and uninspected vessels. All marine employers are required to collect and maintain a record of drug testing program data for each calendar year, January 1 through December 31. You must submit this data by 15 March of the following year to the Coast Guard in an annual MIS report.

You may either submit your own MIS report or have a consortium or other employer representative submit the data in a consolidated MIS report. The chemical drug testing data is essential to analyze our current approach for deterring and detecting illegal drug abuse in the maritime industry.

Since 2004 MIS data indicates that the positive random testing rate is greater than one percent industry-wide (1.53 percent), the Coast Guard announces that the minimum random drug testing rate is set at 50 percent of covered employees for the period of January 1, 2006 through December 31, 2006 in accordance with 46 CFR 16.230(e).

Each year we will publish a notice reporting the results of the previous calendar year's MIS data, and the minimum annual percentage rate for random drug testing for the next calendar year.

Dated: December 20, 2005.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. E5–7897 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Change in Regional Partners for Southeast Alaska and the Kodiak Archipelago for the Alaska Migratory Bird Co-Management Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is announcing a change in two regional partners, one representing Southeast Alaska and the other one representing the Kodiak Archipelago, both on the Alaska Migratory Bird Co-management Council (Co-management Council). For Southeast Alaska, the Central Council, Tlingit and Haida Indian Tribes of Alaska (Central Council), has elected to step down, and the Co-management Council has voted to replace that partner with the Southeast Alaska Inter-Tribal Fish and Wildlife Commission. For Kodiak, the Kodiak Area Native Association has elected to step down, and the Co-Management Council has voted to replace that partner with the Shoonaq' Tribe of Kodiak.

DATES: The decision described in this notice became effective December 2, 2005.

ADDRESSES: Regional Director, Alaska Region, U.S. Fish and Wildlife Service,

1011 E. Tudor Road, Anchorage, AK 99503, or fax to (907) 786–3306 or e-mail to *ambcc@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service regulates the subsistence take of migratory birds in Alaska through regulations in 50 CFR part 92. The Service published a notice of decision in the **Federal Register** on March 28, 2000, (65 FR 16405) that established regional management bodies in Alaska to develop recommendations related to subsistence harvest. The notice of decision also established a single statewide management body consisting of representatives from each of the regions and one representative each from the U.S. Fish and Wildlife Service and the Alaska Department of Fish and Game. Membership on the 11 regional bodies comprises subsistence users from each of the active regions. The Service contracted with 11 partner organizations to organize and support the regional bodies.

Since 2000, the Co-management Council partner organization representing Southeast Alaska has been the Central Council. However, the Central Council notified the Service, by letter dated September 16, 2005, of its request to cease the present regional partnership with the Co-management Council, and recommended that the Southeast Alaska Inter-Tribal Fish and Wildlife Commission could potentially be a good replacement. The Co-management Council met in Anchorage on September 29, 2005, and unanimously selected the Southeast Alaska Inter-Tribal Fish and Wildlife Commission as the new regional partner to represent Southeast Alaska.

Since 2000, the Co-management Council partner organization representing the Kodiak Archipelago has been the Kodiak Area Native Association. However, the Kodiak Area Native Association notified the Service, by letter dated November 3, 2005, of its request to cease the present regional partnership with the Co-management Council, and recommended that the Shoonaq' Tribe of Kodiak could potentially be a good replacement. The Co-management Council voted by polling on November 21, 2005, and selected the Shoonaq' Tribe of Alaska as the new regional partner to represent Kodiak, Alaska.

These two new Co-management Council partner organizations will ensure continuity of communication with the subsistence users of their regions to establish and maintain local representation on their regional management bodies. Partners are also responsible for coordinating meetings within their regions, soliciting proposals and keeping the villages informed.

Dated: December 2, 2005.

Rowan Gould,

Regional Director, Anchorage, Alaska.

[FR Doc. E5–7969 Filed 12–27–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1920–ET–4662; NVN–77880; 6–08807]

Public Land Order No. 7653; Withdrawal of Public Lands for the Department of Energy To Protect the Caliente Rail Corridor; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 308,600 acres of public lands within the Caliente Rail Corridor, Nevada, from surface entry and the location of new mining claims, subject to valid existing rights, for a period of 10 years to allow the Department of Energy to evaluate the lands for the potential construction, operation, and maintenance of a rail line which would be used to transport spent nuclear fuel and high-level radioactive waste to the proposed Yucca Mountain Repository as part of the Department of Energy's responsibility under the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10101 *et seq.*

DATES: Effective Date: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 775–861–6532.

SUPPLEMENTARY INFORMATION: The evaluation of the Caliente Rail Corridor will assist the Department of Energy to determine through the preparation of the Caliente Corridor rail alignment environmental impact statement, conducted pursuant to the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*, whether to construct the rail line in that location. Construction of a rail line within the Caliente Rail Corridor would require that the Department of Energy apply for and receive a right-of-way grant from the Bureau of Land Management in accordance with the Federal Land Policy and Management Act, as amended, 43 U.S.C. Subchapter V.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (2000)), but not from leasing under the mineral leasing laws, for a period of 10 years, to allow the Department of Energy to evaluate lands within the Caliente Rail Corridor for the potential construction, operation, and maintenance of a rail line which would be used to transport spent nuclear fuel and high-level radioactive waste to the proposed Yucca Mountain Repository as part of the Department of Energy's responsibility under the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10101 *et seq.*

A corridor 1-mile in width that contains a portion of, or is wholly encompassed within the following sections and/or quarter sections and government lots:

T. 1 N., R. 43 E.,
- Sec. 23, S½;
- Sec. 24, NE¼ and S½;
- Secs. 25 and 26;
- Sec. 27, E½;
- Secs. 34, 35, and 36.

T. 1 S., R. 43 E.,
- Sec. 1, lots 2, 3, and 4, S½NW¼, and SW¼;
- Secs. 2 and 3;
- Sec. 4, E½;
- Sec. 9, E½;
- Secs. 10 and 11;
- Sec. 12, W½;
- Sec. 13;
- Sec. 14, E½ and NW¼;
- Sec. 15;
- Sec. 16, E½;
- Sec. 21;
- Sec. 22, NE¼ and W½;
- Sec. 23, NE¼;
- Sec. 24;
- Sec. 25, E½;
- Sec. 27, W½;
- Secs. 28 and 33;
- Sec. 34, W½.

T. 2 S., R. 43 E.,
- Sec. 3, lots 3 and 4, S½NW¼, and SW¼;
- Secs. 4 and 9;
- Sec. 10, W½;
- Sec. 15, W½;
- Sec. 16 (except patented land);
- Sec. 20, SE¼ (except patented land);
- Sec. 21 (except patented land);
- Sec. 22, W½ (except patented land);
- Sec. 27, SW¼ (except patented land);
- Sec. 28 (except patented land);

Sec. 29, E½ (except patented land);
Sec. 32, NE¼ (except patented land);
Secs. 33 and 34 (except patented land);
Sec. 35, W½ and SE¼ (except patented land);
Sec. 36, SW¼.
T. 3 S., R. 43 E.,
Secs. 1, 2, and 3 (except patented land);
Sec. 4, NE¼ (except patented land);
Sec. 10 (except patented land);
Secs. 11 and 12;
Sec. 13, NE¼ and W½;
Sec. 14;
Sec. 15, E½;
Sec. 22, E½;
Secs. 23 to 26, inclusive;
Sec. 27, E½;
Sec. 34, E½;
Secs. 35 and 36.
T. 4 S., R. 43 E.,
Sec. 1, lots 2, 3, and 4, S½NE¼, S½NW¼, and SW¼;
Sec. 2;
Sec. 3; lots 1 and 2, S½NE¼, and S½;
Secs. 10 and 11;
Sec. 12, W½;
Secs. 14, 15, and 22;
Sec. 23, W½;
Sec. 26, NW¼;
Sec. 27;
Sec. 28, E½;
Sec. 33;
Sec. 34, NE¼ and W½.
T. 5 S., R. 43 E., Unsurveyed
Sec. 3, NW¼;
Secs. 4, 5, 8, 9, 15, and 16;
Sec. 17 (except patented land);
Secs. 21, 22, 27, 28, 33, 34, and 35.
T. 6 S., R. 43 E., Unsurveyed
Secs. 1, 2, 3, Secs. 10 to 15, inclusive, and Sec. 23;
Secs. 24 and 25 (except patented land);
Sec. 26;
Sec. 27, E½;
Sec. 34, E½;
Secs. 35 and 36.
T. 7 S., R. 43 E., Unsurveyed
Secs. 1 and 2;
Sec. 3, E½;
Secs. 11 to 14, inclusive, Secs. 24 and 25.
T. 1 N., R. 44 E.,
Sec. 19, lots 2, 3, and 4, E½SW¼, and E½;
Secs. 20, 21, and 22;
Sec. 23, W½ and SE¼;
Sec. 24, S½;
Secs. 25 and 26;
Sec. 27, N½;
Sec. 28, N½;
Sec. 29, N½;
Sec. 30, lots 1, 2, and 3, NE¼, E½NW¼, and E½SW¼.
T. 7 S., R. 44 E., Partially Surveyed
Secs. 6, 7, 17, 18, 19, and 20;
Sec. 21, NE¼ and N½NW¼;
Sec. 27;
Sec. 29, W½;
Sec. 29, SE¼ (reserved minerals only);
Secs. 30 and 31.
T. 8 S., R. 44 E., Partially Surveyed
Sec. 2, E½;
Sec. 9, N½ (reserved minerals only);
Sec. 9, S½;
Sec. 10, N½ (reserved minerals only);
Sec. 10, S½;
Sec. 11, SW¼;
Sec. 12, E½;
Secs. 13 to 16, inclusive;
Sec. 22, NE¼;
Secs. 23 to 26, inclusive, and Sec. 36.
T. 1 N., R. 45 E.,
Sec. 19, lot 4, E½SW¼, and SE¼;
Sec. 20, S½;
Sec. 25, S½;
Sec. 26, NW¼ and S½;
Secs. 27 to 30, inclusive;
Sec. 32, N½;
Sec. 33, N½;
Sec. 34, N½;
Secs. 35 and 36.
T. 8 S., R. 45 E., Unsurveyed
Sec. 19 and Secs. 28 to 33, inclusive.
T. 9 S., R. 45 E., Unsurveyed
Secs. 2 to 6, inclusive, Secs. 8 to 14, inclusive, and Sec. 24.
T. 1 N., R. 46 E.,
Sec. 25, NE¼ and S½;
Sec. 26, S½;
Sec. 27, S½;
Sec. 28, S½;
Sec. 29, S½;
Sec. 30, lot 4, E½SW¼, and SE¼;
Secs. 31 to 36, inclusive.
T. 9 S., R. 46 E., Unsurveyed
Sec. 7 and Secs. 17 to 21, inclusive;
Sec. 22, SW¼;
Secs. 26 to 29, inclusive, and Secs. 33 to 36, inclusive.
T. 10 S., R. 46 E., Unsurveyed
Secs. 1, 2, 12, and 13.
T. 1 N., R. 47 E.,
Sec. 1, lots 1 to 4, inclusive, S½NE¼, S½NW¼, and SW¼;
Sec. 2;
Sec. 3, SE¼;
Secs. 10 and 11;
Sec. 12, NW¼;
Sec. 14, NW¼;
Sec. 15;
Sec. 16, NE¼ and S½;
Sec. 20, NE¼ and S½;
Sec. 21;
Sec. 22, NE¼ and W½;
Sec. 28, NE¼ and W½;
Secs. 29 and 30;
Sec. 31, lots 1, 2 and 3, NE¼, and E½NW¼;
Sec. 32 NW¼.
T. 2 N., R. 47 E.,
Sec. 25, NE¼ and S½;
Sec. 35, E½;
Sec. 36.
T. 10 S., R. 47 E., Partially Surveyed
Sec. 6, SW¼;
Secs. 7 and 8;
Sec. 9, SW¼;
Sec. 15, NW ¼ and S½;
Secs. 16, 17, and 18;
Sec. 21, N½ and SE½;
Sec. 22, E½NE¼, W½, and SE¼SE¼;
Sec. 23, S½NW¼ and SW¼;
Sec. 26, W½;
Sec. 27; E½ and SW¼SW¼;
Sec. 28, NE¼;
Sec. 34;
Sec. 35, W½ and SE¼.
T. 11 S., R. 47 E.,
Sec. 1, SW¼;
Sec. 2;
Sec. 3, lots 1 and 2, S½NE¼, and SE¼;
Sec. 11;
Sec. 12, W½ and SE¼;
Sec. 13;
Sec. 14, N½ and SE¼;
Sec. 24, N½ and SE¼;
Sec. 25, NE¼.
T. 2 N., R. 48 E.,
Sec. 2, lots 3 and 4, and S½NW¼;
Sec. 3;
Sec. 4, lot 1, S½NE¼, and S½;
Sec. 8, E½;
Sec. 9;
Sec. 10, NE¼ and W½;
Sec. 16, NE¼ and W½;
Sec. 17;
Sec. 18, SE¼;
Sec. 19, lots 3 and 4, E½, and E½SW¼;
Sec. 20;
Sec. 21, NW¼;
Sec. 29, NW¼;
Sec. 30;
Sec. 31, lots 1 to 4, inclusive, NE¼, and E½NW¼.
T. 3 N., R. 48 E.,
Sec. 13, E½ and SW¼;
Sec. 23, E½;
Sec. 24;
Sec. 25, N½ and SW¼;
Sec. 26;
Sec. 27, SE¼;
Secs. 34 and 35;
Sec. 36, NW¼.
T. 11 S., R. 48 E., Unsurveyed
Sec. 7, S½;
Secs. 8 to 11, inclusive, Secs. 14 to 22, inclusive, and Secs. 27 to 34, inclusive.
T. 12 S., R. 48 E., Unsurveyed
Secs. 2 to 6, inclusive;
Sec. 9, NE¼;
Secs. 10 and 11;
Sec. 13, SW¼;
Secs. 14, 15, and Secs. 23 to 26, inclusive;
Sec. 35, E½;
Sec. 36.
T. 13 S., R. 48 E., Unsurveyed
Secs. 9, 10, 14, 15, 16, and Secs. 22 to 26, inclusive;
Sec. 36, NE¼.
T. 3 N., R. 49 E.,
Sec. 2, lots 3 and 4, and S½NW¼;
Secs. 3 and 4;
Sec. 5, SE¼;
Sec. 7, E½SW¼ and SE¼;
Secs. 8 and 9;
Sec. 10, NW¼;
Sec. 16, NW¼;
Sec. 17, N½ and SW¼;
Sec. 18;
Sec. 19, lots 1, 2, and 3, NE¼, and E½NW¼.
T. 4 N., R. 49 E.,
Sec. 24, SE¼;
Sec. 25;
Sec. 26, NE¼ and S½;
Sec. 33, SE¼;
Secs. 34 and 35;
Sec. 36, N½ and SW¼.
T. 12 S., R. 49 E., Unsurveyed
Sec. 31.
T. 13 S., R. 49 E., Unsurveyed
Secs. 13, 14,
Secs. 22 to 27, inclusive, and
Secs. 29 to 36, inclusive.
T. 14 S., R. 49 E., Unsurveyed
Secs. 1 to 5, inclusive,
Secs. 8 to 11, inclusive,
Secs. 15 and 16.
T. 4 N., R. 49½ E., Unsurveyed
Secs. 25, 26, 27, 34, 35, and 36.

T. 1 N., R. 50 E.,
Sec. 1, lots 1 and 2, S½NE¼, and SE¼;
Sec. 12, NE¼ (excluding Kawich Wilderness Study Area).
T. 2 N., R. 50 E.,
Sec. 1;
Sec. 2, lots 1 and 2, S½NE¼, and SE¼;
Sec. 11, E½;
Secs. 12 and 13;
Sec. 14, NE¼;
Secs. 24 and 25;
Sec. 36, E½ and NW¼.
T. 3 N., R. 50 E., Unsurveyed
Secs. 2, 3, 4, 10, 11, and 14;
Sec. 15, E½;
Sec. 22, NE¼;
Secs. 23 to 26, inclusive, Secs. 35 and 36.
T. 3½ N., R. 50 E., Unsurveyed
Secs. 33 and 34.
T. 4 N., R. 50 E., Partially Surveyed
Secs. 30 and 31;
Sec. 32, SW¼.
T. 13 S., R. 50 E., Unsurveyed
Secs. 30 and 31.
T. 1 N., R. 51 E.,
Sec. 6 (excluding South Reveille Wilderness Study Area);
Sec. 7 (excluding Kawich and South Reveille Wilderness Study Areas);
Sec. 17 (excluding South Reveille Wilderness Study Area);
Sec. 18 (excluding Kawich and South Reveille Wilderness Study Areas);
Sec. 19 NE¼ (excluding Kawich Wilderness Study Area);
Sec. 20 and 28 (excluding South Reveille Wilderness Study Area);
Sec. 29, E½ and NW¼;
Sec. 33, E½ and NW¼;
Sec. 34 (excluding South Reveille Wilderness Study Area).
T. 2 N., R. 51 E.,
Sec. 18, lots 3 and 4;
Sec. 19, lots 1 to 4, inclusive, E½NW¼, and E½SW¼;
Sec. 30, lots 1 to 4, inclusive, E½NW¼, E½SW¼, and SE¼;
Sec. 31, (excluding South Reveille Wilderness Study Area).
T. 1 S., R. 51 E., Unsurveyed
Sec. 2, (excluding South Reveille Wilderness Study Area);
Sec. 3;
Secs. 11, 12, and 13 (excluding South Reveille Wilderness Study Area);
Sec. 14, E½;
Sec. 24; Sec. 25, E½;
Sec. 36, E½.
T. 1 S., R. 51½ E., Unsurveyed
Secs. 19, 29, and 30 (excluding South Reveille Wilderness Study Area);
Sec. 31;
Sec. 32 (excluding South Reveille Wilderness Study Area).
T. 2 S., R. 51½ E., Unsurveyed
Secs. 4 and 5 (excluding South Reveille Wilderness Study Area);
Secs. 6, 7, and 8;
Sec. 9, (excluding South Reveille Wilderness Study Area);
secs, 16 and 17;
Sec. 18, NE¼;
Sec. 20, NE¼;
Sec. 21.
T. 2 S., R. 52 E., Unsurveyed
Secs. 7 and 11 (excluding South Reveille Wilderness Study Area);
Secs 12 and 13;
Secs. 14 to 18, inclusive (excluding South Reveille Wilderness Study Area);
Secs. 19, 20, and 21;
Sec. 22, N½;
Sec. 23, N½.
T. 1 S., R. 53 E.,
Sec. 25;
Sec. 35, E½ and SW¼;
Sec. 36.
T. 2 S., R. 53 E.,
Sec. 1, lots 3 and 4, and S½NW¼;
Sec. 2;
Sec. 3, lot 1, S½NE¼, and S½;
Sec. 7, lot 4, E½SW¼, and SE¼;
Sec. 8, S½;
Secs. 9 and 10;
Sec. 11, N½ and SW¼;
Sec. 15, N½;
Sec. 16, N½ and SW¼;
Secs. 17 and 18.
T. 1 S., R. 54 E.,
Sec. 1, S½NE¼ and S½;
Sec. 10, SE¼;
Secs. 11 and 12;
Sec. 13, N½;
Secs. 14 and 15;
Sec. 16, SE¼;
Sec. 19, lots 3 and 4, E½SW¼, and SE¼;
Sec. 20, S½;
Secs. 21 and 22;
Sec. 23, NW¼;
Sec. 28, N½ and SW¼;
Secs. 29 and 30;
Sec. 31, lots 1 and 2, and E½NW¼;
Sec. 32, NW¼.
T. 1 N., R. 55 E.,
Sec. 13, S½;
Sec. 14, SE¼;
Sec. 21, S½;
Sec. 22, NE¼ and S½;
Secs. 23 and 24;
Sec. 25, NW¼;
Sec. 26, N½;
Secs. 27 and 28;
Sec. 29, NE¼ and S½;
Sec. 30, SE¼;
Secs. 31 and 32;
Sec. 33, N½.
T. 1 S., R. 55 E.,
Sec. 5, lot 4 and S½NW¼;
Sec. 6;
Sec. 7, lots 1, 2, and 3, NE¼, and E½NW¼.
T. 1 N., R. 56 E., Partially Surveyed
Sec. 1;
Sec. 2, S½NE¼ and SE¼;
Sec. 9, S½;
Secs. 10 and 11;
Sec. 12, NE¼ and W½;
Sec. 13, NW¼;
Sec. 14, N½;
Secs. 15, 16, and 17;
Sec. 18, lots 3 and 4, E½, and E½SW¼;
Sec. 19, lots 1, 2, 3, NE¼, E½NW¼, NE¼SW¼, and NW¼SE¼;
Sec. 20, N½;
Sec. 21, N½.
T. 2 N., R. 56 E., Partially Surveyed
Sec. 36.
T. 1 N., R. 57 E., Partially Surveyed
Sec. 3, lots 3 and 4, and S½NW¼;
Sec. 4, lots 1 to 4, inclusive, and S½NW¼;
Sec. 5, lots 1 to 4, inclusive, S½NE¼, S½NW¼, and W½SW¼;
Sec. 6.
T. 2 N., R. 57 E.,
Sec. 13;
Sec. 14, SE¼;
Sec. 22, S½;
Secs. 23 to 28, inclusive;
Sec. 29, S½;
Sec. 31, lots 3 and 4, E½, and E½SW¼;
Secs. 32 to 35, inclusive;
Sec. 36, NE¼ and W½.
T. 2 N., R. 58 E.,
Sec. 2, lots 3 and 4, and S½NW¼;
Secs. 3 and 4;
Sec. 5, S½;
Sec. 7, lot 4, E½SW¼, and E½;
Sec. 8;
Sec. 9, NE¼ and W½;
Sec. 10, NW¼;
Sec. 13, SW¼ and S½SE¼;
Sec. 17, NE¼ and W½;
Sec. 18;
Sec. 19, lots 1 and 2, and E½NW¼;
Sec. 20, S½;
Sec. 21, S½;
Sec. 22, NE¼ and S½;
Secs. 23 and 24;
Sec. 25, N½;
Sec. 26, N½;
Secs. 27 to 30, inclusive;
Sec. 31, lots 1 and 2, NE¼, and E½NW¼;
Sec. 32, N½.
T. 3 N., R. 58 E.,
Sec. 24, SE¼;
Sec. 25;
Sec. 26, NE¼ and S½;
Sec. 33, SE¼;
Secs. 34 and 35;
Sec. 36, N½ and SW¼.
T. 2 N., R. 59 E.,
Sec. 2, lots 2, 3, and 4, and S½NW¼;
Sec. 3, lots 1 to 4, inclusive, S½NE¼, and S½NW¼;
Sec. 4;
Sec. 8, NE¼ and S½;
Sec. 9;
Sec. 16, N½ and SW¼;
Secs. 17, 18, and 19;
Sec. 20, NW¼.
T. 3 N., R. 59 E.,
Sec. 12, E½ and SW¼;
Sec. 13;
Sec. 14, SE¼;
Sec. 19, lots 3 and 4, NE¼, E½SW¼, and SE¼;
Sec. 20;
Sec. 21, S½SW¼ and SE¼;
Sec. 22, NE¼ and S½;
Secs. 23 to 28, inclusive;
Sec. 29, N½;
Sec. 30;
Sec. 33, SE¼;
Secs. 34, 35, and 36.
T. 2 N., R. 60 E., Unsurveyed
Sec. 1.
T. 3 N., R. 60 E., Unsurveyed
Secs. 5 to 8, inclusive, Secs. 18 to 22, inclusive, Secs. 25 to 31, inclusive, Secs. 34, 35, and 36.
T. 4 N., R. 60 E.,
Sec. 20, SE¼;
Sec. 21, S½;
Secs. 22, 23, and 24;
Sec. 25, N½;
Sec. 26, N½;
Sec. 27, E½NE¼ and W½;
Secs. 28 and 29;
Sec. 30, SE¼;

Sec. 31, lots 3 and 4, E½, and E½SW¼;
Sec. 32;
Sec. 33, NW¼.
T. 2 N., R. 61 E., Unsurveyed
Sec. 6.
T. 3 N., R. 61 E., Unsurveyed
Secs. 2, 3, 4, and Secs. 9 to 15, inclusive;
Sec. 22, SE¼;
Secs. 23 and 24;
Sec. 25 (excluding Weepah Spring Wilderness Area);
Secs. 26 to 33, inclusive.
Secs. 34, 35, and 36 (excluding Weepah Spring Wilderness Area).
T. 4 N., R. 61 E.,
Sec. 19, lots 2, 3, and 4, E½SW¼, and SE¼;
Sec. 20, SW¼;
Sec. 28, SW¼;
Secs. 29 and 30;
Sec. 31, NE¼;
Secs. 32 and 33;
Sec. 34, S½.
T. 1 N., R. 62 E., Unsurveyed
Sec. 1, E½;
Sec. 12, E½;
Sec. 13.
T. 2 N., R. 62 E., Unsurveyed
Secs. 1 to 4, inclusive;
Sec. 5, N½;
Secs. 10 to 14, inclusive;
Sec. 15, NE¼;
Secs. 24 and 25;
Sec. 36, E½.
T. 3 N., R. 62 E.,
Sec. 18, lots 2, 3, and 4, E½SW¼, and SE¼;
Sec. 19;
Sec. 20, W½ and SE¼;
Sec. 28, W½ and SE¼;
Secs. 29 and 30;
Sec. 31 (excluding Weepah Spring Wilderness Area);
Secs. 32, 33, and 34, inclusive;
Sec. 35, SW¼.
T 1 N., R. 63 E., Unsurveyed
Secs. 6, 7, 8, Secs. 17 to 21, inclusive, and Secs. 26 to 30, inclusive;
Secs. 32 and 35, inclusive.
T. 1 S., R. 63 E., Unsurveyed
Secs. 1, 2, 11, 12, and 13.
T. 2 N., R. 63 E.,
Sec. 7, lots 1 to 4, inclusive, E½NW¼, E½SW¼, and SE¼;
Secs. 18, 19, 30, and 31.
T. 1 S., R. 64 E.,
Sec. 7, lots 2, 3, and 4, E½NW¼, E½SW¼, and SE¼;
Sec. 15, SW¼;
Sec. 16, S½;
Secs. 17 and 18;
Sec. 19, NE¼ and E½NW¼;
Secs. 20 to 23, inclusive;
Sec. 24, NW¼ and S½;
Sec. 25;
Sec. 26, N½;
Sec. 27, N½.
T. 1 S., R. 65 E.,
Sec. 19, lots 3 and 4, E½SW¼, and SE¼;
Sec. 20, SW¼;
Sec. 27, W½ and SE¼;
Secs. 28, 29, and 30;
Sec. 32, N½;
Sec. 33, N½ and SE¼;
Sec. 34;
Sec. 35, NW¼ and S½.
T. 2 S., R. 65 E.,
Sec. 1, S½NW¼ and SW¼;
Sec. 2;
Sec. 3, lots 1, 2, and 3, S½NE¼, S½NW¼, and SE¼;
Secs. 11, 12, and 13;
Sec. 14, NE¼.
T. 2 S., R. 66 E., Unsurveyed
Secs. 1 to 5, inclusive, Secs. 7 to 14, inclusive, Secs. 16, 17, 18, 20, and 24;
Secs. 16 to 18, inclusive.
T. 2 S., R. 67 E.,
Sec. 7, E½SE¼;
Sec. 8, S½;
Sec. 9, SW¼;
Sec. 14, SW¼ and W½SE¼;
Sec. 15, NW¼ and S½;
Secs. 16 to 20, inclusive;
Sec. 21, N½ and SE¼;
Sec. 22;
Sec. 23, NE¼NE¼, W½NE¼, W½, and SE¼;
Sec. 24, NW¼SW¼, S½SW¼, and NW¼SE¼;
Sec. 25 NW¼NW¼;
Sec. 26, NE¼;
Sec. 29, NW¼;
Sec. 30, lots 1 and 2, NE¼, and E½NW¼;
Sec. 35, NW¼NE¼;
Sec. 36, W½NE¼, SE¼NE¼, E½NW¼, E½SW¼, SW¼SW¼, and SE¼.
T. 3 S., R. 67 E.,
Sec. 1;
Secs. 12 and 13;
Sec. 16, E½;
Sec. 20, SE¼;
Sec. 21, W½NE¼, SW¼, NW¼SE¼, and N½SW¼SE¼;
Sec. 23, E½;
Secs. 24 and 25;
Sec. 28, W½NW¼, S½SW¼, and SE¼;
Sec. 29, NE¼, SW¼, N½SE¼, and SE¼SE¼;
Sec. 32, E½NE¼, NW¼, W½SW¼, NE¼SW¼, and E½SE¼;
Sec. 33, lots 2 and 3, and NW¼;
Sec. 35, E½;
Sec. 36.
T. 4 S., R. 67 E.,
Sec. 1;
Sec. 2, lots 1 and 2, S½NE¼, and SE¼;
Sec. 4, lots 3 and 4, S½NW¼, and SW¼;
Sec. 5, lots 1 and 4, SE¼NE¼, SW¼NW¼, NW¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 6, lot 1, S½NE¼, and SE¼;
Sec. 7, lot 5;
Sec. 8, S½SE¼;
Sec. 9, N½NW¼ and SW¼;
Sec. 12, NE¼, N½NW¼, SE¼NW¼, and SE¼.
T. 2 S., R. 68 E.,
Sec. 23, S½;
Secs. 25 to 29, inclusive;
Sec. 30, E½, SE¼NW¼, and E½SW¼;
Sec. 31, NE¼ and E½NW¼;
Sec. 32, N½;
Sec. 33, N½;
Sec. 34, N½;
Sec. 35, N½;
Sec. 36.
T. 3 S., R. 68 E.,
Sec. 1;
Sec. 12, NE¼;
Sec. 19, lots 3 and 4, and E½SW¼;
Sec. 30, lots 1 to 4, inclusive, E½NW¼, and E½SW¼;
Sec. 31, lots 1 and 2, and E½NW¼.
T. 4 S., R. 68 E.,
Sec. 6, lots 5, 6, and 7, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 2, 3, and 4, NE¼, E½SW¼, and SE¼;
Sec. 8, W½;
Sec. 17, NW¼;
Sec. 18, lot 1, NE¼, E½NW¼.
T. 2 S., R. 69 E.,
Sec. 30, lots 3 and 4, and E½SW¼;
Sec. 31, lots 1 to 4, inclusive, E½NW¼, E½SW¼, and SE¼;
Sec. 32, S½;
Sec. 33, S½.
T. 3 S., R. 69 E.,
Sec. 3, lot 4, S½NW¼, SW¼, and SE¼;
Secs. 4 to 7, inclusive;
Sec. 8, W½;
Sec. 9, E½ and NW¼;
Sec. 10;
Sec. 11, SW¼;
Sec. 13, S½;
Secs. 14 and 15;
Sec. 22, NE¼;
Secs. 23 and 24;
Sec. 25, N½.
T. 3 S., R. 70 E.,
Sec. 8, S½;
Sec. 9, S½;
Sec. 10, S½;
Sec. 11, S½;
Sec. 12, S½;
Secs. 13 to 17, inclusive;
Sec. 18; lots 8 to 12, inclusive, and E½;
Sec. 19; sec. 20, N½;
Sec. 22, NE¼;
Sec. 23, N½;
Sec. 24, NW¼.

2. This order does not authorize the construction, operation, or maintenance of a rail line to transport spent nuclear fuel and high-level radioactive waste to the Yucca Mountain Repository.

3. All public lands included in this withdrawal will be managed in accordance with applicable Bureau of Land Management land use plans, laws, regulations, and policy. The actions of the Department of Energy in evaluation of the lands covered by this withdrawal will meet the Bureau of Land Management's definition of ''casual use'' as set forth at 43 CFR 2801.5. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 10 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

(Authority: 43 U.S.C. 1714(a); 43 CFR 2310.3–3(b)(1))

Dated: December 21, 2005.

Mark Limbaugh,

Assistant Secretary of the Interior.

[FR Doc. 05–24579 Filed 12–27–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Minor Boundary Revision at Antietam National Battlefield

AGENCY: National Park Service, Interior.

ACTION: Announcement of park boundary revision.

SUMMARY: Notice is given that the boundary of Antietam National Battlefield has been revised pursuant to the Acts as specified below, to encompass lands depicted on Drawing 302/92500, Segment 05, Antietam National Battlefield, revised July 1, 2005, prepared by the National Park Service. The revision to the boundary includes Tract Number 05–171, as depicted on the map.

FOR FURTHER INFORMATION CONTACT: Superintendent, Antietam National Battlefield, P.O. Box 158, Sharpsburg, Maryland 21782–0158.

SUPPLEMENTARY INFORMATION: The Act of August 30, 1890 (26 Stat. 401) authorized surveying, locating and preserving the lines of battle of the Army of the Potomac and of the Army of Northern Virginia at Antietam. Sections 7(c) (1)(i) and 7(c) (1)(ii) of the Land and Water Conservation Fund Act, as amended by the Act of June 10, 1977 (Pub. L. 95–42, 91 Stat. 210), and the Act of March 10, 1980 (Pub. L. 103–333, 110 Stat. 4194) further authorized the Secretary of Interior to make minor revisions in the boundaries whenever the Secretary determines that it is necessary for the preservation, protection, interpretation or management of an area.

The map is on file and available for inspection in the Land Resources Program Center, National Capital Regional Office, 1100 Ohio Drive, SW., Washington, DC 20242, and in the Offices of the National Park Service, Department of the Interior, Washington DC 20013–7127.

Dated: August 22, 2005.

Joseph M. Lawler,

Regional Director, National Capital Region.

Editorial Note: This document was received in the Office of the Federal Register on December 22, 2005.

[FR Doc. E5–7889 Filed 12–27–05; 8:45 am]

BILLING CODE 4312–58–P

DEPARTMENT OF THE INTERIOR

National Park Service

Oil and Gas Management Plan, Final Environmental Impact Statement, Big Thicket National Preserve, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the Oil and Gas Management Plan, Big Thicket National Preserve.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of a final Environmental Impact Statement for the Oil and Management Plan, for Big Thicket National Preserve, Texas.

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the Notice of Availability of the Final Environmental Impact Statement.

ADDRESSES: Information will be available for public inspection online at *http://parkplanning.nps.gov*, in the office of the Superintendent, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas 77701–4724, 409–951–6801, and at the following locations:

Planning and Environmental Quality, Intermountain Region, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: 303–969–2851.

Office of Minerals/Oil and Gas Support, Intermountain Region, National Park Service, 1100 Old Santa Fe Trail, Santa Fe, NM 87505, Telephone: 505–988–6095.

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, Telephone: 202–208–6843.

FOR FURTHER INFORMATION CONTACT: Superintendent, Big Thicket National Preserve, at the above address and telephone number.

Dated: December 8, 2005.

Michael D. Snyder,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. E5–7885 Filed 12–27–05; 8:45 am]

BILLING CODE 4312–CB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement for Fire Management Plan; Golden Gate National Recreation Area, Muir Woods National Monument and Fort Point National Historic Site; Marin, San Francisco and San Mateo Counties, CA; Notice of Availability

Summary: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 42 U.S.C. 4321–4347, January 1, 1970, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the National Park Service, Department of the Interior, has prepared a Final Environmental Impact Statement for an new Fire Management Plan for Golden Gate National Recreation Area (GGNRA), Muir Woods National Monument and Fort Point National Historic Site—the latter two parks being under the administration of GGNRA. The Fire Management Plan Final Environmental Impact Statement (FEIS) evaluates fire management options for approximately 15,000 acres of GGNRA's nearly 75,000 legislated acres in Marin, San Francisco and San Mateo counties. The Fire Management Plan FEIS describes and analyzes three alternative strategies to replace the 1993 GGNRA Fire Management Plan with a plan that conforms to current Federal wildland fire management policy and National Park Service (NPS) management policies. Potential impacts and mitigating measures are described for the two action alternatives and a no action alternative. The alternative selected after this conservation planning and environmental impact analysis process will serve as a blueprint for fire management actions for the GGNRA over the next 10–15 years.

The FEIS fire planning and analysis area does not include the following lands:

1. The northern lands of GGNRA, comprising 18,000 acres north of the Bolinas-Fairfax Road in western Marin County, which are managed by Point Reyes National Seashore under an agreement between the two park units. Fire management responsibilities for these northern lands are addressed in the Point Reyes FMP (approved October 29, 2004).

2. Lands within the jurisdictional boundary of GGNRA that are not directly managed by the National Park Service. This includes the San Francisco Watershed, managed by the San Francisco Public Utilities Commission (with overlays of NPS easements) and

the interior portion of the Presidio of San Francisco which is managed by the Presidio Trust, a Federal corporation. The coastal portion of the Presidio managed by the GGNRA, is included in the planning area.

In addition to lands currently under the management of the NPS, the subject FMP planning area includes those lands within the legislative boundary that may pass to NPS management in the near future. These areas, all in San Mateo County, include Cattle Hill and Pedro Point.

Purpose and Need for Federal Action: The 1993 FMP for GGNRA focused primarily on natural resource management issues and needs to be updated to more fully address cultural resource concerns, provide guidance for parklands acquired since 1993, and provide more guidance on effectively reducing fire risk along wildland urban interface (WUI) areas in the park. The new FMP is needed to reflect the emphasis of recent years on fuel reduction projects that effectively reduce wildfire risk to natural and cultural park resources and to private property along the WUI zone. In addition, the new FMP will address the role that fire management actions can have on ecosystem changes to parklands such as the spread of more flammable, invasive, nonnative plant species, dense second-growth forests with high fuel loads, conversion of plant community type in the absence of wildland fire, alteration of important cultural landscapes through overgrowth of vegetation, and the decline of certain fire-adapted plant species.

The FMP will provide a framework for all fire management activities in a manner responsive to natural and cultural resource objectives while reducing risks to developed facilities and adjacent communities and providing for public and staff safety. The purposes of this conservation planning and environmental impact analysis process are:

- To prepare a new FMP that is consistent with Federal Wildland Fire Management Policy and conforms to agency guidelines for fire management plans and programs; and
- To help achieve resource management objectives consistent with the park's cultural resource, natural resource, and land management plans, and to be responsive to safety considerations for park visitors, employees, and resources.

Proposed Fire Management Plan. Alternative C is the alternative preferred by the NPS and has also been determined by the NPS to be the ''environmentally preferred'' alternative. The three FMP EIS alternatives differ in the number of acres proposed for treatment through prescribed burning or mechanical treatments in the park interior versus the outer parklands that border residential development in the WUI zone. Each alternative has an upper limit set on the number of acres that could be treated annually as shown in Table 1. Alternative C allows for the greatest number of acres to be treated on an annual basis to achieve fire management and resource objectives through the use of a broad range of fire management strategies. Mechanical treatment and prescribed burning would be used throughout the park as a means to reduce fuel loading and achieve resource enhancement goals. Mechanical treatments, complemented by prescribed fire, would be employed to assist with restoration and maintenance of the park's natural and cultural resources. An expanded research program would examine the role of fire and mechanical treatments in enhancing natural resources, reducing fuel loading, and specific impacts of fire on key natural resources; research would also be used to adaptively guide the fire management program and help to maximize the benefits to park resources. Project planning will favor projects that integrate natural and cultural resource goals and objectives into the design and implementation of fuel reduction projects.

The three alternatives share many common elements that do not vary from one alternative to the next. For example, the fire management approach for Muir Woods National Monument, using prescribed fire and mechanical fuel reduction to reduce invasive species, reduce fuel loading and restore the role of fire in the redwood old growth coast redwood forest. Other actions common include participation in the WUI Initiative funding program for outside agencies and groups, continued maintenance of the park's fire roads, trails, and defensible space around park buildings, suppression of unplanned ignitions, provision to the public of fire information and educational materials, monitoring of the effects of fire management actions, construction of a new fire cache structure and fuel reduction treatments for San Francisco parklands.

Alternative A, Continued Fuel Reduction for Public Safety and Limited Resource Enhancement, is the No Action alternative required by NEPA. Alternative A is based on the 1993 GGNRA FMP updated to include the current planning area and current national fire management policies. The focus of the 1993 FMP program is on vegetation management through the application of prescribed fire to perpetuate fire-dependent natural systems. In recent practice, many fire management actions have been mechanical fuel reduction projects (e.g., mowing, cutting to remove non-native shrubs and trees, and selective thinning in forested stands) funded through the Wildland Urban Interface Program. This alternative would rely on the continued implementation of the 1993 FMP supplemented by mechanical fuel reduction projects in the WUI zone and suppression of all wildfires. Current research projects would continue and would focus on the role of fire to enhance natural resources and the effects of fire on key natural resources to determine the effectiveness of various fuel treatments.

Alternative B, Hazard Reduction and Restricted Fire Use for Research and Resource Enhancement, emphasizes the use of mechanical methods to reduce fuel loading in areas with the highest risks. Compared to Alternative A, Alternative B would increase the number of acres mechanically treated each year, with a focus on the reduction of high fuel loads in the WUI area. Limited use of prescribed fire could occur for research purposes within the park interior. Research projects would examine the role of fire to enhance natural resources and the effects of fire on key natural resources to determine the effectiveness of various fuel treatments. Natural and cultural resource goals and objectives would be integrated into the design and implementation of fuel reduction projects.

Planning Background: A notice of availability for the Draft EIS was published in the **Federal Register** (March 21, 2005) and the document made available for public review and comment through May 27, 2005 (extended from the original May 17, 2005 date to provide additional time for review). The park also announced availability of the DEIS through a mass mailing and posting on the park's Web site.

TABLE 1.—SUMMARY OF ALTERNATIVES BY ANNUAL ACRES TREATED AND TREATMENT TYPE

Treatment type	County	Alternative A [1]	Alternative B	Alternative C
Mechanical Treatment [2]	Marin	75	180	225
	San Francisco	5	10	10
	San Mateo	20	40	40
	Total	100	230	275
Prescribed Fire	Marin	100	120	285
	San Francisco	<1	<1	<1
	San Mateo	10	0	35
	Total	110	120	320

Source: GGNRA Fire Management Office, 2004.
[1] Estimated based upon current practice; the 1993 FMP did not specify number of acres per year per treatment type.
[2] Includes fuel reduction by methods such as mowing, cutting, short-term grazing, or selective thinning.

The DEIS was made available at park headquarters, visitor centers, and public libraries in the area. Two public presentations were made on the DEIS; the first at a City of Pacifica regularly scheduled City Council meeting on April 11, 2005 and the second at the regularly scheduled, bi-monthly GGNRA public meeting on April 19, 2005. The public was encouraged to submit comments on the DEIS via email, fax, or regular mail.

The NPS received twelve written comment letters and consultation letters with findings from the State Historic Preservation Officer on FMP conformance to the National Historic Preservation Act and from the U.S. Fish and Wildlife Service as required under the Endangered Species Act. The Environmental Protection Agency provides the most comments, primarily focused on air quality and related matters. The letters and responses are included in appendices of the FEIS. The major issues raised during the public comment period included: Smoke management, clarification of the text on conformance with air quality regulations and the State Implementation Plan, herbicide use, structure of the EIS, protection of riparian and wetland areas, range of alternatives addressed, effects on Monarch butterfly habitat, and the need and benefits from interagency cooperation.

Addresses: Copies of the FMP FEIS may be obtained from the Superintendent, Golden Gate National Recreation Area, Fort Mason, Building 201, San Francisco, CA 94123, Attn: Fire Management Plan, or by email request to: *goga_fire@nps.gov* (please mark the email subject line ''FMP FEIS''). Printed copies of the FMP FEIS or a copy on the FEIS on CD will be directly distributed to those who received the DEIS in these formats, and to any others who request it. The FMP FEIS will be available at park headquarters, park visitor centers, and at local and regional libraries. The complete FMP FEIS will be posted on the park's Web site at *http://parkplanning.nps.gov/goga* under the heading for GOGA FMP FEIS.

Decision: As a delegated EIS, the Regional Director of the Pacific West Region is responsible for the final decision on the selected FMP alternative. A Record of Decision, documenting the decision process in selecting the final FMP, may be considered by the Regional Director not sooner than 30 days following the publication by the Environmental Protection Agency of their notice of filing of the FMP FEIS in the **Federal Register**. Following approval of the FMP FEIS, the official responsible for implementing the new FMP will be the Superintendent of Golden Gate National Recreation Area.

Dated: November 3, 2005.

George J. Turnbull,

Acting Regional Director, Pacific West Region.

[FR Doc. E5–7898 Filed 12–27–05; 8:45 am]

BILLING CODE 4312–FN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement; Fire Management Plan for Santa Monica Mountains National Recreation Area; Los Angeles and Ventura Counties, CA; Notice of Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the National Park Service, Department of the Interior, has prepared a Final Environmental Impact Statement (FEIS) identifying and evaluating four alternatives for a Fire Management Plan for the Santa Monica Mountains National Recreation Area (SMMNRA). Potential impacts, and appropriate mitigations, are assessed for each alternative. When approved, the plan will guide all future fire management actions in the SMMNRA for the next five years. The FEIS documents the analysis of three action alternatives and a ''no action'' alternative.

An updated fire management program is needed to meet public safety, natural and cultural resource management, and wildland/urban interface protection objectives in the federally managed property of the SMMNRA. The ''action'' alternatives concentrate on wildland/urban interface community protection work and ecosystem protection, and vary in their mix of treatments available for completing work. The ''no action'' alternative describes the existing fire management program, which the park has not been able to effectively implement to protect neighboring lives and property. As a result, the risk of catastrophic fire has increased in recent decades.

Proposal and Alternatives Considered: Alternative 2 (determined to be the ''environmentally preferred'' alternative) is proposed for implementation as the new Fire Management Plan (FMP). Termed the Mechanical Fuel Reduction/Ecological Prescribed Fire/Strategic Fuels Treatment alternative, it provides the maximum potential environmental benefits and minimizes the adverse impacts of fire management actions. Alternative 2 is the most flexible alternative, utilizing all available fire management strategies identified to be appropriate in the Santa Monica Mountains. Although strategic fuels reduction has the potential for both impacts and benefits in most of the impact areas analyzed, individual

strategic fuels reduction projects would be evaluated for their potential risk: benefit ratio. Work would be accomplished with a combination of NPS and other agency fire crews and by contract.

Alternative 1 (No Action Alternative) would continue the current NPS fire and vegetation management program to create a landscape mosaic of varying aged chaparral stands through the application of prescribed fire in separate watersheds, minimizing brush clearance. It should be noted that large scale burning has not been feasible to implement in accordance with the goals of the previous Fire Management Plan because of regulatory constraints on prescribed fire, especially those relating to air quality standards. Alternative 3 (Mechanical Fuel Reduction/Ecological Prescribed Fire) relies exclusively on prescribed burning to provide resource enhancement including control of exotic species and restoration of natural communities. Mosaic burning is eliminated. Fuel reduction is concentrated at the wildland urban interface to protect existing development and emphasizes mechanical or biomechanical fuel modification. This alternative provides effective protection of homes by focusing mechanical fuel reduction at the interface between homes and wildland vegetation, and provides ecological benefits from resource prescribed burning. Alternative 4 (Only Mechanical Fuel Reduction) relies exclusively on mechanical or biomechanical fuel modification at the wildland urban interface. Prescribed fire is eliminated. This alternative provides effective protection of homes by focusing mechanical fuel reduction at the interface between homes and wildland vegetation.

Alternatives Considered but Rejected: Three additional alternatives were considered but rejected from further deliberation because the interdisciplinary team determined that they were not feasible for one or more specific reasons. Alternative 5 (Suppression Only/No Vegetation Manipulation) was found to be inconsistent with NPS policies and guidelines as well as with the objectives of the SMMNRA fire management program, and inadequate to protect public safety. Alternative 6 (Mechanical Fuel Reduction on a Landscape Level) was also found to be inconsistent with NPS policies and guidelines as well as the objectives of the SMMNRA fire management program. Alternative 7 (Wildland Fire Use) could be a threat to public safety if implemented and logistically infeasible to implement along the wildland-urban interface.

Planning Background: Public outreach was initiated in June 2001 coinciding with a planning workshop for agencies, cooperators and other partners. A Notice of Scoping for an environmental document was published in the **Federal Register** March 26, 2002, encouraging comments through an extensive scoping period ending August 31, 2002. Four public scoping meetings were hosted in Beverly Hills, Calabasas, Malibu and Thousand Oaks, California. Two additional meetings were held to gain additional input on the preliminary alternatives from fire agencies, cooperators and other partners. Letters were also sent to Native American representatives, requesting their comments and concerns related to cultural activities, practices or resources. Concerns raised in these meetings included: how to provide for public and firefighter safety; how to optimize the effectiveness of fuels treatments in the wildland-urban interface for property protection and to minimize impacts; the need to promote operational and policy coordination among all the agencies within the SMMNRA, including consistent brush clearance policies; the impact of fire management activities including suppression actions; containing the spread of invasive plants and animals; the use of prescribed fire for restoration activities, and appropriate land use planning. Based on the issues and concerns raised it was determined that an environmental impact statement rather than an environmental assessment would be completed. This would allow sufficient analysis to be undertaken in assessing the effects of particular alternatives and to ensure adequate involvement by the public and interested agencies.

The distribution of Draft environmental impact statement (DEIS) for the FMP began in May, 2004. Approximately 250 DEISs were distributed; 85 went to local libraries, 20 were handed out at the SMMNRA Visitor Center, and the remainder was provided to individuals by mail or in person at public meetings. A notice of availability of the DEIS was published in the **Federal Register** June 16, 2004, providing an opportunity for public review and comment through September 15, 2004. In order to facilitate public review and understanding of the proposed plan, four public meetings were held during July, 2004 in Calabasas, Woodland Hills, Malibu and Thousand Oaks, California. The meetings were advertised through the print media, on the SMMNRA website and via 350 invitations sent to community leaders, neighborhood organizations, local agencies and stakeholder groups.

The NPS received a total of 25 written responses, generated either from the public meetings or from public notices. All of these comments were duly considered in finalizing in the FEIS. Two main issues and concerns were expressed by the respondents: that the FEIS and FMP should prioritize public and firefighter safety as well as the protection of the unique Mediterranean ecosystem which the SMMNRA was established to protect. All alternatives provide numerous provisions for public and firefighter safety. Alternatives 2, 3 and 4 incorporate strong controls to protect native flora and fauna, minimizing the spread of invasive grasses and forbs. The Environmental Protection Agency expressed environmental concerns due to insufficient information. SMMNRA staff consulted closely with the EPA in preparing the FEIS. All comments and responses are documented in Appendix F of the FEIS.

ADDRESSES: Copies of the FEIS may be obtained from the Superintendent, Santa Monica Mountains National Recreation Area, 401 W. Hillcrest Drive, Thousand Oaks, CA 91360, Attn: Fire Management Plan, or by e-mail request to: *samo_fire@nps.gov* (in the subject line, type: Fire Management Plan). The FEIS will be sent directly to those who previously received the DEIS or who have requested subsequently. The FEIS will also be available at local libraries in Agoura Hills, Beverly Hills, Calabasas, Malibu, Oak Park, Oxnard, Santa Monica, Thousand Oaks, Westlake Village and selected locations in Los Angeles; and at regional libraries in Ventura County and selected locations in Los Angeles County. A comprehensive list of these locations, as well as the document itself, is posted on the park's Web page (*http://www.nps.gov/samo/pphtml/documents.html*).

Decision: As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; a Record of Decision may be approved by the Regional Director not sooner than 30 days after EPA's publication of the notice of filing of the FEIS in the **Federal Register**. Notice of the final decision will be also posted in the **Federal Register**. Following approval of the Fire Management Plan, the official responsible for implementation will be the Superintendent, SMMNRA.

Dated: November 3, 2005.

George J. Turnbull,

Acting Regional Director, Pacific West Region.

[FR Doc. E5–7893 Filed 12–27–05; 8:45 am]

BILLING CODE 4312–FE–P

DEPARTMENT OF THE INTERIOR

National Park Service

Jackson Hole Airport Use Agreement Extension, Environmental Assessment, Grand Teton National Park, WY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Assessment for the Jackson Hole Airport Use Agreement Extension, Grand Teton National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service is preparing an Environmental Assessment for the Jackson Hole Airport Use Agreement Extension for Grand Teton National Park, WY. This effort addresses a request from the Jackson Hole Airport Board to amend the use agreement between the Department of Interior and the Airport Board in order to ensure that the airport remains eligible for funding through the Federal Aviation Administration (FAA). Alternatives to be considered include *Alternative 1: No Action*—The airport would continue operations under the existing use agreement which currently has an expiration date of April 27, 2033; *Alternative 2: Extend Agreement*—Jackson Hole Airport Board proposal to extend the use agreement for an additional two 10-year terms, bringing the expiration date to April 27, 2053; and *Alternative 3: Update and Extend Agreement*—Extend the use agreement for an additional two 10-year terms with minor modifications as mutually agreed to by the NPS and the Airport Board.

The Jackson Hole Airport is located within Grand Teton National Park on 533 acres of land under the administrative jurisdiction of the National Park Service. The airport operates under the terms and conditions of a use agreement between the Department of the Interior and the Jackson Hole Airport Board. The agreement, executed in 1983, was for a primary term of 30 years, with options for two 10-year extensions, both of which have been exercised. The agreement also includes a provision that further extensions, amendments, or modifications could be negotiated by the parties on mutually satisfactory terms, and that the parties agree that upon expiration of the agreement, a mutually satisfactory extension of the agreement would be negotiated.

Since the FAA requires that the airport have more than 20 years remaining on its use agreement in order to remain eligible for Airport Improvement Program funds, an extension of the use agreement is needed to provide assurance that the airport will remain eligible for funding beyond the year 2013.

DATES: The National Park Service will accept scoping comments from the public through January 9, 2006.

ADDRESSES: Information will be available for public review and comment online at *http://parkplanning.nps.gov*, at Grand Teton National Park Headquarters Visitor Center in Moose, Wyoming, and at the Reference Desk of the Teton County Library in Jackson, Wyoming.

FOR FURTHER INFORMATION CONTACT: Margaret Wilson, Grand Teton National Park, P.O. Drawer 170, Moose, Wyoming 83012–0170, (370) 739–3390, *margaret_wilson@nps.gov*.

SUPPLEMENTARY INFORMATION: A scoping brochure has been prepared that describes the purpose and need for the project and issues identified to date. A copy of the brochure may be obtained at one of the addresses described above. If you wish to provide comments, you may do so by any one of several methods. You may mail comments to the Superintendent Office, Attention: Airport EA, P.O. Drawer 170, Moose, Wyoming 83012–0170. You may comment via the Internet at *http://parkplanning.nps.gov*. Finally, you may hand-deliver comments to the Grand Teton National Park Headquarters Visitor Center at Moose, Wyoming. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: November 22, 2005.

Michael D. Snyder,

Acting Regional Director, Intermountain Region, National Park Service.

[FR Doc. E5–7884 Filed 12–27–05; 8:45 am]

BILLING CODE 4312–CX–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the General Management Plan/Wilderness Study, Sleeping Bear Dunes National Lakeshore

AGENCY: National Park Service, Department of the Interior.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (2)(C), and the Wilderness Act of 1964, 16 U.S.C. 1131 *et seq.*, the National Park Service (NPS) is preparing an environmental impact statement (EIS) for a general management plan/wilderness study (GMP/WS) for Sleeping Bear Dunes National Lakeshore, Michigan. The EIS will be approved by the Regional Director, Midwest Region. This planning effort is a new start, not a restart of the planning effort that ended in 2002. With the publication of this notice of intent, the earlier planning effort has been terminated.

The GMP will establish the overall direction for the park, setting broad management goals for managing the area over the next 15 to 20 years. The plan will prescribe desired resource conditions and visitor experiences that are to be achieved and maintained throughout the park based on such factors as the park's purpose, significance, special mandates, the body of laws and policies directing park management, resource analysis, and the range of public expectations and concerns. The plan also will outline the kinds of resource management activities, visitor activities, and developments that would be appropriate in the park in the future. The wilderness study will evaluate portions of Sleeping Bear Dunes National Lakeshore (Lakeshore) for possible designation as wilderness. The study will be included as a part of the general management plan.

A range of reasonable alternatives for managing the Lakeshore will be developed through this planning process and will include, at a minimum, a no-action and a preferred alternative. Major issues the plan will address include access to the Lakeshore, wilderness, management of areas new to

the Lakeshore since the current 1979 general management plan, changes in visitor use patterns, adequacy and sustainability of existing visitor facilities and park operations, and management of natural and cultural resources. The environmental impact statement will evaluate the potential environmental impacts of the alternative management approaches and the possible designation of wilderness within the Lakeshore.

As the first phase of the planning process, the NPS is beginning to scope the issues to be addressed in the GMP/WS/EIS. All interested persons, organizations, and agencies are encouraged to submit comments and suggestions on issues and concerns that should be addressed in the GMP/WS/EIS, and the range of appropriate alternatives that should be examined.

DATES: The NPS is planning to begin public scoping with State and Federal Agencies; associated American Indian tribes; neighboring communities; county commissioners; local organizations, researchers and institutions; the congressional delegation; and other interested members of the public. In addition, the NPS will hold public scoping meetings regarding the GMP/WS/EIS. Specific dates, times, and locations will be announced through a variety of media, including on the Internet at the Planning, Environment, and Public Comment (PEPC) website (*http://parkplanning.nps.gov/*). In addition to attending the scoping meetings, people wishing to provide input to this initial phase of developing the GMP/WS/EIS may mail or email comments to the Superintendent at the addresses below.

Written comments concerning the scope of the GMP/WS/EIS will be accepted for 60 days from the publication of this notice.

ADDRESSES: General park information requests or requests to be added to the project mailing list should be directed to: Dusty Shultz, Superintendent, Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630–9797, telephone 231–326–5134. E-mail: *slbe_gmp@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Dusty Shultz, Superintendent, Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630–9797, telephone 231–326–5134. E-mail: *slbe_gmp@nps.gov.* General information about Sleeping Bear Dunes National Lakeshore is available on the Internet at *http://www.nps.gov/slbe.*

SUPPLEMENTARY INFORMATION: If you wish to comment on any issues associated with the plan, you may submit your comments by several methods. You may mail comments to Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630–9797. You may also comment via the Internet at *slbe_gmp@nps.gov.* Finally, you may hand-deliver comments to the Lakeshore at 9922 Front Street, Empire, Michigan.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: November 29, 2005.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. E5–7888 Filed 12–27–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, February 6, 2006.

The Commission was established pursuant to Public Law 99–420, sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at Park Headquarters, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held September 12, 2005.
2. Committee reports:
   —Land Conservation
   —Park Use
   —Science and Education
   —Historic
3. Old business
4. Superintendent's report
5. Public comments
6. Proposed agenda for next Commission meeting, February 5, 2006

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: December 2, 2005.

Sheridan Steele,

Superintendent.

[FR Doc. 05–24508 Filed 12–27–05; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the National Park System Advisory Board will meet January 12–13, 2006, in Philadelphia, Pennsylvania. On January 12, the Board will tour Independence National Historical Park and will be briefed regarding environmental, education and partnership programs. The Board will convene its business meeting on January 13, 8:30 a.m., EST, in the Visitor Center at Independence National Historical Park, 1 North Independence Mall West, 6th and Market Streets, Philadelphia, PA, telephone 215–597–7120. The meeting will be adjourned at 5 p.m. The Board will be addressed by National Park Service Director Fran Mainella and will receive the reports of its Director's Council, Education Committee, National Landmarks Committee, Committee on Health and Recreation, National Parks Science Committee, Committee on Federal Historic Rehabilitation Tax Credit, and Partnerships Committee. The Board also will be briefed regarding Preserve America and the 106 Compliance Review.

Other officials of the National Park Service and the Department of the Interior may address the Board, and other miscellaneous topics and reports may be covered.

The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board also may permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Chief, Office of Policy, National Park Service; 1849 C Street, NW., Room 7250; Washington, DC 20240; telephone 202–208–7456.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 7252, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: December 19, 2005.

Bernard Fagan,

Deputy Chief, Office of Policy.

[FR Doc. E5–7891 Filed 12–27–05; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 17, 2005.

Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 12, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

ARIZONA

Maricopa County

Sacred Heart Home for the Aged, 1110 N. 16th St., Phoenix, 05001548

MISSISSIPPI

Yazoo County

Afro-American Sons and Daughters Hospital, 8th St. and Webster Ave., Yazoo City, 05001558

MISSOURI

Franklin County

St. Albans Farms Stone Barn, 3476 St. Albans Rd., St. Albans, 05001550

Oregon County

Greer Mill, W. Side, MO 19, 10 mi. N of Alton, Alton, 05001551

St. Louis Independent City

Union Depot Railroad Co. Building, (South St. Louis Historic Working and Middle Class Streetcar Suburbs MPS), 2727 S. Jefferson Ave., St. Louis (Independent City), 05001549

NORTH CAROLINA

Rutherford County

Washburn Historic District (Boundary Increase), 1037 Gun Club Rd., Bostic, 05001552

OREGON

Hood River County

First National Bank of Hood River, 304 Oak St., Hood River, 05001555

Heilbronner Block, 100–118 Third St., Hood River, 05001554

Multnomah County

Lombard Automobile Buildings, 123–35 NW Broadway;134 NW 8th Ave., Portland, 05001553

Ruby, Alfred C. and Nettie, House, 211 NE 39th Ave., Portland, 05001559

Spokane, Portland and Seattle Railway Steam Locomotive, Roundhouse, UPRPR's Brooklyn Yard (SE Portland), Portland, 05001557

TENNESSEE

Shelby County

Gayoso—Peabody Historic District (Boundary Decrease), Roughly along S. Main St. from McCall Place to Monroe Ave., Memphis, 05001556

[FR Doc. E5–7994 Filed 12–27–05; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, Norman, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, Norman, OK. The human remains were removed from Crittendon, Mississippi, and Poinsett Counties, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Sam Noble Oklahoma Museum of Natural History and Oklahoma State Archeologist professional staff in consultation with representatives of the Quapaw Tribe of Indians, Oklahoma.

In 1933, human remains representing a minimum of two individuals were removed from Cummin's Place, also called Cumming's Place (Arkansas–7/130 and 7/131), in Poinsett County, AR, by Frank Newkumet. Mr. Newkumet loaned the human remains to the Oklahoma Museum of Natural History (now the Sam Noble Oklahoma Museum of Natural History) from 1933 until 1947. The museum purchased the collection from Mr. Newkumet in 1947. No known individuals were identified. No associated funerary objects are present. A deer bone found with the human remains at Arkansas–7/130 was not located during the inventory process.

In 1933, human remains representing a minimum of two individuals were removed from Upper Nodena Place (Arkansas–7/137 and 7/138) in Mississippi County, AR, by Frank Newkumet. Mr. Newkumet loaned the human remains to the Oklahoma Museum of Natural History from 1933 until 1947. The museum purchased the collection from Mr. Newkumet in 1947. No known individuals were identified.

No associated funerary objects are present.

In 1959, human remains representing a minimum of three individuals were removed from the Banks site (Arkansas–31A) in Crittendon County, AR, by Greg Perino. Mr. Perino donated the human remains to the Oklahoma Museum of Natural History later that same year. No known individuals were identified. No associated funerary objects are present.

Diagnostic artifacts found at the Cummin's Place, Upper Nodena Place, and Banks sites indicate that the human remains are Native American and were probably buried during the Parkin phase of the Mississippian nucleation horizon (A.D. 1350–1650). The Parkin phase is characterized by Nodena leaf-shaped arrow points, Madison arrow points, pipe drills, chisels, adzes, use of basalt, conch shell beads, mushroom shaped beads, ear plugs, copper disks, discoidals, catlinite pipes, Parkin punctate and Barton incised pottery, Mississippian Plain pottery, effigy forms such as, head pots, compound vessels, and occasionally red and white Nodena ware. Although many of these types of artifacts were found at the sites, none of the artifacts besides the missing deer bone are considered associated funerary objects because they were not found in a burial context nor is there any other information that attests to their being from a burial context. Many of the Parkin phase artifact traits continued to be practiced by people later identified as Quapaw. European documentation concerning the geographical range of the Quapaw people supports their presence in the northeastern part of Arkansas. Present-day descendants of the Quapaw people are members of the Quapaw Tribe of Indians, Oklahoma.

Officials of the Sam Noble Oklahoma Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of seven individuals of Native American ancestry. Officials of the Sam Noble Oklahoma Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Quapaw Tribe of Indians, Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Ellen Censky, Director, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua, Norman, OK 73072, telephone (405) 325–4712, before January 27, 2006. Repatriation of the human remains to the Quapaw Tribe of Indians, Oklahoma may proceed after that date if no additional claimants come forward.

Sam Noble Oklahoma Museum of Natural History is responsible for notifying the Quapaw Tribe of Indians, Oklahoma that this notice has been published.

Dated: December 3, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E5–7886 Filed 12–27–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service, Interior.

Notice of Intent to Repatriate Cultural Items: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sold responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 12 cultural items are 7 beaded necklaces (beads include glass trade beads, shell beads, and copper beads), 1 bracelet, 3 sets of pipe fragments, and 1 piece of twine.

At an unknown date, the 12 cultural items were removed from a small island just upriver from Blalock Island in the lower Columbia River, Benton County, WA, by Mr. John Tomaske, an archaeology graduate student of the University of Washington. In 1960, the cultural items were donated to the University of Washington Department of Anthropology, and subsequently transferred to the Burke Museum and accessioned in 1973 (Burke Accn. #1973–8). Accession information indicated the presence of burials at the site. According to Mr. Tomaske, the burials had previously been disturbed and exhibited evidence of cremation. The human remains are not in the possession of the Burke Museum.

The small island just upriver from Blalock Island described in museum records could be Cook's Island, which was formerly recorded as containing cremation burials. Archaeological evidence for Cook's Island supports the presence of cremation burials. Cremation and burial on islands in the Columbia River were customary practices of the Umatilla. It was also the practice of the Umatilla that individuals were buried with many of their personal belongings. The area surrounding Blalock Island was heavily utilized by the Umatilla, including ama'amapa, which served as a habitation area, burial site, and stronghold from enemies. On Blalock Island, and along the Washington side of the Columbia River, the Umatilla had a permanent camp, Yep-po-luc-sha (or Yep-po-kuc-sha), as well as a fishing area.

Burial practices and funerary objects described are consistent with historic practices of the present-day Confederated Tribes of the Umatilla Reservation, Oregon. The area surrounding Blalock Island is within the aboriginal territory of the Confederated Tribes of the Umatilla Reservation, Oregon and the land claims boundaries of the Indian Claims Commission decision of 1960.

Officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001(3)(B), the 12 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Burke Museum also have determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between funerary objects and the Confederated Tribes of the Umatilla Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010, telephone (206) 685–2282, before January 27, 2006. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Umatilla Reservation, Oregon may proceed after that date if no additional claimants come forward.

The Burke Museum is responsible for notifying the Confederated Tribes of the Umatilla Reservation, Oregon that this notice has been published.

Dated: December 6, 2005.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–24509 Filed 12–27–05; 8:45 am]

BILLING CODE 4312–50–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 04–31]

Joey Enterprises, Inc. d/b/a/ NorthStar Wholesale Denial of Application

On March 2, 2004, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Joey Enterprises, Inc., d/b/a NorthStar Wholesale (hereinafter referred to as ''Respondent'') of Birmingham, Alabama. The show cause order proposed to deny the Respondent's February 10, 2003, application for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged in substance that granting the application of the Respondent would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h).

According to the DEA investigative file, on or about March 30, 2004, the Respondent, through its President Feroz Jiwani (Mr. Jiwani), requested a hearing in response to the show cause order. On April 22, 2004, the presiding Administrative Law Judge issued an Order for Pre-hearing Statements. As part of that Order, the Administrative Law Judge directed the Government to file its Pre-hearing Statement on or before May 14, 2004, and that the Respondent was to file its Pre-hearing Statement on or before June 4, 2004. Following pre-hearing motions extending the above scheduled filing dates, the Government filed its Pre-hearing Statement on July 21, 2004. However, the Respondent did not file its Pre-hearing Statement by the August 16, 2004 deadline.

On September 2, 2004, the Administrative Law Judge issued an order extending the filing date of the Respondent's Pre-hearing Statement to September 15, 2004. The Administrative Law Judge's Order also notified the Respondent that if it again failed to meet the deadline for filing a Pre-hearing Statement, such inaction would be deemed a waiver of its hearing entitlement. Nevertheless, the Respondent again failed to meet the new deadline and did not file its Pre-hearing Statement. Accordingly, on September 29, 2004, the Administrative Law Judge issued her Order Terminating the Proceedings.

The Deputy Administrator adopts the ruling of the Administrative Law Judge's termination order that the Respondent has waived its hearing right. *See, Aqui Enterprises,* 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Deputy Administrator now enters her final order without a hearing pursuant to 21 CFR 1309.53(b) and (d). The Deputy Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). As noted in previous DEA final orders, pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant and its illicit manufacture and abuse are ongoing public health concerns in the United States. *See e.g., Direct Wholesale,* 69 FR 11654 (2004); *Yemen Wholesale Tobacco and Candy Supply, Inc.,* 67 FR 9997 (2002); *Denver Wholesale,* 67 FR 99986 (2002).

The investigative file contains a printed news release article from the DEA Web site regarding federal drug seizures and the abuse of methamphetamine in the State of Alabama. *http://www.dea.gov/pubs/states/alabama.html.* According to the article, methamphetamine has become the number one abused drug in Alabama. The article also tracked the ''dramatic increase'' in the number of methamphetamine laboratory seizures in the state from 1997 to 2003. According to data obtained by DEA's El Paso Intelligence Center (also known as ''EPIC''), in 1997, methamphetamine laboratory seizures in Alabama totaled six; by 2002, the total number of laboratory seizures climbed to 201.

The above-referenced registration application of the Respondent was initially submitted under the business name ''Joey Enterprises, Inc.,'' and was later amended to include the caption, ''d.b.a. Northstar Wholesale.'' The Respondent sought DEA registration as a distributor of the list I chemicals ephedrine, pseudoephedrine and phenylpropanolamine. There is no evidence in the investigative file that Respondent, or anyone purporting to represent the Respondent has sought to further modify its pending application.

The Deputy Administrator's review of the investigative file reveals that on September 3, 2003, DEA Diversion Investigators conducted an on-site pre-registration inspection at Respondent's proposed registered location in Birmingham. DEA's investigation revealed that Mr. Jiwani is the owner and President of the Respondent, his wife, Amynah, is the company's assistant manager, and the company also employs a part-time employee by the first name of Christopher. When asked by DEA investigators, neither Mr. nor Mrs. Jiwani knew the part-time employee's last name.

The Respondent is a cash and carry establishment that distributes typical convenience store items including tobacco products, candy, drinks and health and beauty products. The Respondent's customers consist of approximately 150 convenience stores and gas stations located in the Birmingham area, as well as Northern Alabama, Georgia and Fort Lauderdale, Florida.

DEA investigators asked Mr. Jiwani to provide information on list I chemical products the firm intended to carry. In response to the request, Mr. Jiwani provided a list of chemical products the firm would distribute, including: Max Brand 25/200 mg—60 count bottles; Mini Thins 25/200 mg—60 count bottles; Ephedrine 25/200 mg—60 count bottles; Bio Tech Ephedrine 25/200 mg—60 count bottles; Ephedrine 25/200 mg Black—12 count packets; Tylenol Cold, Tylenol Sinus and Tylenol Allergy (no sizes listed); Advil Cold and Sinus and Aleve Cold and Sinus (no sizes listed); and Vicks Dayquil and Nyquil (no sizes listed). Mr. Jiwani estimated that these products would make up ten to fifteen percent of Respondent's total sales.

Max Brand products have previously been identified by DEA as the ''precursor product predominantly encountered and seized at clandestine methamphetamine laboratories.'' See *Express Wholesale*, 69 FR 62086, 62087 (2004); see also, *RAM, Inc. d/b/a American Wholesale Distribution Corp.*, 70 FR 11693 (2005). Convenience stores are the ''primary source'' for the purchase of Max Brand products, which are the preferred brand for use by illicit methamphetamine producers. See *Elk International, Inc., d/b/a Tri-City Wholesale*, 70 FR 24615 (2005).

Mr. Jiwani also informed DEA investigators that he had no experience handling list I chemical products. He further stated that Respondent had no procedure in place for identifying suspicious or unusual purchases of list I chemical products.

According to the investigative file, on September 3 and 4, 2003, DEA investigators conducted random verifications of the ten of Respondent's proposed customers for list I chemical products. At least seven of the customers informed DEA personnel that they didn't carry listed chemical products or were already purchasing them from other suppliers. Another customer was already in possession of listed chemical products which were on display at the establishment. The customer insisted to DEA investigators that he purchased the products from Respondent, even when told that Respondent did not carry such products.

Mr. Jiwani further advised DEA investigators he requires new customers to provide tax exempt ID numbers before selling them anything. DEA investigators found however, that Mr. Jiwani could not confirm the existence of his customers because he did not visit the location of these stores prior to their becoming customers.

DEA has previously found that small, illicit laboratories operate with listed chemical products often procured, legally or illegally, from non-traditional retailers of over-the-counter drug products, such as gas stations and small retail markets. Some retailers acquire products from multiple distributors to mask their acquisition of large quantities of listed chemicals. See, *A–1 Distribution Wholesale,* 70 FR 28573 (2005).

DEA has further determined that there exists a ''gray market'' in which certain high strength, high quantity pseudoephedrine and ephedrine products are distributed only to convenience stores and gas stations, from where they have a high incidence of diversion. *A–1 distribution, supra,* at 28573. These gray market products are not sold in large discount stores, retail pharmacies or grocery stores, where sale of therapeutic over-the-counter drugs predominate. ''Two-way'' ephedrine and single entity pseudoephedrine products are prime products in this gray market industry and are rarely found in any retail store serving the traditional therapeutic market.

DEA has also credited industry data, market studies and statistical analysis which has shown that over 90% of over-the-counter drug remedies are sold in drug stores, supermarket chains and ''big box'' discount retailers. Less than one percent of cough and cold remedies are sold in gas stations or convenience stores. Studies have indicated that most convenience stores could not be expected to sell more than $20.00 or $40.00 worth of products containing pseudoephedrine per month. *Jay Enterprises of Spartansburg, Inc.,* 70 FR 24620 (2005).

Pursuant to 21 U.S.C. 823(h), the Deputy Administrator may deny an application for Certificate of Registration if she determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. See, e.g., *ANM Wholesale,* 69 FR 11652 (2004); *Energy Outlet,* 64 FR 14269 (1999). See also *Henry J. Schwartz, Jr., M.D.,* 54 FR 16422 (1989).

The Deputy Administrator finds factors four and five relevant to Respondent's pending registration application.

With regard to factor four, the applicant's past experience in the distribution of chemicals, the Deputy Administrator finds this factor relevant to Mr. Jiwani's lack of experience in the handling of list I chemical products. In prior DEA decisions, the lack of experience in the handling list I chemicals was a factor in a determination to deny a pending application for DEA registration. See, e.g., *CWK Enterprises, Inc.* (CWK), 69 FR 69400 (2004); *Prachi Enterprises, Inc. (Prachi),* 69 FR 69407 (2004); *Matthew D. Graham,* 67 FR 10229 (2002); *Xtreme Enterprises, Inc.,* 67 FR 76195 (2002). Therefore, this factor similarly weighs against the granting of Respondent's pending application.

With respect to factor five, other factors relevant to and consistent with the public safety, the Deputy Administrator finds this factor also weighs heavily against granting the Respondent's application. Methamphetamine abuse is one of the top public health threats facing the country. While there have been various state legislative initiatives enacted around the United States that seek to address the illicit production and use of methamphetamine, the growing menace of this drug remains a grave public health and safety concern. Ephedrine and pseudoephedrine are precursor products needed to manufacture methamphetamine and operators of illicit laboratories regularly acquire the precursor products needed to manufacture the drug.

Many of these illicit transactions arise from listed chemical products acquired from convenience stores and gas stations. It is apparent that the Respondent intends on being a participant in this market with most of its proposed customers made up of convenience stores and gas stations. While there are no specific prohibitions under the Controlled Substance Act regarding the sale of listed chemical products to these entities, DEA has nevertheless found that gas stations and convenience stores constitute sources for the diversion of listed chemical products. See, e.g., *ANM Wholesale,* 69 FR 11652 (2004); *K.V.M. Enterprises,* 67 FR 70968 (2002) (denial of application based in part upon information developed by DEA that the applicant proposed to sell listed chemicals to gas stations, and the fact that these establishments in turn have sold listed chemical products to individuals engaged in the illicit manufacture of methamphetamine); *Xtreme Enterprises, Inc.,* supra. Therefore, to Respondent's proposed sale of listed chemical products convenience store and gas stations weighs against granting its pending registration application.

As noted above, there is no evidence in the investigative file that the Respondent ever sought to modify its pending application with respect to listed chemical products it intends to distribute. Among the listed chemical products the firm seeks to distribute is phenylpropanolamine. DEA has previously determined that an applicant's request to distribute phenylpropanolamine constitutes a ground under factor five for denial of an application for registration because of the apparent lack of safety associated with the use of this product. See e.g., *William E. ''Bill'' Smith d/b/a B &B Wholesale,* 69 FR 2259 (2004); *J &S Distributors,* 69 FR 62089 (2004); *Shani Distributors,* 68 FR 62324 (2003). The Deputy Administrator also finds factor

five relevant to the results of DEA's random customer verifications where several of Respondent's proposed customers informed investigators that listed chemicals products likely would not be purchased from Respondent.

Factor five is also relevant to Respondent's lack of procedure for identifying suspicious or unusual purchases of list I chemical products. Factor five is further relevant to DEA's investigative findings regarding Respondent's inability to confirm the existence of its customers. The Deputy Administrator is also somewhat concerned by the Jiwani's inability to identify a part-time employee. It is unknown whether any knowledge of the individual's identity would favorably or unfavorably impact DEA's determination with regard to Respondent's application for registration. Therefore, the unresolved nature of this event is also given consideration under factor five. Based on the foregoing, the Deputy Administrator concludes that granting the pending application of the Respondent would be inconsistent with the public interest.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by Joey Enterprises, Inc., d/b/a NorthStar Wholesale be, and it hereby is denied. This order is effective January 27, 2006.

Dated: December 15, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–24496 Filed 12–27–05; 8:45am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 04–63]

Donley D. Siddall, M.D.; Revocation of Registration

On June 28, 2004, the Deputy Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Donley D. Siddall, M.D. (Respondent) of Collegedale, Tennessee. The Order to Show Cause notified the Respondent of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AS691100, under 21 U.S.C. 824(a)(3), and deny any pending application for renewal of that registration pursuant to 21 U.S.C. 823(f). The Order to Show Cause further informed the Respondent of the immediate suspension of his registration, alleging that his continued registration would constitute an imminent danger to the public health and safety, pursuant to 21 U.S.C 824(d).

Specifically, the Order to Show Cause alleged in relevant part that effective January 7, 2004 the Tennessee Board of Medical Examiners (Tennessee Board) revoked Respondent's license to practice medicine in that state and as a result, he is not currently authorized to handle controlled substances in Tennessee.

By letter dated August 6, 2004, the Respondent, through his legal counsel, timely requested a hearing in this matter. As part of his hearing request, the Respondent asserted that ''* * * [t]he Tennessee Board * * * wrongly revoked [his] medical license * * *.'' On August 26, 2004, the presiding Administrative Law Judge Gail A. Randall (Judge Randall) issued to counsel for DEA as well as the Respondent on Order for Prehearing Statements.

In lieu of filing a Pre-hearing Statement, counsel for DEA filed Government's Request for Stay of Proceedings and Motion for Summary Disposition on September 9, 2004. In its motion, the Government recited the primary allegation raised in the Order to Show Cause regarding the January 7, 2004 revocation of the Respondent's Tennessee medical license. In support of its motions, the Government attached a copy of the aforementioned revocation order of the Tennessee Board. Accordingly, the Government argued that a motion for summary disposition is appropriate in this matter and Respondent's DEA Certificate of Registration should be revoked.

On September 29, 2004, counsel for the Respondent filed a Response In Opposition to the Government's Motion for Summary Disposition. In his reply brief, the Respondent argued in relevant part that any action by DEA to dismiss Respondent's right to a hearing would be ''premature'' since the matter involving the appropriateness of the Tennessee Board's revocation action was being reviewed in state courts. The Respondent also requested that DEA stay the current administrative action until the Tennessee state courts have reached a final decision regarding his state medical license. While he further argued in his reply brief that the Tennessee Board's revocation action was conducted ''* * * in an arbitrary and capricious manner'', and that the matter was pending review before the Tennessee courts, the Respondent nevertheless did not deny that he is currently without authorization to handle controlled substances in Tennessee, the state in which he currently holds a DEA registration.

On November 4, 2004, Judge Randall issued her Order, Opinion and Recommended Decision of the Administrative Law Judge (Opinion and Recommended Decision). As part of her recommended ruling, Judge Randall granted the Government's Motion for Summary Disposition and found that the Respondent lacked authorization to handle controlled substances in Tennessee. In granting the Government's motion, Judge Randall also recommended that the Respondent's DEA registration be revoked. No exceptions were filed by either party to Judge Randall's Opinion and Recommended Decision, and on December 7, 2004, the record of these proceedings was transmitted to the Office of the DEA Deputy Administrator.

The Deputy Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that the Respondent currently possesses DEA Certificate of Registration AS6911007, and is registered to handle controlled substances at a location in Collegedale, Tennessee. As outlined above, the Respondent is currently without authorization to practice medicine in Tennessee following the January 7, 2004, revocation of his state medical license. Notwithstanding the Respondent's request that the DEA administrative matter be stayed pending a resolution of his appeal of the Tennessee Board's revocation order, there is no evidence before the Deputy Administrator that the Respondent has been granted reinstatement of his Tennessee medical license. Therefore, it is reasonable to conclude that without the ability to practice medicine, the Respondent also lacks authorization to handle controlled substances in Tennessee.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently

upheld. *See James Marvin Goodrich, M.D.,* 70 FR 24619 (2005); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988).

Here, it is clear that the Respondent's state medical license has been revoked and there is no information before the Deputy Administrator which points to a rescission or modification of the Tennessee Board's revocation order. As a result, the Respondent is not licensed to handle controlled substances in Tennessee, where he is registered with DEA. Therefore, he is not entitled to maintain that registration.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.014, hereby orders that DEA Certificate of Registration, AS6911007, issued to Donley D. Siddall, M.D., be, and is hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied.

This order is effective January 27, 2006.

Dated: December 15, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–24497 Filed 12–27–05; 8:45am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 20, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Independent Contractor Registration and Identification.

OMB Number: 1219–0040.

Frequency: On occasion.

Type of Response: Recordkeeping and Reporting.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 17,395.

Estimated Annual Responses: 100,665.

Estimated Average Response Time: 8 minutes for a mine operator to maintain contractor information and 4 to 8 minutes to supply information for obtaining a contractor identification number.

Estimated Annual Burden Hours: 13,396.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $183,742.

Description: Independent contractors performing services or construction at mines are subject to the Federal Mine Safety and Health Act of 1977. Title 30 CFR 45.4(b) requires mine operators to maintain a written summary of information concerning each independent contractor present on the mine site. The information includes the trade name, business address, and telephone number; a brief description and the location on the mine of the work to be performed; MSHA identification number, if any; and the contractor's business address of record. This information is required to be provided for inspection and enforcement purposes by the mine operator to any MSHA inspector upon request.

Title 30 CFR 45.3 provides that independent contractors may voluntarily obtain a permanent MSHA identification number by submitting to MSHA their trade name and business address, a telephone number, an estimate of the annual hours worked by the contractor on mine property for the previous calendar year, and the address of record for service of documents upon the contractor. Independent contractors performing services or construction at mines are subject to the Federal Mine Safety and Health Act of 1977 and are responsible for violations of the Mine Act committed by them or their employees.

Although Independent Contractors are not required to apply for the identification number, they will be assigned one by MSHA the first time they are cited for a violation of the Mine Act. MSHA uses the information to issue a permanent MSHA identification number to the independent contractor.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E5–7962 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 19, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13,44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

AGENCY: Employment and Training Administration (ETA).

Type of Review: New Collection.

Title: Prisoner Reentry Initiative (PRI) Reporting System.

OMB Number: 1205–0NEW.

Frequency: Quarterly.

Affected Public: Not-for-profit institutions.

Type of Response: Recordkeeping; Reporting.

Number of Respondents: 30.

Annual Responses: 6,490.

Average Response time: 64 hours.

Total Annual Burden Hours: 15,150.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (operating/maintaining systems or purchasing services): 0.

Description: Respondents are Faith-Based and Community Organization (FBCO) grantees. Selected standardized information pertaining to customers in Prisoner Reentry Initiative (PRI) programs will be collected and reported for the purposes of general program oversight, evaluation and performance assessment. ETA will provide all grantees with a PRI management information system to use for collecting participant data and for preparing and submitting the required quarterly reports.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. E5–7963 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11306, et al.]

Proposed Exemptions; Pennsylvania Institute of Neurological Disorders, Inc. Profit Sharing Plan (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: ''*moffitt.betty@dol.gov*'', or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Pennsylvania Institute of Neurological Disorders, Inc. Profit Sharing Plan (the Plan) Located in Sunbury, PA

[Application No. D–11306]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) by the Plan of a parcel of unimproved real property known as Lot 20, Section ''F'', Monroe Manor, Inc., (Lot #20 Kingswood Drive, Selinsgrove, PA 17870) (the Property) to Mahmood Nasir, M.D. (Dr. Nasir), a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) All terms and conditions of the Sale are at least as favorable to the Plan as those that the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The Sales price is the greater of $81,000 or the fair market value of the Property as of the date of the Sale;

(c) The fair market value of the Property has been determined by a qualified independent appraiser;

(d) The Sale is a one-time transaction for cash;

(e) The Plan does not pay any commissions, costs, or other expenses in connection with the Sale; and

(f) The Plan fiduciaries will determine, among other things, whether it is in the interest of the Plan to go forward with the Sale of the Property, will review and approve the methodology used in the appraisal that is being relied upon, and will ensure that such methodology is applied by a qualified independent appraiser in determining the fair market value of the Property as of the date of the Sale.

Summary of Facts and Representations

1. The Pennsylvania Institute of Neurological Disorders, Inc. (the Employer) is the sponsor of the Plan. Dr. Nasir is the sole owner and shareholder of the Employer. Dr. Nasir is also the President of the Employer. The Employer is located in Sunbury, Pennsylvania.

The Plan is a defined contribution profit sharing plan which was effective as of September 1, 1993. As of December 31, 2004, the Plan had seven participants, who are as follows: Dr. Nasir, Denise Bebenek, Teresa Gelnett, Julie Rebuck, Judy S. Smink, Hollie Vankirk, and Cassie J. Wolfe. The Trustees of the Plan are Dr. Nasir and Rubina Nasir. As of December 31, 2004, the Plan had total assets of $403,241.99.

2. In July 1995, the Plan purchased the Property from John A. Bolig and Christabelle M. Bolig, unrelated third parties, for $49,000.[1] The Property is a 22,500 square foot parcel of unimproved real property located at Lot #20 Kingswood Drive, Selinsgrove, Pennsylvania 17870. The Property is adjacent to property owned and resided on by Dr. Nasir. The applicant represents that the Property has not been leased to, or used by, any party in interest with respect to the Plan since the date of acquisition by the Plan. The value of the Property represents approximately 16.57% of the Plan's total assets as of December 31, 2004. The applicant represents that the only Plan expenditure with respect to the Property is $511.72 in annual real estate taxes from 1995 (*i.e.*, the year of original acquisition) until the present. Therefore, the total cost to the Plan for the Property was $54,628.92 as of the present date ($5,628.92 + $49,000 = $54,628.92). Since the date of the purchase, the Property has remained vacant and no income has been generated.

3. The Property was appraised (the Appraisal) on June 21, 2005, by Mary Beth Rodriguez (the Appraiser), of the Bowen Agency in Selinsgrove, Pennsylvania. The Appraiser is certified by the Commonwealth of Pennsylvania as a General Appraiser. The Appraiser has certified that she is independent of the Employer, the Trustees, and any other parties in interest.

The Property was valued using the sales approach. The Appraiser compared the Property to three other similar properties sold within a one-half mile of the Property since March 2004. She adjusted the sale price of the comparable properties based upon date of the sale, location, and site/view. The Appraiser determined that the fair market value of the Property was $81,000 as of June 21, 2005.

The Appraiser did not attribute any special benefit to the value of the Property from the ownership of Dr. Nasir of the adjacent property due to a number of factors. First, there is a driveway dividing the two parcels. Second, the ownership of the Property by Dr. Nasir does not affect Dr. Nasir's interest in the adjacent lot. Finally, the value of the sum of the separate values for the Property and the adjacent parcel already owned by Dr. Nasir is greater than the value if the Property and the adjacent lot were sold as one combined lot. Therefore, the Appraisal does not include any premium for assemblage value.[2]

4. The applicant represents that the proposed transaction is in the interest of the Plan because a gain will be realized when the parcel of land is sold to Dr. Nasir and the proceeds can be reinvested in other investments with a higher rate of return without incurring carrying costs such as real estate taxes. The Property is the only real property owned by the Plan. The transaction will be a one-time cash sale and will enable the Plan to diversify its investment portfolio.

Furthermore, the applicant represents that the proposed transaction is in the best interest and protective of the Plan because the Sale will be for an amount equal to the greater of: (i) $81,000 which represents the fair market value of the Property as of June 21, 2005, or (ii) the current fair market value of the Property, as established by a qualified independent appraiser on the date of the Sale. This amount exceeds the original acquisition cost of the Property, plus expenses and real estate taxes incurred by the Plan from the date of the acquisition until the date of the proposed Sale. The Plan will not pay any commissions, costs, or other expenses in connection with the Sale. The applicant states that the Appraisal will be updated as of the date of the transaction.[3]

5. The Plan fiduciaries will determine, among other things, whether it is in the interest of the Plan to go forward with the Sale of the Property, will review and approve the methodology used in the appraisal that is being relied upon, and will ensure that such methodology is applied by a qualified independent appraiser in determining the fair market value of the Property as of the date of the Sale.

6. The proposed transaction will occur within 30 days of the publication of the grant of the prohibited transaction exemption.

7. In summary, the applicant represents that the subject transaction satisfies the statutory criteria contained in section 408(a) of the Act and section 4975(c)(2) of the Code for the following reasons:

(a) All terms and conditions of the Sale will be at least as favorable to the Plan as those that the Plan could obtain in an arms-length transaction with an unrelated party;

(b) The fair market value for Property has been determined by a qualified independent appraiser;

(c) The Sale will be a one-time transaction for cash;

(d) The Plan will not pay any commissions, costs, or other expenses in connection with the Sale; and

(e) The Plan will receive an amount equal to the greater of: (i) $81,000; or (ii) the current fair market value of the Property as of the date of the Sale.

Notice to Interested Persons

Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the

[1] The Department expresses no opinion herein as to whether the acquisition and holding of the Property by the Plan violated any of the provisions of part 4 of Title I of the Act.

[2] ''Assemblage'' value reflects the willingness of a purchaser to pay above market value for a parcel of property in order to preserve such purchaser's interest in their present holdings of other parcels which are adjacent to such property.

[3] For this purpose, the updated appraisal must take into account any new data on recent sales of similar property in the local real estate market, which may affect the valuation conclusion.

applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji of the Department, telephone (202) 693–8567 (this is not a toll-free number).

The Zieger Health Care Corporation Retirement Fund (the Plan) Located in Farmington, Michigan

[Exemption Application No. D–11313]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B, 55 FR 32836, 32847 (August 10, 1990).[4]

I. Transactions

If the exemption is granted, the restrictions of sections 406(a), 406(b)(1), 406(b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975, by reason of sections 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(a) The in-kind contribution and transfer to the Plan (the In-Kind Contribution) by Zieger Health Care Corporation (ZHCC), acting through its wholly-owned subsidiary, Botsford General Hospital (the Hospital), both of which are parties in interest with respect to the Plan, of the Hospital's right, title, and interest in five (5) limited liability corporations, (collectively, the LLCs or individually, an LLC) where the sole asset of each such LLC is one of five (5) parcels of improved real property situated in southeastern Michigan (individually, an Underlying Property, collectively, the Properties).

(b) The holding by the Plan of ownership interests in the LLCs that own the Properties.

(c) The leaseback by the Plan to the Hospital of the Underlying Property held by each of the LLCs, (individually, a Lease or collectively, the Leases).

(d) The sale of an Underlying Property (or ownership interest in an LLC, as the case may be) by the Plan to ZHCC or its affiliates, pursuant to a right of first offer (the RFO), as described in each Lease, at any time during the term of such Lease.

(e) Any payment or payments to the Plan by the Hospital, pursuant to contingent rent payments(s) (the Contingent Rent Payment(s)), as described in each Lease, during the term of such Lease.[5]

II. Conditions

The exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a) ZHCC contributes to the Plan no less than:

(1) Cash in the amount of $3.3 million in the year 2005;

(2) Cash in the amount of $2 million in each of the years 2006, 2007, and 2008; and

(3) Cash in the amount of $3 million in the year 2009.

(b) A qualified, independent fiduciary, as defined in section III(c), below, (the Independent Fiduciary), acting on behalf of the Plan, determines in accordance with the fiduciary provisions of the Act, whether and on what terms to enter into each of the Transactions.

(c) The Independent Fiduciary represents the Plan's interests for all purposes with respect to each of the Transactions and determines, prior to entering into any of the Transactions, that each such transaction is feasible, in the interest of the Plan, and protective of the Plan and its participants and beneficiaries.

(d) The Independent Fiduciary reviews, negotiates, and approves the specific terms of each of the Transactions.

(e) The Independent Fiduciary monitors compliance by ZHCC and its affiliates, as defined in section III(a), below, with the terms of each of the Transactions and with the conditions of this proposed exemption to ensure that such terms and conditions are at all times satisfied.

(f) The Independent Fiduciary manages the acquisition, holding, leasing, and disposition of the Plan's ownership interests in the LLCs that own the Properties and takes whatever actions are necessary to protect the rights of the Plan with respect the Plan's ownership interests in such LLCs.

(g) The terms and conditions of each of the Transactions are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties.

(h) The Independent Fiduciary determines the fair market value of the In-Kind Contribution, as of the date such contribution is made. In determining the fair market value of the In-Kind Contribution, the Independent Fiduciary obtains an updated appraisal from an independent, qualified appraiser selected by the Independent Fiduciary and ensures that the appraisal is consistent with sound principles of valuation.

(i) Each Lease has a term of years, commencing on the closing date of the In-Kind Contribution and ending ten (10) years thereafter. Each Lease is a triple net ''bondable'' lease in which the Hospital's obligation to pay rent to the Plan is absolute and unconditional. The rental payment under each Lease is no less than the fair market rental value of the leased premises, as determined by the Independent Fiduciary, and is net of all costs related to the leased premises, including costs of capital improvements and all other costs to operate, maintain, repair and replace in good condition, and repair the systems and structural and non-structural components of the buildings on the leased premises, including without limitation, the roof, foundation, landscaping, storm water management, utilities, and all other capital and non-capital repairs and replacements, all in a manner befitting office buildings comparable to the buildings on the leased premises and in accordance with all applicable laws. Each Lease contains a commercially reasonable standard for determining whether repair or replacement is necessitated. All such maintenance, repair, and replacement work is the responsibility of the Hospital. As discussed in representation number 6 in the Summary of Facts and Representations, below, and except as otherwise provided in each Lease, the Hospital is required to restore the leased premises in the event of casualty or condemnation, regardless of any lack or insufficiency of insurance proceeds or condemnation awards therefore (but subject to all applicable laws);

(j) ZHCC and the Hospital agree to make one or more Contingent Rent Payment(s) to the Plan, if the Plan does not earn an annual return on each of the Properties equal to a fixed interest rate of 8 percent (8%) in any year (the Minimum Funding Rate). Each Contingent Rent Payment is due on the *earliest* of: (1) The end of the ten (10) year term of the Leases, (2) the termination of any of the Leases (including a termination due to default,

[4] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[5] The transactions described in section I (a)–(e), above, collectively, are referred to herein as the Transactions.

destruction, or condemnation), or (3) the sale by the Plan of any parcel included in the Properties (or the sale by the Plan of the entity that owns any parcel) (each a Minimum Return Date). If the actual return to the Plan (the Actual Return), as defined in section III (d), below, is less than the sum of the contribution value of the Properties, plus a return on such contribution value equal to the Minimum Funding Rate (the Minimum Return), then ZHCC and the Hospital shall pay to the Plan a Contingent Rental Payment equal to the amount of any such difference. ZHCC and the Hospital shall pay each Contingent Rent Payment to the Plan in cash within 180 days after each Minimum Return Date.

(k) If the Plan desires to sell or convey any of the Properties (or any of the LLCs, as the case may be), during the term of a Lease, the Plan shall first offer the Hospital the right to purchase or otherwise acquire such property or LLC, pursuant to a right of first offer (the RFO): (1) On such terms and conditions as the Plan proposes to market such property or such LLC for sale (Soliciting Offer), which terms and conditions shall reflect the Plan's good faith determination of market conditions and the fair market value for such property or LLC, or (2) on such terms and conditions as are contained within an unsolicited *bona fide* offer from an unaffiliated third party that the Plan desires to accept (Unsolicited Offer). The parties shall negotiate in good faith the terms and conditions of any purchase based on a Soliciting Offer for a period of thirty (30) days following the Plan's notice to the Hospital. In all events, the Hospital shall exercise such right to purchase, if at all, upon notice to the Plan within the thirty (30) day period described above with respect to a Soliciting Offer or within thirty (30) days after notice to the Hospital of an Unsolicited Offer. If the Hospital fails to exercise such right to purchase, the Plan is free to sell such property or LLC (*i.e.*, close on the transfer) to a third party on such terms for the next 360 days. However, the Plan shall not have the right to sell to a third party at a lower effective purchase price or on any other materially more favorable term than the effective purchase price and terms proposed by the Plan to the Hospital without first re-offering such property or LLC to the Hospital at such lower effective purchase price or other more favorable term, nor to sell on any terms following the expiration of such 360-day period, without in either event first re-offering such property or LLC to the Hospital. The RFO shall terminate upon the commencement of the exercise by the Plan of its remedies under the Leases as the result of a monetary event of default by the Hospital that continues uncured following notice and the expiration of applicable cure periods (and a second notice and cure period provided fifteen (15) days before the loss of such right on account of such default).

(l) Subject to the Hospital's RFO, the Plan retains the right to sell or assign, in whole or in part, any of its interests in the Properties (or any of its interests in the LLCs, as the case may be) to any third party purchaser.

(m) ZHCC indemnifies the Plan with respect to any liability for hazardous materials released on the Properties, whether such release occurs prior to or after the execution of the Leases or the In-Kind Contribution;

(n) The In-Kind Contribution is conditioned on the Independent Fiduciary's receipt of favorable engineering and environmental reports prior to closing.

(o) The Plan incurs no fees, commissions, or other charges or expenses as a result of its participation in any of the Transactions.

III. Definitions

(a) The term, ''affiliate,'' means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term, ''control,'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term, ''Independent Fiduciary,'' means a fiduciary that:

(1) Has a minimum of five (5) years of experience acting on behalf of employee benefit plans covered by the Act and/or the Code;

(2) Can demonstrate, through experience and/or education, proficiency in matters involving the acquisition, management, leasing, and disposition of real property;

(3) Is an expert with respect to the valuation of real property or has the ability to access (itself or through persons engaged by it) appropriate data regarding the purchase, sale, and leasing of real property located in the relevant market;

(4) Has not engaged in any criminal activity involving fraud, fiduciary standards, or securities law violations;

(5) Is appointed to act on behalf of the Plan for all purposes related to, but not limited to (i) the In-Kind Contribution, (ii) the Leases, (iii) the RFO, (iv) the Contingent Rent Payment(s), and (v) any other transactions between the Plan and ZHCC and its affiliates related to the LLCs and Properties; and

(6) Is independent of and unrelated to ZHCC or its affiliates. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to ZHCC and its affiliates if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with ZHCC,

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration in connection with any Transactions described in this exemption; except that an Independent Fiduciary may receive compensation from ZHCC for acting as an Independent Fiduciary in connection with the Transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the Independent Fiduciary's ultimate decisions, and

(iii) The annual gross revenue received by such fiduciary, during any year of its engagement, from ZHCC and its affiliates exceeds five percent (5%) of the fiduciary's annual gross revenue from all sources for its prior tax year.

(d) The definition of Actual Return to be used in calculating the amount of each Contingent Rent Payment is the sum of: (1) The sales price of any parcel sold, net of selling costs, (2) any net insurance proceeds or net condemnation awards received by the Plan (if any Lease is terminated due to destruction or condemnation), (3) the fair market value of any parcel(s) that the Plan continues to hold, as determined by a three appraiser method (if the parties are unable to otherwise agree), plus (4) the rental income received by the Plan under the Leases prior to the Minimum Return Date, less expenses incurred by the Plan with respect to the Properties and the Leases up to the Minimum Return Date. The liabilities and obligations of the Hospital and ZHCC survive the expiration date of a Lease, or a termination of a Lease, and continue until such liabilities and obligations have been fully paid and fulfilled.

Temporary Nature of Exemption

The exemption, if granted, is temporary and will become effective on the date of publication of the grant of the final exemption in the **Federal Register**. The exemption will expire on the date which is ten (10) years from the date of the grant of the exemption. If the

Hospital wishes to renew the Leases on the Properties between the Hospital and the LLCs (or between the Hospital and the Plan, as the case may be), the Department would encourage the applicant to submit another application prior to the expiration of this exemption, provided that the Independent Fiduciary determines that the conditions of the renewal are feasible, in the interest and protective of the Plan and the Hospital can demonstrate that it can satisfy the terms of such renewal.

Summary of Facts and Representations

1. ZHCC is a not-for-profit Michigan corporation established in 1968 to provide a centralized governance and management structure for its subsidiaries. ZHCC's business operations include the following wholly-owned subsidiaries: (a) The Hospital, (b) Community Emergency Medical Services (CEMS), and (c) Botsford Continuing Care Corporation (BCCC).

The Hospital is a community osteopathic hospital that operates a full service hospital, providing an array of ambulatory and inpatient services for the benefit of the residents living in southeastern Michigan. CEMS provides emergency and non-emergency medical transportation to the general public and health care providers in approximately twenty (20) communities in southeastern Michigan. BCCC owns and operates a 179-bed skilled nursing facility in Farmington, Michigan, a 64 unit assisted living facility, and a 51 unit independent living apartment building. BCCC also provides services to an independent living condominium development that consists of 86 separately owned units located within its campus.

2. The Plan was established January 1, 1968, and restated effective January 1, 2000. The Plan is a non-contributory, single employer, defined benefit pension plan. The Plan covers all employees of the Hospital, CEMS, and BCCC. It is represented that the Hospital, CEMS, and BCCC are the only entities in the controlled group that have employees. As of December 31, 2003, the Plan had approximately 3,344 participants and beneficiaries. As of February 11, 2005, the date the application for exemption was filed, the Plan had approximately 3,300 participants and beneficiaries.

On November 26, 2002, the Board of Directors of ZHCC approved a resolution to freeze benefit accruals under the Plan, effective December 31, 2002. All participants, as of December 31, 2002, are deemed 100 percent (100%) vested. After December 31, 2002, employees could not become participants in the Plan.

As of September 30, 2004, the Plan was approximately 71 percent (71%) funded with assets of $71.2 million and liabilities of $101 million measured on an accumulated benefit obligation basis using a 6 percent (6%) discount rate, under Financial Accounting Standard (FAS) No. 87, Employers' Accounting for Pensions. Of the total assets of the Plan after the execution of the In-Kind Contribution, approximately ten percent (10%) will be involved in the Transactions that are the subject of this exemption.

ZHCC is the sponsor of the Plan, the administrator of the Plan, and the named fiduciary for the Plan. As such, ZHCC is a party in interest with respect to the Plan, pursuant to section 3(14)(A) and 3(14)(C) of the Act. The Hospital, CEMS, and BCCC, as corporations 50% or more owned by ZHCC, are also parties in interest with respect to the Plan, pursuant to 3(14)(G) of the Act.

The general administration of the Plan and the responsibility for carrying out the provisions of the Plan are vested in a Retirement Committee (the Committee) consisting of designated members of the Board of Directors of ZHCC and two (2) members of management. The Board of Directors of ZHCC appoints the members of the Committee. The function of the Committee is to administer the Plan exclusive of those functions assigned to the trustee of the Plan (the Trustee). The Committee is a party in interest with respect to the Plan, pursuant to section 3(14)(A) of the Act.

Under the terms of the Zieger Health Care Corporation Retirement Plan Trust (the Trust), the Trustee of the Plan is Standard Federal Corporate and Institutional Trust (formerly, Standard Federal Bank). The Trustee is a division of LaSalle Bank, a national banking association. The Trustee has discretion with respect to the investment of the assets of the Plan. Pursuant to its authority under the Trust, ZHCC has appointed investment managers to manage the Plan's assets. ZHCC has the power to appoint and remove the Trustee. The Trustee is a party in interest with respect to the Plan, pursuant to section 3(14)(A) of the Act.

The Plan has invested $3,272,836 and $2,691,285, as of December 31, 2003, and December 31, 2002, respectively, in shares of funds managed by the Trustee or its subsidiaries. The applicant represents that these transactions are exempt under Prohibited Transaction Class Exemption 77–4 (PTCE 77–4).[6]

3. The Properties that are the subject of this proposed exemption are described below:

(a) Botsford Center for Rehabilitation and Health Improvement (the Rehab Center) is located at 26905 Grand River Avenue in Redford, Michigan, on a rectangular, level site containing 27,443 square feet or 0.63 gross acres with frontage along Grand River Avenue and Denby Street. All of the typical utilities are available to the site.

The Rehab Center is a one-story building totaling 5,288 square feet of gross building area. The construction of the improvements is represented to be Class C, with average quality of construction. The condition of the building is average.

The Rehab Center was built in 1963, originally as offices of Junior Achievement, with renovations in 1985 and 2001. The Rehab Center is currently 100 percent (100%) owner occupied by the Hospital.

(b) Botsford Kidney Center (the Kidney Center) is located at 28425 West Eight Mile Road in Livonia, Michigan, on a slightly irregular level site containing 209,959 square feet or 4.82 gross acres frontage along West Eight Mile Road. All of the typical utilities are available to the site.

The Kidney Center is a one-story building totaling 16,217 square feet of gross building area. The building has 13,947 square feet of net rentable area, which does not include the common areas of the building. The construction of the improvements is represented to be Class C, with average quality of construction. The condition of the Kidney Center is average.

The Kidney Center was built in 1976 as offices for an architect and was renovated in 1991 and 1995. A tenant owned by the Hospital occupies 28 percent (28%) of the building. The remaining 72 percent (72%) of the building is occupied on a month to month basis with only an expired lease in place by Botsford Kidney Center, Inc. (BKCI). BKCI is a Michigan business corporation owned 80 percent (80%) by individual physicians and 20 percent (20%) by the Hospital.

(c) Brentwood Medical Center (the Medical Center) is located at 28711

[6] The Department is offering no view, herein, as to the applicant's reliance on PTCE 77–4 with respect to the purchases by the Plan of interests in funds managed by the Trustee or its subsidiaries, nor has the Department made a determination that the applicant has satisfied all of the requirements of PTCE 77–4. Further, the Department is not providing any relief, herein, with respect to such purchases.

West Eight Mile Road in Livonia, Michigan, on a slightly irregular, level site containing 84,158 square feet or 1.93 gross acres with frontage along Brentwood Avenue and West Eight Mile Road. All of the typical utilities are available to the site.

The Medical Center is a one-story building with 9,895 square feet of gross building area. The building has 8,542 square feet of net rentable area, which does not include the common areas of the building. The construction of the improvements is represented to be Class C, with average quality of construction. The condition of the building is average.

The Medical Center was built in 1977, and has had several minor renovations since 1997. The Medical Center is currently 63 percent (63%) occupied by the Hospital, the owner, and 37 percent (37%) occupied by Tri-County Urologists, an unrelated third party.

(d) The Planning and Development Building (the P&D Building) is located at 29134 Grand River Avenue in Farmington Hills, Michigan, on a slightly irregular, level site containing 22,744 square feet or 0.52 gross acres. The site is comprised of two parcels, one that has frontage on Grand River Avenue, and one that has frontage on Jefferson Avenue. The only access to the property is via Jefferson Avenue. All typical utilities are available to the site.

The P&D Building is a one-story building totaling 4,063 square feet of gross building area and net rentable area. The construction of the improvements is represented to be Class C, with average quality of construction. The condition of the building is good.

The P&D Building was built in 1987. A department of the Hospital currently occupies 100 percent (100%) of the building.

(e) The South Professional Office Building (the SPO Building) located at 28100 Grand River Avenue in Farmington Hills, Michigan, on an irregular, level site containing 80,150 square feet or 1.84 gross acres. The site does not have any frontage on Grand River Avenue but is located on the campus of the Hospital. The only access to the property is via the access drive to the Hospital. All typical utilities are available to the site.

The SPO Building is a three-story building totaling 43,200 square feet of gross building area. The building has 35,470 square feet of net rentable area, which is comprised of fourteen tenant suites that are located on all three floors. The construction of the improvements is represented to be Class C, with average quality of construction. The condition of the building is average.

The SPO Building was built in 1987. The SPO Building is currently 87.3 percent (87.3%) occupied by multiple tenants, including Hospital departments and unrelated third party tenants.

The SPO Building is currently held in the Botsford Professional Office Building Limited Partnership, LLP (BPOB). BPOB is 90 percent (90%) owned by the Hospital and 10 percent (10%) owned by Botsford Real Estate Services Corporation (BRESC), a wholly owned subsidiary of ZHCC. It is represented that prior to the In-Kind Contribution, BRESC will be merged into the Hospital, thereby dissolving BPOB and resulting in the SPO Building being 100 percent (100%) owned by the Hospital.

The SPO Building is subject to a $1.9 million mortgage. It is represented that the Hospital will pay-off the SPO Building mortgage debt before executing the In-Kind Contribution.

4. ZHCC, the applicant, seeks an individual administrative exemption: (a) For the immediate, voluntary In-Kind Contribution to the Plan of interests in five (5) LLCs each of which will hold one of the Properties, described in paragraph 3, above, and (b) for the continued holding by the Plan of ownership interests in such LLCs and Properties.

It is anticipated that the Hospital will transfer its fee simple interest in each Underlying Property to a separate Michigan LLC of which the Hospital will own a 100 percent (100%) interest. The Hospital then intends to transfer its entire interest in each LLC to the Plan. Because the LLCs will be formed immediately before the In-Kind Contribution, it is represented that the LLCs will have no outstanding obligations or liabilities other than those generated by the transaction.

5. ZHCC believes that the In-Kind Contribution of the Properties does not satisfy the requirements of section 408(e) of the Act relating to the acquisition, lease, or sale of ''qualifying employer real property,'' as defined in section 407(d)(4) of the Act. In this regard, among the provisions in the definition of ''qualifying employer real property,'' set forth in section 407(d)(4) of the Act, is the requirement that parcels of property must be dispersed geographically. ZHCC believes that the In-Kind Contribution of the Properties would violate sections 406 and 407(a) because the Properties are all located within five (5) miles of each other; and therefore, arguably would not be geographically dispersed.

Likewise, as it is anticipated that each of the Properties is to be transferred into an LLC and the interests in the LLCs transferred to the Plan, ZHCC believes that the interests in the LLCs would fail to meet the requirements of 408(e) of the Act applicable to the acquisition or sale of ''qualifying employer securities,'' set forth in section 407(d)(5) of the Act, as interests in the LLCs would fail to meet the requirements of section 407(f)(1) of the Act. Accordingly, ZHCC has requested relief from sections 406(a), 406(b)(1), 406(b)(2) and 407(a) of the Act for the In-Kind Contribution and for the continued holding of ownership interests in the LLCs and the Properties.

6. In addition to the In-Kind Contribution, ZHCC requests an administrative exemption from section 406(a) and 406(b)(1) and 406(b)(2) of the Act for the Leases of the Properties between the Hospital and the LLCs. It is represented that execution of the Leases between the Hospital and the LLCs is a condition to acceptance by the Plan of the In-Kind Contribution. Under the terms of the Leases, the Plan, acting by and through the Independent Fiduciary who manages the LLCs, will lease each Underlying Property to the Hospital under a separate lease agreement. Each of the Leases will be identical as to material terms. For the purpose of each Lease, the Plan will maintain each of the Properties in its respective LLC in which: (1) the Plan will be the sole member and the Independent Fiduciary will be the LLC manager, and (2) the LLC will own such Underlying Property and be the lessor under the Lease.

Each of the Leases has a term of ten (10) years. Each Lease is an absolute net lease (*i.e.*, all costs are paid by the lessee, the Hospital) throughout the term of such Lease. The Leases are ''bondable'' leases in which the Hospital's obligation to pay rent to the LLC is absolute and unconditional. The rental payments are exclusive of all costs related to the leased premises, including real estate taxes, utilities, and insurance, which the Hospital must pay.

The Hospital also bears the costs of capital improvements to the Properties. Under the provisions of the Leases, the Independent Fiduciary must approve any capital alterations made to the Properties.

The Hospital will also bear all costs to operate, maintain, repair and replace in good condition the systems and structural and nonstructural components of the buildings on the Properties, in a manner befitting comparable office buildings in the area and in accordance with all applicable laws. In this regard, it is represented that the Independent Fiduciary has retained and will retain annually an engineering firm to conduct a property condition assessment and make

recommendations for maintenance, repair, and replacements. In this regard, the Independent Fiduciary represents that it has received a Property Condition Assessment Report that has identified a number of repairs and replacements that should be made on the Properties. Based on the recommendations of the inspector, the Independent Fiduciary and the Hospital are working to develop a timetable to complete these repairs and replacements and will annually develop a budget for maintenance, repair, and replacement. All such maintenance, repair, and replacement work is the responsibility of the Hospital.

The Leases will contain a commercially reasonable standard for determining whether repair or replacement is necessary. Any disputes between the Independent Fiduciary and the Hospital concerning the Properties will be resolved through mediation. If mediation is unsuccessful, either party may bring suit.

The Leases contain certain casualty provisions that are described, in part, in this and the following paragraphs. In this regard, the Hospital, as lessee, is required at its sole expense to restore, repair, rebuild, or remove and replace all or any part of the leased premises damaged or destroyed in the event of any casualty, regardless of any lack or insufficiency of insurance proceeds. In this regard, the Hospital shall commence such activity after the occurrence of any such casualty within the time period, as set forth in the Lease, unless prevented by circumstances beyond the Hospital's control, and shall pursue such activity to completion. All casualty insurance proceeds are deposited with the LLC or the Plan, as the lessor, and disbursed to the Hospital, as needed in accordance with the capital alteration provisions of the Lease.

Failure by the Hospital to commence or substantially complete the restoration, repair, rebuilding, or removal and reconstruction, within certain timeframes as set forth in the Lease, shall be deemed an event of default under the Lease. Any insurance proceeds paid to the Hospital but not applied to the restoration, repair, rebuilding, or removal and reconstruction of the leased premises are due and payable, as additional rent by the Hospital, immediately prior to the termination of the Lease. All insurance proceeds not yet paid to the Hospital become the property of the LLC or the Plan, as lessor, upon such an event of default.

In the event that all or part of the leased premises are damaged or destroyed at any time during the last three (3) years of the term of the Lease, and either (a) the cost to repair or replace exceeds 50 percent (50%) of the full replacement cost, or (b) repair or replacement cannot reasonably be completed within 360 days of the date of the damage or destruction, the Hospital may elect to terminate the Lease; provided all insurance proceeds are paid to the LLC or the Plan, as lessor. If the estimated cost to reconstruct or repair the leased premises exceeds the amount of the insurance proceeds payable as a result of the damage or destruction, the Hospital shall be obligated to contribute any excess amounts needed to fully restore the leased premises. Any such excess amounts shall be paid to the LLC or the Plan, as lessor together with the insurance proceeds.

The Lease contains certain condemnation provisions that are described, in part, in this and the following paragraphs. If at any time during the term of a Lease, there shall be a taking of substantially all of the leased premises, the Lease shall terminate, as of the date of such taking, and the base rent and additional rent shall be apportioned and paid by the Hospital to the date of such taking. If the Lease terminates because of such taking, as of such date, the LLC or the Plan, as the lessor, shall be entitled to the entire condemnation award, except that the Hospital shall be entitled to any portion explicitly attributable to the Hospital's personal property and relocation costs.

In the event of a partial taking, the Lease shall continue and remain unaffected, except that the Hospital shall promptly after such partial taking, at its expense, take commercially reasonable efforts to restore or demolish and reconstruct any improvements altered or damaged by such partial taking. In this regard, the Hospital is entitled to reimbursement from the condemnation award for the aggregate of the funds expended and all other reasonable and customary costs directly related to such restoration or demolition and reconstruction. The balance of the award shall be paid to the LLC or the Plan, as lessor. Following any partial taking, the base rent shall be re-determined by the independent fiduciary based on an independent determination of fair market value by a qualified, independent appraiser.

Failure by the Hospital to commence and substantially complete restoration or reconstruction of the leased premises, within the time periods set in the Lease, unless such failure is due to circumstances beyond the Hospital's control, shall be deemed an event of default under the Lease, whereupon LLC or the Plan, as lessor, shall be entitled to the entire award, or so much thereof as has not been disbursed and used in such reconstruction or restoration.

In the event of a taking of all or part of the leased premises for temporary use, the Lease shall continue without change. There shall be no re-determination of base rent. Any periodic payments of the condemnation award made for such temporary use will be made to the Hospital until the expiration or termination of the Lease and to the LLC or the Plan, as lessor thereafter. In the event of a lump sum payment of the condemnation award, the Hospital shall be entitled to an amount equal to a maximum of three (3) months rent with the balance of such condemnation award deposited with the LLC or the Plan, as lessor. In addition, the Hospital is entitled to file any claim against the condemnor for damages for negligent use, waste or injury to the leased premises throughout the balance of the term of the Lease. The amount recovered for such damages shall be first applied by the Hospital to any necessary repair or restoration of the leased premises.

The Hospital in the event of any taking shall not be entitled to any payment based upon the value of the unexpired term of the Lease, other than the unearned portion of prepaid base rent or amounts attributable to the Hospital's personal property and any reasonable removal and relocation costs.

The Hospital, as the sole lessee under each of the Leases, will be solely responsible for all payments of rent to the LLC or the Plan, as lessor. The rental payments under the Leases are set at fair market rates. Subject to final due diligence and the approval of the Independent Fiduciary, the annual base rent for each of the Properties will be the current fair market rental value identified in appraisals prepared by an independent, qualified appraiser. It is estimated that the Leases will generate in the aggregate an average of $1 million in annual rental income for the Plan over the ten (10) year term of the Leases.

Under the terms of each Lease, the rental rate increases at 2.5 percent per year, compounded. The Independent Fiduciary represents that this provision is intended to protect the Plan against inflation. In this regard, the Independent Fiduciary represents that over the past ten (10) years, the average annual increase in the Consumer Price Index (CPI) has been 2.45 percent (2.45%). The Independent Fiduciary maintains that using a fixed percentage, rather than pegging the rent to a variable

index, such as the CPI, provides certainty for the Plan as owner of the Properties. Further, it is represented that: (a) In recent years, negotiated base rental rates have increased by less than 2.5 percent (2.5%); and (b) the Congressional Budget Office estimates that the average annual increase in the CPI over the next ten (10) years will be 2.2 percent (2.2%).

The Leases provide that the Hospital will indemnify and hold the Plan harmless from all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architects' and attorneys' fees (excluding consequential damages and indirect losses) [7] during the term of a Lease, related to (i) any work done in or about the leased premises or any part of the leased premises by the Hospital or any party claiming by or through or at the request of the Hospital; (ii) any use, non-use, possession, occupation, condition, operation, maintenance, or management of the leased premises by the Hospital or any party acting on behalf of the Hospital; (iii) any negligence on the part of the Hospital or any of its agents, contractors, employees, subtenants, licensees, or invitees; (iv) any failure on the part of the Hospital to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations in the Leases; (v) any violation of any environmental law, the ADA, and other applicable laws; and (vi) any liability for hazardous materials released on the leased premises, whether such release occurred prior to or after (a) the execution of the Leases, or (b) the In-Kind Contribution.

It is represented that the Independent Fiduciary has retained Atwell-Hicks Development Consultants (Atwell) to conduct a Phase I Environmental Site investigation. In this regard, it is represented that Atwell did not identify any environmental concerns associated with the Properties or surrounding adjacent properties that could impact business environmental risk. No further investigations or actions were recommended at this time.

The Hospital will have the authority to sublease all or a portion of any of the Properties to a third party. Currently, portions of the Kidney Center, the SPO Building and the Medical Center are leased to unrelated third parties. Any leases currently in existence between the Hospital and unrelated third parties with regard to any of the Properties will be treated as subleases upon consummation of the Leases between the Hospital and the LLCs.

The provisions of all of the subleases are similar. The term of each of the subleases is generally for a period of five (5) years. It is represented that the initial rental rates due from the Hospital under the Leases of the Properties are higher than the aggregate rents to be paid under the subleases. In this regard, for calendar year 2005, the annual sublease income, including a proportionate share of expenses related to the SPO Building, the Kidney Center, and the Medical Center was $783,221. Taking into account the expenses that the Hospital bears with respect to the subleasing of the Properties, the applicant maintains that there are no current or anticipated profits to share with the Plan. In this regard, the Independent Fiduciary represents that since the tenant in an absolute net lease bears all of the costs of a property (as does the Hospital under the provisions of the Leases), such leases do not normally provide for profit sharing.

The Independent Fiduciary has negotiated an arrangement designed to ensure that any economic benefit derived from the subleases flows through to the Plan. In this regard, rents paid by subtenants will be sent to a postal lockbox and deposited directly into a cash account that can be used only to pay the rent and other obligations of the Hospital, as lessee under the Leases. Neither ZHCC nor the Hospital will have the right to withdraw funds from this cash account. The Independent Fiduciary will direct withdrawal of funds from this account. In this regard, on a monthly basis, the Independent Fiduciary will notify the Hospital of the amount of funds applied toward its rental obligations during the previous month, and the Hospital will have the right to deduct such amount from the next installment of rent due under the Leases. If any rentals are set aside, recovered, rescinded, or required to be returned for any reason, including the bankruptcy, insolvency, or reorganization of any subtenant, then the rental obligations of the Hospital to which the subtenant's rentals were applied will remain in existence, and the Leases will be enforceable as to such rentals. The Hospital will pay all fees and expenses related to the lockbox, the cash account, and any related postal or banking services.

The subleases will survive the expiration of the Leases, if entered into on commercially reasonable terms and for fair market rent. Any new subleases will include a provision stating that in the event of default by the Hospital under the Leases, the subtenant will pay all rents to the Plan or as directed by the Plan.

The applicant maintains that the Independent Fiduciary did not require a security deposit. In this regard, it is represented that security deposits are not customarily required under medical office leases because of the favorable risk profile of medical office tenants. It is further represented by the applicant that the subtenants, like the Hospital, are reliable tenants who have fulfilled their rental obligations on a timely basis.

7. The applicant has also requested an administrative exemption from section 406(a) and 406(b)(1) and 406(b)(2) for the sale of any of the Properties (or ownership interest in any of the LLCs, as the case may be), pursuant to the RFO, specified in the provisions of the Leases of the Properties as negotiated by the Independent Fiduciary. In this regard, the Properties (or LLCs, as the case may be) are to be offered to the Hospital, in accordance with a Soliciting Offer the terms of which are set by the Plan, or in accordance with an Unsolicited Offer made to the Plan by an unrelated third party.

The Independent Fiduciary will be responsible for any negotiations if the Hospital elects to purchase any of the Properties under terms of the RFO. The Hospital has a period of thirty (30) days to decide whether to accept such offer on its terms and, if the Hospital fails to do so, the Plan may sell to a third party on the offered terms or better. It is represented that the RFO does not ''run with the land'', so that the Hospital has no rights once the Plan sells to a third party. The Hospital cannot avail itself of the RFO, if there is an uncured monetary default under any Lease.

8. Further, an administrative exemption from sections 406(a) and 406(b)(1) and 406(b)(2) of the Act is needed for any Contingent Rent Payment(s) made to the Plan by ZHCC and/or the Hospital under the terms of the Leases on the Properties. In this regard, ZHCC and the Hospital have agreed to make one or more Contingent Rent Payment(s) that will provide a return to the Plan on each of the Properties equal to the Minimum Funding Rate. As of a Minimum Return Date, if the Actual Return (as defined in section III(d), of the exemption) to the

[7] The applicant has represented that the exclusion for consequential damages and indirect losses referred to in this sentence, would prevent the Plan from making a claim for damages that do not flow directly and immediately from the Hospital's activities, but only from some indirect result of those activities. For example, if the Hospital's negligence leads to a loss of rental income, this loss would be part of the Plan's direct damages. But if the loss of rental income causes the Plan to default on an obligation to a third party, this default would result in consequential damages that do not flow directly from the Hospital's activities.

Plan is less than the sum of the fair market value of such property when contributed plus a return equal to the Minimum Funding Rate, then ZHCC and/or the Hospital within 180 days, will pay to the Plan a Contingent Rent Payment equal to the difference. Under the terms of each of Leases of the Properties, the liabilities and obligations of ZHCC and the Hospital survive the expiration date or termination of a Lease and continue until such liabilities and obligation have been fully paid and fulfilled.

9. The applicant maintains that the requested exemption is administratively feasible in that the subject Transactions are similar to those granted by the Department in Prohibited Transactions Exemption 2004–19 [8] and include similar terms which protect the interests of the Plan and its participants and beneficiaries.

10. The applicant maintains that the exemption is in the interest of the Plan in that the proposed contributions, both those to be made in-kind and in cash are entirely in excess of the minimum funding obligations of ZHCC under section 302 of the Act and section 412 of the Code. As a result of the In-Kind Contribution, including the additional contributions of cash, and the income from the Leases, the Plan will be more than 110 percent (110%) funded for the actuarial present value of the accumulated Plan benefits liability under FAS 35. The Independent Fiduciary represents that the proposed exemption would place the Plan in a better actuarial and financial position over a five (5) year period from 2005–2009, with a higher funding percentage and a large funding standard account credit balance, with lower cash contributions from ZHCC. It is represented that the Plan will be less reliant on the ZHCC's ability to generate cash for payments to the Plan. Further, as the Properties are marketable and have a value independent of the Hospital, as the lessee, the Plan's reliance on the Hospital's creditworthiness would be reduced.

In addition to improving the Plan's funded status, it is represented that the overall diversification of the Plan's portfolio will improve as a result of the In-Kind Contribution. In this regard, the Plan's investment policy statement currently permits investments in equities (domestic and international), fixed income, real estate, immediate participation guarantee contracts issued by insurers, and cash equivalents. Currently, the Plan holds no real estate assets and owns no employer securities. If the exemption is granted and the Properties become assets of the Plan, the contributed real estate would replace a portion of the Plan's fixed income allocation. It is represented that adding real estate assets like the Properties to a portfolio of publicly-traded securities should enhance the overall portfolio diversification, given the low correlation of returns between real estate and other asset classes, and can be expected to improve the Plan's risk adjusted returns. It is further represented that the In-Kind Contribution and the Leases would not cause the Plan to fail to satisfy the diversification requirement as set forth in section 404 of the Act, notwithstanding the fact that approximately 10 percent (10%) of the Plan's assets would be invested in real estate in a single metropolitan area.

11. The applicant maintains that there are sufficient safeguards in place with regard to the subject Transactions that are designed to protect the interests of the Plan and its participants and beneficiaries. In this regard, pursuant to a letter agreement (the Agreement) between Fiduciary Counselors Inc. (FCI) and the Committee, FCI has been appointed to act as the qualified Independent Fiduciary on behalf of the Plan and investment manager with authority and discretion to acquire, hold, lease, and dispose of the Properties and acquire, hold, and dispose of the LLCs, as the case may be. FCI represents that it understands and acknowledges its duties and responsibilities, and obligations to act as a fiduciary under the Agreement and in accordance with the applicable fiduciary responsibility provisions of the Act.

If any party terminates the Agreement or if FCI decides to assign its obligations to perform services, the parties to the Agreement shall notify the Department within 15 days of any decision regarding the resignation, termination, or change in control of the Independent Fiduciary. Any replacement or successor Independent Fiduciary must be independent and qualified and must assume responsibility prior to the effective date of the removal of the predecessor Independent Fiduciary.

It is represented that FCI is qualified to serve as the Independent Fiduciary and investment manager for the Plan. In this regard, FCI is an investment adviser registered under the Investment Advisers Act of 1940 and a ''qualified professional assets manager'' as that term is defined in Prohibited Transaction Exemption 84–14. Since its inception in 1999, FCI has been involved in a variety of transactions requiring an independent fiduciary, such as prohibited transaction exemptions, conversions of common and collective mutual funds, mergers of mutual funds and ESOP transactions, and other transactions involving plan assets totaling more than $5 billion.

With regard to its independence, neither FCI nor its affiliates are affiliates of ZHCC or its affiliates within the meaning of 29 CFR 2570.31(a) of the Department's regulations. FCI represents that the fees it will receive in the current year from ZHCC will not exceed five percent (5%) of its annual gross income for the prior fiscal year. It is represented that while ZHCC is paying FCI's fees, the contract with FCI specifically provides, and ZHCC has acknowledged, that FCI's duties and obligations are solely for the benefit of the Plan and its participants and beneficiaries.

Nell Hennessy (Ms. Hennessy), President of FCI, will lead the project on behalf of FCI with respect to the Transactions that are the subject of this proposed exemption.

FCI is responsible for deciding whether and on what terms to agree on behalf of the Plan to the In-Kind Contribution and the Leases of the Properties. FCI will negotiate the specific terms of and the closing of the In-Kind Contribution and the Leases and will determine on behalf of the Plan the value of the assets to be obtained by the Plan by virtue of the consummation of such transactions. In making such decision, FCI will review the Plan's financial and actuarial condition, asset allocation, investment portfolio, investment policy statement, and other material relevant to making a determination as to the suitability of engaging in these transactions within the context of the Plan's overall assets.

In addition to its responsibilities with regard to the In-Kind Contribution and the Leases, FCI will be responsible for the following ongoing functions: (a) Monitor and enforce the Plan's rights and interests with respect to the Properties that are the subject of this exemption and any Leases or other agreements with ZHCC regarding the use of such Properties; (b) propose, negotiate, and decide whether to enter into any agreement to amend the Leases; (c) evaluate and decide whether to grant requests for forbearance of the terms of the Leases; (d) arrange for such appraisals of the Properties as may be necessary to satisfy the Plan's responsibilities under the Act and the subject exemption to establish and report the value of such Properties; (e)

[8] ARINC Incorporated Retirement Income Plan granted 69 FR 68391 (November 24, 2004) and proposed 69 FR 55179 (September 13, 2004).

report annually to the Committee concerning the physical and financial condition of the Properties; (f) determine whether continued ownership of the Properties is in the interest of the participants and beneficiaries of the Plan and whether, when, and on what terms to seek prudently to sell any of the Properties in accordance with the provisions of any contract between the Plan and ZHCC; and (g) in the event FCI determines to sell or otherwise dispose of any of the Properties, negotiating the terms and conditions of, and consummating the sale or disposition.

To carry out its responsibilities, FCI retained an experienced legal counsel in the law firm of Warner, Norcross & Judd LLP (Warner Norcross) to advise with respect to legal issues raised by the Transactions. In addition, FCI retained a qualified, independent appraiser, as discussed more fully, in paragraph 12 below, to determine the fair market value of the Properties and the fair market rent for the Leases. In this regard, it is represented that Ms. Hennessy physically inspected the Properties with the appraiser and a real estate partner from Warner Norcross.

FCI represents that it has retained and, if the Transactions are consummated, periodically will retain engineering and environmental experts to assess the physical condition of the Properties and make an environmental site assessment. It is represented that an engineering firm has conducted and will conduct its assessment in general conformance with the American Society of Testing and Materials guidelines for property condition assessments. It is further represented that an environmental firm has produced and periodically will produce Phase I environmental reports. FCI represents that any defects identified by the engineering and environmental experts will either be corrected or taken into account in determining whether to accept the Properties and the fair market value at which the Properties will be contributed.

FCI has represented that it will also retain an expert in insurance issues to evaluate the adequacy of the insurance coverage that ZHCC currently maintains and will maintain on the Properties. FCI further represents that, if appropriate, it will recommend changes in or additions to such coverage. Further, it is represented that FCI and its advisors will continue to analyze the condition of the Properties and the safeguards available to protect the Plan if the Transactions are consummated.

12. It is represented that FCI retained Stout Resius Ross Inc. (SRR), a qualified independent appraiser, to determine the fair market value of the Properties for purposes of the In-Kind Contribution and the fair market rental value of the Properties for purposes of the Leases. It is represented that the FCI solicited proposals from a number of appraisal firms, interviewed two firms and selected SRR based on their experience and references.

It is represented that SRR is qualified in that it has 19 professionals focusing on real estate valuation and consulting, including two professionals that are designated members of the Appraisal Institute with the MAI designation. SRR professionals hold general certified appraiser licenses in a number of states, including Michigan. It is represented that the real estate valuation group at SRR completes valuations of over 500 commercial properties per year. SRR has experience in the valuation of different property types, including hospital office buildings.

As requested by FCI, the scope of SRR's assignment for each of the Properties included the following: (a) Inspection of each of the Properties and surrounding area; (b) collection of current assessment and zoning data; (c) estimation of the highest and best use of each of the Properties; (d) research and analysis of sales and rentals of similar properties; (e) an estimate of the value of the Properties; (f) an estimate of the fair market rent for a ten-year absolute net lease; (g) an estimate of the fair market rent for a standard term lease; (h) consideration of the rent escalation factor contained in the Leases; (i) consideration of the RFO contained in the Leases; and (j) consideration of the adaptability of the Properties for alternative uses.

As requested by FCI, SRR determined the fair market value of the Rehab Center, the Medical Center, the Kidney Center, and the P&D Building based on: (a) The fee simple [9] ''as is,'' because these properties were not leased to third parties or were only subject to short-term leases; and (b) the leased fee estates [10] under the Leases with the Hospital. For the SPO Building, SRR determined the fair market value based on: (a) The leased fee estate ''as is,'' because a portion of the SPO Building is currently leased to third parties at below market rental rates, and (b) the leased fee estate under the Lease with the Hospital.

In making its determinations of the fair market value of each of the Properties ''as is'', SRR used the ''sales comparison'' [11] and the ''income capitalization'' [12] approaches, but did not use the cost approach,[13] due to the age of the improvements and the difficulty in accurately estimating physical depreciation.

In making its determination of the fair market value of the leased fee estate under the Leases with the Hospital, SRR incorporated a lease structure that would have the Hospital as a tenant for a ten (10) year term of the Lease, on an absolute net [14] basis. According to SRR, the ten (10) year term of the Lease, reduces rollover risk for the landlord under the Leases. The following factors influenced the estimation of a fair market rental rate and influenced an overall capitalization rate of 9.25 percent (9.25%): (a) The terms of the Leases, (b) the market rental rates applicable to each of the Properties to be included in the Leases, and (c) an estimation of management fees and replacement reserves. Additionally, SRR determined that the rental rate for each of the Properties is calculated by deducting $0.75 per square foot from the applicable market rental rate. This was calculated by accounting for the additional reimbursement of management fees and replacement reserves.

SRR examined the Leases under three (3) separate scenarios, one utilizing a direct capitalization approach and the other two utilizing a discounted cash flow analysis (DCF). The first DCF analysis examined the result if the Hospital were to vacate the premises after the expiration of the ten-year term of the Leases.

The second DCF analysis examined the result if the Hospital were to renew the Leases after the expiration of the ten-year term of the Leases.

It is represented that SRR concluded that the final reconciled value should be the fair value based on the actual terms of the Leases, including the actual

[9] SRR defines a ''fee simple'' as absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by governmental powers of taxation, eminent domain, police power, and escheat.

[10] SRR defines a ''leased fee estate'' as an ownership interest held by a landlord with the rights of use and occupancy conveyed by lease to others. The rights of the lessor (the leased fee owner) and the leased fee are specified by contract terms contained within the lease.

[11] The ''sales comparison approach'' estimates the market value based on sales and listing of similar properties.

[12] The ''income capitalization approach'' estimates value by capitalizing the net income a property is capable of generating at market rates.

[13] The ''cost approach'' estimates the market value of the land as if vacant and the cost to replace the improvements less depreciation to their current conditions.

[14] SRR defines an ''absolute net lease'' as a lease in which tenant pays its pro-rata share of all operating expenses, including management fees and capital expenditures.

distribution of responsibility and cost for capital maintenance, and not on a more generalized market value based on market standard lease terms. FCI concurs with SRR in this view. As of March 22, 2005, the fair market values of the Properties and fair market rental value of the Properties were as follows:

Name of property	Fair market rental value per square foot absolute net under Leases with Hospital	Fair market value of ''Leased fee'' estate under Leases with Hospital
Rehab Center	$12.25	$630,000
Kidney Center	12.25	1.7 million
Medical Center	12.25	1 million
P&D Building	12.75	510,000
SPO Building	14.75	5.1 million

It is represented that FCI will continue to do due diligence before accepting the Properties for the Plan and that SRR's final valuation will be adjusted to reflect any subsequent information or developments so that the value of the Properties and the LLCs will reflect fair market value when contributed.

In determining whether the In-Kind Contribution will be in the interest of the Plan and its participants and beneficiaries, FCI considered not only the abstract value of the Properties, as determined in SRR's appraisals but a realistic assessment of the marketability of the Properties to parties other than ZHCC in the event the Leases are terminated and the Hospital no longer occupies the Properties, either by choice at the end of the Leases or due to a default under the Leases. The Properties are currently occupied almost exclusively by the Hospital or by medical practices that are associated with the Hospital. However, it is represented that the Properties are suitable for use by other occupants so the value of the Properties can be realized even if the Hospital were to default on the Leases. Based on the appraisals prepared by SRR, FCI believes that the Plan could recoup 87 percent (87%) of the leased value if the Properties were sold to independent third parties. In this regard, it is represented that with the exception of the SPO Building, the Properties are not on the campus of the Hospital; and therefore, could be sold separately.

All of the Properties are on or near major thoroughfares, in commercial areas. Thus, there should be multiple opportunities for sale or rental of the Properties to one or more unrelated users.

Under the terms of each of the Leases, ZHCC will have a RFO to purchase the leased premises, if the Plan chooses to sell any of the Properties prior to the end of the term of the Lease. FCI considered whether the RFO would materially impair the Plan's ability to sell the Properties for fair value during the term of the Leases. In this regard, FCI represented that, as structured, the RFO will not bar the Plan from marketing the Properties for sale at fair market value, since ZHCC can only purchase the Properties at fair market value. It is the opinion of FCI that any purchaser will not be burdened by the RFO, and therefore, the RFO should not affect the price that a purchaser is willing to pay for any of the Properties.

As the Properties are currently used for professional medical offices and facilities, FCI requested that SRR analyze the fitness of each of the Properties for alternative uses within the overall area and market in which they are located. This analysis is presented in the Highest and Best Use section of SRR's report. Factors affecting this include the strength and growth patterns of the region and the physical structure as well as the permitted uses of the Properties.

In the opinion of SRR, the most probable use of the Rehab Center, the Kidney Center, and the Medical Center is as a medical office space given the medical design of the examination rooms. However, it is represented that each of these buildings could be converted to a general office use for a tenant other than the Hospital by utilizing the tenant improvement allowances to reconfigure the interior of the buildings.

SRR represented that the most probable use of the P&D Building based on the design of the building is general office use. However, by utilizing tenant improvement allowances, it is the opinion of SRR that the P&D Building could likely be reconfigured for commercial/retail use.

SRR represented that medical office use is the most probable use for the SPO Building. In the opinion of SRR, significant renovations would be required to convert the SPO Building to general office use. Furthermore, SRR represented that general office use for the SPO Building would not be a likely alternative given the location of the SPO Building on the campus of the Hospital.

FCI has addressed whether the SPO Building would continue as a medical office building if the Hospital were to fail. In this regard, although the SPO Building could be reconfigured for other professional offices if necessary, FCI anticipates that the SPO Building would continue to be leased to doctors and other medical specialists. It is represented that vacancy rates for medical offices within a 7-mile radius of the site are significantly lower than general office space (8 percent (8%) compared to 18 percent (18%)) and this difference has been consistent over the last three (3) years. In the opinion of FCI, since this space has already been configured for medical offices, which generally command a higher rent because of the build outs needed for medical practices, it is likely that the space in the SPO Building would remain leased to doctors and other medical professionals.

13. FCI has determined that the In-Kind Contribution and the Leases are appropriate and in the interest of the Plan's participants and beneficiaries. FCI believes that the terms of the In-Kind Contribution and the Leases when taken as a whole are consistent with an arm's length negotiation between unrelated parties. In this regard, the In-Kind Contribution and the Leases include the following important features to protect the interests of the Plan and its participants and beneficiaries:

(a) The bondable nature of the absolute net Leases for the entire term of such Leases means that the Hospital, not the Plan, will bear not only the ordinary maintenance, tax and insurance expenses associated with a triple net lease but also all capital expenses associated with the Properties.

In addition, the Hospital will not have a tenant's typical right to rent abatement in the event any of the Properties suffer damages and cannot be occupied.

(b) The Plan has the unencumbered right to sell the Properties and to lease them to any party when the Leases expire.

(c) ZHCC has accepted a RFO. The RFO is subject to forfeiture in the event of ZHCC's unsecured monetary default. The RFO will not run with the land but will be extinguished, if the Hospital declines to exercise the right with respect to any of the Properties and the Plan sells that property to a third party.

(d) ZHCC and the Hospital have agreed to provide the Plan a minimum rate of return on each of the Properties as of the 10th anniversary of the In-Kind Contribution or on the earlier sale of any of the Properties or termination of a Lease or related lease on such property (including a termination due to default, destruction, or condemnation). This will take the form of one or more Contingent Rent Payment(s) to the Plan so that the Plan's actual return on the property (including rental payments) will not be less than the Minimum Funding Rate. This provision will protect the Plan if the value of any of the Properties were to decline.

(e) The Properties are discreet parcels of real estate with office buildings suitable for other tenants. FCI has insisted that each of the Properties be owned by a separate LLC, because that will facilitate separate sales in the future if FCI determines that such sales would be in the best interests of the Plan and its participants and beneficiaries. The LLCs are special purpose entities that will be single member LLCs, owned and managed entirely by the Plan. This LLC structure protects the remaining assets of the Plan from any liability arising from the Properties and facilitates future sales without transfer taxes, and without changing the underlying economic benefits for the Plan. For tax purposes, the LLCs will be treated as partnerships so the attributes of the Properties will be passed through to the Plan. This is the structure typically used by plans that acquire real estate.

FCI requested SRR to consider the potential impact on the value if each of the Properties is owned by a separate LLC. In this regard, SRR represented that if the LLC is 100% owned by the Plan, and the owner has control over the operation of the entity as well as the assets within the entity, then there would not be any discount to the value of the entity. The LLC would be valued based on the opening balance sheet of the entity, reflecting the market value of the assets less any applicable liabilities (*e.g.* mortgages), if they exist.

14. It is represented that ZHCC's cash position is the key to its ability to make the payments required by the proposed Transactions. In the opinion of FCI, the proposed Transactions would not appear to place a financial burden on ZHCC that would jeopardize its ability to satisfy its obligations to the Plan and its other creditors. It is represented that at the end of 2004, ZHCC had $79.7 million in cash and marketable securities (which could easily be converted to cash) of which $50.3 million (63%) was unrestricted. The annual rent under the Leases, $915,254, represents less than five percent (5%) of ZHCC's anticipated net cash for operations for 2005. FCI represents that it will continue to review ZHCC's financial situation prior to entering into the proposed Transactions and will take ZHCC's financial situation into consideration both in deciding whether it is prudent to enter into the proposed Transactions and what should be the final value assigned to the contributed Properties.

Further, FCI examined the Hospital's most recent financial information. In this regard, the Hospital's financial results for the first half of 2005 indicate that the Hospital's revenue was up 4 percent (4%) and expenses were down 3 percent (3%) for the six-month period ending June 30, 2005, compared to the same period last year.

FCI did not require financial projections for the full ten (10) years of the Leases. FCI states that projections beyond five (5) years were not available and would be highly speculative. FCI did review the Hospital's financial projections through 2010. In this regard, FCI represents that the Hospital provided five-year projections, even though it normally prepares one-year projections for its lenders. Based on five-year projections, it is the opinion of FCI that the Hospital should have sufficient cash flow to make the payments under the Leases, the Contingent Rent Payment, and the additional contributions to the Plan as required under the conditions of this exemption.

15. FCI provided a written report to the Department of its conclusions and summarized the analysis and consideration it took into account in reaching such conclusions. In the opinion of FCI, the In-Kind Contribution and the Leases will immediately improve the Plan's funding, improve the Plan's overall portfolio of assets in terms of anticipated risk-adjusted return, and reduce the Plan's reliance on future cash contributions from ZHCC. The Plan will receive a portfolio of marketable real estate, fully leased to a single tenant obligated to pay rent at fair market value with regular annual increases. The terms of the Leases relieve the Plan of any exposure to the costs, including capital improvements, for the first ten (10) years after the Properties are contributed to the Plan. Further, in the view of FCI, the In-Kind Contribution and the Leases satisfy the criteria set forth in sections 404 and 408(a) of the Act. Accordingly, for the reasons set forth above, FCI concluded, as the Independent Fiduciary for the Plan, that the In-Kind Contribution and the Leases are prudent and in the interest of the Plan's participants and beneficiaries.

16. The Department notes that the appointment of an independent fiduciary to represent the interests of the Plan with respect to the transactions that are the subject of the exemption request is a material factor in its determination to propose exemptive relief. The Department believes that it would be helpful to provide its views on the responsibilities of an independent fiduciary in connection with the in-kind contribution, directly or indirectly, of property to an employee benefit plan.

As noted in the Department's Interpretive Bulletin, 29 CFR 2509.94–3(d),[15] apart from consideration of the prohibited transaction provisions, plan fiduciaries must determine that acceptance of an in-kind contribution is consistent with the general standards of fiduciary conduct as set forth in the Act. It is the view of the Department that acceptance of an in-kind contribution is a fiduciary act subject to section 404 of the Act. In this regard, section 404(a)(1)(A) and (B) of the Act requires that fiduciaries discharge their duties to a plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

In addition, section 404(a)(1)(C) of the Act requires that fiduciaries diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Accordingly, the fiduciaries of a plan must act ''prudently,'' ''solely in the interest'' of the plan's participants and beneficiaries, and with a view to the need to diversify plan assets when

[15] 59 FR 66736, December 28, 1994.

deciding whether to accept an in-kind contribution. If accepting an in-kind contribution is not ''prudent,'' not ''solely in the interest'' of the participants and beneficiaries of the plan, or would result in an improper lack of diversification of plan assets, the responsible fiduciaries of the plan would be liable for any losses resulting from such a breach of fiduciary responsibility, even if a contribution in-kind does not constitute a prohibited transaction under section 406 of the Act.

The selection of an independent qualified appraiser to determine the value of an in-kind contribution and the acceptance of the resulting valuation are fiduciary decisions governed by the provisions of part 4 of Title I of the Act. In discharging its obligations under section 404(a)(1) of the Act, the independent fiduciary must take steps calculated to obtain the most accurate valuation available. In addition, the fiduciary obligation to act prudently requires, at a minimum, that the independent fiduciary conduct an objective, thorough, and analytical critique of the valuation. In conducting such verification, the independent fiduciary must evaluate a number of factors relating to the accuracy and methodology of the valuation and the expertise of the independent qualified appraiser. Reliance solely on the valuation provided by the appraiser would not be sufficient to meet this prudence requirement.

17. In summary, the applicant represents that the subject Transactions meet the statutory criteria of section 408(a) of the Act and 4975(c)(2) of the Code because:

(a) The Leases are expected to generate approximately $1 million in income for the Plan annually for a period of ten (10) years; (b) subject to the Hospital's RFO, the Plan retains the right to sell or assign, in whole or in part, any of its interests in the Properties (or any of its interests in the LLCs, as the case may be) to any third party purchaser; (c) FCI has established the fair market value of the Properties and the fair market rental value of the Properties with the assistance of a independent, qualified appraiser; (d) the Plan will be in a stronger financial position as a result of the In-Kind Contribution; (e) the Plan will acquire a valuable investment in that the Properties are likely to appreciate in value and are adaptable for other uses; (f) the In-Kind Contribution of real property will diversify the Plan holdings; (g) FCI has determined that the In-Kind Contribution and the Leases are appropriate and in the interest of the Plan's participants and beneficiaries; (h) FCI is responsible for reviewing, negotiating, and approving the specific terms of each of the Transactions, and has determined that the terms of the In-Kind Contribution and the Leases are consistent with an arm's length negotiation between unrelated parties; (i) the In-Kind Contribution is conditioned on receipt of favorable engineering and environmental reports prior to closing; (j) the Plan will incur no fees, commissions, or other charges or expenses as a result of its participation in any of the Transactions; (k) ZHCC will indemnify the Plan with respect to any liability for hazardous materials released on the Properties, whether such release occurs prior to or after the execution of the Leases or the In-Kind Contribution; (l) if the Actual Return to the Plan is less than the sum of the contribution value of the Properties plus a return on such contribution value equal to the Minimum Funding Rate, then ZHCC and the Hospital will make Contingent Rent Payments to the Plan equal to the amount of any such difference; (m) each Lease is a triple net ''bondable'' lease in which the Hospital's obligation to pay rent to the Plan is absolute and unconditional; (n) FCI will manage the acquisition, holding, leasing, and disposition of each of the Properties and the acquisition, holding, and disposition of the interests in each of the LLCs and will take whatever actions are necessary to protect the rights of the Plan with respect the Plan's ownership of such Properties and LLCs; (o) FCI will represent the Plan's interests for all purposes with respect to each of the Transactions and determine, prior to entering into any of the Transactions, that each is feasible, in the interest of the Plan, and protective of the Plan and its participants and beneficiaries; (p) FCI will monitor compliance by ZHCC and its affiliates with the terms of each of the Transactions and with the terms of this exemption; (q) the In-Kind Contribution plus the additional voluntary cash contributions will exceed the minimum funding requirement for the year 2005; and (r) FCI has determined that the Hospital should have sufficient cash flow to make the Lease payments, the Contingent Rent Payment(s), and the additional cash contributions to the Plan.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include participants and beneficiaries of the Plan, trustees, unions, vested terminates, retirees, and all other interested persons or parties involved in the Transactions. It is represented that these various classes of interested persons will be notified as follows.

All interested persons will be provided with a copy of the notice of this proposed exemption (the Notice), plus a copy of the supplemental statement (the Supplemental Statement), as required, pursuant to 29 CFR 2570.43(b)(2), which will advise such interested persons of the right to comment and to request a hearing. The Notice and the Supplemental Statement will be provided to all interested persons within seven (7) days of the publication of the Notice in the **Federal Register**. The Notice and the Supplemental Statement will be sent by first class mail to all interested persons. It is represented that for the purpose of sending the Notice and Supplemental Statement by mail, the last known addresses of such interested persons will be used.

The Department must receive written comments and requests for a hearing no later than thirty-seven (37) days from the date of the publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

The Donlar Corporation Profit Sharing Plan (the Plan) Located in Roseville, MN

[Exemption Application No. D–11325]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B, 55 FR 32836, 32847 (August 10, 1990).[16] If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, in connection with the termination of the Plan, to the cash sale of a parcel of improved real property (the Property) owned by the Plan to Mr. Donald A. Kainz (Mr. Kainz), a party in interest with respect to the Plan; provided that:

[16] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(a) The Plan receives a price for the sale of the Property to Mr. Kainz equal to the *greater* of:

(1) $418,000; or

(2) The fair market value of the Property, plus the ''assemblage value'' to Mr. Kainz, as determined by an independent, qualified appraiser, as of the date of such sale; or

(3) The cost to the Plan to acquire and hold the Property;

(b) The Plan incurs no fees, commissions, or other charges or expenses as a result of its participation in the sale of the Property to Mr. Kainz;

(c) Prior to entering into the subject transaction:

(1) With respect to the past use and/or leasing of the Property by the Donlar Corporation (the Employer), the Employer files a Form 5330 with the Internal Revenue Service (IRS);

(2) With respect to the entire period of such use and/or leasing, the Employer pays all appropriate excise taxes, plus interest on such taxes to the IRS; and

(3) With respect to the past use and/or leasing of the Property by the Employer, the Employer pays to the Plan the present value of the fair market rent, including interest, due to the Plan from the Employer in the form of a lump sum total rent payment in arrears with respect to the past use and/or leasing of the Property by the Employer, as determined by Mike Amo (Mr. Amo) an independent, qualified, appraiser, for the entire period of such use and/or leasing of the Property by the Employer;

(d) The termination of the Plan and the distribution of its assets is in accordance with the provisions of the Plan and all applicable statutes and regulations, including section 4044 of the Act, relating to the allocation of assets; and

(e) Upon termination of the Plan, each participant in the Plan receives 100 percent (100%) of the balance of his or her account in the Plan in cash, including each participant's *pro rata* share of the value of the Property, as of the date of the sale of the Property to Mr. Kainz.

Summary of Facts and Representations

1. The Employer, a corporation located in Roseville, Minnesota, engages in the construction business. As an employer any of whose employees are covered by the Plan, the Employer is a party in interest with respect to the Plan, pursuant to section 3(14)(C) of the Act.

Mr. Kainz is a shareholder and director of the Employer. As such, Mr. Kainz is a party in interest with respect to the Plan, pursuant to sections 3(14)(E) and 3(14)(H) of the Act.

2. The Plan is a defined contribution pension plan with individual participant accounts. The Employer adopted the Plan, effective July 1, 1973, as amended and restated July 1, 1997. As of July 7, 2005, the date of the application for exemption, there were sixteen (16) participants in the Plan. Mr. Kainz is a participant in the Plan.

Mr. Kainz and Lawrence S. Dotte (Mr. Dotte) serve as trustees of the Plan (the Trustees). As Trustees, Mr. Kainz and Mr. Dotte are fiduciaries and parties in interest with respect to the Plan, pursuant to section 3(21) and 3(14)(A) of the Act.

The financial statement for the Plan prepared by Larson Allen, CPA, indicates that, as of June 30, 2004, the aggregate fair market value of the total assets in the Plan was $5,481,798. As of June 30, 2004, approximately 60.9 percent (60.9%) of the assets of the Plan consisted of real property valued at $3,342,500.[17]

Effective December 31, 2004, the Board of Directors of the Employer resolved to terminate the Plan and to cease contributions. As of the same date, participation in the Plan ceased, as did crediting service, vesting, and benefit accrual under the Plan. On April 1, 2005, the Employer submitted to the IRS Form 5310, Application for determination for Terminating Plan, with respect to the Plan. In connection with the termination of the Plan, it is represented that all participants became 100 percent (100%) vested. A favorable determination letter from the IRS is expected upon termination of the Plan. It is represented that the Plan's trust will be liquidated after the IRS issues a favorable determination letter.

3. On June 1, 1984, the Plan purchased the Property that is the subject of this exemption for a purchase price of $73,000 from Gordon R. and Shirley Hove and Robert A. and Hazel G. Lindborg. It is represented that none of the previous owners were parties in interest with respect to the Plan.

It is represented that the Trustees made the decision to purchase the Property as a long term growth investment for the Plan. Since the acquisition of the Property in June 1984, until November 30, 2004, the Plan has paid $13,426 in real estate taxes, $45,126 in financing costs, and $5,447 in utility costs. Accordingly, the total cost to the Plan to acquire and hold the Property, as of November 30, 2004, was approximately $136,999.

At the time the Plan acquired the Property approximately 18.37% of the Plan's total assets were invested in the Property. As of December 31, 2003, and June 30, 2004, respectively, the value of the Property represented approximately 6.60 percent (6.60%), and 7 percent (7%) of the Plan's total assets.[18]

4. The Employer and the Trustees (collectively, the Applicants) have requested a prospective administrative exemption that would permit the sale of the Property to Mr. Kainz for cash; provided that, among other conditions the Plan receives a price equal to the *greater* of: (1) $418,000; or (2) the fair market value of the Property, plus the ''assemblage value'' to Mr. Kainz, as determined by an independent, qualified appraiser, as of the date of such sale; or (3) the cost to the Plan to acquire and hold the Property. In addition, the Plan will not incur fees, commissions, or other charges or expenses as a result of its participation in the sale of the Property to Mr. Kainz.

5. The Property is described as a rectangular 51 acre tract of cropland and woods located adjacent to and south of 100th Street Northeast, within the eastern half of Section 11 of Watab Township, Benton County, Minnesota.

It is represented that the northern half of the Property is level but slopes gradually down to Sucker Creek and back up again south of the creek. The highest and best use of the Property is described as rural residential development. It is represented that access for the purpose of developing areas south of Sucker Creek would require the acquisition of an easement for a road from the south.

The Property is improved by a one-story, steel and wood storage garage (the Garage) situated on a concrete slab.

Overhead electric and underground telephone lines are available to the site. Water and sewer would be via private drilled well and sewer disposal systems. There are two wells on the site.

[17] It would appear that a substantial percentage of the assets of the Plan involve real property. In this regard, the Department notes that the general standards of fiduciary conduct under section 404 of the Act would apply to investments by the Plan. Section 404(a)(1)(C) of the Act requires, among other things, that a fiduciary diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. It is the responsibility of the fiduciary of the Plan to determine whether the diversification requirements of section 404(a)(1)(C) of the Act have been satisfied. It is the Department's position that both section 408(a) of the Act and the regulations promulgated thereunder make clear that a fiduciary of a plan that has received an administrative exemption is not insulated from responsibility and/or potential liability under section 404 of the Act.

[18] The Department, herein, is providing no relief from section 404 of the Act for the acquisition and holding of the Property by the Plan.

5. It is represented that Rita Kainz, the wife of Mr. Kainz, the proposed purchaser of the Property, owns a parcel of real estate (the Kainz Land) contiguous to the Property owned by the Plan. In this regard, the Kainz Land is situated within the eastern half of Section 11 (14.2 acres) and western half of Section 12 (14 acres) of Watab Township, Benton County, Minnesota. It is represented that the Kainz Land was purchased in 1979, five (5 years) prior to the Plan's acquisition of the Property in 1984 and was purchased from unrelated individuals that were different than the sellers of the Property to the Plan.

The Kainz Land is described as an irregular-shaped 28.20 acre tract consisting of approximately 19 acres of cropland and 9 acres of woods. The Kainz Land is predominately south of Sucker Creek, but a portion of the Kainz Land lies north of Sucker Creek.

Overhead electric and underground telephone lines are available to the Kainz Land. Water and sewer for the Kainz Land would be via private drilled well and sewer disposal systems or a cluster system or future area sewer district.

Accessibility to the Kainz Land is adequate for residential and agricultural uses. Most of the Kainz Land is nearly level and developable for residential use.

6. The applicant maintains that the requested exemption is administratively feasible in that Mr. Kainz is a willing buyer of the Property, for a purchase price that includes ''the assemblage value'' of the Property.

The applicant further maintains that the exemption is feasible in that it involves a one-time sale by the Plan of the Property to Mr. Kainz for cash. The applicant also points out that if the exemption were not to be granted, the Plan would incur additional costs, fees, commissions or other charges or expenses associated with the sale of the Property to an unrelated third party.

7. The applicant maintains that safeguards will be in place at the time the transaction is entered that are designed to protect the interests of the Plan and its participants and beneficiaries. In this regard, the application file contains two (2) appraisals reports of the fair market value of the Property, dated June 30, 2004, and December 6, 2004, respectively.

These appraisals were prepared by Mr. Amo, an Associate Appraiser with St. Cloud Appraisal, Inc. in St. Cloud, Minnesota.

In these appraisals, Mr. Amo estimated the value of the Property using only the Sales Comparison Approach. In this regard, Mr. Amo indicates that vacant land is typically valued using the Sales Comparison Approach. Even though there are improvements on the Property, the Cost Approach was not applied, as Mr. Amo believes the Garage situated on the Property, does not contribute to the value of the Property in its projected highest and best use as residential development land. Further, Mr. Amo did not consider the Income Capitalization Approach to be valid in this case. It is represented that Mr. Amo is qualified to appraise the Property in that he is a member of the Appraisal Institute, a Certified Assessment Evaluator, a Certified General Appraiser, and a Certified Appraiser Assessor. Mr. Amo represents that he has had twenty (20) years of experience with St. Cloud Appraisal, Inc. Mr. Amo has also served as county assessor of Morrison County and city assessor of St. Cloud. In addition, Mr. Amo has experience as a lecturer and instructor in appraisal courses for the University of Minnesota.

Mr. Amo is independent in that he has no present or prospective interest in the Property and has no personal or professional interest with respect to the parties involved. It is represented that Mr. Amo's engagement and compensation were not contingent upon the development or reporting of predetermined results.

To measure the ''assemblage value'' of the Property to Mr. Kainz by virtue of the fact that the Kainz Land is contiguous to the Property, Mr. Amo prepared the December 6, 2004, appraisal report. In this regard, Mr. Amo appraised: (1) The value of the Property at $398,000 ($7,804 per acre); (2) the value of the Kainz Land at $259,000 ($9,184 per acre); and (3) the value of the Property and the Kainz Land under one ownership (the Combined Site) (79.20 acres) at $677,000 ($8,548 per acre). In the opinion of Mr. Amo, the Combined Site: (1) Benefits from the amenity of Sucker Creek, and (2) is fully able to be developed from both the north and the south access points. According to Mr. Amo, the ''assemblage value'' of the Combined Site is $20,000 ($253 per acre), as of December 6, 2004, as calculated by subtracting the value of the Combined Site from the sum of the values of the subject Property and the Kainz Land. ($677,000 minus ($398,000 + $259,000) = $20,000) Accordingly, the fair market value of the Property, as of December 6, 2004, plus an ''assemblage value'' is $418,000. ($398,000 + $20,000 = $418,000)

8. The applicant maintains that the subject transaction is in the interest of the Plan, because the Plan has been terminated and the sale of the Property to Mr. Kainz is the most effective means of liquidating the Plan's assets in preparation for making cash distributions to participants. In this regard, it is represented that the termination of the Plan and the distribution of its assets will be in accordance with the provisions of the Plan and all applicable statutes and regulations, including section 4044 of the Act, relating to the allocation of assets. Further, upon termination of the Plan, each participant in the Plan will receive 100 percent (100%) of the balance of his/her account in the Plan in cash, including each participant's *pro rata* share of the value of the Property, as of the date of the sale of the Property to Mr. Kainz.

9. It is represented that, in the past, a portion of the Property was used and/or leased by the Employer as a staging site for construction equipment, materials, and supplies. In this regard, the Employer confirms that it has used, since 1990, a portion of land area of the Property and since 1994, the Garage on the Property to store equipment and building materials. It is represented that the Employer's use of the Property ceased on June 29, 2005.

The Employer has represented that on July 7, 2005, it filed a Form 5330 with the IRS and attached a check made payable to the United States Treasury in the amount of $11,582.11 which the Employer has represented reflects the excise tax due from the Employer for engaging in a use of plan assets by a disqualified person from July 1, 1990 through June 29, 2005.

The application file contains an appraisal report, prepared by Mr. Amo, dated May 31, 2005, of the present value of the fair market rent, including interest, due to the Plan from the Employer for the Employer's prior use of all or part of the Garage and a portion of land area of the Property for the period from June 30, 1990, through June 30, 2005.

The scope of Mr. Amo's assignment was to estimate the nature and extent of the Employer's occupancy of the Property, including the term and intensity of such occupancy. To assist him in this task, Mr. Amo represents that he reviewed the appraisals of the Property which he prepared during the past decade. Further, Mr. Amo represents that those reviews were supplemented by statements from representatives of the Plan. In this regard, Mr. Kainz, as one of the Trustees, assisted Mr. Amo with the development of an occupancy schedule for the dates preceding the time period

covered by Mr. Amo's appraisals and inspections of the Property. In this regard, Mr. Amo has estimated that the Employer utilized one-half acre of the land area of the Property during 1990, 1991, 1992, and 1993. For the period from 1994 through June 30, 2005, Mr. Amo concluded that the Employer utilized one acre of the land area of the Property in addition to all or part of the Garage located on the Property.

The scope of Mr. Amo's assignment also included estimating the market rent for rural industrial land, as well as for rural garage storage space, during the term of the Employer's occupancy of the Property, and calculating the present value of the fair market rent, including interest, due to the Plan from the Employer in the form of a lump sum total rent payment in arrears.

In reaching his conclusion on the present value of the fair market rent, including interest, due to the Plan, Mr. Amo used the following assumptions: (a) A 4.5 percent (4.5%) effective rate of interest, as being a representative average during the relevant time period; (b) an annual frequency of conversion; (c) the land rent calculated using the market value estimate for the site utilized times a capitalization rate of 8 percent (8%); (d) occupancy of the land of the Property commencing on June 30, 1990, and occupancy of the Garage commencing after June 30, 1994, and (e) Garage market rent based on comparisons with unheated, basic storage unit rents in residential garages with additional consideration for the remote and un-secure location of this structure.

In addition, in a letter dated September 28, 2005, Mr. Amo clarified that in completing his analysis of the present value of the fair market rent, including interest, due to the Plan he considered the access roadway to the Property. In this regard, Mr. Amo indicated that in the market where the Property is located, rents paid for land and building occupancy include the rights to ingress and egress.

Mr. Amo's final conclusion, as of June 30, 2005, of the present value of the fair market rent, including interest, due to the Plan from the Employer in the form of a lump sum total rent payment in arrears, was $19,595.11. In this regard, the Employer represents that on June 30, 2005, it paid $19,595.11 to the Plan for the use and/or leasing of the Property for the period from July 1, 1990 through June 30, 2005, and that such amount represented the fair market rental value of the Property due to the Plan.[19]

10. In summary, the applicant represents that the subject transaction meets the statutory criteria of section 408(a) of the Act and 4975(c)(2) of the Code because:

(a) The Plan will receive a price for the sale of the Property to Mr. Kainz equal to the greater of:

(1) $418,000; or

(2) The fair market value of the Property, plus the ''assemblage value'' to Mr. Kainz, as determined by an independent, qualified appraiser, as of the date of such sale; or

(3) The cost to the Plan to acquire and hold the Property;

(b) The Plan will incur no fees, commissions, or other charges or expenses as a result of its participation in the sale of the Property to Mr. Kainz;

(c) Prior to entering into the subject transaction:

(1) With respect to the past use and/or leasing of the Property by the Employer, the Employer filed a Form 5330 with the IRS and with respect to the entire period of such use and/or leasing, the Employer paid all appropriate excise taxes, plus interest on such taxes to the IRS; and

(2) With respect to the past use and/or leasing of the Property by the Employer, the Employer paid to the Plan the present value of the fair market rent, including interest, due to the Plan from the Employer in the form of a lump sum total rent payment in arrears, as determined by an independent, qualified, appraiser, for the entire period of such past use and/or leasing of the Property by the Employer;

(d) The termination of the Plan and the distribution of its assets will be in accordance with the provisions of the Plan and all applicable statutes and regulations, including section 4044 of the Act, relating to the allocation of assets;

(e) Upon termination of the Plan, each participant in the Plan receives 100 percent (100%) of the balance of his or her account in the Plan in cash, including each participant's *pro rata* share of the value of the Property, as of the date of the sale of the Property to Mr. Kainz;

(f) The subject transaction is a one-time sale by the Plan of the Property for cash; and

(g) Mr. Amo, an independent, qualified appraiser determined the present value of the fair market rent, including interest, due to the Plan from the Employer in the form of a lump sum total rent payment in arrears with respect to the past use and/or leasing of the Property by the Employer and will determine the fair market value of the Property including ''assemblage value,'' as of the date of the sale of the Property to the Employer.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

[19] The Department, herein, is providing no retroactive relief from the prohibitions as set forth in section 406 of the Act for the past use and/or leasing of the Property by the Employer.

Signed at Washington, DC, this 21st day of December 2005.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 05–24493 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2005–16; Exemption Application No. D–11231 et al.]

Grant of Individual Exemptions; Wachovia Corporation (Wachovia)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Wachovia Corporation (Wachovia) Located in Charlotte, NC

[Prohibited Transaction Exemption 2005–16; Exemption Application No. D–11231]

Exemption

Section I. Covered Transactions

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply, effective January 2, 2002, to (1) the in kind transfer by the Wachovia Retirement Savings Plan (the Plan) of its shares in the Wachovia Equity Index Fund (the Index Fund), a mutual fund in which Evergreen Investment Management Company, LLC, a wholly owned subsidiary of Wachovia, the Plan sponsor, serves as the investment adviser, to the Wachovia Enhanced Stock Market Fund (the Enhanced Fund), a bank collective investment fund, also maintained by Wachovia in exchange for Enhanced Fund units; [2] and (2) the in kind redemption by the Enhanced Fund of the Index Fund shares received on behalf of the Plan in return for a pro rata distribution of cash and transferable securities held by the Index Fund.

Section II. Specific Conditions

This exemption is subject to the following conditions:

(a) Mercer Investment Consulting, Inc. (Mercer), a fiduciary, which was acting on behalf of the Plan, and which was independent of, and unrelated to, Wachovia and its subsidiaries, as defined in paragraph (e) of Section IV below, had the opportunity to review the in kind transfer and in kind redemption transactions, and received, in advance of such transactions, full written disclosures concerning the Funds, which included, but were not limited to the following:

(1) A prospectus or its equivalent for each of the Funds;

(2) The management fees, as negotiated under the applicable investment management agreements, and the costs;

(3) The reasons why the Plan Committee (the Plan Committee) considered such investment to be appropriate for the Plan; and

(4) Whether there were any limitations applicable to the Plan with respect to which assets of the Plan could be invested in the Enhanced Fund and the nature of such limitations.

(b) On the basis of the foregoing information, Mercer recommended,

(1) The in kind transfer of the mutual fund shares that were held on behalf of the Plan in the Index Fund, in exchange for units in the Enhanced Fund; and

(2) The in kind redemption by the Enhanced Fund of Index Fund shares received from the Plan for cash and certain transferable securities.

(3) The Plan Committee followed Mercer's recommendation by acting on such advice.

(c) Before recommending the covered transactions, Mercer determined that:

(1) The terms of the transactions were fair to the participants in the Plan, and were comparable to, and no less favorable than, the terms obtainable at arm's length between unaffiliated parties; and

(2) The transactions were in the best interest of the Plan and its participants and beneficiaries.

(d) The in kind transfer transaction was a one-time transaction for the Plan and the mutual fund shares transferred were equivalent in value to the units in the Enhanced Fund.

(e) The in kind redemption transaction was a one-time transaction and the resulting cash and transferable securities constituted a pro rata portion of the assets held on behalf of the Plan in the Index Fund prior to the transaction.

(f) In the case of the exchange by the Plan of Index Fund shares for Enhanced Fund units, the per unit value of the Enhanced Fund units that were issued to the Plan in exchange for the Plan's Index Fund shares had an aggregate value that was equal to the value of the mutual fund shares transferred to the Enhanced Fund on the date of the transfer, as determined in a single valuation performed in the same manner and at the close of business on the same day in accordance with Securities and Exchange Commission

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] The Index Fund and the Enhanced Fund are collectively referred to herein as the Funds.

Rule 17a–7 (Rule 17a–7) under the Investment Company Act of 1940, as amended, (using sources independent of Wachovia), and the procedures established by the Enhanced Fund pursuant to Rule 17a–7.

(g) In the in kind redemption transaction, the Enhanced Fund received a pro rata portion of the cash and transferable securities held on behalf of the Plan in the Index Fund that was equal in value to the number of mutual fund shares redeemed for such cash and transferable securities, as determined in a single valuation performed in the same manner and at the close of business on the same day in accordance with Rule 17a–7, (using sources independent of Wachovia), and the procedures established by the Enhanced Fund pursuant to Rule 17a–7.

(h) For purposes of the covered transactions, the fair market value of all securities received by the Enhanced Fund in the in kind redemption transaction was determined by reference to the last sale price for transactions as reported in the consolidated transaction reporting system, a recognized securities exchange, or the National Association of Securities Dealers Automated Quotation System.

(i) Within 90 days after the completion of the transactions, Mercer received confirmation of the following information:

(1) The number of Index Fund shares exchanged by the Plan and the number of Enhanced Fund units received by the Plan immediately before the in kind transfer transaction (and the related per share net asset value and the total dollar value of the shares held) as reported by the Funds; and

(2) The identity, the current market price of each transferable security received by the Enhanced Fund in the in kind redemption, and the aggregate dollar value of the securities allocated to the Plan in the Enhanced Fund pursuant to the redemption, and the net asset value of Enhanced Fund units after the redemption;

(j) Subsequent to the completion of the transactions, Mercer conducted a post-transaction review in which it verified:

(1) The number and current market price of all Enhanced Fund units transferred to the Plan in exchange for the Index Fund shares;

(2) The number and current market price of all Index Fund shares transferred by the Plan to the Enhanced Fund in exchange for Enhanced Fund units;

(3) The identity of each transferable security, the number of shares of such security transferred, the closing price on the relevant national exchange as of the date of the transfer, and the proper valuation of the securities for the purposes of the transfer;

(4) The aggregate dollar value of the Index Fund shares that were being held by the Plan immediately before the transfer and aggregate dollar value of the Enhanced Fund units held by the Plan immediately after the transfer were valued at their daily net asset values in accordance with their normal procedures.

(5) The use, by the Index Fund and the Enhanced Fund of the same methodology to value the securities transferred by the Index Fund to the Enhanced Fund in the in kind redemption transaction.

(k) No sales commissions, fees or other costs were paid by the Plan in connection with the transactions, and no additional management fees are being charged to the Plan by Wachovia through the Enhanced Fund.

(l) Wachovia did not enter into the transactions unless Mercer concurred with such transactions.

(m) The Plan's dealings with the Index Fund, the Enhanced Fund and Wachovia were on a basis that was no less favorable to the Plan than dealings between the Enhanced Fund and other investors.

Section III. General Conditions

This exemption is subject to the following general conditions:

(a) Wachovia maintains, or causes to be maintained, for a period of six years from the date of the covered transactions, such records as are necessary to enable the persons described in paragraph (b) of this Section III to determine whether the conditions of this exemption were met, except that:

(1) If the records necessary to enable the persons described in paragraph (b) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the plan fiduciary, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest, other than the plan fiduciary responsible for recordkeeping, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records have not been maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) of this Section III and notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (a) of this Section III are unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Mercer or any other fiduciary of the Plan; or

(iii) Any participant or beneficiary of the Plan or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraphs (ii) and (iii) of this paragraph (b)(1) of this Section III shall be authorized to examine trade secrets of Wachovia, or any commercial or financial information, which is privileged or confidential.

Section IV. Definitions

For the purposes of this exemption,

(a) The term ''Wachovia'' means Wachovia Corporation and any affiliate of Wachovia as defined below in Section IV(b).

(b) An ''affiliate'' of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''relative'' means a ''relative,'' as that term is defined in section 3(15) of the Act, (or a ''member of the family,'' as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(e) As applied to Mercer, the term ''independent fiduciary'' means a fiduciary who is (1) independent of and unrelated to Wachovia and its affiliates, and (2) appointed to act as investment adviser to the Plan for all purposes related to, but not limited to, (i) the transfer of Index Fund shares to the Enhanced Fund in exchange for units in the Enhanced Fund, and (ii) the Enhanced Fund's redemption of the Index Fund shares received from the

Plan for cash and transferable securities. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Wachovia if (1) such fiduciary directly or indirectly controls, is controlled by or is under common control with Wachovia; (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption, except that Mercer may receive compensation for acting as an independent fiduciary from Wachovia in connection with the transactions contemplated herein and in connection with the provision of ongoing investment advice to the Plan Committee if the amount of payment of such compensation is not contingent upon or in any way affected by Mercer's ultimate decision; and (3) the annual gross revenue received by such fiduciary from Wachovia and its affiliates during any year of its engagement, exceeds 5 percent (5%) of Mercer's annual gross revenue from all sources for its prior tax year.

(f) The term ''transferable securities'' means securities (1) for which market quotations are readily available (as determined under Rule 17a–7) and (2) which are not (i) securities which, if distributed, would require registration under the Securities Exchange Act of 1933 (the 1933 Act); (ii) securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Index Fund, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (iii) certain portfolio positions (such as forward foreign currency contracts, futures, and options contracts, swap transactions, certificates of deposit and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership; (iv) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) which are not readily distributable; (v) other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and (vi) securities subject to ''stop transfer'' instructions or similar contractual restrictions on transfer.

DATES: *Effective Date:* This exemption is effective January 2, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on August 12, 2005 in the **Federal Register** at 70 FR 47246.

Written Comments/Technical Correction to the Notice

The Department invited all interested persons to submit written comments and requests for a hearing with respect to the Notice within 75 days of the date of its publication in the **Federal Register** on August 12, 2005. Therefore, all comments and requests for a hearing were due by October 26, 2005.

During the comment period, the Department received no comments and no requests for a public hearing. However, upon careful review of the Notice, the Department observed that the definition of the term ''transferable securities'' in Section III(f) was in partial error due to the inclusion of the following reference to ''Rule 144A securities:''

> Notwithstanding the above, the term ''transferable securities'' also includes securities that are considered private placements intended for large institutional investors, pursuant to Rule 144A under the 1933 Act, which are valued by the unrelated investment managers for the Funds, or if applicable, by the independent fiduciary, which will confirm and approve all such valuations.

The Department notes that Wachovia represented in its exemption application that the securities involved in the covered transactions were all publicly-traded on a national securities exchange. Thus, in the Department's view, none of the securities would be of the type to which Rule 144A would apply. Accordingly, the Department has revised the definition of the term ''transferable securities'' by striking the reference to ''Rule 144A securities.''

After giving full consideration to the entire record, the Department has decided to grant the exemption subject to the modification described above. For further information, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11231) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Silvia M. Quezada of the Department, telephone (202) 693–8553. (This is not a toll-free number.)

George N. Newton, Individual Retirement Account (the IRA) Located in Waco, Texas

[Prohibited Transaction Exemption 2005–17; Application No. D–11328]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[3] shall not apply to the arrangement involving the in-kind distributions by the IRA to Mr. George N. Newton (Mr. Newton), a disqualified person with respect to the IRA, in two installments of 50 percent (50%) each, of the IRA's ownership interest in an unencumbered, improved parcel of real property (the Property) located in San Antonio, Texas, in connection with the required minimum distributions rules under the Code; provided the following conditions are satisfied:

(1) the two installments of the in-kind distributions by the IRA occur on December 30, 2005, through January 3, 2006;

(2) the terms and conditions of the transactions are at least as favorable to the IRA, as the terms of similar transactions negotiated at arm's length with unrelated third parties;

(3) the fair market value of the IRA's interest in the Property is determined by an independent, qualified appraiser, as of the date the first of the two installments of the in-kind distributions is made to Mr. Newton; and

(4) the IRA does not pay any commissions, costs, charges, fees, or other expenses in connection with the in-kind distributions.

After giving full consideration to the entire record, the Department has decided to grant the exemption, as described above. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefit Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of

[3] Pursuant to 29 CFR 2510.3–2(d), the IRA is not within the jurisdiction of Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

Proposed Exemption published on November 3, 2005, at 70 FR 66854.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of October, 2005.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 05–24492 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,329]

Conopco, Inc., a Subsidiary of Unilever U.S., Asheboro, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 14, 2005 in response to a worker petition filed by a company official on behalf of workers at Conopco, Inc., a subsidiary of Unilever U.S., Asheboro, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of December 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7953 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,394]

Georgia-Pacific Corporation, Old Town, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 22, 2005 in response to a worker petition filed by a company official on behalf of workers at Georgia-Pacific Corporation, Old Town, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of December 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7955 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,336]

Kimberly-Clark Corporation Ballard Medical Products Division, Draper, UT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 14, 2005 in response to a petition filed by a company official on behalf of workers of Kimberly-Clark Corporation, Ballard Medical Products Division, Draper, Utah.

The petitioning group of workers is covered by an active certification issued on March 10, 2005 and which remains in effect (TA–W–56,494). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 9th day of December, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7958 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment

Assistance, at the address shown below, not later than January 9, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 9, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of December 2005.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX.—TAA PETITIONS INSTITUTED BETWEEN 12/5/05 AND 12/9/05

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
58453	Leggett and Platt (Wkrs)	Cedar City, UT	12/05/05	11/30/05
58454	Metso Automation (State)	Shrewsbury, MA	12/05/05	12/02/05
58455	Sturgis Foundry Corp. (Wkrs)	Sturgis, MI	12/05/05	11/22/05
58456	WestPoint Home (Comp)	Valley, AL	12/05/05	12/02/05
58457	Sonoco Products Company (Comp)	Charlotte, NC	12/05/05	12/02/05
58458	Hitchcock Chair Company (Comp)	New Hartford, CT	12/05/05	12/02/05
58459	SJP Corp. (Comp)	Rutherford, NJ	12/05/05	11/17/05
58460	Glenoit Fabrics (Comp)	Tarboro, NC	12/05/05	12/05/05
58461	Jaderloon Co., Inc. (Comp)	Burleson, TX	12/06/05	11/28/05
58462	Key Plastics (Wkrs)	Hartford City, IN	12/06/05	12/02/05
58463	Nexus Custom Electronics Corp. (Comp)	Woburn, MA	12/06/05	11/30/05
58464	South-Eastern Fabrics Corp. (Comp)	Conover, NC	12/06/05	11/30/05
58465	JB Woven Labels (USA), Inc. (Comp)	San Francisco, CA	12/06/05	12/04/05
58466	Royal Indemnity Co. (Wkrs)	Charlotte, NC	12/06/05	11/21/05
58467	Scottsburg Plastics, Inc. (Comp)	Scottsburg, IN	12/06/05	12/06/05
58468	Candor Hosiery Mills, Inc. (Comp)	Robbins, NC	12/06/05	12/05/05
58469	Rockford Corporation (Wkrs)	Walker, MI	12/06/05	11/29/05
58470	Great Lakes Industry, Inc. (Comp)	Jackson, MI	12/06/05	11/28/05
58471	Columbia Gas of Ohio (Comp)	Lorain, OH	12/07/05	12/05/05
58472	Visteon Systems, LLC (Comp)	Bedford, IN	12/07/05	11/30/05
58473	National Textiles (Wkrs)	China Grove, NC	12/07/05	11/28/05
58474	IBM Global Services (Wkrs)	Oakbrook, IL	12/07/05	11/28/05
58475	Pendleton Woolen Mills, Inc. (Comp)	Portland, OR	12/07/05	11/16/05
58475A	Pendleton Woolen Mills, Inc. (Comp)	Milwaukie, OR	12/07/05	11/16/05
58475C	Pendleton Woolen Mills, Inc. (Comp)	Washougal, WA	12/07/05	11/16/05
58475D	Pendleton Woolen Mills, Inc. (Comp)	Pendleton, OR	12/07/05	11/16/05
58475B	Pendleton Woolen Mills, Inc. (Comp)	Bellevue, NE	12/07/05	11/16/05
58476	Orban CRL (State)	San Leandro, CA	12/07/05	11/18/05
58477	Dolce, Inc. (State)	Los Angeles, CA	12/07/05	11/29/05
58478	Rich Products Manufacturing Corp. (BCU)	Winchester, VA	12/07/05	12/01/05
58479	FYC Apparel Donna Ricco (Wkrs)	East Haven, CT	12/07/05	12/01/05
58480	LeSportsac, Inc. (Comp)	Stearns, KY	12/07/05	11/30/05
58481	Collins and Aikman (Comp)	El Paso, TX	12/07/05	12/07/05
58482	Dan River Inc. (Comp)	Morven, NC	12/08/05	12/08/05
58483	Reed and Barton Silversmiths (RWDSU)	Taunton, MA	12/08/05	12/07/05
58484	Big River Zinc Corporation (USW)	Sauget, IL	12/08/05	12/07/05
58485	Rawlings Sporting Goods (Wkrs)	Licking, MO	12/08/05	12/05/05
58486	Hewlett Packard ()	Omaha, NE	12/08/05	12/06/05
58487	US Airways (CWA)	Pittsburgh, PA	12/09/05	12/05/05
58488	River City Metal Products (Comp)	Keokuk, IA	12/09/05	12/05/05
58489	Tricon Industries, Inc. (Wkrs)	Downers Grove, IL	12/09/05	09/13/05
58490	Greeneville Casting, Inc. (Comp)	Greeneville, TN	12/09/05	12/08/05

[FR Doc. E5–7956 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,360]

Magna International, Red Oak, IA; Notice of Termination of Investigation

Pursuant to section 221 of the November 17, 2005 in response to a worker petition filed by a company official on behalf of workers at Magna International, Red Oak, Iowa.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 8th day of December 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7959 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,657]

Midas International Corporation, Muffler Corporation of America Division, Hartford Manufacturing Facility, Hartford, WI; Notice of Negative Determination Regarding Application for Reconsideration

By application of November 4, 2005, United Steelworkers of America, Local

2–152 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on September 12, 2005, and published in the **Federal Register** on October 6, 2005 (70 FR 58476).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Midas International Corporation, Muffler Corporation of America Division, Hartford Manufacturing Facility, Hartford, Wisconsin engaged in production of automotive muffler and exhaust products for the aftermarket was denied because the ''contributed importantly'' group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met, nor was there a shift in production from that firm to a foreign country. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed no imports of automotive muffler and exhaust products during the relevant period. The subject firm did not import automotive muffler and exhaust products nor did it shift production to a foreign country during the relevant period.

The petitioner states that the affected workers lost their jobs as a result of the subject firm ''exiting the manufacturing portion of the business'' and its consequent decision to purchase automotive muffler and exhaust products from a different vendor. The petitioner alleges that because this vendor has ''120 manufacturing facilities in 25 countries'', there naturally should be imported automotive muffler and exhaust products sold to the subject firm. The petitioner states that because the new vendor is a global producer of automotive muffler and exhaust products, the workers of the subject firm should be eligible for TAA. To support the above allegations, the petitioner attached news articles from companies' websites which contain information on Midas International's new supplier of automotive muffler and exhaust products.

A company official was contacted regarding the above allegations. The company official confirmed what was revealed during the initial investigation. In particular, the official stated that Midas International Corporation's actions in ceasing its production of automotive muffler and exhaust products was a reflection of company's strategic desire to be a retailer, combined with the reduction in the size of the overall market for exhaust systems. The official provided the name of the vendor which supplies automotive muffler and exhaust products to Midas International. This is the same vendor indicated by the petitioner in the request for reconsideration.

The Department conducted a survey of the vendor regarding its manufacturing of automotive muffler and exhaust products. The survey revealed that the majority of automotive mufflers and exhaust products sold to Midas International is manufactured in the United States and only a small fraction of automotive mufflers and exhaust products is imported. Moreover, the survey revealed an insignificant amount of vendor's overall imports of automotive muffler and exhaust products during the relevant time period.

The petitioner also attached abstracts from the publication by the United States International Trade Commission (USITC) which contain information on imports of mufflers and exhaust pipes from 1999 to 2003 and a printout from the USITC website which shows an eight percent increase in U.S. aggregate imports of motor vehicle parts from January through August of 2005 when compared with the same period in 2004.

In order to establish import impact, the Department must consider imports that are like or directly competitive with those produced at the subject firm within a year prior to the date of the petition. Thus the period ending in 2003 is outside of the relevant period as established by the current petition date of July 30, 2005. Information on imports of motor vehicle parts does not provide import information on specific types of motor parts, such as automotive mufflers and exhaust products and thus is also irrelevant in this investigation.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, day 13th of December, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7957 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–58,475, TA-W–58,475A, and TA-W–58,475B]

Pendleton Woolen Mills, Inc., Corporate Headquarters, Portland, OR; Menswear Distribution Center, Milwaukie, OR; Bellevue Plant, Bellevue, NE; Washougal Mill, Washougal, WA; and Pendelton Mill, Pendelton, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on December 7, 2005 in response to a worker petition filed by a company official on behalf of workers at Pendleton Woolen Mills, Inc., Corporate headquarters, Portland Oregon; Menswear Distribution Center, Milwaukie, Oregon; Bellevue Plant, Bellevue, Nebraska; Washougal Mill, Washougal, Washington and Pendleton Mill, Pendleton, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 14th day of December 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7961 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,356]

The Rug Barn, Abbeville, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 15, 2005 in response to a worker petition filed by a company official on behalf of workers at The Rug Barn, Abbeville, South Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 13th day of December, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7954 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,461 and TA–W–56,461A]

Teradyne, Inc., Currently Known as Amphenol TCS, a Division of Amphenol Corporation, Connectors and Backplane Assemblies Facility and Printed Circuit Board Facility, Including Leased Workers of Microtech Staffing Group, TAC Worldwide and Technical Needs, Nashua, NH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974, (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 10, 2005, applicable to workers of Teradyne, Inc., Teradyne Connection Systems (TCS), Connectors and Backplane Assemblies Facility and the Printed Circuit Board Facility, including leased workers of Microtech Staffing Group, TAC Worldwide, and Technical Needs, Nashua, New Hampshire. The notice was published in the **Federal Register** on April 1, 2005 (70 FR 16848–16849).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers at the Connectors and Backplane Assemblies Facility produce connectors and backplane assemblies; they are not separately identifiable by articles produced. Workers of the Printed Circuit Board Facility produce printed circuit boards.

The subject firm originally named Teradyne, Inc., Teradyne Connection Systems (TCS), was renamed Teradyne, Inc., Amphenol TCS, a Division of Amphenol Corporation on December 1, 2005, due to a change in ownership. The State agency reports that workers' wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Teradyne, Inc., currently known as Amphenol TCS, a Division of Amphenol Corporation, Nashua, New Hampshire.

Accordingly, the Department is amending this certification to reflect a change in ownership.

The intent of the Department's certification is to include all workers of Teradyne, Inc., currently known as Amphenol TCS, a Division of Amphenol Corporation, Connectors and Backplane Assemblies Facility and the Printed Circuit Board Facility who were adversely affected by a shift in production to Mexico, Malaysia and China.

The amended notice applicable to TA–W–56,461 and TA–W–56,461A are hereby issued as follows:

All workers of Teradyne, Inc., currently known as Amphenol TCS, a Division of Amphenol Corporation, Connectors and Backplane Assemblies Facility, Nashua, New Hampshire (TA–W–56,461), and Teradyne, Inc., currently known as Amphenol TCS, A Division of Amphenol Corporation, Printed Circuit Board Facility, Nashua, New Hampshire (TA–W–56,461A) including leased workers of Microtech Staffing Group, TAC Worldwide, and Technical Needs engaged in activities related to the production of connectors and backplane assemblies workers at the Connectors and Backplane Assemblies Facility, Nashua, New Hampshire (TA–W–56,461) and workers engaged in activities related to the production of printed circuit boards working at the Printed Circuit Boards Facility, Nashua, New Hampshire (TA–W–56,461A) who became totally or partially separated from employment on or after January 31, 2004, through March 10, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of December 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7952 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,408]

United States Sugar Corporation Bryant Mill, Bryant, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on November 25, 2005 in response to a petition filed by a company official on behalf of workers at United States Sugar Corporation, Bryant Mill, Bryant, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of December, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–7960 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. RS&W Coal Company, Inc.

[Docket No. M–2005–079–C]

RS&W Coal Company, Inc., 207 Creek Road, Klingerstown, Pennsylvania 17941 has filed a petition to modify the application of 30 CFR 75.1312 (Explosives and detonators in underground magazines) to its RS&W Drift Mine (MSHA I.D. No. 23–01818) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the amount of explosives to be how much explosives are stored in a type two magazine built in accordance with ATF requirements in lieu of limiting the amount of explosives used underground to not more than 48 hours; to permit the use of two (2) magazines separated with 4 inches of hardwood; and to permit location of storage explosives and detonators in the anthracite coal mine gangway to be located 5 feet from the rail and offset from the rib at least 2 feet into solid rock, to protect the magazines from the dangers of moving vehicles and sources of electrical current. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Canyon Fuel Company, LLC

[Docket No. M–2005–080-C]

Canyon Fuel Company, LLC, 397 South 800 West, Salina, Utah 84654 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance

requirements) to its SUFCO Mine (MSHA I.D. No. 42–00089) located in Sevier County, Utah; West Elk Mine (MSHA I.D. No. 05–03672) located in Gunnison County, Colorado; its Skyline Mine (MSHA I.D. No. 42–01566) and its Dugout Canyon Mine (MSHA I.D. No. 42–01890) located in Carbon County, Utah. The petitioner proposes to operate its six-wheel Getman Roadbuilder grader, Model RDG–1504S, Serial Number 6787 without front brakes as originally designed. The petitioner will provide training for grader operators to lower the moldboard to provide additional stopping capability in emergency situations, and to recognize the appropriate speeds to use on different roadway conditions, and to limit the maximum speed to 10 miles per hour. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Black Beauty Coal Company

[Docket No. M–2005–081-C]

Black Beauty Coal Company, 7100 Eagle Crest Blvd., Suite 100, Evansville, Indiana 47715 has filed a petition to modify the application of 30 CFR 75.500(d) (Permissible electric equipment) to its Air Quality #1 Mine (MSHA I.D. No. 12–02010) located in Knox County, Indiana; Francisco Mine—UG Pit (MSHA I.D. No. 12–02295) located in Gibson County, Indiana; Gateway Mine (MSHA I.D. No. 11–02408) located in Randolph County, Illinois; and its Riola Mine Complex—Riola Portal (MSHA I.D. No. 11–02971) and Riola Mine Complex—Vermilion Grove Portal (MSHA I.D. No. 11–03060) located in Vermilion County, Illinois. The petitioner requests a modification of the existing standard to permit an alternative method of compliance to use battery-powered non-permissible hand-held computers in or inby the last open crosscut, including in the return airways to allow supervisors and selected miners to collect and record data pertinent to safety observations during work processes. The petitioner has listed specific procedures in this petition that will be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Big Ridge, Inc.

[Docket No. M–2005–082-C]

Big Ridge, Inc., 420 Long Lane Road, Equality, Illinois 62934 has filed a petition to modify the application of 30 CFR 75.500(d) (Permissible electric equipment) to its Willow Lake Mine (MSHA I.D. No. 11–03054) located in Saline County, Illinois. The petitioner requests a modification of the existing standard to permit an alternative method of compliance to use battery-powered non-permissible hand-held computers in or inby the last open crosscut, including in the airways to allow supervisors and selected miners to collect and record data pertinent to safety observations during work processes. The petitioner has listed specific procedures in this petition that will be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Dodge Hill Mining Company, LLC

[Docket No. M–2005–083-C]

Dodge Hill Mining Company, LLC, P.O. Box 165, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.500(d) (Permissible electric equipment) to its Dodge Hill Mine (MSHA I.D. No. 15–18335) located in Union County, Kentucky. The petitioner requests a modification of the existing standard to permit an alternative method of compliance to use battery-powered non-permissible hand-held computers in or inby the last open crosscut, including in the airways to allow supervisors and selected miners to collect and record data pertinent to safety observations during work processes. The petitioner has listed specific procedures in this petition that will be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Ohio County Coal Company

[Docket No. M–2005–084-C]

Ohio County Coal Company, 19070 Highway 1078 South Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.500(d) (Permissible electric equipment) to its Dyson Creek Mine (MSHA I.D. No. 15–13920) located in Webster County, Kentucky; Freedom Mine (I.D. No. 15–17587) located in Henderson County, Kentucky; and its Big Run Mine (I.D. No. 15–18552) located in Ohio County, Kentucky. The petitioner requests a modification of the existing standard to permit an alternative method of compliance to use battery-powered non-permissible hand-held computers in or inby the last open crosscut, including in the airways to allow supervisors and selected miners to collect and record data pertinent to safety observations during work processes. The petitioner has listed specific procedures in this petition that will be followed when its proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via E-mail: *zzMSHA-Comments@dol.gov*; Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before January 27, 2006. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 20th day of December, 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. E5–7900 Filed 12–27–05; 8:45 am]

BILLING CODE 4510–43–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 (Pub. L. 92–463), as amended, notice is hereby given that five 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:

Media Arts/Arts on Radio and Television (application review): January 10–12, 2006 in Room 716. This meeting, from 9 a.m. to 6 p.m. on January 10th and 11th, and from 9 a.m. to 5 p.m. on January 12th, will be closed.

Folk & Traditional Arts/NEA National Heritage Fellowships (nomination review): January 17–20, 2006 in Room 716. This meeting, from 9 a.m. to 6:30 p.m. on January 17th and 18th, from 9 a.m. to 5:30 p.m. on January 19th, and from 9 a.m. to 3:30 p.m. on January 20th, will be closed.

State Partnership Agreements (application review): January 24–25, 2006 in Room 716. This meeting, from 9:30 a.m. to 6 p.m. on January 24th and

from 8:30 a.m. to 4 p.m. on January 25th, will be open.

Arts Education/Summer Schools in the Arts (application review): January 26–27, 2006 in Room 730. This meeting, from 9 a.m. to 6 p.m. on January 26th and from 9 a.m. to 5 p.m. on January 27th, will be closed.

Regional Partnership Agreements (application review): February 2, 2006 by teleconference from Room 710. This meeting, from 3 p.m. to 5 p.m., will be open.

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 these meetings 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: December 20, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E5–7894 Filed 12–27–05; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Request Non-Agreement States Information for the State Agreements Program, as authorized by Section 274(a) of the Atomic Energy Act.

2. Current OMB approval number: 3150–0200.

3. How often the collection is required: 6 times per year.

4. Who is required or asked to report: The 19 States and territories (17 Non-Agreement States and the District of Columbia and the Commonwealth of Puerto Rico) that have not signed 274(b) Agreement with NRC.

5. The number of annual respondents: 19.

6. The number of hours needed annually to complete the requirement or request: 941.

7. Abstract: Requests may be made of Non-Agreement States that are similar to those of Agreement States to provide a more complete overview of the national program for regulating radioactive materials. This information would be used in the decision-making of the Commission. With Agreement States and as part of the NRC cooperative post-agreement program with the States pursuant to Section 274(b), information on licensing and inspection practices, and/or incidents, and other technical and statistical information are exchanged.

Agreement State comments are also solicited in the areas of proposed implementing procedures relative to NRC Agreement State program policies. With the enactment of the Energy Policy Act of 2005, specifically Section 651(e), NRC now has regulatory authority over use of accelerator-produced radioactive materials and discrete sources of radium-226 and other naturally occurring radioactive material as specified by the Commission. Therefore, information requests sought may take the form of surveys, e.g., telephonic and electronic surveys/polls and facsimiles.

Submit, by February 27, 2006, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *infocollects@nrc.gov.*

Dated at Rockville, Maryland, this 21st day of December 2005.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chieft Information Officer.

[FR Doc. E5–7966 Filed 12–27–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of December 26, 2005, January 2, 9, 16, 23, 30, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters to be Considered

Week of December 26, 2005

Friday, December 30, 2005

12 noon—Affirmation Session (Public Meeting) (Tentative). a. Final Rule—AP1000 Design Certification (Tentative). (Contact: Michelle Schroll, 301–415–1662)

Week of January 2, 2006—Tentative

There are no meetings scheduled for the Week of January 2, 2006.

Week of January 9, 2006—Tentative

Tuesday, January 10, 2006

9:30 a.m.—Briefing on International Research and Bilateral Agreements (Public Meeting). (Contact: Roman Shaffer, 301–415–7606)

This meeting will be webcast live at the Web address *http://www.nrc.gov*

Wednesday, January 11, 2006

1:55 p.m.—Affirmation Session (Public Meeting) (Tentative). a. Hydro Resources, Inc. (Crownpoint, New Mexico) Petition for Review of LBP–05–17 (Groundwater Issues) (Tentative)

2:00 p.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting). (Contact: John Larkins, 301–415–7360)

This meeting will be webcast live at the Web address *http://www.nrc.gov*.

Thursday, January 12, 2006

9:30 a.m.—Discussion of Security Issues (closed—ex. 2 & 3).

Week of January 16, 2006—Tentative

Tuesday, January 17, 2006

1:30 p.m.—Discussion of Security Issues (closed—ex. 1 & 3).

Week of January 23, 2006—Tentative

There are no meetings scheduled for the Week of January 23, 2006.

Week of January 30, 2006—Tentative

Tuesday, January 31, 2006

9:30 a.m.—Briefing on Strategic WorkForce Planning and Human Capital Initiatives (closed—ex. 2).

Wednesday, February 1, 2006

9:30 a.m.—Discussion of Security Issues (closed—ex. 1 & 3).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Scroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public mergings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Interned system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: December 22, 2005.

R. Michelle Scroll,

Office of the Secretary.

[FR Doc. 05–24628 Filed 12–23–05; 3:06 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Acquisition Advisory Panel; Cancellation of an Upcoming Meeting of the Acquisition Advisory Panel

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Cancellation of a Federal Advisory Committee Meeting.

SUMMARY: The Office of Management and Budget is issuing this notice to cancel the January 5, 2006, public meeting of the Acquisition Advisory Panel (AAP or ''Panel'') established in accordance with the Services Acquisition Reform Act of 2003.

DATES: The only meeting being cancelled by this notice is the January 5, 2006, meeting.

ADDRESSES: The meeting was to have been held at the Federal Deposit Insurance Corporation (FDIC), Basement auditorium, 801 17th Street, NW., Washington, DC 20434.

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information concerning this cancellation notice or any future meetings or the Acquisition Advisory Panel itself, should contact Ms. Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov*, phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F Street, NW., Room 4006, Washington, DC, 20405.

SUPPLEMENTARY INFORMATION: (a) Background: The cancelled meeting was originally announced in the **Federal Register** at 70 FR 67761 on November 8, 2005. Only the January 5, 2006, meeting is being cancelled.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. 05–24605 Filed 12–27–05; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52985; File No. SR–NASD–2005–073]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Rule 4350(e) To Amend the Annual Shareholder Meeting Requirement

December 20, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 6, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On December 5, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On December 9, 2005, Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 4350 in order to change its annual shareholder meeting requirement. Nasdaq would implement the proposed rule change, as amended, immediately upon approval by the Commission. Below is the text of the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq revised the proposed rule text and corresponding description of the proposal in its Form 19b–4. Amendment No. 1 replaced Nasdaq's original filing in its entirety.

[4] In Amendment No. 2, Nasdaq made further clarifying changes to the proposed rule text of IM–4350–8 with respect to certain issuers still subject to the annual shareholder meeting requirement under NASD 4350(e).

change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq Capital Market Issuers Except for Limited Partnerships

(a)–(d) No change.

(e) Shareholder Meetings

Each issuer *listing common stock or voting preferred stock, and their equivalents,* shall hold an annual meeting of shareholders [and shall provide notice of such meeting to Nasdaq.] *no later than one year after the end of the issuer's fiscal year-end.*

(f)–(n) No change.

* * * * *

IM–4350–8. Shareholder Meetings

Rule 4350(e) requires that each issuer listing common stock or voting preferred stock, and their equivalents, hold an annual meeting of shareholders within one year of the end of each fiscal year. At each such meeting, shareholders must be afforded the opportunity to discuss company affairs with management and to elect directors, if required by the issuer's governing documents. A new listing that was not previously subject to a requirement to hold an annual meeting is required to hold its first meeting within one-year after its first fiscal year-end following listing. Of course, Nasdaq's meeting requirement does not supplant any applicable state or federal securities laws concerning annual meetings.

This requirement is not applicable as a result of an issuer listing the following types of securities: securities listed pursuant to Rule 4420(f) (such as Trust Preferred Securities and Contingent Value Rights), unless the listed security is a common stock or voting preferred stock equivalent (e.g., a callable common stock); Portfolio Depository Receipts listed pursuant to Rule 4420(i); Index Fund Shares listed pursuant to Rule 4420(j); and Trust Issued Receipts listed pursuant to Rule 4420(l). Notwithstanding, if the issuer also lists common stock or voting preferred stock, or their equivalent, the issuer must still hold an annual meeting for the holders of that common stock or voting preferred stock, or their equivalent.

* * * * *

The text of the proposed rule change, as amended, is also available on Nasdaq's Internet Web site (*http://www.nasdaq.com*), at Nasdaq'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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 4350(e) currently requires all Nasdaq issuers to hold an annual meeting of shareholders and to provide notice of such meeting to Nasdaq.[5] An annual meeting allows the equity owners of a company—typically its common stockholders—the opportunity to elect directors and meet with management to discuss company affairs.[6]

This requirement, however, is not necessary for an issuer as a result of listing certain securities because the holders of those securities do not directly participate as equity holders and do not vote in the election of directors. For example, Nasdaq lists a number of securities pursuant to NASD Rule 4420(f) (Quantitative Designation Criteria, Other Securities), which allows for the listing of securities that possess attributes or features of more than one category of security.[7] Typically, these securities are not an issuer's primary equity security, and their holders have only limited economic interests and other rights.

Nasdaq also lists Portfolio Depository Receipts and Index Fund Shares, securities issued by unit investment trusts and open-end management investment companies, respectively, that are organized as exchange-traded funds. These exchange-traded funds, which are generally passive investment vehicles that seek to match the performance of an index, must obtain an exemptive order from the Commission before they offer securities. As a result, their operations are circumscribed by numerous representations and conditions of the applicable orders, and they do not typically experience the need for operational or other changes requiring a shareholder vote, and, by extension, a shareholder meeting.[8] These entities are also extremely sensitive to expenses, and as a result, some of these entities have stated to Nasdaq that the imposition of an annual shareholder meeting requirement could impact the ability of some exchange-traded funds to compete with other investment types, such as typical open-end funds.

In addition, Nasdaq lists Trust Issued Receipts, which are securities issued by a trust that holds, but does not manage, specific securities on behalf of the investors in the trust. These trusts typically do not hold shareholder (or unitholder) meetings because the trusts have no boards of directors and essentially serve only as conduits for the investors' indirect investments in the underlying securities of the trusts.

For these reasons, in the past, Nasdaq has not required certain issuers to hold annual shareholder meetings as a result of listing these securities. Nasdaq now proposes to amend NASD Rule 4350(e) such that only issuers of voting and non-voting common and voting preferred stock, and their equivalents, would be required to hold an annual shareholder meeting, except as set forth in proposed IM–4350–8. By clearly identifying those issuers that will be subject to the annual shareholder meeting requirement, Nasdaq believes that the rule will be more transparent.

In addition, NASD Rule 4350(e) currently requires all issuers to provide notice of their annual meetings to Nasdaq. Nasdaq, however, does not rely on this notification to monitor compliance with the annual shareholder meeting requirement. Instead, the Nasdaq staff reviews proxy statements (and, in the case of issuers that do not file proxy statements, other Commission filings) to determine compliance. As such, Nasdaq believes that the current

[5] Nasdaq's annual shareholder meeting requirement applies in addition to any applicable state and federal securities laws concerning such annual meetings.

[6] Nasdaq permits the use of webcasts instead of, or in addition to, a physical meeting, provided such webcasts are permissible under the applicable state law and that shareholders have the opportunity to ask questions of management.

[7] Securities currently listed under Rule 4420(f) include: (i) Trust Preferred Securities, the payments on which are linked to the performance of another security; (ii) Index Linked Notes, the payments on which are linked to the performance of an underlying index; and (iii) Contingent Value Rights, the performance of which are tied to the performance of another security, a particular division of the company, or the occurrence of a certain event.

[8] These exchange-traded funds are registered under, and remain subject to, the Investment Company Act of 1940, which imposes various shareholder-voting requirements that may be applicable to the funds.

notification requirement is redundant and proposes to eliminate it.

Finally, while the current rule does not provide a deadline for holding the annual shareholder meeting, Nasdaq proposes that the annual shareholder meeting must be held within one year of the end of the issuer's fiscal year. Nasdaq believes that codifying this time frame would provide additional transparency to the annual meeting requirement.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[9] in general, and with section 15A(b)(6) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq asserts that the proposed rule change is consistent with these requirements in that it will provide transparency to its annual shareholder meeting rule and eliminate an unnecessary notification requirement.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

[9] 15 U.S.C. 78o–3.

[10] 15 U.S.C. 78o–3(b)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–073 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–073. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–073 and should be submitted on or before January 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7896 Filed 12–27–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52986; File No. SR–PCX–2005–137]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Expand Its $2.50 Strike Price Program

December 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by PCX. On December 16, 2005, PCX filed Amendment No. 1 to the proposed rule change.[3] The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to amend PCX Rule 6.4 Commentary .03 governing the listing of options with strike price intervals of $2.50. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rule 6.4. Series of Options Open for Trading

(a)–(e)—No change.

Commentary .01–.02—No change.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 corrected an omission in the proposed rule text.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

.03 The Exchange may select [a limited number]*up to 43 classes* of its listed options on individual stocks or Exchange-Traded Fund Shares for which the interval of strike prices will be $2.50 where the strike price is greater than $25 but less than [$50.] *$75. The Exchange will list $2.50 strikes prices between $50 and $75 provided the $2.50 strike prices between $50 and $75 are no more than $10 from the closing price of the underlying stock on its primary market on the preceding day.* In addition to those options selected by the Exchange, the strike price interval may be $2.50 in any multiply traded option once another exchange trading that option selects such options. *An option class shall remain in the $2.50 Strike Price Program until otherwise designated by the Exchange and a decertification notice is sent to the Options Clearing Corporation.*

.04–.07—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX proposes to amend PCX Rule 6.4 Commentary .03 to allow the listing of options with $2.50 strike price intervals for options with strike prices between $50 and $75 on those option classes that have been selected as part of the $2.50 Strike Price Program (''Program''). PCX proposes to list options with $2.50 strike price intervals above $50 only if the new strike price is within $10 of the closing price of the underlying security on the previous trading day.

Under the Program, initially adopted in 1995 as a joint program of the options exchanges, exchanges were permitted to list options with $2.50 strikes price intervals up to $50 on a total of 100 option classes.[6] The Program was later expanded and permanently approved in 1998 to allow the exchanges collectively to select up to 200 issues on which to list options with $2.50 strike price intervals up to $50.[7] Of the 200 available issues, PCX has been allocated 43 issues. This proposal does not increase the number of issues that the PCX will be allocated under the Program. In addition to an allocation from the 200 issues, each exchange is also permitted to list options with $2.50 strike price intervals on any option class that another exchange selects as part of its Program. In addition, the Exchange proposes to amend PCX Rule 6.4 Commentary .03 to note that an option class shall remain in the Program until otherwise designated by the Exchange and a decertification notice is sent to the Options Clearing Corporation.

PCX believes that the experiences over the past ten years of listing options series with strike prices at $2.50 intervals up to $50 have produced positive results.[8] Specifically, this has stimulated customer interest by creating additional trading opportunities, by creating more flexibility in trading decisions, and by affording customers the ability to more closely tailor investment strategies to the precise movement of the underlying security. The proposal to expand the listing of options with $2.50 strike price intervals is intended to provide customers with greater flexibility in their investment choices for those stocks priced between $50 and $75. PCX represents that Options Price Reporting Authority has the capacity to accommodate the increase of series added pursuant to this rule change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objective of Section 6(b)(5) of the Act,[10] 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 does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.[15] The Exchange has requested that the Commission waive the 30-day pre-operative delay, and the Commission hereby grants that request.[16] The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest. This action will allow the Exchange to immediately expand its Program to list options with $2.50 strike price intervals for options with strike prices between $50 and $75.

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[6] *See* Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (approving File Nos. SR–Phlx–95–08, SR–Amex–95–12, SR–PSE–95–07, SR–CBOE–95–19, and SR–NYSE–95–12).

[7] *See* Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (approving File Nos. SR–Amex–98–21, SR–CBOE–98–29, SR–PCX–98–31, and SR–Phlx–98–26).

[8] Telephone conversation between Glenn Gsell, Director, Regulation, PCX, and Theodore S. Venuti, Attorney, Division of Market Regulation, Commission, on December 20, 2005.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *Id.*

[15] In addition, Rule 19b–4(f)(6)(iii) requires that the Exchange give the Commission 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 Commission has decided to waive the five-day pre-filing notice requirement.

[16] For the purposes only of waiving the 30-day pre-operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

The Commission notes that it recently approved similar expansions to the $2.50 Strike Price Programs of the Chicago Board Options Exchange (''CBOE'') and the American Stock Exchange (''Amex'').[17] These proposals were subject to a full notice-and-comment period, and no negative comments were submitted. The Commission does not believe that PCX's proposal raises any novel issues.

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 Act.[18]

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 No. SR–PCX–2005–137 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–PCX–2005–137. 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 PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–PCX–2005–137 and should be submitted on or before January 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7895 Filed 12–27–05; 8:45 am]

BILLING CODE 8010–01–P

[17] *See* Securities Exchange Act Release Nos. 52892 (December 5, 2005), 70 FR 73492 (December 12, 2005) (approving SR–CBOE–2005–39) and 52893 (December 5, 2005), 70 FR 73488 (December 12, 2005) (approving SR–Amex–2005–067).

[18] For purpose 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 that period to commence on December 16, 2005, the date that PCX filed Amendment No. 1.

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5220]

Shipping Coordinating Committee; Notice of Meetings

The Working Group on Radio Communications and Search and Rescue of the Subcommittee on Safety of Life at Sea will conduct open meetings at 1 P.M. on Friday January 5, 2006, at the Radio Technical Commission for Maritime Services, 1800 North Kent Street, Suite 1060, Arlington, VA 22209. The purpose of this meeting is to prepare for the Tenth Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications and Search and Rescue, which is scheduled for the week of March 6–10, 2006, at IMO headquarters in London, England. The primary matters to be considered are:

—Maritime Safety Information for GMDSS
—Development of a procedure for recognition of mobile satellite systems
—Large passenger ship safety
—Emergency radiocommunications, including false alerts and interference
—Issues related to maritime security
—Matters concerning Search and Rescue
—Developments in maritime radiocommunication systems and technology
—Planning for the 11th session of COMSAR

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information or by writing: Mr. Russell S. Levin, U.S. Coast Guard Headquarters, Commandant (CG–622), Room 6611, 2100 Second Street, SW., Washington, DC 20593–0001, by calling: (202) 267–1389, or by sending Internet electronic mail to *rlevin@comdt.uscg.mil* and viewing *http://www.navcen.uscg.gov/marcomms/imo/meetings.htm.*

Dated: December 16, 2005.

Clay Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 05–24522 Filed 12–27–05; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 5221]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) through the Subcommittee on Standards of Training, Certification and Watchkeeping will conduct an open meeting at 9:30 A.M. on January 17, 2006. The meeting will be held in Room 6103 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to prepare for the 37th session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW 37) to be held on January 23–27, 2006, at the IMO Headquarters in London, England.

The primary matters to be considered include:

—Measures to enhance maritime security, training and certification for ship, company and port facility security officers;
—Unlawful practices associated with certificates of competency;
—Large passenger ship safety;
—Measures to prevent accidents with lifeboats;
—Education and training requirements for fatigue prevention, mitigation, and management;
—Training requirements for the control and management of ship's ballast water and sediments; and
—Development of competences for ratings.

Please note that hard copies of documents associated with STW 37 will not be available at this meeting, the

documents will be available at the meeting in portable document format (.pdf) on CD–ROM. To request documents before the meeting please write to the address provided below, and include your name, address, phone number, and electronic mail address. Copies of the papers will be sent via electronic mail to the address provided.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Luke Harden, U.S. Coast Guard (G–MSO–1), Room 1210, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling: (202) 267–1838.

Dated: December 16, 2005.

Clay Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 05–24523 Filed 12–27–05; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 5222]

Shipping Coordinating Committee; Notice of Meetings

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Thursday, January 26, 2006, in Room 6103 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 49th session of the Sub-Committee on Ship Design and Equipment (DE) to be held at the International Maritime Organization (IMO) Headquarters in London, England from February 20th to February 24th, 2006. The primary matters to be considered include:

—Amendments to resolution A.744(18) regarding longitudinal strength of tankers;
—Passenger ship safety;
—Review of the 2000 HSC Code and amendments to the DSC Code and the 1994 HSC Code;
—Consideration of IACS unified interpretations;
—Inspection and survey requirements for accommodation ladders;
—Revision of the Guidelines for systems for handling oily wastes in machinery spaces of ships (MEPC/Circ.235);
—Development of provisions for gas-fueled ships;
—Performance standards for protective coatings;
—Mandatory emergency towing systems in ships other than tankers greater than 20,000 dwt;
—Review of the Special Purpose Ships (SPS) Code;
—Revision of the Code on Alarms and Indicators (resolution A.830(19));
—Amendments to the MODU Code;
—Review of requirements on the relevant equipment for the revision of the Intact Stability Code.

Hard copies of documents associated with the 49th session of DE will be available at this meeting. To request further copies of documents please write to the address provided below.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Wayne Lundy, Commandant (G-MSE–3), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1300, Washington, DC 20593–0001 or by calling (202) 267–0024.

Dated: December 16, 2005.

Clay Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 05–24524 Filed 12–27–05; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending December 16, 2005

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–23336.
Date Filed: December 13, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Within South East Asia except between Malaysia and Guam (Memo 0904).
Intended effective date: 15 January 2006.

Docket Number: OST–2005–23337.
Date Filed: December 13, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC3 South East Asia—South West Pacific except between Malaysia and American Samoa (Memo 0905).
Intended Effective Date: 15 January 2006.

Docket Number: OST–2005–23340.
Date Filed: December 13, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC3 South East Asia—South Asian Subcontinent (Memo 0907). Singapore, 21 November–30 November 2005.
Intended effective date: 15 January 2006.

Docket Number: OST–2005–23341.
Date Filed: December 13, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Japan, Korea—South East Asia except between Korea (Rep. of) and Guam, Northern Mariana Islands (Memo 0908).
Intended effective date: 15 January 2006.

Docket Number: OST–2005–23346.
Date Filed: December 13, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Areawide (Memo 0909). Singapore, 21 November–30 November 2005.
Intended effective date: 15 January 2006.

Docket Number: OST–2005–23347.
Date Filed: December 13, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC23/TC123 Europe—South West Pacific (Memo 0100). Geneva & Teleconference, 15–16 September 2005.
Intended effective date: 1 April 2006.
Tables Fares: TC23 Europe—South West Pacific, South Asian S Subcontinent (Memo 0058).
Minutes: TC23 Europe—South West Pacific, South Asian Subcontinent.
Passenger Tariff Coordinating Conference Geneva, 15–16 September 2005 (Memo 0102).
Intended effective date: 1 April 2006.

Docket Number: OST–2005–23385.
Date Filed: December 16, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Japan, Korea—South East Asia except between Korea (Rep. of) and Guam, Northern Mariana Islands.
Singapore, 21 November–30 November 2005.
Intended effective date: 1 February 2006.

Docket Number: OST–2005–23386.
Date Filed: December 16, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Within South East Asia except between Malaysia and Guam.

Singapore, 21 November–30 November 2005.
Intended effective date: 1 February 2006.

Docket Number: OST–2005–23390.
Date Filed: December 16, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC3 South East Asia—South West Pacific except between Malaysia and American Samoa Singapore, 21 November–30 November 2005 (Memo 0912).
Intended effective date: 1 February 2006.

Docket Number: OST–2005–23403.
Date Filed: December 16, 2005.
Parties: Members of the International Air Transport Association.
Subject:
TC3 Areawide (Memo 0913) Singapore, 21 November–30 November 2005.
Intended effective date: 1 February 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E5–7965 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 16, 2005

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2005–23345.
Date Filed: December 13, 2005 .
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 3, 2006.

Description: Application of Etihad Airways P.J.S.C. requesting a foreign air carrier permit to provide scheduled and charter foreign air transportation of persons, property and mail from points behind the United Arab Emirates via the United Arab Emirates and intermediate points to a point or points in the United States and beyond.

Docket Number: OST–2005–23352.

Date Filed: December 13, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 3, 2006.

Description: Application of Livingston S.p.A. requesting a foreign air carrier permit authorizing it to engage in charter foreign air transport of persons, property and mail from Italy, via intermediate points, to points in the United States and beyond, as well as such other charter authority permitted under the U.S.-Italy Open Skies Agreement and Part 212.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E5–7964 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2005–22020]

Environmental Impacts: Policies and Procedures; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice; request for comment; correction.

SUMMARY: The Federal Aviation Administration published a document in the **Federal Register** on December 20, 2005 (79 FR 75529). That notice proposed to revise FAA Order 1050.1E, *Environmental Impacts: Policies and Procedures.* In that notice, the **FOR FURTHER INFORMATION CONTACT** was inadvertently left out.

Correction

In the **Federal Register** of December 20, 2005, in FR Doc. 05–24132, on page 2, after the **ADDRESSES** section, add the following information:

FOR FURTHER INFORMATION CONTACT: Mr. Matthew McMillen, Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 493–4018.

Issued in Washington, DC, on December 21, 2005.

Carl E. Burleson,

Federal Aviation Administration, Director, Office of Environment and Energy.

[FR Doc. 05–24533 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: San Antonio International Airport, San Antonio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Cancellation of the Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) for proposed airport development projects at San Antonio International Airport.

SUMMARY: The FAA is issuing this notice to advise that it is withdrawing its Notice of Intent to prepare a DEIS for proposed projects at the San Antonio International Airport, San Antonio, Texas.

Proposed airport projects included the extension of Runway 3/21, extension and widening of Runway 12L/30R, potential uses of approximately 180 acres of Airport owned land and, evaluation of air traffic or procedural actions recommended in the Airport's 14 CFR part 150 Noise Compatibility Program.

Widening of Runway 12L/30R and air traffic procedures recommended in the Airport's CFR Part 150 Noise Compatibility Program have been withdrawn from consideration in the EIS. Preliminary lack of significant adverse impacts from remaining proposed projects indicated that an EIS is no longer required. Instead, the City of San Antonio will prepare a Draft Environmental Assessment (DEA) for the use of Airport owned land, extension of Runway 3/21 and miscellaneous airport improvement projects.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Blackford, Environmental Specialist, Federal Aviation Administration, Southwest Region, Texas Airports Development Office, Federal Aviation Administration, Southwest Regional Office, Forth Worth, Texas 76193–0650. Telephone (817) 222–5607.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the City of San Antonio, determined that capacity improvements to Runway 12L/30R are more appropriate for a future date.

Additionally, FAA determined that procedural actions recommended in the Airport's 14 CFR Part 150 Noise Compatibility Program would conflict with existing airspace utilization. Both proposed projects were therefore removed from evaluation in the EIS. The preliminary lack of adverse impacts from the remaining projects indicates that a DEIS is no longer required under the National Environmental Policy Act.

The public will be given the opportunity to review the DEA during the 30-day public comment period. Prior to the close of the comment period, any person may make a written request for a public meeting, setting forth the particular reasons for the request. The FAA will then determine whether the issues raised are substantial and should be considered in making their decision. If a public meeting is warranted, all known interested parties will be notified of the time, date, and location of such a meeting in the local news media.

Issued on: December 19, 2005.

Kelvin L. Solco,

Manager, Airports Division.

[FR Doc. 05–24534 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–67]

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 January 17, 2006.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2001–11170] 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: John Linsenmeyer (202) 267–5174 or Tim Adams (202) 267–8033, 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 December 20, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions For Exemption

Docket No.: FAA–2001–11170.

Petitioner: Airbus.

Section of 14 CFR Affected: 14 CFR 145.107(c).

Description of Relief Sought: Petitioner seeks an amendment to an existing exemption that would permit Airbus to have a satellite repair station in a country other than the domicile country where the repair station with managerial control is located.

[FR Doc. E5–7899 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In September 2005, there were six applications approved. This notice also includes information on seven applications, one approved in April 2003 and six approved in August 2005, inadvertently left off the April 2003 and August 2005 notices, respectively. Additionally, 31 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: Dallas-Fort Worth International Airport Board, Dallas/Fort Worth, Texas.

Application Number: 03–06–C–00–DFW.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $51,900,495.

Earliest Charge Effective Date: December 1, 2015.

Estimate Charge Expiration Date: June 1, 2016.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Dallas-Fort Worth International Airport.

Brief Description of Project Approved for Collection and Use: Source isolation deicing system.

Decision Date: April 11, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Nicely, Southwest Region Airports Division, (817) 222–5650.

Public Agency: City of Tallahassee, Florida.

Application Number: 05–05–U–00–TLH.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue to be Used in This Decision: $554,642.

Charge Effective Date: October 1, 2002.

Estimated Charge Expiration Date: February 1, 2007.

Class of Air Carriers not Required to Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use:

Terminal apron lighting improvements.
Interactive training system improvements.
Americans with Disabilities Act passenger lift.
Terminal security improvements.
Taxiway P rehabilitation.
General aviation taxiway overlays.
New general aviation central apron construction.
Old terminal apron rehabilitation.
General aviation south apron rehabilitation.

Decision Date: August 30, 2005.

FOR FURTHER INFORMATION CONTACT: W. Dean Stringer, Orlando Airports District Office, (407) 812–6331.

Public Agency: Spokane Airport Board, Spokane, Washington.

Application Number: 05–05–C–00–GEG.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $9,577,800.

Earliest Charge Effective Date: May 1, 2006.

Estimated Charge Expiration Date: October 1, 2009.

Classes of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Planning study.
Land acquisition.
Perimeter road construction.
Terminal rotunda and concourse C enhancements.

Brief Description of Withdrawn Project: Construct airfield apron.

Determination: The project was withdrawn by the public agency on July 29, 2005.

Decision Date: August 30, 2005.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Public Building Commission, St. Clair County, Belleville, Illinois.

Application Number: 05–01–C–00–BLV.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $7,000,000.

Earliest Charge Effective Date: November 1, 2005.

Estimated Charge Expiration Date: March 1, 2047.

Classes of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Acquire land for airport development.
Environmental mitigation (wetlands).
Construct runway.
Construct aprons.
Construct taxiway.
Utility systems.
Construct access/service roads.
Construct airport traffic control tower.
Construct aircraft rescue and firefighting building.
Maintenance/snow removal equipment facility.
Security fencing.
Extend runway.
Acquire aircraft rescue and firefighting and snow removal equipment.
Construct terminal building.

Decision Date: August 31. 2005.

FOR FURTHER INFORMATION CONTACT: Gary Wilson, Chicago Airports District Office, (847) 294–7631.

Public Agency: Springfield Airport Authority, Springfield, Illinois.

Application Number: 05–09–C–00–SPI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $493,000.

Earliest Charge Effective Date: October 1, 2005.

Estimated Charge Expiration Date: June 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: On-demand air taxis.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Abraham Lincoln Capital Airport.

Brief Description of Projects Approved for Collection and Use:

Security vehicles required by the Transportation Security Administration.
Land acquisition—Scott.
Land acquisition—Williams.
Light control panel, beacon, signs, and windcone.
improve runway 13/31 safety area.
Widen taxiways A and F.
Widen taxiways G and F.
Update geographic information system/airport layout plan/storm sewer plan.
Rehabilitate air carrier apron, phase 2.

Decision Date: August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Gary Wilson, Chicago Airports District Office, (847) 294–7631.

Public Agency: Economic Development Corporation of Chippewa County, Kincheloe, Michigan.

Application Number: 05–01–C–00–CIU.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,087,463.

Earliest Charge Effective Date: November 1, 2005.

Estimated Charge Expiration Date: July 1, 2023.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Runway 16.34 rehabilitation.
Lighting control and airport beacon.
Resurface general aviation ramp.
Runway 9.27 environmental study.
Master plan update.
Aircraft rescue and firefighting building/hangar relocation (design).
Construct aircraft rescue and firefighting/snow removal equipment building.
Construct terminal phase 1.
Acquire aircraft rescue and firefighting vehicle.
Electrical runway 9/27.
Construct crosswind runway 9.27.
Construct parallel taxiway.
Construct terminal.
Wildlife assessment and fencing.
Construct terminal apron.
Acquire snow removal equipment.
Acquire rapid response aircraft rescue and firefighting vehicle.
Rehabilitate apron.
Replace airport beacon.
Update airport master and layout plans.

Decision Date: August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Jason K. Watt, Detroit Airports District Office, (734) 229–2906.

Public Agency: Erie Municipal Airport Authority, Erie, Pennsylvania.

Application Number: 05–05–U–00–ERI.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue to be Used in This Decision: $19,250.

Charge Effective Date: August 1, 2003.

Estimated Charge Expiration Date: August 1, 2006.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Snow removal equipment (Oshkosh blower).

Decision Date: August 31, 2005.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Meridian Airport Authority, Meridian, Mississippi.

Application Number: 05–08–C–00–MEI.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $150,000.

Earliest Charge Effective Date: April 1, 2008.

Estimated Charge Expiration Date: April 1, 2009.

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Project Approved for Collection and Use: Sweeper storage/maintenance building.

Decision Date: September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Rans Black, Jackson Airports District Office, (601) 664–9900.

Public Agency: Kent County Department of Aeronautics, Grand Rapids, Michigan.

Application Number: 05–03–I–00–GRR.

Application Type: Impose a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $13,100,000.

Earliest Charge Effective Date: July 1, 2019.

Estimated Charge Expiration Date: March 1, 2032.

Class of Air Carriers not Required to Collect PFC's: Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's appliction, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Gerald R. Ford International Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal B concourse expansion.
Terminal A concourse expansion.
Baggage claim expansion.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $242,364.

Earliest Charge Effective Date: May 1, 2018.

Estimated Charge Expiration Date: June 1, 2018.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at General Mitchell International Airport (MKE).

Brief Description of Projects Approved for Collection and use at MKE:

Reconstruct west perimeter road.
Runway safety areas—1L, 19R, and 25L.

Brief Description of Project Approved for Collection at MKE and Use at Lawrence J. Timmerman Airport:

Runway and taxiway rehabilitation.

Decision Date: September 8, 2005.

FOR FURTHER INFORMATION CONTACT: Sandy DePottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: International Falls-Koochiching County Airport Commission, International Falls, Minnesota.

Application Number: 05–04–C–00–INL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $477,226.

Earliest Charge Effective Date: November 1, 2005.

Estimated Charge Expiration Date: July 1, 2011.

Class of Air Carriers not Required to Collect PFC's:

Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total amount enplanements at Falls International Airport.

Brief Description of Projects Approved for Collection and Use:

Land acquisition—14.2 acres.
Engineering services—approach lighting (medium intensity approach lighting system with runway end identifier lights) and snow removal equipment.
Snow removal equipment—snow plow and sander.
Acquire taxiway reflectors.
Land acquisition—6.6 acres.
PFC administration.
Land acquisition—33 acres.
Engineering services for land acquisition and apron rehabilitation.
Concrete apron rehabilitation.
Terminal building lighting improvement.
Replace broom carrier unit.
Abrasive storage building.
Acquire snow removal equipment—loader.
Obstruction removal for runway practice zone—bury power line.
Rehabilitate heating, ventilation, and air conditioning system in terminal building.
Improve terminal security.
Part 1542 security measures.
Medium intensity approach lighting system with runway end identifier lights installation.
Acquire wetlands credits.
Construct snow removal equipment storage facility.
Prepare environmental assessment for runway 13/31 extension.
Apron lighting improvements.
Ganged public use seating in terminal.
Design runway 13 precision approach path indicator.
Replace overhead baggage doors.
Reconstruct and expand air carrier apron pavement.
Reconstruct and expand general aviation apron pavement.
Replace visual approach slope indicator with precision approach path indicator and replace regulator on runway 13.
Spot milling on runway 13/31 and the parallel taxiway.
Engineering for apron, precision approach path indicator, and spot milling.
Replace emergency generator.
Purchase snow removal equipment loader with ramp plow and snow bucket.
Refurbish terminal ceiling.

Decision Date: September 19, 2005.

FOR FURTHER INFORMATION CONTACT: Dan Millenacker, Minneapolis Airports District Office, (612) 713–4359.

Public Agency: Wilcomico County Airport Commission, Salisbury, Maryland.

Application Number: 05–02–C–00–SBY.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,827,724.

Earliest Charge Effective Date: October 1, 2005.

Estimated Charge Expiration Date: August 1, 2014.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators filing or requested to file FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Salisbury-Ocean City: Wicomico Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Develop PFC program and PFC application.
Conduct environmental mitigation/permitting for runway 14/32 preliminary design; rehabilitate runway 14/32 navigational aids coordination (design); construct snow removal equipment storage building (design).
Acquire aircraft rescue and firefighting vehicle.
Acquire land for runway 14 runway protection zone (Goldman parcel 30, phase 1).

Rehabilitate runway 14/32 (design); runway 32 navigational aids extension (design).
Rehabilitate taxiway C—phase II (design and construction).
Rehabilitate runway 14/32—1999 20-year bond debt service.
Rehabilitate runway 14/32 (construction phase I).
Remove obstructions, runway 5/23 (design).
Acquire snow removal vehicles.
Runway 32 extension (design).
Acquire land for runway 14 runway protection zone (Goldman parcel 30, phase II).
Acquire land for runway 14 runway protection zone (Walston parcel 63).
Rehabilitate runway 14/32 (construction phase II).
Remove obstruction, runway 5/23 (construction).
Extend runway 14/32 (construction).
Improve runway 5 extended runway safety area (design).
Rehabilitate runway 5/23 (design).
Airport master plan update.
Improve runway 5 extended runway safety area (construction).
Construct taxiway F and apron (design and construction).

Brief Description of Projects Approved for Collection:

Rehabilitate runway 5/23 (construction).

Snow removal equipment storage building (construction).

Reconstruct taxiway E (design and construction).

Reconstruct T-Hangar taxiways (design and construction).

Decision Date: September 29, 2005.

FOR FURTHER INFORMATION CONTACT: Luis Loarte, Washington Airports District Office, (703) 661–1365.

AMENDMENTS TO PFC APPROVALS

Amendment No., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
97–03–C–02–GJT, Grand Junction, CO	10/25/04	$1,932,000	$1,408,237	09/01/04	07/01/02
99–01–C–02–LMT, Klamath Falls, OR	03/25/05	426,374	426,374	11/01/04	05/01/04
02–04–C–02–TLH, Tallahassee, FL	03/28/05	11,500,458	11,572,800	02/01/07	02/01/07
04–04–C–01–TUP, Tupelo, MS	04/18/05	170,000	192,500	07/01/14	07/01/14
*96–02–C–02–DAB, Daytona Beach, FL	05/20/05	8,254,367	8,343,983	09/01/07	03/01/10
96–02–C–03–DAB, Daytona Beach, FL	08/16/05	8,343,983	20,646,852	03/01/10	03/01/20
96–02–C–05–DFW, Dallas/Fort Worth, TX	08/31/05	90,172,120	88,751,233	10/01/98	10/01/98
98–06–I–02–SJC, San Jose, CA	09/02/05	35,000,000	72,022,700	07/01/01	07/01/01
01–12–C–01–SJC, San Jose, CA	09/02/05	9,407,000	38,671,724	09/01/08	09/01/08
02–13–C–02–SJC, San Jose, CA	09/02/05	146,485,000	61,589,000	08/01/14	08/01/14
04–14–C–01–SJC, San Jose, CA	09/02/05	97,197,000	39,131,000	09/01/17	07/01/14
*93–01–C–04–BOS, Boston, MA	09/02/05	764,316,000	683,205,217	10/01/17	02/01/11
96–02–C–01–BOS, Boston, MA	09/02/05	163,037,000	163,037,000	09/01/12	10/01/22
97–03–U–01–BOS, Boston, MA	09/02/05	NA	NA	10/01/17	02/01/11
96–02–C–06–DFW, Dallas/Fort Worth, TX	09/07/05	88,751,233	88,751,233	10/01/98	10/01/98
98–04–U–02–DFW, Dallas/Forth Worth, TX	09/07/05	NA	NA	10/01/98	10/01/98
03–06–C–01–VLD, Valdosta, GA	09/08/05	185,100	179,596	09/01/04	09/01/04
*01–01–C–01–APN, Alpena, MI	09/09/05	268,480	268,480	11/01/09	08/01/08
*92–01–I–02–GRR, Grand Rapids, MI	09/09/05	94,359,802	94,359,802	07/01/19	10/01/16
95–02–U–01–GRR, Grand Rapids, MI	09/09/05	NA	NA	07/01/19	10/01/16
*00–04–C–02–SJU, San Juan, PR	09/09/05	98,663,704	103,572,267	08/01/09	06/01/08
99–04–C–03–CAK, Akron, OH	09/15/05	2,815,200	3,516,214	09/01/02	09/01/02
02–05–C–01–CAK, Akron, OH	09/15/05	7,277,000	9,665,854	11/01/06	05/01/05
94–01–C–04–ISP, Islip, NY	09/19/05	21,956,043	21,974,503	09/01/05	09/01/05
96–02–C–01–ISP, Islip, NY	09/19/05	4,058,200	4,059,528	09/01/06	09/01/06
99–03–C–01–ISP, Islip, NY	09/19/05	180,000	204,000	11/01/06	11/01/06
01–04–C–01–ISP, Islip, NY	09/19/05	441,949	444,546	01/01/07	01/01/07
00–06–C–02–COS, Colorado Springs, CO	09/22/05	8,441,519	3,374,865	09/01/03	01/01/01
02–07–C–01–COS, Colorado Springs, CO	09/22/05	7,566,700	5,620,814	02/01/06	11/01/04
01–07–I–01–YKM, Yakima, WA	09/22/05	456,000	456,000	03/01/05	03/01/02
*98–01–C–01–MWH, Moses Lake, WA	09/27/05	470,000	470,000	03/01/09	01/01/16

NOTE: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3 per enplaned passenger to $4.50 per enplaned passenger. For Boston, MA, this change is effective on October 1, 2005. For Daytona Beach, FL, Grand Rapids, MI, And Moses Lake, WA, this change is effective on November 1, 2005. For Alpena, MI and San Juan, PR, this change is effective on December 1, 2005.

Dated: Issued in Washington, DC, on December 20, 2005.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 05–24504 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In October 2005, there were five applications approved. This notice also includes information on two applications, approved in September 2005, inadvertently left off the September 2005 notice. Additionally, 14 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of

1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Los Angeles World Airports, Los Angeles, California.

Application Number: 05–05–C–00–LAX.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $267,249,968.

Earliest Charge Effective Date: December 1, 2005.

Estimated Charge Expiration Date: October 1, 2009.

Class of Air Carriers not Required to Collect PFC's: All air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Los Angeles International Airport (LAX).

Brief Description of Projects Approved for Collection at LAX and Use at a $3.00 PFC Level:

Apron lighting upgrade.
Southside airfield improvement program and new large aircraft integrated study.
Century cargo complex—demolition of air freight 3.
Taxilane C–10 reconstruction.
Master plan.
Aircraft rescue and firefighting vehicles.

Brief Description of Project Approved for Collection at LAX and Use at Palmdale Production Flight/Test Installation Air Force Plant 42 at a $3.00 PFC Level: Master plan.

Brief Description of Project Approved for Collection at LAX and Use at LAX, Ontario International Airport, and Van Nuys Airport at a $3.00 PFC Level: Aircraft noise monitoring and management system.

Brief Description of Projects Approved for Collection at LAX and Use at LAX at a $4.50 PFC Level:

Southside airfield improvement program—airfield intersection improvements.
Southside airfield improvement program—remote boarding facilities modifications.
Tom Bradley International terminal interior improvements program—interior improvements and bag screening systems.
Implementation of information technology security master plan.

Brief Description of Project Disapproved for Collection at LAX and Use at LAX: Automatic external defibrillator installation.

Determination: As a stand-alone project, the automatic external defibrillator does not meet the requirements of § 158.15(a). In addition, this project does not meet the requirements of § 158.15(b)(2). The project is not Airport Improvement Program (AIP) eligible in accordance with paragraph 540 of FAA Order 5100/38C, AIP Handbook (June 28, 2005).

Decision Date: September 23, 2005.

FOR FURTHER INFORMATION CONTACT: Ruben Cabalbag, Western Pacific Airports Regional Office, (310) 725–3630.

Public Agency: Puerto Rico Ports Authority, Aguadilla, Puerto Rico.

Application Number: 05–02–C–00–BQN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $9,828,476.

Earliest Charge Effective Date: December 1, 2005.

Estimated Charge Expiration Date: December 1, 2021.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Study, design, and construct new runway pavement 8/26.
Expand passenger terminal.
Rehabilitate apron slabs.

Brief Description of Disapproved Project: Construct aircraft rescue and firefighting training pit.

Determination: This project did not meet the requirements of § 158.25(c)(1)(ii)(B).

Decision Date: September 29, 2005.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Orlando Airports District Office, (407) 812–6331, extension 20.

Public Agency: Jackson Hole Airport Board, Jackson, Wyoming.

Application Number: 05–10–C–00–JAC.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,277,186.

Earliest Charge Effective Date: January 1, 2007.

Estimated Charge Expiration Date: August 1, 2009.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Expand air carrier apron.
Planning studies.
Rehabilitate taxiway A and associated connectors.
Snow removal equipment.
PFC application and administration fees.

Decision Date: October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: State of Alaska Department of Transportation and Public Facilities, Anchorage, Alaska.

Application Number: 05–02–C–00–ANC.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $14,000,000.

Earliest Charge Effective Date: January 1, 2006.

Estimated Charge Expiration Date: July 1, 2009.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Project Approved for Collection and Use: Concourse A and B remodel.

Decision Date: October 12, 2005.

FOR FURTHER INFORMATION CONTACT: Jim Lomen, Alaska Region Airports Division, (907) 271–5816.

Public Agency: Golden Triangle Regional Authority, Columbus, Mississippi.

Application Number: 06–04–C–00–GTR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: 125,000.

Charge Effective Date: October 1, 2007.

Estimated Charge Expiration Date: October 1, 2009.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Project Approved for Collection and Use: Build air cargo ramp.

Decision Date: October 18, 2005.

FOR FURTHER INFORMATION CONTACT: David Shumate, Jackson Airports District Office, (601) 664–9882.

Public Agency: Fort Wayne-Allen County Airport Authority, Fort Wayne, Indiana.

Application Number: 05–03–C–00–FWA.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,045,000.

Earliest Charge Effective Date: October 1, 2016.

Estimated Charge Expiration Date: March 1, 2018.

Class of Air Carriers Not Required To Collect PFC'S: Non-scheduled/on-demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Fort Wayne International Airport.

Brief Description of Projects Approved for Collection and Use:

Aircraft rescue and firefighting vehicle.
Four-by-four high speed runway snow blower.
Four-by-four high speed runway snow plow.
Four-by-four high speed runway snow plow.
Mobile deicer collector unit.

Decision Date: October 21, 2005.

FOR FURTHER INFORMATION CONTACT: Gary Wilson, Chicago Airports District Office, (847) 294–7631.

Public Agency: Houghton County Memorial Airport Committee, Calumet, Michigan.

Application Number: 06–10–C–00–CMX.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $130,367.

Earliest Charge Effective Date: September 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Storm water removal from sanitary sewer system.
Security fence/perimeter road wetland mitigation and/or preservation.
Security fence/perimeter road delineation of wetlands.
Snow removal equipment—snow blower procurement.
Stream remediation, phase 1, check dams and sedimentation basins.
Stream remediation, phase 2, construction.
Snow removal equipment—push plow for front-end loader procurement.
Emergency radios procurement (800 Mhz).
Rehabilitate runway 7/25 and portion of taxiway C edge lighting.
Runway 7/15 safety area delineation of wetlands.
Runway 7/25 safety area environmental assessment.
Perimeter road modifications.
PFC application preparation reimbursement.
Reimbursement of PFC account audit charges for fiscal years 1999 through 2004.
Terminal holding area improvements.

Decision Date: October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Jason Watt, Detroit Airports District Office, (734) 229–2906.

AMENDMENTS TO PFC APPROVALS

Amendment No., City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
97–01–C–03–SBA, Santa Barbara, CA	09/15/05	$3,282,698	$3,384,520	01/01/00	01/01/00
02–03–C–02–SBA, Santa Barbara, CA	09/15/05	2,001,560	2,420,080	08/01/06	02/01/06
02–04–C–01–RDM, Redmond, OR	09/27/05	1,968,545	2,083,546	10/01/06	04/01/07
94–01–C–02–SLC, Salt Lake City, UT	09/28/05	99,230,800	104,375,119	03/01/99	03/01/99
96–02–C–02–SLC, Salt Lake City, UT	09/28/05	61,992,646	61,798,349	07/01/01	07/01/01
01–07–C–01–JAC, Jackson, WY	10/06/05	111,930	111,005	09/01/02	09/01/02
*03–02–C–03–ACY, Atlantic City, NJ	10/19/05	1,363,575	1,363,575	04/01/06	11/01/06
*99–01–C–05–ACY, Atlantic City, NJ	10/20/05	6,801,935	8,380,852	07/01/05	02/01/06
*04–03–C–01–ACY, Atlantic City, NJ	10/20/05	750,000	750,000	11/01/06	07/01/07
*92–01–C–01–FWA, Fort Wayne, IN	10/21/05	26,563,457	26,563,457	03/01/15	10/01/16
98–01–C–01–FWA, Fort Wayne, IN	10/21/05	500,000	0	01/01/16	03/01/15
92–01–C–05–RSW, Fort Myers, FL	10/25/05	155,965,924	149,922,253	03/01/11	09/01/06
94–03–U–01–RSW, Fort Myers, FL	10/26/05	NA	NA	03/01/11	09/01/06
97–04–U–01–RSW, Fort Myers, FL	10/27/05	NA	NA	03/01/11	09/01/06

NOTE: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3 per enplaned passenger to $4.50 per enplaned passenger. For Fort Wayne, IN and Atlantic City, NJ, this change is effective on December 1, 2005.

Issued in Washington, DC, on December 21, 2005.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 05–24532 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Technical Standard Order (TSO)–C166a, Extended Squitter Automatic Dependent Surveillance—Broadcast (ADS–B) and Traffic Information Service—Broadcast (TIS–B) Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of, and requests comments on the proposed revision to technical standard order (TSO)–C166, Extended Squitter Automatic Dependent Surveillance—Broadcast (ADS–B) and Traffic Information Service—Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 Megahertz (MHz), issued September 20, 2004. The resulting changes to this proposed revised TSO tells persons seeking a TSO authorization or letter of design approval (LODA) what minimum performance standards (MPS) their extended squitter ADS–B and TIS–B equipment must meet to be identified with the applicable TSO marking.

DATES: Comments must be received on or before January 27, 2006.

ADDRESSES: Send all comments on the proposed technical standard order to:

Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch (AIR–130), 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. Robert H. Duffer. Or you may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Duffer, AIR–130, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (425) 227–2722, Fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed revised TSO by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing date, in Room 815, at the above address, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received or or before the closing date before issuing the final TSO.

Background

The proposed revised TSO removes all references to RTCA document RTCA/DO–260, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance—Broadcast (ADS–B), dated September 13, 2000, to include applicable changes listed in Appendix 1, Section 1 of TSO–C166. This change is being implemented to keep pace with plans to use ADS–B for air traffic control (ATC) services in the National Airspace System (NAS) that will require advanced position integrity parameters (i.e., NIC, NAC and SIL) not addressed in RTCA/DO–260. The proposed revised TSO now refers only to RTCA/DO–260A, Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance—Broadcast (ADS–B), dated April 10, 2003, as modified by Appendix 1 (previously Appendix 1, Section 2 of TSO–C166). In addition, Appendix 1 of the proposed revised TSO includes test procedures and provisions necessary for 1090 MHz extended squitter receivers to correctly handle ADS–B rebroadcast provided by ground stations.

How To Obtain Copies

A copy of the proposed revised TSO–C166 may be obtained via the information contained in section title **FOR FURTHER INFORMATION CONTACT**, or from the FAA Internet Web site at *http://www.faa.gov/aircraft/draft_docs/*. Copies of all RTCA documents may be purchased from RTCA, Inc., 1828 L Street, NW., Suite 815, Washington, DC 20036. Copies may also be obtained through the RTCA Internet Web site at *http://www.rtca.org/*.

Issued in Washington, DC, on December 20, 2005.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 05–24502 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for review and comment. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on September 7, 2005 (70 FR 53270). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 27, 2006.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Huie, (202) 366–3039, Department of Transportation, Federal Highway Administration, Office of Infrastructure, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highways for LIFE Incentive Funding for Federal-aid Projects Application.

Abstract: Section 1502 of SAFETEA–LU establishes the ''Highways for LIFE'' Pilot Program. The purpose of the Highways for LIFE pilot program is to advance longer-lasting highways using innovative technologies and practices to accomplish the fast construction of efficient and safe highways and bridges. ''Highways for LIFE'' is focused on accelerating the rate of adoption of proven technologies. The program will provide funding to States to accelerate technology adoption to construct, reconstruct, or rehabilitate Federal-aid highway projects that incorporate innovative technologies that will improve safety, reduce congestion due to construction and improve quality. Those States interested in participating in the ''Highways for LIFE'' program will submit an application for project funding. The information to be provided on the application includes a description of the project, the innovative technologies to be used and a description of how these technologies will improve safety, reduce construction congestion and improve quality. The collected information will be used by FHWA to evaluate and select projects for ''Highways for LIFE'' funding.

Respondents: 50 State Departments of Transportation, the District of Columbia and Puerto Rico.

Frequency: Annually, beginning in 2006 and ending in 2009.

Estimated Total Annual Burden Hours: The estimated average burden to complete the application is 8 hours per respondent. The estimated total number of respondents per year is 30. The estimated total annual burden is 240 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: December 20, 2005.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. E5–7967 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2005–23272]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before February 27, 2006.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Donovan Green, Office of Crash Avoidance Standards, 400 Seventh Street, SW., DC 20590. Mr. Green's telephone number is (202) 493–0248. His FAX number is (202) 493–2739. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How 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.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Tire Identification and Recordkeeping.

OMB Control Number: 2127–0050.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Extension of a currently approved collection.

Affected Public: Tire and rim manufacturers, new tire dealers and distributors, and consumers.

Form Number: This collection of information uses no standard forms.

Abstract: Each tire manufacturer and rim manufacturer must label their tire or rim with the applicable safety information. These labeling requirements ensure that tires are mounted on the appropriate rims; and that the rims and tires are mounted on the vehicles for which they are intended. It is estimated that this rule affects 10 million respondents annually. This group consists of approximately 8 tire manufacturers, 12,000 new tire dealers and distributors, and 10 million consumers who choose to register their tire purchases with the manufacturers.

Estimated Annual Burden: 245,000 hours.

Estimated Number of Respondents: 10,000,000.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on: December 22, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E5–7968 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. RSPA–2005–20036 (Notice No. 05–10)]

Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comments. The ICRs describe the nature of the information collections and their expected burden. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on September 21, 2005 [70 FR 55450]. No comments were received.

DATES: Comments must be submitted on or before January 27, 2006.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR parts 110 and 130 and the Hazardous Materials

Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collections:

Title: Rulemaking, Special Permits, and Preemption Requirements.

OMB Control Number: 2137–0051.

Type of Request: Extension of a currently approved collection.

Abstract: This collection of information applies to rulemaking procedures regarding the HMR. Specific areas covered in this information collection include part 105, subpart A and subpart B, ''Hazardous Materials Program Definitions and General Procedures;'' part 106, subpart B, ''Participating in the Rulemaking Process;'' part 107, subpart B, ''Special Permits;'' and part 107, subpart C, ''Preemption.'' The Federal hazardous materials transportation law directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in commerce. We are authorized to accept petitions for rulemaking and appeals, as well as applications for special permits, preemption determinations and waivers of preemption. The types of information collected include:

(1) *Petitions for Rulemaking:* Any person may petition the Office of Hazardous Materials Standards to add, amend, or delete a regulation in Parts 110, 130, 171 through 180, or may petition the Office of the Chief Counsel to add, amend, or delete a regulation in Parts 105, 106 or 107.

(2) *Appeals:* Except as provided in § 106.40(e), any person may submit an appeal to our actions in accordance with the Appeals procedures found in §§ 106.110 through 106.130.

(3) *Application for Special Permits:* Any person applying for a special permit must include the citation of the specific regulation from which the applicant seeks relief; specification of the proposed mode or modes of transportation; detailed description of the proposed special permit (e.g., alternative packaging, test procedure or activity), including as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents, etc.

(4) *Application for Preemption Determination:* Any person directly affected by any requirement of a State, political subdivision, or Indian tribe may apply to the Associate Administrator for a determination whether that requirement is preempted under 49 U.S.C. 5125, or regulations issued thereunder. The application must include the text of the State or political subdivision or Indian tribe requirement for which the determination is sought; specify each requirement of the Federal hazardous material transportation law or the regulations issued thereunder with which the applicant seeks the State, political subdivision or Indian tribe requirement to be compared; explanation of why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of section 5125 (see also 49 CFR 107.202); and how the applicant is affected by the State or political subdivision or Indian tribe requirements.

(5) *Waivers of Preemption:* With the exception of requirements preempted under 49 U.S.C. 5125(c), any person may apply to the Associate Administrator for a waiver of preemption with respect to any requirement that: (1) The State or political subdivision thereof or an Indian tribe acknowledges is preempted under the Federal hazardous material transportation law or the regulations issued thereunder, or (2) that has been determined by a court of competent jurisdiction to be so preempted. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement affords an equal or greater level of protection to the public than is afforded by the requirement of the Federal hazardous material transportation law or the regulations issued thereunder and does not unreasonably burden commerce.

The information collected under these application procedures is used in the review process by PHMSA in determining the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for special permits, preemption determinations and waivers of preemption to the HMR. The procedures governing these petitions for rulemaking and for reconsideration of rulemakings are covered in subpart B of part 106. Applications for special permits, preemption determinations and waivers of preemption are covered under subparts B and C of part 107. Rulemaking procedures enable PHMSA to determine if a rule change is necessary, is consistent with public interest, and maintains a level of safety equal to or superior to that of current regulations. Special Permit procedures provide the information required for analytical purposes to determine if the requested relief provides for a comparable level of safety as provided by the HMR. Preemption procedures provide information for PHMSA to determine whether a requirement of a State, political subdivision, or Indian tribe is preempted under 49 U.S.C. 5125, or regulations issued thereunder, or whether a waiver of preemption should be issued.

Affected Public: Shippers, carriers, packaging manufacturers, and other affected entities.

Recordkeeping:

Number of Respondents: 3,304.

Total Annual Responses: 4,294.

Total Annual Burden Hours: 4,219.

Frequency of Collection: On occasion.

Title: Radioactive (RAM) Transportation Requirements.

OMB Control Number: 2137–0510.

Type of Request: Extension of a currently approved collection.

Abstract: This information collection consolidates and describes the information collection provisions in the HMR involving the transportation of radioactive materials in commerce. Information collection requirements for RAM include: Shipper notification to consignees of the dates of shipment of RAM; expected arrival; special loading/unloading instructions; verification that shippers using foreign-made packages hold a foreign competent authority certificate and verification that the terms of the certificate are being followed for RAM shipments being made into this country; and specific handling instructions from shippers to carriers for fissile RAM, bulk shipments of low specific activity RAM and packages of RAM that emit high levels of external radiation. These information collection requirements help to establish that proper packagings are used for the type of radioactive material being transported; external radiation levels do not exceed prescribed limits; and packages are handled appropriately and delivered in a timely manner, so as to ensure the safety of the general public, transport workers, and emergency responders.

Affected Public: Shippers and carriers of radioactive materials in commerce.

Recordkeeping:
Number of Respondents: 3817.
Total Annual Responses: 21,519.
Total Annual Burden Hours: 15,270.
Frequency of Collection: On occasion.
Title: Hazardous Materials Security Plans.
OMB Control Number: 2137–0612.
Type of Request: Extension of a currently approved collection.
Abstract: To assure public safety, shippers and carriers must take reasonable measures to plan and implement procedures to prevent unauthorized persons from taking control of, or attacking, hazardous materials shipments. Part 172 of the HMR requires persons who offer or transport certain hazardous materials to develop and implement written plans to enhance the security of hazardous materials shipments. The security plan requirement applies to shipments of: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in hazard zone A; (4) a shipment of hazardous materials in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases, or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) a shipment that requires placarding; and (6) select agents. Select agents are infectious substances identified by CDC as materials with the potential to have serious consequences for human health and safety if used illegitimately. A security plan will enable shippers and carriers to reduce the possibility that a hazardous materials shipment will be used as a weapon of opportunity by a terrorist or criminal.
Affected Public: Shippers and carriers of hazardous materials in commerce.
Recordkeeping:
Number of Respondents: 42,000.
Total Annual Responses: 42,200.
Total Annual Burden Hours: 247,250.
Frequency of Collection: On occasion.
Title: Subsidiary Hazard Class and Number/Type of Packagings.
OMB Control Number: 2137–0613.
Type of Request: Extension of a currently approved collection.
Abstract: Section 5103 of the Federal Hazardous Materials Transportation Law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) authorizes the Pipeline and Hazardous Materials Safety Administration (PHMSA) to prescribe safety and security regulations for the transportation of hazardous materials in interstate, intrastate, and foreign commerce. The HMR require that shipping papers and emergency response information accompany each shipment of hazardous materials in commerce. The Subcommittee on Surface Transportation recommended that additional Federal requirements mandating retention of shipping papers be imposed in order to facilitate documentation of violations by the law enforcement community. Subsequently, the Hazardous Materials Transportation Authorization Act of 1994 (HMTAA), Public Law 103–311, amended the HMR to require shippers and carriers to retain copies of each shipping paper for one year. In August, 2005, the Hazardous Materials Safety and Security Reauthorization Act of 2005 (the Act; Title VII of Pub. L. 109–59, 119 Stat. 1144 (August 10, 2005)) amended Federal hazmat law by revising certain terminology, definitions, and requirements. The Act amends § 5110 of Federal hazmat law to require shippers to retain a copy of a shipping paper for a period of two years after the shipping paper is provided to a carrier and to require carriers to retain a copy of a shipping paper for a period of one year after the date the shipping paper is received from the shipper. Shippers and carriers of a hazardous waste must continue to retain a shipping paper for 3 years after the material is accepted by the initial carrier. The Environmental Protection Agency (EPA), and the Internal Revenue Service (IRS) require retention of shipping papers for three years or more for certain hazardous materials shippers and carriers. Since most companies (common carriers) already retain these records to meet these other Federal or State requirements, the current requirements incorporated into the HMR under HM–240, did not significantly impact their paperwork burden. Permanent shipping papers are authorized to reduce the burden on those entities that ship the same materials on a continuous basis.

Shipping papers and emergency response information are basic hazard communication tools relative to the transportation of hazardous materials. The definition of a shipping paper in § 171.8 of the HMR includes a shipping order, bill of lading, manifest, or other shipping document serving a similar purpose and containing the information required by §§ 172.202, 172.203, and 172.204. A shipping paper with emergency response information must accompany most hazardous materials shipments and be readily available at all times during transportation. It serves as the principal source of information regarding the presence of hazardous materials, identification, quantity, and emergency response procedures. Shipping papers also serve as the source of information for compliance with other requirements, such as the placement of rail cars containing different hazardous materials in trains, prevent the loading of poisons with foodstuffs, the separation of incompatible hazardous materials, and the limitation of radioactive materials that may be transported in a vehicle or aircraft. Shipping papers and emergency response information serve as a means of notifying transport workers that hazardous materials are present. Most importantly, shipping papers serve as a principal means of identifying hazardous materials during transportation emergencies. Firefighters, police, and other emergency response personnel are trained to obtain the DOT shipping papers and emergency response information when responding to hazardous materials transportation emergencies. The availability of accurate information concerning hazardous materials being transported significantly improves response efforts in these types of emergencies.

It is necessary that hazardous materials and emergency response information be displayed on shipping papers in a uniform manner to ensure accuracy and consistency. DOT regulations require that when hazardous materials and materials not subject to the HMR are described on the same shipping paper, the hazardous materials entries required by § 172.202 and those additional entries that may be required by § 172.203 must be entered first, or entered in a color that clearly contrasts with any description on the shipping paper of materials not subject to the requirements, or highlighted, or identified by the entry with an ''x'' in an HM column opposite the hazardous material entry. The subsidiary hazard class or subsidiary division number(s) must also be entered in parentheses following the primary hazard class or division number on shipping papers under § 172.202. In addition, the number and type of packagings must also be indicated on shipping papers such as drums, boxes, jerricans, etc. as part of the basic shipping description.

Affected Public: Shippers and carriers of hazardous materials in commerce.
Recordkeeping:
Number of Respondents: 250,000.
Total Annual Responses: 6,337,500.
Total Annual Burden Hours: 17,604.
Frequency of Collection: On occasion.

ADDRESSES: Send comments regarding the burden estimates, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for PHMSA, 725

17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on December 22, 2005.

Susan Gorsky,

Acting Director, Office of Hazardous Materials Standards.

[FR Doc. 05–24518 Filed 12–27–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34784]

Koch Forest Products, Inc. and Koch Industries, Inc.—Acquisition of Control Exemption—Gloster Southern Railroad Company and Blue Rapids Railway Company

Koch Industries, Inc. (Koch Industries), and its wholly owned subsidiary Koch Forest Products, Inc. (Koch Forest), both noncarriers (together, Applicants), have filed a verified notice of exemption to acquire control of the following two Class III railroads: (1) Gloster Southern Railroad Company (GSR) and Blue Rapids Railway Company (BRR).[1]

The transaction is expected to be consummated on or after December 15, 2005.

Koch Forest Products states that: (1) The rail lines operated by GSR, BRR and OAR do not connect with each other or any railroad in their corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34784, 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 David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 19, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–24403 Filed 12–27–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 435X); STB Docket No. AB–987X]

BNSF Railway Company—Abandonment Exemption—in Rock Island and Whiteside Counties, IL; Iowa, Chicago & Eastern Railroad Corporation—Discontinuance of Service Exemption—in Rock Island and Whiteside Counties, IL

BNSF Railway Company (BNSF) and Iowa, Chicago & Eastern Railroad Corporation (ICE) have jointly filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for BNSF to abandon, and for ICE to discontinue service over, approximately 5.09 miles of railroad between milepost 20.31 and milepost 25.40, near Albany, in Rock Island and Whiteside Counties, IL. The line traverses United States Postal Service Zip Codes 61230, 61242, and 61252.

BNSF and ICE have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on January 26, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 6, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 17, 2006, with: Surface Transportation

[1] 1 Koch Forest will acquire the two railroads pursuant to its acquiring all of the outstanding stock of Georgia-Pacific Corporation (Georgia-Pacific). Following this transaction, Koch Forest will be merged into Georgia-Pacific and Georgia-Pacific, GSR, and BRR will then become indirect wholly owned subsidiaries of Koch Industries. Koch Industries, through its wholly owned subsidiary Koch Cellulose, LLC, also controls the Old Augusta Railroad Company (OAR), a Class III railroad.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemptions' effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

Board, 1925 K Street, NW., Washington, DC 20423–0001.[3]

A copy of any petition filed with the Board should be sent to applicants' representatives: Michael Smith, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677, and Karl Morell, 1455 F Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemptions are void *ab initio*.

BNSF and ICE have filed environmental and historic reports which address the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 30, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by December 27, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 22, 2005.

By the Board,

David M. Konschnik,

Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–24558 Filed 12–27–05 8:45 am]

BILLING CODE 4915–01–P

[3] In response to the abandonment notice for the above-described rail line, the Village of Albany has filed requests for issuance of a public use condition under 49 U.S.C. 10905, and issuance of an interim trail use condition pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address both requests, and any others that may be timely filed, in a separate decision.

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the Fund), a bureau of the Department of the Treasury, is soliciting comments concerning the New Markets Tax Credit (NMTC) Program—Allocation Application.

DATES: Written comments should be received on or before February 27, 2006 to be assured of consideration.

ADDRESSES: Direct all comments to Matt Josephs, New Markets Tax Credit Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–8911.

FOR FURTHER INFORMATION CONTACT: The NMTC Allocation Application may be obtained from the Fund's Web site at *http://www.cdfifund.gov*. Requests for additional information should be directed to Matt Josephs, New Markets Tax Credit Program Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or by phone to (202) 622–7373.

SUPPLEMENTARY INFORMATION: *Title:* New Markets Tax Credit Program—Allocation Application.

OMB Number: 1559–0016.

Abstract: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC § 45D, New Markets Tax Credit. Pursuant to IRC § 45D, the Department of the Treasury, through the Fund, administers the NMTC Program, which will provide an incentive to investors in the form of tax credits over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities. In order to qualify for an allocation of tax credits under the NMTC Program, an entity must be certified as a qualified community development entity and submit an allocation application to the CDFI Fund. Upon receipt of such applications, the CDFI Fund will conduct a competitive review process to evaluate applications for the receipt of NMTC allocations.

Current Actions: Currently reviewing allocation applications.

Type of review: Extension.

Affected Public: Business or other for-profit institutions, not-for-profit institutions and State, local and Tribal entities.

Estimated Number of Respondents: 250.

Estimated Annual Time Per Respondent: 175 hours.

Estimated Total Annual Burden Hours: 43,750 hours.

Requests For Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: Consolidated Appropriations Act of 2001, Pub. L. 106–554; 31 U.S.C. 321.

Dated: December 20, 2005.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. E5–7901 Filed 12–27–05; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0132]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 27, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0132.'' Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0132'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veteran's Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant (Title 38 U.S.C. 2101(a) or 251001(b)), VA Form 26–4555.

OMB Control Number: 2900–0132.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans with service-connected disability complete VA form 26–4555 to apply for assistance in acquiring specially adapted housing or a special home adaptation grant. VA uses the data collected to determine the veteran's eligibility.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 12, 2005 at pages 59398–59399.

Affected Public: Individuals or households.

Estimated Annual Burden: 500 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,000.

Dated: December 15, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–7874 Filed 12–27–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0630]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 27, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6590 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0630.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0630'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Regulation on Application for Fisher Houses and Other Temporary Lodging, VA Form 10–0408.

OMB Control Number: 2900–0630.

Type of Review: Extension of a currently approved collection.

Abstract: VA provides temporary lodging to veterans receiving VA medical care or Compensation and Pension examinations and to family members or other persons accompanying the veteran. Claimants may apply for temporary lodging by letter, e-mail, facsimile, telephone, or in person at the VA healthcare facility of jurisdiction. VA Form 10–0408 is used to determine claimant's eligibility for temporary lodging.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 3, 2005, at page 57649.

Affected Public: Individuals or Households.

Estimated Total Annual Burden: 83,333 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Semi-Annual.

Estimated Number of Respondents: 250,000.

Estimated Total Number of Respondents: 500,000.

Dated: December 16, 2005.

By direction of the Secretary.

Denis McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–7877 Filed 12–27–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0321]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to

publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether claimant appointed a veterans service organization or an individual to prosecute their VA claims.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 27, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0321'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Appointment of Veterans Service Organization as Claimant's Representative, VA Form 21–22 and Appointment of Individual as Claimant's Representative, VA Form 21–22a.

OMB Control Number: 2900–0321.

Type of Review: Extension of a currently approved collection.

Abstract: Beneficiaries complete VA Forms 21–22 and 21–22a to appoint a veterans service organization or an individual to prepare, present, and prosecute their claim for VA benefits. Beneficiaries also use the forms to authorize VA to release their records and forward correspondence on their behalf to the representative appointed.

Affected Public: Individuals or households.

Estimated Annual Burden: 28,683 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 331,400.

Dated: December 14, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–7878 Filed 12–27–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0565]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a State's eligibility for plot or interment allowances.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 27, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0565'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: State Application for Interment Allowance Under 38 U.S.C., Chapter 23, VA Form 21–530a.

OMB Control Number: 2900–0565.

Type of Review: Extension of a previously approved collection.

Abstract: Cemetery state officials' complete VA Form 21–530a to request allowances for plot or interment for veterans interred at a State-owned cemetery. VA uses the data collected to determine the veteran's eligibility for burial benefits.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 3,100 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,500.

Dated: December 16, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–7879 Filed 12–27–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 70, No. 248

Wednesday, December 28, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan and Environmental Assessment for Shawangunk Grasslands National Wildlife Refuge

Correction

This document originally appeared in the issue of Monday, December 5, 2005 at FR 72463-72464. In correction document C5–23642 appearing on page 75544 in the issue of Tuesday, December 20, 2005, make the following correction:

On page 75544, in the third column, in the second paragraph, in the fourth and sixth lines, the email address is corrected to read as follows: ''northeastplanning@fws.gov''.

[FR Doc. C5–23642 Filed 12–27–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
December 28, 2005

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0058; FRL–8011–5]

RIN 2060–AM97

National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, amendments; notice of final action on reconsideration.

SUMMARY: EPA is promulgating amendments to the national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters which EPA promulgated on September 13, 2004. After promulgation of the final rule for boilers and process heaters, the Administrator received petitions for reconsideration of certain provisions in the final rule. On July 27, 2005, EPA published a notice of reconsideration and requested public comment on certain aspects of the health-based compliance alternatives, as outlined in 40 CFR 63.7507 and appendix A to the final rule (40 CFR part 63, subpart DDDDD). After evaluating public comment on the notice of reconsideration, we are retaining the health-based compliance alternatives in the final rule in substantially the same form. However, we are making a limited number of amendments to 40 CFR 63.7507 and appendix A to the final rule to improve and clarify the process for demonstrating eligibility to comply with the health-based compliance alternatives contained in the final rule.

DATES: The final rule amendments are effective on February 27, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–OAR–2002–0058. All documents in the docket are listed in on the *www.regulations.gov* Web site. 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 information, such as copyrighted materials, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy form at the Air and Radiation Docket, Docket ID No. EPA–OAR–2002–0058, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local representative or appropriate EPA Regional Office representative. For information concerning rule development, contact Jim Eddinger, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5426, fax number (919) 541–5450, e-mail address: *eddinger.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include:

Category	SIC code	NAICS code	Examples of potentially regulated entities
Any industry using a boiler or process heater in the final rule.	24	321	Manufacturers of lumber and wood products.
	26	322	Pulp and paper mills.
	28	325	Chemical manufacturers.
	29	324	Petroleum refiners and manufacturers of coal products.
	30	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	33	331	Steel works, blast furnaces.
	34	332	Electroplating, plating, polishing, anodizing, and coloring.
	37	336	Manufacturers of motor vehicle parts and accessories.
	49	221	Electric, gas, and sanitary services.
	80	622	Health services.
	82	611	Educational Services.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final rule amendments to the NESHAP is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by February 27, 2006. Only those objections that were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of the final rule amendments may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Background Information Document. EPA proposed and provided notice of the reconsideration of the NESHAP for industrial, commercial, and institutional boilers and process heaters on June 27, 2005 (70 FR 36907), and received 35 comment letters on the proposal. A memorandum ''National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, Summary of Public Comments and Responses to Reconsideration of the Final Rule,'' containing EPA's responses to each public comment is available in Docket No. OAR–2002–0058.

Organization of this document: The information presented in this preamble is organized as follows:

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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 and Advancement Act
J. Congressional Review Act

I. What is the statutory authority for the final rule?

Section 112 of the Clean Air Act (CAA) requires EPA to list categories and subcategories of major sources and area sources of hazardous air pollutants (HAP) and to establish NESHAP for the listed source categories and subcategories. Industrial, commercial and institutional boilers (ICI), and process heaters were listed on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tons per year (tpy) of any one HAP or 25 tpy of any combination of HAP.

II. Background

On September 13, 2004 (69 FR 55218), we promulgated the NESHAP for ICI boilers and process heaters pursuant to section 112 of the CAA. Under section 112(d) of the CAA, the NESHAP must reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as maximum achievable control technology (MACT). However, section 112(d)(4) of the CAA also states that ''[w]ith respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emissions standards under this subsection.''

We proposed standards for ICI boilers and process heaters on January 13, 2003 (68 FR 16660). The preamble for the proposed rule described the rationale for the proposed rule and solicited public comments. We requested comment on incorporating various risk-based approaches (based on section 112(d)(4) and other provisions of the CAA) into the final rule to reduce the cost of regulatory controls on those facilities that pose little risk to public health and the environment. (See 68 FR 1688–1693.) Industry trade associations, owners/operators of boilers and process heaters, State regulatory agencies, local government agencies, and environmental groups submitted comments on the proposed risk-based approaches. We received a total of 218 public comment letters on the proposed rule during the comment period. We summarized major public comments on the proposed risk-based approaches, along with our responses to those comments, in the preamble to the final rule (69 FR 55239) and in the comment response memorandum, ''Response to Public Comments on Proposed Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP (Revised)'' which was placed in the docket for the final rule.

In the final rule, we adopted health-based compliance alternatives for the hydrogen chloride (HCl) emission limit and the total selected metals (TSM) emission limit, based on our authority under section 112(d)(4) of the CAA. Affected sources that successfully demonstrate that they are eligible for the HCl health-based compliance alternative are not required to demonstrate compliance with specific HCl emissions limits in table 1 to the final rule, but are still subject to operating and monitoring requirements in the final rule (subpart DDDDD of 40 CFR part 63). Affected sources that demonstrate eligibility for the health-based compliance alternative for TSM are still subject to a technology-based (MACT) TSM emission limit and operating and monitoring requirements in the final rule (subpart DDDDD of 40 CFR part 63) except that they may demonstrate compliance with this TSM emission limit based on the sum of emissions for seven metals, instead of the eight selected metals, by excluding manganese emissions.

The methodology and criteria for affected sources to use in demonstrating eligibility for the health-based compliance alternatives were promulgated in appendix A to subpart DDDDD of 40 CFR part 63. (See 69 FR 55282.) Appendix A specifies the process units and pollutants that must be included in the eligibility demonstration, the emissions testing methods, the criteria for determining if an affected source is eligible, the risk assessment methodology (look-up table analysis or site-specific risk analysis), the contents of the eligibility demonstration, the schedule for submission of the self-certified eligibility demonstrations, and the methods for ensuring that an affected source remains eligible. For an affected source to be eligible for the health-based compliance alternatives, the owner/operator of the source must conduct a risk assessment, as described in appendix A to the final rule, and submit the risk assessment, also called the eligibility demonstration, to the permitting authority along with a signed certification that the assessment is an accurate depiction of the affected facility. To ensure the source remains eligible, federally enforceable limits reflecting the parameters used in the eligibility demonstration must be incorporated into its title V permit.

Following promulgation of the final rule, the Administrator received petitions for reconsideration pursuant to section 307(d)(7)(B) of the CAA from the Natural Resources Defense Council (NRDC), Environmental Integrity Project (EIP), and General Electric (GE).[1] Under this provision, the Administrator is to initiate reconsideration proceedings if the petitioner can show that it was impracticable to raise an objection to a rule within the public comment period

[1] In addition to the petitions for reconsideration, two petitions for judicial review of the final rule were filed with the U.S. Court of Appeals for the District of Columbia by NRDC, Sierra Club, and EIP (No. 04–1385, D.C. Cir.) and American Municipal Power—Ohio and Ohio cities of Dover, Hamilton, Orrville, Painesville, Shelby, and St. Marys (No. 04–1386, D.C. Cir.). The two cases have been consolidated. Eleven additional parties have filed petitions to intervene: American Home Furnishings Alliance, Council of Industrial Boiler Owners, American Forest and Paper Association, American Chemistry Council, National Petrochemical and Refiners Association, American Petroleum Institute, National Oilseed Processors Association, Coke Oven Environmental Task Force, Utility Air Regulatory Group, and Alliance of Automobile Manufacturers are intervening with regard to the health-based compliance alternatives.

or that the grounds for the objection arose after the public comment period.

NRDC and EIP initially requested that EPA reconsider seven issues reflected in the final rule that they believe could not have been practicably addressed during the public comment period. EIP also filed a supplement to this petition which raised additional issues for reconsideration. Together, NRDC and EIP requested reconsideration of the following issues: (1) The adoption of ''no control'' MACT floors for certain subcategories and pollutants; (2) establishing risk-based alternatives on a plant-by-plant basis; (3) the existence of health thresholds for HCl and manganese; (4) consideration of background pollution and co-located emission sources; (5) establishing a health-based compliance alternative for a pollutant (HCl) that serves as a surrogate for other inorganic pollutants; (6) promulgating a health-based compliance alternative that allows low risk sources of manganese emissions to comply with the MACT limitations for metals without counting manganese; (7) the procedures for demonstrating compliance with the health-based alternatives; (8) consideration of emissions during periods of startup, shutdown, malfunction and, (9) the cost effectiveness of the health-based alternatives. The NRDC and EIP petition also requested that EPA stay the effectiveness of the health-based compliance alternatives pending reconsideration. By letters dated January 28, 2005, we informed NRDC and EIP that we intended to grant their joint petition for reconsideration.

On June 27, 2005, we decided to reconsider (70 FR 36907) several of the issues raised in the NRDC and EIP petition pertaining to certain provisions of the health-based compliance alternatives in appendix A to the final rule. We denied the petitioners' request to stay because in this case, a stay was not necessary to protect the public health or provide a more adequate timeline for compliance planning. We are continuing to review the issue raised by GE with respect to the emissions averaging provision of the final rule and published proposed action on that petition on October 31, 2005 (70 FR 62264).[2]

In the June 27, 2005, notice of reconsideration, we specifically solicited comment in the following eight areas: (1) The methodology and criteria for demonstrating eligibility for the health-based compliance alternatives; (2) the use of a tiered analysis in appendix A to the final rule and the application of the principles set forth in the 1994 National Academy of Sciences report, ''Science and Judgment in Risk Assessment'' (in response to the concerns expressed by the petitioners, we entered this document into the public docket for review); (3) the methodology used to develop the look-up tables including average stack heights, the use of conservative assumptions to account for other variables such as meteorology, and the derivation of different look-up table values based on the distance from the property line; (4) the approach for conducting a site-specific risk assessment and the criteria set forth in section 7 of appendix A to the final rule; (5) the approach for selecting a hazard index (HI) and hazard quotient (HQ) applicability cutoff value of 1.0, exclusive of background or co-located emissions, and the deferral of further consideration of background and co-located sources until we assess facility-wide emissions of HAP in future residual risk actions; (6) the appropriateness of adopting a health-based compliance alternative for manganese and using the same TSM emission limit in table 1 to subpart DDDDD of 40 CFR part 63 as a limitation for seven metals, while excluding manganese from the calculation; (7) whether we should or should not extend the deadline for submission of eligibility demonstrations in light of this reconsidered action; and (8) proposed corrections regarding the scope sources that are able to demonstrate eligibility for the health-based compliance alternatives. The responses to the significant comments received on these eight areas are discussed later in this preamble. A comprehensive response to public comments is also available in a document entitled ''National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, Summary of Public Comments and Responses to Reconsideration of the Final Rule,'' which can be found in the docket for this action (Docket No. OAR–2002–0058).

III. What revisions were made as a result of the reconsideration?

We are making a limited number of amendments to 40 CFR 63.7507 and appendix A to the final rule to improve and clarify the process for demonstrating eligibility to comply with the health-based alternatives contained in the final rule. Overall, however, we are retaining the health-based compliance alternatives in substantially the same form.

A. Adoption of a Weighted Average Stack Height Metric for Appendix A to the Final Rule

Sections 4 and 6 of appendix A to the final rule have been modified to incorporate procedures for calculating a weighted average stack height metric for use in a look-up table analysis. Equation 3 was added to section 6 to calculate a weighted average stack height for determining the maximum allowable HCl-equivalent emission rate in table 2 to the final rule. Equation 4 was also added to section 6 to calculate a weighted average stack height for determining the maximum allowable manganese emission rate in table 3 to the final rule.

The amendments made to incorporate the weighted average stack height metric also required conforming modifications to the format of equations 1 and 2 of appendix A to the final rule. Equation 1 in section 4 of appendix A was amended to clarify the calculation of the maximum hourly emissions.

B. Correction Regarding Sources That May Demonstrate Eligibility for Health-Based Compliance Alternatives

We revised the text of 40 CFR 63.7507(a) and the title of appendix A to the final rule to clarify that all subpart DDDDD, 40 CFR part 63, sources subject to HCl and TSM emission limits may demonstrate eligibility for the health-based compliance alternatives, not just large solid fuel-fired units.

C. Review of Eligibility Demonstrations by Permitting Agencies

Sections 10 and 11 of appendix A to the final rule have been amended to explicitly state that eligibility demonstrations may be reviewed by permitting agencies (i.e., EPA or any State, local, or tribal agency that has been delegated title V permitting authority) to verify that they meet the requirements of appendix A and are technically sound. To accommodate this addition and to clarify appendix A, we also moved some of the provisions in sections 9 and 10 of appendix A to different sections.

We also amended section 6 of appendix A to the final rule to clarify that a look-up table analysis may not be used for the eligibility demonstration if the permitting authority determines it is not appropriate based on site specific factors. A site specific analysis under section 7 of appendix A would be required in these circumstances.

[2] GE requested reconsideration of the emissions averaging provisions of the final rule to address how this provision might apply in the context of emissions units that vent to a single stack.

D. Clarification of Eligibility Criteria

With respect to site-specific compliance demonstration, we revised sections 5(c)(2) and (d)(2) of appendix A to the final rule to clarify the locations where hazards must be assessed. The phrase ''where people live'' has been changed to indicate that hazards must be assessed where people live or congregate (e.g., including locations such as schools or daycare centers). We also reworded other parts of these two paragraphs to better express our original intent.

E. Timeline for New or Reconstructed Sources To Submit Preliminary Submission of Eligibility

We amended section 9(c)(1) of appendix A to the final rule to specify when new or reconstructed sources that start up after the effective date of subpart DDDDD, 40 CFR part 63, must submit a preliminary eligibility demonstration. New or reconstructed sources must submit this preliminary eligibility demonstration at the same time that the source submits an application for approval of construction or reconstruction.

F. Requirement for Title V Permit Conditions

In conjunction with other revisions to section 10 of appendix A to the final rule discussed above, we moved the existing requirement that sources submit certain parameters for incorporation into a title V permit into section 8 to appendix A to the final rule and clarified that the proposed permit conditions must be submitted at the same time as the rest of the eligibility demonstration. Section 8, which addresses the contents of the eligibility demonstration, is a more natural and logical place to include this requirement. We also expanded the list of parameters that should be considered for inclusion as enforceable permit limits.

G. Health-Based Alternative for Manganese Emissions and Total Selected Metals Standard

We are retaining the health-based compliance alternative to the TSM standard for sources that can demonstrate eligibility based on emissions of manganese. However, we are modifying the language in 40 CFR 63.7507(b) and related parts of appendix A to the final rule slightly to clarify that eligible sources are subject to two alternative requirements—one is the health-based compliance alternative for manganese emissions in appendix A and the other is an alternative MACT emissions limitations for seven selected metals set forth in 40 CFR 63.7507(b).

With respect to manganese emissions, an eligible source must satisfy the requirements of appendix A to the final rule, which include the requirement to submit, for incorporation as conditions in the title V permit, the parameters that make the affected source eligible for the health-based alternative. Compliance with these and other appendix A requirements for manganese represents compliance with the health-based alternative for these manganese emissions.

However, the remaining seven metals that are covered by the technology-based TSM standard must continue to meet a technology-based standard based on MACT. Thus, we are retaining the existing requirement that eligible sources comply with the TSM limit in table 1 to the final rule based on the sum of seven metals rather than eight. Using the same methodology we used to develop the TSM MACT limitation for eight metals, we derived an alternative MACT limitation for seven metals for the final rule promulgated on September 13, 2004. This alternative applies only to those sources that demonstrate eligibility for the health-based alternative for manganese emissions. Because our MACT methodology yielded the same MACT standard for both seven and eight metals, we expressed the alternative MACT standard for seven metals as a requirement to comply with the standard in table 1 based on the sum of seven metals instead of repeating the numerical standard in 40 CFR 63.7507(b).

We explain our basis for these revisions further below in response to individual comments.

IV. What are the responses to significant comments?

We received 35 public comment letters on the proposed rule and notice of reconsideration. Complete summaries of all the comments and EPA responses are found in the Response-to-Comments document (see **SUPPLEMENTARY INFORMATION** section). The most significant comments are summarized below.

A. Methodology and Criteria for Demonstrating Eligibility for the Health-Based Compliance Alternatives

Comment: Two commenters suggested that EPA provide for flexibility and engineering judgment by allowing an applicability cutoff HI or HQ of greater than 1.0 in individual situations. One commenter stated that a value of 1.0 is the most stringent margin of safety required and the Agency could use a HI greater than 1.0 in certain cases. The commenter added that no additional margin of safety is required because the Reference Concentration (RfC) calculation contains many layers of protection, including safety factors to account for uncertainty.

One commenter suggested the use of an applicability cutoff HI or HQ value of at most 0.5 in order to account for cumulative and persistent risk.

Response: We disagree that an HI or HQ value other than 1.0 should be used as an applicability cutoff value for the health-based compliance alternatives. HI and HQ values are based on peer reviewed reference values such as EPA's reference concentrations (RfC). An RfC is an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure or a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious non-cancer effects during a lifetime. An HI or HQ less than or equal to 1.0 means that the concentration of the pollutant (in air) is less than or equal to the reference value, and, therefore, is presumed to be without appreciable risk of adverse health effects.

As mentioned by commenters, RfC values contain uncertainty factors in order to account for scientific uncertainties that are identified in the literature. We acknowledge that EPA can consider the uncertainty inherent in these reference values when making risk-based determinations. For the health-based compliance alternatives in this rule, using an HI and HQ of 1.0 as a health-protective default is appropriate and, along with the risk assessment methods specified in appendix A to the final rule, protects public health with an ample margin of safety as required by CAA section 112(d)(4).

Comment: One commenter did not support the use of a HI less than or equal to 1.0 as the applicability cutoff value for determining eligibility with the HCl health-based compliance alternative. The commenter asserted that the HI should be changed to less than 10 but greater than 1.0 due to the additive effect of several health protective factors used for deriving the HCl HI value. Specifically, the commenter highlighted that it is overly conservative to apply the chlorine RfC to evaluate the exposure to chlorine. The commenter added that chlorine reacts in the atmosphere to form HCl, and the commenter requested EPA to evaluate the exposure to chlorine using

the equivalent amount of HCl formed in the atmospheric reactions.

Response: As we argue above, we disagree that an HI or HQ value other than 1.0 should be used as an applicability cutoff value for the health-based compliance alternatives. An HI of 1.0 corresponds to a level of pollutant exposure that is unlikely to result in adverse health effects over a lifetime. We acknowledge that EPA can consider the uncertainty inherent in reference values when making risk-based determinations. However, for the health-based compliance alternatives, using an HI and HQ of 1.0 as a health-protective default is appropriate and helps protect public health with an ample margin of safety.

Additionally, as stated above, we believe that it is appropriate to apply our risk assessment methodology to the health-based alternative compliance options in the final rule. This methodology includes calculating hazard to the individual most exposed to pollutant emissions from the source, which helps ensure that public health is protected with an ample margin of safety.

We also disagree with the commenter's suggestion to account for atmospheric reactions of chlorine to form HCl. Impacts from chlorine can occur shortly after release if a population lives near an emission point. Chlorine has a lower reference value than HCl. Thus, we make the health-protective assumption that people are exposed to chlorine emitted from the source prior to any conversion into the less potent HCl. This approach, along with the other requirements of appendix A to the final rule, helps ensure that public health is protected with an ample margin of safety.

B. Tiered Risk Assessment Methodology

Comment: Multiple commenters supported the flexibility and efficiency of a tiered risk assessment methodology, and these commenters stated that the methodology set forth in appendix A to the final rule provided an appropriate balance of conservatism and accuracy to protect the public health with an ample margin of safety. One commenter added that the tiered approach provides a simple, conservative first tier analysis that companies can achieve without hiring an outside consultant to demonstrate compliance with the health-based compliance alternative. This commenter also feels it is necessary to allow facilities to conduct site-specific analyses in tandem with the look-up analysis so that facilities can still demonstrate compliance with the health-based alternatives in the event that the source fails the look-up analysis. Other commenters added that a tiered approach is less arbitrary than a control-based standard, which requires equivalent controls across the board, without considering the risk of an affected source.

Response: We agree with the flexible, efficient, and health-protective nature of a two-tiered risk approach. We concluded that a tiered risk approach is consistent with both the commenters' support for an approach that minimizes the impact on low-risk facilities and EPA's statutory mandate under CAA section 112.

C. Look-up Tables

Comment: Several commenters disagreed with use of the look-up tables because they believe there is an insufficient level of conservatism inherent in the look-up tables during worse-case scenarios. These commenters emphasized that if the look-up tables remained as a result of the reconsideration, the look-up tables should not be used when unique site-specific factors such as building downwash, rain caps, or complex terrain occur, because these factors are not accounted for in the look-up tables. One commenter requested that EPA clarify that sources must comply with the MACT standard in the event that a permitting agency rejects the use of look-up table analysis for demonstrating eligibility with the health-based compliance alternative.

Response: We continue to believe that the look-up tables can provide an efficient and cost-effective method for sources to comply with the health-based alternative compliance options while also protecting the public health with an ample margin of safety. However, we agree that the protective measures inherent in the look-up tables do not necessarily justify their use in all cases. We developed the look up tables by running the SCREEN3 atmospheric dispersion model with worst-case meteorology defaults, an assumption of flat terrain, an assumption that building downwash effects are not present, and an assumption that the plume does not encounter a raincap or other obstruction. As several commenters identified, we recognize that site-specific factors not accounted for in the SCREEN3 dispersion modeling, such as building downwash, the presence of rain caps, and complex terrain, could make the use of the tables inappropriate for some sources. Therefore, we agree with limiting the use of the look-up tables to those situations where the tables can conservatively represent actual site conditions. In order to prevent the misuse of look-up tables, we are adding language in section 6 of appendix A to the final rule to clarify that, although the lookup tables are presumed to be applicable in each case, permit agencies have the authority to determine on a site-specific basis, that look-up tables may not be used if unique site-specific factors, for which the look-up tables do not account, make their use inappropriate. In such situations, a source would have to demonstrate eligibility using a site-specific risk assessment that does account for these unique factors. If a source is unable to make this demonstration (e.g. if a permitting authority ultimately finds the eligibility demonstration deficient on technical grounds), the source must then comply with the technology-based standards in the NESHAP.

Comment: Three commenters suggested alternatives to the average stack height metric. One commenter proposed an alternate method of four stack height ranges which is currently used in the State's hazardous air pollutant rule. Two commenters requested EPA to consider weighted stack heights and cited the use of a weighted stack height metric in the proposed amendments to the plywood NESHAP. The commenters suggested the weighted stack height more accurately portrays the potential risk than the average stack height metric.

Four commenters expressed concern with the appropriateness and accuracy of using the average stack height metric in the look-up tables. Three of these commenters suggested limiting the use of the look-up tables to facilities with similar stack heights to those assumed in the model.

One commenter disagreed with the use of the average stack height, contending that this approach understates risk and that EPA lacked a justification and documentation on how the EPA chose this metric. According to this commenter, risk is understated when a calculation averages the shortest, most-highly polluting stack located closest to neighboring populations with another emission point that is taller, cleaner, and farther away. The commenter also contended that there is no documentation of the analysis or data at any step of the final rulemaking, including this action, which supports the development of the average stack height metric that would enable a member of the public to evaluate EPA's methodology.

Response: We agree that the average stack height is not the best metric for characterizing risk, and that a more precise approach is the weighted stack

height metric proposed in the Plywood NESHAP amendments. We are changing the stack height metric in the boilers and process heaters rule by adding two equations to appendix A to the final rule, similar to the approach used for equations 3 and 4 listed in appendix B of 40 CFR part 63, subpart DDDD. Equations 1 and 2 of appendix A of 40 CFR part 63, subpart DDDDD, will also be modified to harmonize the existing calculations of appendix A with the new weighted stack height metric. The complete rationale for selecting the weighted stack height metric can be found in the amendments to the plywood NESHAP (70 FR 44021).

There are situations where the average stack height is health protective, (e.g. when most emissions are from the tallest stacks) and situations where the average stack height metric is not health protective, (e.g., when most emissions are from the shortest stacks). The toxicity- and emissions-weighted stack height, which we are incorporating into appendix A to the final rule, is more health protective when most emissions are from the shortest stacks. Further, using this more precise method does not undercut our reliance on health-protective assumptions in the look-up table analysis when most of the emissions come from taller stacks.

Comment: Several commenters suggested that the use of the minimum distance to property boundary metric is overly conservative. Two commenters requested EPA to allow a weighted average for the distance to property boundary when there are multiple emission units. These two commenters argued that this metric would portray more accurate estimates of the potential risk from facilities.

One commenter requested that the modeling protocol for HAP should be consistent with the modeling protocols for criteria pollutants under the PSD protocols found at 40 CFR part 51, appendix W. The commenter expressed concern that the current use of minimum property distance may not be the point of maximum impact.

Response: We disagree with changing the minimum distance to property boundary. We recognize that the minimum distance to property boundary may overestimate the ambient concentration and exposure; however, we emphasize the health-protective nature of the look-up tables and do not believe that it is appropriate to change this metric towards one that would be uniformly less health-protective.

It is incorrect to assert that, when performing a look-up table analysis, the minimum distance to the property boundary may not be the point of maximum impact. For the look-up tables, we developed the allowable emission rate for each property boundary distance from the maximum modeled HAP concentrations beyond that property boundary. As a result, a look-up table analysis necessarily considers the point of maximum pollutant impact outside the source's property boundary. This is consistent with appendix W of 40 CFR part 51.

D. Site-Specific Risk Assessment

Comment: Several commenters disagreed with the level of guidance EPA provided for conducting a site-specific assessment. Three of these commenters added that there is a lack of basic methods or required parameters, such as the years of exposure to an individual which might lead to basing a risk assessment on a 1-year exposure instead of the traditional lifetime exposure. One commenter stated that while EPA has provided some guidance on performing site-specific assessments, EPA has a responsibility to develop constraints on the sources' discretion. The commenter contended that the lack of constraint included in the final rule does not provide specific, knowable, replicable, and enforceable legal standards necessary to govern and enforce the final rule. The commenter added that the loose guidance provided for in selecting a site-specific assessments can be interpreted as unlimited discretion for the affected source, and thus prevent any future efforts for administrative challenge.

Response: We believe that providing sources with the discretion to use any ''scientifically-accepted, peer-reviewed risk assessment methodology'' is appropriate. However, contrary to the assertions of some commenters, this discretion is not unlimited. In section 7(c) of appendix A to the final rule, EPA has established specific minimum criteria for site-specific compliance demonstrations. In order to demonstrate eligibility for the health-based compliance alternative, the site-specific risk assessment conducted by the facility must meet the following criteria: (1) Estimate long-term inhalation exposures through the estimation of annual or multi-year average ambient concentrations; (2) estimate the inhalation exposure for the individual most exposed to the facility's emissions; (3) use site-specific, quality-assured data wherever possible; (4) use health-protective default assumptions wherever site-specific data are not available; and (5) contain adequate documentation of the data and methods used.

Furthermore, EPA cited the Air Toxics Risk Assessment (ATRA) Reference Library to provide guidance to the sources and States on developing technically sound site-specific risk assessments. The ATRA Reference Library provides examples of how a risk assessment can be conducted. These examples include instruction in basic risk assessment methodology, in determining what parameters to include in a risk assessment, and in the constraints that should be placed on those parameters. The documents within the ATRA Reference Library have been peer-reviewed and were developed according to the principles, tools and methods outlined in the 1999 EPA Residual Risk Report to Congress. However, the guidance in the ATRA Reference Library may not be appropriate for all sources. For that reason sources may consider alternative analytical tools as long as these alternatives are scientifically defensible, peer-reviewed and transparent.

Finally, the discretion of each source is not unlimited because permitting agencies have the authority to review each site-specific eligibility demonstration to determine if it meets the requirements in section 7(c) of appendix A to the final rule and if the methodology, as applied in the demonstration of eligibility, is technically sound and appropriate. After reviewing a source's compliance demonstration, the permitting authority makes the final determination of whether site-specific assessments are completely and correctly submitted. These authorities may reject site-specific assessments if they do not meet the requirements of section 7 of appendix A or if they contain technical flaws with respect to the risk assessment methodology. Thus, it may be advisable for sources to seek prior approval when using a methodology that deviates from the approach in the ATRA Reference Library. However, we do not feel that it is necessary to require this prior approval.

E. Background Concentrations and Emissions From Other Sources

Comment: Multiple commenters disagreed with EPA's decision not to include background or co-located emissions when determining whether or not a facility qualifies for the health-based compliance alternative standards in the final rule. Several commenters stated that when evaluating whether or not a facility is eligible to comply with the health-based compliance alternatives, the background or co-located emissions should be included in the risk determination.

Several of the commenters that opposed consideration of emissions from background or co-located sources argued that the statutory language in CAA section 112(d) does not provide EPA with the legal authority to consider emissions from other source categories. Many of these commenters also provided counter-examples of sections of the CAA where the Congressional intent was focused on including background or co-located emissions. Several commenters added that background or co-located emissions do not fall into a source category or subcategory of major sources listed for regulation. Two commenters stated that there is no precedent for the consideration of background or co-located emissions during the promulgation of the benzene NESHAP or during the litigation of the vinyl chloride NESHAP.

Three commenters cited a 1990 Senate Report, and concluded that the consideration of background or co-located emission sources would be the kind of lengthy study Congress intended to avoid. Two commenters cited risk documents from the Presidential/Congressional Commission on Risk Assessment and Risk Management, and a paper written by the Residual Risk Coalition to support their position on excluding background and co-located emission sources when evaluating whether or not a facility qualifies for the health-based alternative standard in appendix A to the final rule.

One commenter argued that the public health is most protected when regulations are specific to a source category and provided examples of how the different provisions of the CAA account for different sources of HAP. The commenter added that the consideration of background emissions would over-regulate the affected source category and effectively require certain sources to compensate for other sources of HAP.

Two of the commenters that supported considering emissions from background and co-located sources contended that the major source status is based on facility-wide emissions and limiting the risk analysis to certain sources within the facility presents an unrealistic view of the facility's impact. One commenter added that EPA must meet its duty of providing for an ''ample margin of safety'' by evaluating the risk of background emissions now as opposed to during the residual risk evaluation. One commenter stated that risk assessment should be done in the context of all HAP sources at the facility and at nearby facilities. One of these commenters disagreed with the health-based compliance alternative for metals because it does not adjust for facility-wide emissions

Three commenters cited the 1996 National Air Toxics Assessment (NATA) for support of the concern of high exposures to air toxics throughout the country and stated a reduction in such exposures will require a general reduction across all sources. These commenters expressed concern that excluding background or co-located emissions ignore cumulative risk and do not protect the public health.

One commenter contended that the tiered risk approach used at this State level correctly considers background emissions, in contrast to the exclusion of these background emissions in the final NESHAP. The commenter added that by excluding these background sources, the final MACT rule identifies low-risk subcategories based on an unrealistic view of the facility impact. The commenter also concluded that the refined site-specific risk screening provides no real measure of health impact without including background or co-located emission sources.

Response: Based on the arguments made by several commenters and our review of the CAA, we believe it is permissible under CAA section 112(d) to limit our analysis to establishing emissions limitations for only those sources in the individual source categories subject to this action. Therefore, in developing emissions limitations under section 112(d), we believe emissions from sources outside of this source category need not be considered to determine eligibility for the health based compliance alternatives for ICI boilers and process heaters. Although we may combine several source categories into one NESHAP rulemaking as we did in this action, we do not construe the CAA to require that we regulate the emissions from all other source categories through an individual section 112(d) rule for particular source categories.

The focus of section 112(d) of the CAA is on establishing emission standards for individual source categories. Section 112(d)(1) indicates that the administrator is to ''promulgate regulations establishing emission standards for each category or subcategory of major sources and area source of hazardous air pollutants listed for regulation pursuant to subsection (c) of this section in accordance with the schedule provided in subsections (c) and (e) of this section.'' The health-based compliance alternatives are included among the emissions standards we have established for ICI boilers and process heaters under section 112(d). Section 112(d)(4) states that ''the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.'' The subsection described in this provision of the statute is CAA subsection 112(d). Since the ''ample margin of safety'' provision is also contained within section 112(d), we do not interpret this part of the CAA to require that we consider emissions from other source categories in establishing a health-based alternative under section 112(d)(4) for one category of sources. Based on the overall focus of section 112(d) on sources in specific categories, we believe the ''ample margin of safety'' criteria should be applied to the emissions of threshold pollutants from the individual source category subject to each NESHAP rulemaking.

We agree with several commenters that the legislative history supports this view that Congress intended for EPA to focus only on the emissions from sources within a particular category when establishing health-based standards for a particular source category under CAA section 112(d)(4). The Senate Report stated that the following:

> The Administrator is authorized by section 112(d)(4) to use the no observable effects or NOEL (again with an ample margin of safety) as the emissions limitation in lieu of more stringent ''best technology'' requirements. Following this scenario, only those sources in the category which present a risk to public health (those emitting in amounts greater than the safety threshold) would be required to install controls, even though the general policy is ''maximum achievable technology'' everywhere.

This statement suggests an intent for EPA to address only whether ''sources in the category'' present a risk to public health when EPA is determining whether individual sources in the category should have to comply with a technology-based emissions limitation or may avoid installation of controls by demonstrating that the emissions from a source do not present risks greater than an established health threshold.

Thus, we believe it is permissible to conclude that the facility-wide impact is not the focus of the analysis in the development of a CAA section 112(d) rule. Under our interpretation, the appropriate analysis under the CAA is whether the emissions of sources in the applicable category (without consideration of emissions from sources in other categories) are below the health threshold. Under the eligibility demonstration methodology set forth in appendix A of subpart DDDDD of 40 CFR part 63, a source must demonstrate

eligibility based on the emissions from all units in the ICI boilers and process heaters source category. Because all emissions units in the category are covered, any background emissions or emissions from other sources at a particular location would have to be emissions from sources in other categories or emissions that occur naturally.

We do not read CAA section 112(d) to require us to use emissions from sources outside the category to establish health-based alternatives for sources in the ICI boilers category. Likewise, we do not believe eligibility for health-based alternative should be determined by using a sum of emissions from all source categories or by lowering the health threshold for emissions from one source category to account for emissions from other source categories. We believe we should concentrate on only the emissions from each source category to establish health-based emissions limitations for that category and in determining whether sources in that category are eligible to comply with a health-based emissions limitation or must meet a technology-based emissions limitation.

Although a particular facility may be identified as a major source of HAP for purposes of CAA section 112 on the basis of emissions from affected sources in multiple source categories, this does not require that we establish eligibility for a health-based emissions limitation in a particular source category based on emissions from co-located sources outside the category. Emissions units in other source categories located at the same major source site remain subject to the technology-based emissions limitations contained in other NESHAP rulemaking promulgated under section 112(d). The sources covered by these NESHAP rules are not eligible to comply with the health-based alternatives in the ICI boilers and process heaters NESHAP because an ICI boiler or process heater at the same site is eligible for the health-based alternative in the NESHAP for ICI boilers and process heaters.

Under either scenario, each source is subject to regulatory requirements (whether health or technology-based) that address the health risks posed by emissions from that facility. The health-based compliance alternatives in the 40 CFR part 63, subpart DDDDD, are only available for HCl and manganese, and only if emissions of these HAP meet the health-based criteria defined in appendix A to the final rule. Affected sources that can comply with the health-based alternatives in appendix A are still subject to other emissions standards under the NESHAP.

With respect to the concerns about cumulative risk, emission standards under CAA section 112(d) are only one aspect of a broader national air toxics control program. Under the residual risk program, we may consider, as appropriate, risks from other source categories and risks from the total emissions from a particular location. This approach was reiterated in the recently finalized Coke Oven Residual Risk rule where we said we will only consider emissions from the regulated source category when determining ''acceptable risk'' during the first step of the residual risk analysis. However, during the second step, where we determine the ample margin of safety considering costs and technical feasibility (70 FR 19997), we may consider co-located sources and background levels where appropriate.

Comment: Three commenters agreed with the Agency suggestion to revisit the consideration of background emission during future residual risk evaluations. However, one commenter disagreed with the suggestion to revisit facility-wide residual risk determinations in future residual risk rules and stated that EPA does not have the authority to mandate facility-wide residual risk determinations. The commenter provided an attachment of the Coke Oven Residual Risk rule to support their position. Several commenters stated an intention to address this issue in subsequent residual risk rulemakings if EPA proposes to revisit facility-wide emissions at this stage.

Four commenters expressed concern on considering co-located emissions only during the residual risk analysis. One commenter stated that deferring the risk screening acts is contrary to the intent of the CAA. Three commenters were not satisfied with the residual risk evaluations performed to date. Two commenters specifically cited that background concentrations for benzene or any other HAP were not incorporated into the Coke Oven Residual Risk report. One commenter added that EPA must meet its duty of providing for an ''ample margin of safety'' by evaluating the risk of background emissions now as opposed to during the residual risk evaluation. The commenter added that in deferring the consideration of these background emission sources until the residual risk evaluation, the agency is acting arbitrary, capricious, and otherwise not in accordance with law.

Response: To the extent necessary, we believe the appropriate stage for considering total facility risk from air toxics emissions is at the residual risk rulemaking stage under section 112(f) of the CAA. As noted above, we do not construe the requirement in CAA section 112(d)(4) to ''consider such threshold, with an ample margin of safety, when establishing emission standards'' under CAA subsection (d) to require assessment of the cumulative risk at a given location due to the emissions from all source categories at this stage of NESHAP rule development. However, as stated in our recent residual risk rule for coke ovens, we do not agree that CAA section 112(f) entirely precludes EPA from considering emissions other than those from the relevant source category during a residual risk rulemaking analysis for an individual source category. (70 FR 19992, 19998; April 15, 2005) Section 112(f) of the CAA directs EPA to consider whether promulgation of additional standards ''is required to provide an ample margin of safety to protect public health.''

Although the phrase ''ample margin of safety'' is used in both CAA sections 112(d)(4) and 112(f), the context surrounding the phrase is different in each section. The context of CAA subsection 112(d) focuses on each individual source category for which we are promulgating a NESHAP rulemaking under CAA subsection (d). Although we agree that the first stage of our section 112(f) analysis should focus on the risks from each individual source category, we believe we may consider cumulative risks to some extent in implementing the ''ample margin of safety'' requirement in the context of CAA subsection (f) and in evaluating ''other relevant factors'' under this subsection. (70 FR at 19998). As a result, we believe the appropriate stage for any consideration of cumulative facility risks is this second part of the residual risk analysis rather than in the development and implementation of a health-based alternative under section 112(d)(4) of the CAA.

We do not construe section 112(d)(4) of the CAA to accelerate the residual risk analysis under CAA section 112(f) when we invoke section 112(d)(4) to establish a health-based standard during the first stage or rulemaking under section 112(d). In this action, we are implementing section 112(d) and are not writing a regulation based on section 112(f). Section 112(d)(4) does not call for a residual risk analysis for all sources in the category. Rather, this provision allows EPA to consider the existence of health thresholds (with an adequate margin of safety) for particular pollutants at the first stage of the NESHAP promulgation process.

Comment: Two commenters felt it was unclear how the health-based compliance alternatives will affect CAA section 112(f) residual risk evaluations for HCl and manganese, and asked if these two threshold pollutants will be exempted from residual risk assessments.

Response: HCl and manganese will not be exempted in future CAA 112(f) analyses. Rather, exposure to these two pollutants will be assessed along with exposure to other HAP emitted from the source category.

F. Health-Based Compliance Alternative for Metals

Comment: Multiple commenters agreed with EPA's method for evaluating manganese and the basis of excluding manganese from the TSM emission limit for units that comply with the manganese health-based compliance alternative. These commenters also stated that the health-based compliance alternative adequately protects the public health. One commenter cited EPA re-analysis of the MACT floor based on seven instead of eight metals, and concluded that because manganese was only about 5 percent of the TSM, the MACT floor remained the same.

Several commenters disagreed with the appropriateness and lawfulness of the manganese health-based compliance alternative. Three commenters stated that EPA has not provided a justifiable explanation for the exclusion of manganese from the calculation of TSM. The commenters contended that although EPA found the MACT floor to be the same whether or not manganese was included in the floor analysis, this reasoning does not justify removing manganese from the TSM limit. One commenter stated the mechanism through which the manganese compliance alternative operates unlawfully allows plants with low manganese emissions to avoid controlling the emissions of other non-mercury metals. Further, the commenter suggested that the top-performing sources used to calculate the MACT floor may have low manganese emissions because existing controls at the source may reduce manganese emissions, such that the TSM emission limit would not be affected by the incorporation of manganese concentrations. The commenter emphasized that dirtier sources would also be allowed to exclude manganese from their TSM limit calculations and as a result be allowed to emit higher levels of manganese and the other seven metals included in the TSM standard.

Response: We believe the alternative TSM emissions limit for sources that qualify for the health-based alternative is technically-sound and supported by the record. The alternative emissions limitation set forth in 40 CFR 63.7507(b) subpart DDDDD, is a MACT (technology-based) standard for seven metals (excluding manganese). This alternative MACT emissions limit is applicable only to those sources who qualify for the health-based compliance alternative for TSM based on their emissions of manganese. The manganese emissions from these sources are subject to the health-based alternative standard, which is enforceable through the operating conditions in the title V permit of sources that successfully demonstrate eligibility for the health-based alternative. However, the remaining seven metals that are included in the TSM calculation must still be subject to a MACT (technology-based) emissions limit. As a result, we derived an alternative MACT emissions limit for these seven selected metals using the same MACT methodology that we used for other emissions limits in subpart DDDDD. Only sources that qualify for the health-based alternative for TSM are eligible to apply this alternative TSM MACT limit in 40 CFR 63.7507(b) because the manganese emissions are otherwise controlled to health-based levels through the operating conditions in the title V permit established pursuant to appendix A to the final rule.

The methodology for the MACT floor analysis conducted for establishing this alternative, technology-based TSM limit is described in the memorandum ''MACT Floor Analysis for the Industrial, Commercial, and Institutional Boilers and Process Heaters National Emission Standards for Hazardous Air Pollutants'' in the docket. When we investigated the possibility of establishing an alternative TSM emission limit for these seven metals, we performed the same MACT floor analysis that we conducted for the TSM emission limit for eight metals. That is, we reexamined the emission test data for solid fuel units that included emissions results for all of the eight total selected metals (arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium) with manganese removed from the summation. The technology-based TSM limit for these seven metals (excluding manganese) resulted in a MACT floor emission level for existing large solid fuel units of 0.001 pound per million British thermal units (lb/mmBtu). This is the same level as the eight-metal (including manganese) TSM MACT emission level proposed and promulgated for existing large solid fuel units. Our MACT floor analysis for new solid fuel units achieved the same result. Thus, rather than repeating the emissions limit already contained in table 1 to the final rule in 40 CFR 63.7507(b), we expressed the alternative, technology-based TSM limit for these seven metals for eligible sources as a requirement to meet the same emissions limitation without counting manganese.

The seven-metal and eight-metal technology-based TSM limit were the same because the manganese emissions from the unit serving as the basis for the limit only accounted for less than 5 percent of the total selected metals. When we conducted our MACT floor analysis for the seven metals standard, we determined that the unit we used as the basis for the setting the TSM limit for eight metals was the same as the unit selected under the analysis for seven metals.

We understand, but do not agree with commenters concerns that allowing sources to exclude manganese from their TSM limit calculation will result in higher emissions of the other seven metals. Based on the available data, we do not expect sources other than biomass-fired sources to qualify for the health-based alternative for manganese and TSM. The record does not indicate that sources using biomass fuels emit significant quantities of metals other than manganese. Thus, while in theory the exclusion of manganese from the TSM limitation could allow an eligible source to increase emissions of the other seven metals, the record does not indicate that eligible sources are capable of doing so.

The TSM limit in the final rule was included at proposal because the Agency was sensitive to the fact that some sources burn fuels (e.g, biomass) that contain very little metals but have sufficient particulate matter (PM) emissions to require control under the PM provision of the final rule. In these cases, we did not think that PM would be an appropriate surrogate for metallic HAP. Under the rules in subpart DDDDD of 40 CFR part 63, a source may choose to comply with the alternative TSM emission limit instead of the PM limit. The eight metals included in the TSM summation represent the most common and the largest emitted metallic HAP from boilers and process heaters. Based on the impacts analysis done for the final rule, the TSM emission limit would minimize the impacts on small entities (e.g., furniture industry, sugar cane industry) since

some of the potential small entities burn biomass.

Biomass (e.g., wood, bagasse, peanut hulls, etc.) generally does not contain measurable amounts of metals except for manganese. For example, fuel analyses of bagasse from sugar cane mills in Louisiana did not detect any of the metals except for manganese. Fuel analyses of bagasse from sugar cane mills in Florida only detected manganese, lead, and selenium, with lead and selenium totaling 0.00032 lb/mmBtu, and this is assuming that all the metals in the fuel is emitted which would not be the case due to some remaining in the bottom ash. Wood also contains little metals except for manganese. Fuel analyses of wood combusted as fuel at three furniture facilities detected only manganese. Fuel analysis at another furniture facility did detect cadmium, chromium, and nickel beside manganese, but the total of those three metals (0.00005 lb/mmBtu) was only 1.3 percent the level of manganese or 5 percent of the TSM limit. Other biomass materials, such as peanut hulls, used as fuel also have similar metals composition. Fuel analysis conducted by EPA on peanut hulls only detected the presence of manganese.

The metal makeup of biomass differs greatly from coal. Coal contains detectable levels of all eight metals. Fuel analyses from six coal-fired facilities indicate that even if a coal-fired facility could demonstrate eligibility with the TSM health-based compliance alternative and may exclude manganese emissions, it would still require high efficient PM control to achieve the TSM limit. Thus, when we promulgated the TSM health-based compliance alternative, we believed, and still believe that only biomass units will seek to demonstrate that they do not need to employ PM controls by showing they qualify to exclude manganese from the TSM compliance demonstration, since manganese is the principal metal in biomass while manganese only makes up a small fraction of the metals contained in coal.

Comment: One commenter stated that EPA cannot adopt risk-based exemptions for pollutants for which no health threshold has been established. The commenter contended, based on documents in EPA's Integrated Risk Information System (IRIS), that no health threshold has been established for manganese. On the contrary, two commenters specified that manganese has long been recognized as a threshold pollutant. Another commenter stated that unlike other metals in the MACT list, manganese is not a carcinogen, rather it is a Class D pollutant.

Response: We agree that health-based compliance alternatives adopted under section 112(d)(4) of the CAA can apply only to pollutants for which a threshold for health effects has been established. For the pollutants for which we have elected to establish health-based compliance alternatives (manganese and HCl), the scientific data support a threshold approach to evaluating the potential for adverse health effects.

For air toxics risk assessments, we identify pertinent toxicity or dose-response values using a default hierarchy of sources to assist us in identifying the most scientifically appropriate benchmarks. EPA's IRIS is the preferred source in this hierarchy. The values in the IRIS database reflect EPA consensus values and their development typically incorporates extensive peer review. When adequate toxicity information is not available in IRIS, we consult other sources in a default hierarchy that recognizes the desirability of peer review and consistency with EPA risk assessment guidelines to ensure that we have consistent and scientifically sound assessments. For substances lacking current IRIS assessments, U.S. Agency for Toxic Substances and Disease Registry (ATSDR) chronic minimal risk levels received next preference, followed by California Environmental Protection Agency (CalEPA) chronic reference exposure levels and unit risk estimates. Furthermore, when there is an IRIS assessment but that assessment substantially lags the current scientific knowledge, we are committed to consider alternative credible and readily available assessments.

Based on our analysis of manganese using this approach, we believe the data currently available show that a health threshold has been established for manganese and that we are therefore authorized under CAA section 112(d)(4) to establish a health-based alternative for this pollutant. Under our default hierarchy approach, we first consulted IRIS. IRIS may be found on Internet at *www.epa.gov/iris,* but we have added the relevant pages in IRIS to the docket for this rulemaking action. As listed in table 4 of the preamble to the rule (68 FR 1690; Jan. 13, 2003), IRIS contains a reference concentration for manganese. However, IRIS does not contain a unit risk estimate, which addresses cancer risk. EPA's assessment in IRIS indicates that there is inadequate evidence of carcinogenicity for manganese. In addition, a cancer assessment for manganese is not available from any of the other sources in our default hierarchy or from another scientifically-credible source. Based on this information, which we believe is the best available at the present time, our judgment is that it is only appropriate for EPA to evaluate manganese with regard to non-cancer effects. In the absence of specific scientific evidence to the contrary, it has been our policy to classify non-carcinogenic effects as threshold effects. RfC development is the default approach for threshold (or nonlinear) effects. Thus, in the absence of adequate evidence that manganese is a carcinogen and based on the presence of a reference concentration in IRIS for non-cancer effects of manganese, our best scientific judgment at this time is that manganese is a threshold pollutant. We also used this approach to reach a similar conclusion with respect to HCl. (See Comment-Response Document, pg. 233 (February 2004.)

Regarding the lowest observable adverse effect level issue, the methodology employed by EPA recognizes that while a no observable adverse effect level is preferable to a LOAEL for use as the point of departure to which uncertainty factors are applied to derive an RfC, a LOAEL may also be used. (U.S. Environmental Protection Agency. 1994. Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry. Office of Research and Development. EPA/600/8–90/066F.) IRIS incorporates factors to account for uncertainties in the scientific database. The use of a LOAEL to derive the RfC for manganese is one of these uncertainties and is appropriately addressed through the application of uncertainty factors as part of the IRIS process.

We disagree with the commenter that we did not consider acute effects. We performed a risk assessment evaluating the potential acute effects of boiler emissions, including manganese (see docket item #OAR–2002–0058–0608). We used acute inhalation reference values, taken from the table on EPA's air toxics Web site (*www.epa.gov/ttn/atw/toxsource/table2.pdf*), for all pollutants in this assessment. Although the commenter is correct that this table does not contain an acute exposure guidelines level (AEGL) value for manganese compounds, the table does contain an immediately dangerous to life and health (IDLH)/10 value of 50 mg/m3. This is the acute dose-response value that we used, as reflected in table 3 (converted to 50000 ug/m^3) of the screening assessment memorandum (OAR–2002–0058–0608). Thus, the commenter's assertion that the table on the Web site contains no acute dose-response value or that EPA does not know what that value might be is

incorrect. As described in the screening assessment memorandum, for HAP with more than one acute dose-response value, the most health-protective value was chosen. EPA has not prioritized these values. Since we only had one value for manganese, we used that value in our acute assessment. The results indicate that HAP emissions, including manganese, from the industrial boilers source category are unlikely to pose acute risks to human health.

G. Deadline for Submission of Health-Based Applicability Determinations

Comment: Numerous commenters did not deem it as necessary for the Agency to extend the deadline for the submission of eligibility or final compliance dates provided that certain timelines and components of the health-based compliance alternatives were maintained as a result of this reconsideration.

Several commenters requested that the Agency consider including an extension of at least 1 year to both the submission of eligibility and final compliance dates in the final rule. These commenters added that the uncertainties resulting from the reconsideration and ongoing litigation made the original deadlines impractical.

One commenter disagreed with extending the submission of eligibility demonstration or compliance dates of affected sources under any circumstances. The commenter contended that an extension will only further delay the installation of the pollution controls that are required by the CAA. The commenter added that it is unlawful to extend compliance dates of affected sources.

Response: We do not believe it is appropriate at this time to adjust the deadline for submitting eligibility demonstrations. Most commenters representing the regulated industry believed that they would not need an extension if EPA met certain conditions.

EPA has met the conditions outlined by these commenters. We have completed the reconsideration in a timely manner and have not made significant changes to the rule. As stated in the notice of reconsideration as proposed (70 FR 36913), we did not anticipate that significant revisions would be made as a result of the reconsideration, and we advised affected sources to ''proceed to prepare their eligibility demonstrations under the existing process promulgated in the final rule.'' Although we are making some clarifying amendments, we are not changing the final rule substantially. Thus, this action will not have the impact on the eligibility-demonstration process that concerned several other commenters. Therefore, we do not believe an extension is necessary in order for sources to complete their eligibility demonstrations by September 2006.

In addition, we do not have cause to extend the compliance date for existing sources. Section 112(i)(3)(A) of the CAA specifies that NESHAP for existing sources can have compliance dates of no more than 3 years. For the ICI boiler and process heater NESHAP, EPA provided the maximum 3 years for covered sources to comply with the new standards.

It is not unusual for promulgation of CAA standards to be followed by litigation or petitions for reconsideration. Section 307(b)(1) of the CAA specifically provides that the filing of a petition for reconsideration of a rule does not postpone the effectiveness of a rule. To date, EPA has not, during the pendency of a reconsideration request, extended the compliance deadlines for promulgated MACT standards to provide compliance periods in excess of the statutory 3-year maximum. In contrast, where the Agency has amended a MACT standard in a significant way, we have found it appropriate to set a new compliance date for the rule that takes into account new requirements not contained in the original rule.

In this action, we are making relatively minor clarifying amendments to the eligibility demonstration methodology for the health-based alternatives and have not reconsidered or changed any aspect of the technology-based MACT standards. EPA indicated in the reconsideration notice, as proposed, that we were unlikely to change the compliance deadline and that the petitions for reconsideration had not provided new information suggesting a need for significant revisions to the applicability demonstration methodology for the health-based alternatives. (70 FR 36910, 36913) Thus, affected sources were on notice that significant revisions to health-based alternatives were not anticipated, Furthermore, we indicated that we intended to complete this reconsideration action expeditiously to shorten any uncertainty that may have been created by our partial granting of these petitions for reconsideration. (7 FR 36910) The time required to complete the reconsideration process has not been extraordinarily lengthy.

We disagree with the request to provide a blanket compliance date extension for all sources in the category under section 112(i)(3)(B) of the CAA. The granting of an extension under this provision is up to the individual permitting authorities, and is restricted to specific situations where a source can demonstrate that such time is necessary for the installation of controls. We have not been provided with sufficient evidence to show that all sources in the category would be able to (or even have a need to) make such a showing.

H. Proposed Corrections to the Health-Based Compliance Alternatives

Comment: Three commenters disagreed with the proposed correction to extend the risk-based exemptions beyond the large solid-fuel subcategory. These commenters believed the expansion of the health-based compliance alternative to other subcategories to be a significant rule change that would require a separate formal rulemaking process with public notice and a comment period. These commenters expressed concern that this correction will allow more sources, specifically smaller sources with shorter stacks that tend to be located closer to populous regions, to become eligible for the risk-based exemptions. One commenter added that the analysis of TSM contained in the docket was specific to large solid fuel units and not all units for which the proposed correction seeks to offer applicability. One commenter cited sections within the final preamble language that indicated the alternatives applied to large solid fuel-fired sources.

Two commenters contended that there is no technical reason why the type of unit or fuel burned should restrict a facility from the right to demonstrate eligibility.

Response: We do not agree that a separate rulemaking proceeding is necessary to adopt the proposed correction to clarify that sources in all subcategories may demonstrate eligibility for the health-based compliance alternatives. Although this correction was coupled with EPA's response to a petition for reconsideration, EPA provided notice and opportunity to comment on the proposed revisions to the text of the final rule in accordance with the rulemaking requirements of section 307(d) of the CAA. Commenters have not cited legal authority in the CAA or elsewhere that requires EPA to address an allegedly ''significant'' change to a rule in a separate or independent rulemaking action.

We acknowledge that our original intent with respect to the scope of the health-based compliance alternatives is unclear and contradictory. EPA included language in 40 CFR 63.7507(a) that limits the applicability of the

health-based compliance alternative for HCl to sources in the large solid fuel-fired subcategory. We also made several statements in the preamble, highlighted by the commenters, which indicate an intent to limit one or both health-based alternatives to large solid fuel sources. These statements were made because the existing solid fuel-fired units at major sources are the main category of sources potentially affected by the health-based compliance alternatives. Furthermore, the number of new small solid fuel-fired units at major sources projected in the future (see Docket OAR–2002–0058) is relatively small. However, we also took certain actions in the final rule which show an intent to allow sources in all subcategories to demonstrate eligibility for the health-based compliance alternatives. For example, we did not include language in 40 CFR 63.7507(b) that limits the health-based alternative for TSM to sources in the large solid fuel subcategory. Likewise, we did not include any language in section 2 of appendix A to the final rule limiting the health-based alternative for HCl to just sources in the large solid-fuel subcategory. In that provision, we said that ''each new, reconstructed, or existing source may demonstrate that they are eligible for the health-based compliance alternatives.'' Thus, the bottom line is that various portions of the final rule and preamble are inconsistent on the intended scope of eligibility for the health-based compliance alternatives.

As a result of these inconsistencies, we proposed a correction that would make these elements of the final rule consistent. Although we indicated in the proposal that this correction was intended to reflect our original intent, we agree that this terminology was imprecise. Given the conflicting statements and regulatory text in the final rule cited above, we concede that the Agency's original intent was not clear one way or the other. To remedy this confusion, we are resolving the inconsistency by eliminating regulatory language that could be read to limit one or both of the health-based alternatives to only sources in the large solid fuel category. Thus, we are taking the action we proposed, which is to remove the words ''for large solid fuel boilers located at a single facility'' from 40 CFR 63.7507(a) and the words ''Specified for the Large Solid Fuel Subcategory'' from the title of appendix A to the final rule.

Because large solid fuel-fired units are not the only units that have applicable manganese and HCl MACT limits, we believe it is technically correct, and appropriate, to allow all affected sources with manganese and HCl limits the opportunity to demonstrate eligibility for the health-based compliance alternatives. Where EPA has determined that no adverse health effects are expected below a certain threshold level of exposure, there is no reasoned basis for precluding smaller industrial boilers and process heaters from using the health-based compliance alternative so long as their emissions do not result in human exposure above the designated threshold value. To the extent we are expanding the availability of the health-based compliance alternative to all sources, this will not subject the public to adverse health effects.

We do not believe health risks are increased by allowing smaller sources to qualify for the health-based compliance alternatives, even if the commenters are correct that these sources tend to have shorter stacks and are closer to populous areas. The amendments we are making in the final rule do not automatically make all small sources eligible for the health-based compliance alternatives. Such sources must still demonstrate eligibility under the procedures and criteria in appendix A to the final rule, which consider stack heights and distance to populated areas in determining eligibility. If these characteristics indicate that a particular source has emissions that pose risks above the threshold levels, the source will not be eligible for the health-based compliance alternative. In addition, emissions rates are also part of the analysis under appendix A. Because small sources have lower emissions rates, all other things being equal, small sources present less risk than large sources.

We do not believe this correction to the rule requires an extensive re-analysis of the cost or emissions reduction impacts of the health-based compliance alternatives. We have sufficient information to conclude that this correction will not result in a meaningful change to the cost or emissions impacts of the final rule.

In the final rule, the cost and economic analyses developed as part of the final MACT rule were based on the estimated costs for all affected sources to install, maintain, and operate controls and to comply with MACT requirements. Costs were not based on the health-based compliance alternatives since the cost of compliance with controls is significantly higher than the cost to comply with the health-based compliance alternatives. The costs associated with voluntarily conducting risk analyses were not analyzed and, therefore, not re-analyzed to account for this correction to the applicability of the health-based alternatives to all affected units.

Our supplemental analysis of the impact on control costs and emissions reductions resulting from adoption of the health-based alternatives cited by commenter showed that the estimated costs of the final rule would be lower if the health-based provisions were adopted. This ''rough assessment'' of the number of sources that would qualify for the health-based alternatives focused on large sources because these sources were the sources most likely to seek to demonstrate eligibility to comply with the health-based alternatives.

Based on the available information on sources in the category, we do not expect this correction to enable a significant number of additional sources to qualify for the health-based alternatives. Thus, this correction to the final rule will not result in a dramatic difference in our rough control cost and emissions reduction estimates. Since we evaluated the costs of the final rule without the health-based compliance alternatives, we have no reason to believe this amendment will increase compliance costs above these high-end estimates. The analysis we conducted in this reconsideration proceeding is sufficient to enable us to conclude that compliance costs will not be significantly different if a few additional sources are able to demonstrate eligibility as a result of this correction. For similar reasons, we do not have a basis to believe this change dramatically alters the emissions reductions that will be achieved under the final rule.

We adopted the health-based alternatives in part to reduce the compliance costs of the NESHAP while continuing to maintain the health protection called for in the Clean Air Act. The potential for this correction to reduce compliance costs further does not undermine this reason for adopting health-based compliance alternatives. We did not rely on these cost and emission reduction estimates as a basis for establishing technology-based MACT emissions limitations or the eligibility criteria for the health-based compliance alternatives. We conducted the cost and emission reduction estimates in order to present a summary of the environmental and economic impacts of final rule. The estimates included in our supplemental analysis of the impact on control costs and emissions reductions were presented in order to provide a comparative summary of impacts of the final rule based on a rough estimate of facilities that might opt to comply with the health-based compliance alternatives. Additionally, these cost estimates are necessary in order

complete several Statutory and Executive Order Reviews including: the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995.

I. Review of Eligibility Demonstrations and Relationship With Title V

Comment: Several commenters pointed out that the health-based compliance alternative is dependent on the approval from a permitting authority via issuance of a title V permit that includes enforceable alternative limits. These commenters stated that the proposed process for reviewing and incorporating the health-based compliance alternatives into the permits is unworkable because many parameters that affect air dispersion modeling and risks are not required to be incorporated into the title V permit.

One commenter requested EPA to clarify in sections 9 and 10 of appendix A to the final rule that a facility's compliance with the health-based compliance alternatives is dependent on the approval from a permitting authority via issuance of a title V permit that includes the alternative limits. The commenter added, if the eligibility determination is not approved, the facility must comply with the final NESHAP rule requirements.

One commenter opposed a requirement to obtain EPA or State agency approval of the site-specific risk assessments as currently stated in the hazardous waste combustion rule (HWC) rule. The commenter believed that requiring approval would likely create delays in the eligibility process and result in very short compliance timelines if a reviewing authority rejected a site-specific assessment or did not complete the review in a timely manner. The commenter added there is no technical justification for requiring approval in the final HWC MACT rule and recommended not doing so in the final boiler and process heater rule.

Response: We agree that the preferred approach is to not require affirmative approval by the permitting authority of each risk assessment before a source is eligible to comply with the health-based alternative. Thus, under the procedures in appendix A of subpart DDDDD of 40 CFR part 63, as amended in this action, a source becomes eligible to comply with the health-based alternatives at the time it submits an eligibility demonstration meeting the requirements of section 8 of appendix A to the final rule.

However, for a source to remain eligible to comply with the health-based alternatives the eligibility demonstration must be complete and the application for a permit modification must ultimately be approved by the permitting authority. Thus, as part of this process, permitting agencies do have the authority to review eligibility demonstrations to verify that they meet the requirements of appendix A to the final rule and are technically sound. For example, a permitting authority may notify a source that its eligibility demonstration is deficient if the demonstration is incomplete or if a look-up table analysis is performed in a situation when site-specific conditions exist that make the use of the look-up tables inappropriate. Based upon the technical findings of the review, permitting agencies have the authority to inform a source that it is no longer eligible for the health-based alternative if the eligibility demonstration is deficient. EPA will also review some demonstrations as part of an audit program.

This review authority derives from the title V permit program through which the health-based compliance alternatives are implemented, and it was inherent in the final rule when promulgated on September 14, 2004. Subpart DDDDD of 40 CFR part 63 contains applicable requirements that are incorporated in title V permits. The title V permit program provides a process for identifying and consolidating all of the applicable requirements for each source. Through this process, the permit authority reviews each application to verify the applicable requirements for each source. Thus, when a source submits a demonstration of eligibility for the health-based alternatives in subpart DDDDD, the title V permitting authority has the ability to review this submission to determine whether the applicable requirements for that source are the health-based or the technology-based requirements in subpart DDDDD.

However, to clarify this issue, we are adding explicit language in sections 10 and 11 of appendix A to the final rule to make clear that permitting agencies may review each facility's eligibility demonstration. If the permitting authority identifies deficiencies with the eligibility determination or the permit modification is eventually disapproved based on problems with the eligibility demonstration, then the facility is no longer eligible for the health-based alternative and must comply with the MACT emission standards by the compliance dates specified in 40 CFR 63.7495.

For new sources, we are establishing a slightly different procedure because new sources will be relying upon the health-based alternative at start-up. In these cases, the source will have a grace period of 30 to 90 days to correct any deficiencies before ceasing to be eligible for the health-base alternative. This grace period is not needed for existing sources because their eligibility demonstrations must be submitted 12 months prior to the compliance date. We believe this provides sufficient time for permitting authorities to notify sources of any deficiencies and for a source to correct any deficiencies.

Comment: Several commenters requested that EPA specify additional process and non-process related parameters under section 11 of appendix A to the final rule to clarify the enforceable requirements for the facility. One commenter specifically requested that ''emission rate'' be added to the list of parameters. Three commenters requested that non-process parameters that can affect air dispersion modeling be included, such as stack height, exit gas temperature, distance to the plant property line, and changes in RfC or land-use.

Response: We recognize that a large number of parameters can affect continuous compliance with the health-based compliance alternatives. These parameters include, but are not limited to, HAP emission rates, fuel type, type of control device, stack parameters, reference values, and location of local residences. Some of these parameters are appropriate for incorporation into title V permits (e.g., HAP emission rates or a surrogate for emission rate such as production volume) while others are not (e.g., reference values). However, changes in any of these parameters can trigger the need for a re-assessment. Therefore, we are adding language to appendix A to the final rule expanding the list of parameters that should be considered for inclusion as enforceable permit limits. In section 11 of appendix A, we are also expanding the list of parameters that, if changes occur, could also necessitate a re-assessment.

Comment: Three commenters requested that EPA clarify the deadline for compliance for sources whose health-based eligibility determination is found to be deficient. These commenters also suggested an allowance period of 12 months after the facility receives notice of a deficiency in their health-based eligibility determination.

Two commenters stated that the health-based compliance alternative will delay compliance with MACT for sources that attempt to unsuccessfully demonstrate eligibility with the health-based compliance alternatives.

Response: We disagree that there will be a delay in compliance caused by the health-based compliance alternatives. Sources that submit eligibility demonstrations in an attempt to comply with the health-based compliance alternative but do so unsuccessfully must still be in compliance within 3 years after the rule was promulgated. We do not believe it is appropriate to automatically extend the compliance date in these situations. As noted above, for existing sources, there is a 1-year window in which permitting authorities and sources can work out any deficiencies in an eligibility demonstration. The health-based compliance alternative is an optional compliance approach. Some risk is involved in electing to comply with the MACT standard via the health-based compliance alternatives. This assumed risk could include a shorter amount of time to install the controls that are required to meet technology standards in the event that a source does not submit a health-based eligibility demonstration that meets the requirements of Appendix A to the final rule. We do not necessarily endorse the use of CAA section 112(i)(3)(B) to grant compliance date extensions in these circumstances. However, we will leave the decision of whether to grant such a compliance date extension on a site-specific basis to permitting authorities.

J. Miscellaneous

Comment: Two commenters addressed the vagueness of the criteria for determining the location at which the affected source must demonstrate that the HI for HCl and chlorine (Cl_2) and the HQ for manganese is less than or equal to 1.0. One commenter requested to incorporate potential land use changes where people could reasonably be expected to live in the future into the demonstrations of eligibility. The commenter stated that the rule language ''where people live'' does not account for the individual most exposed in the future for a location that was not residentially zoned at the time of the risk assessment. One commenter suggested replacing ''where people live'' with the ''point of maximum impact beyond the facility's property boundary.''

Response: We agree that there is a need clarify the wording of the phrase ''where people live'' in section 5 of Appendix A. To address some of the commenters concerns, we are changing the phrase to ''where people live or congregate (e.g. including schools or daycares).'' We believe that this a an appropriate approach given that, as described in EPA's Air Toxics Risk Assessment Reference Library, sources can deviate from the default assumption that an exposed individual remains at the location of highest exposure for 24 hours per day, 365 days per year.

We do not believe any additional changes are needed in section 5 of Appendix A to account for future land use changes. The final rule requires that a source complying with a health-based compliance alternative must resubmit their demonstration of eligibility if process or non-process parameters change in a way that could increase public health risk. Thus, if people have moved into an area, or if schools or daycare centers are constructed, the demonstration of eligibility must be resubmitted with a new risk assessment that incorporates updated parameters to account for the public health risk of these new populations. This resubmission of the eligibility demonstration is part of the existing requirements of Appendix A to the final rule for maintaining continuous compliance. If a source is no longer in compliance with the health-based alternative due to changes in land use, that source must comply with the technology standards in the MACT.

V. Impacts of the Final Rule

The revisions incorporated as a result of the final rule amendments do not change any of the impacts presented in section V of the preamble to the final rule which was published at 69 FR 55218 (September 13, 2004).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by OMB and the requirements of the Executive Order. The Executive 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.

Pursuant to the terms of Executive Order 12866, it has been determined that today's action is a ''significant regulatory action'' because it raises novel legal or policy issues. As such, the action was submitted to OMB for review under Executive Order 12866. Revisions made in response to OMB suggestions or recommendations are documented in the public record (see **ADDRESSES** section of this preamble).

B. Paperwork Reduction Act

Today's final rule amendments impose no new information collection requirements on the industry. Because there is no additional burden on the industry as a result of the final rule amendments, the information collection request has not been revised. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2060–0551 (EPA No. 2028.02). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division, U.S. Environmental Protection Agency (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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 are listed in 40 CFR part 9 and 40 CFR chapter 15.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's final rule amendments.

For purposes of assessing the impacts of today's final rule amendments on small entities, a small entity is defined as: (1) A small business having no more than 500 to 750 employees, depending on the business' NAICS code; (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 that is not dominant in its field.

We conclude that the final rule amendments will not have a significant economic impact on a substantial number of small entities. This rule will not impose additional regulatory requirements on small entities. After evaluating public comment on the notice of reconsideration, we are retaining the health-based compliance alternatives in the final rule in substantially the same form. However, we are making a limited number of amendments to 40 CFR 63.7507 and appendix A to the final rule to improve and clarify the process for demonstrating eligibility to comply with the health-based compliance alternatives contained in the rule.

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 by State, local, and tribal governments, in the aggregate, or by 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that today's final rule amendments do 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. Although the final rule have annualized costs estimated to range from $690 to $860 million (depending on the number of facilities eventually demonstrating eligibility for the health-based compliance alternatives), today's final rule amendments do not add new requirements that would increase this cost. Thus, today's final rule amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the final rule amendments do not significantly or uniquely affect small governments because there are no new requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule amendments are not subject to section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (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'' are 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.''

The final rule amendments do 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. None of the affected facilities are owned or operated by State governments, and the requirements discussed in today's action will not supersede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to today's final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (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.'' ''Policies that have tribal implications'' are 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 Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' The final rule amendments do not have tribal implications, as specified in Executive Order 13175.

The final rule amendments do not significantly or uniquely affect the communities of Indian tribal governments. We do not know of any ICI boilers or process heaters owned or operated by Indian tribal governments. However, if there are any, the effect of these rules on communities of tribal governments would not be unique or disproportionate to the effect on other communities. EPA specifically solicited additional comment on the final rule from tribal officials, but received none. Thus, Executive Order 13175 does not apply to today's final rule amendment.

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

Executive Order 13045 (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 we have reason to believe may have a disproportionate effect on children.

If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives we considered.

We interpret 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 Executive Order has the potential to influence the regulation. Today's final rule amendments are not subject to the Executive Order because eligibility demonstrations submitted in support of the health-based alternative compliance options will be based on noncancer human health reference values (e.g., reference concentrations) that are designed to be protective of sensitive subpopulations, including children.

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

Today's final rule amendments are not a ''significant energy actions'' as defined in Executive Order 13211 (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. Further, we have concluded that today's final rule amendments are not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires EPA to provide Congress, through the OMB, with explanations when EPA decides not to use available and applicable voluntary consensus standards.

During the development of the final rule, EPA searched for voluntary consensus standards that might be applicable. The search identified three voluntary consensus standards that were considered practical alternatives to the specified EPA test methods. An assessment of these and other voluntary consensus standards is presented in the preamble to the final rule (69 FR 55251, September 13, 2004). Today's final rule amendments do not involve the use of any additional technical standards beyond those cited in the final rule. Therefore, EPA did not consider the use of any additional voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective February 27, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 15, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter 1 of the code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart DDDDD—[Amended]

■ 2. Section 63.7507 is revised to read as follows:

§ 63.7507 What are the health-based compliance alternatives for the hydrogen chloride (HCl) and total selected metals (TSM) standards?

(a) As an alternative to the requirement to demonstrate compliance with the HCl emission limit in table 1 to this subpart, you may demonstrate eligibility for the health-based compliance alternative for HCl emissions under the procedures prescribed in appendix A to this subpart.

(b) As an alternative to the requirement to demonstrate compliance with the TSM emission limit in table 1 to this subpart based on the sum of emissions for the eight selected metals, you may demonstrate eligibility for the health-based alternative for manganese emissions under the procedures prescribed in appendix A to this subpart and comply with the TSM emission standards in table 1 based on the sum of emissions for seven selected metals (by excluding manganese emissions from the summation of TSM emissions).

* * * * *

■ 3. Appendix A to subpart DDDDD is amended as follows:

■ a. By revising the heading.

■ b. In Section 4 by revising paragraph (g).

■ c. In Section 5 by revising paragraphs (c)(2) and (d)(2).

■ d. In Section 6 by revising the introductory text and paragraphs (a) and (b).

■ e. In Section 8 by revising paragraphs (b)(1) and adding paragraph (d).

■ f. In Section 9 by revising paragraphs (b), (c)(1) and (c)(2).

■ g. Revising Section 10.

■ h. Revising Section 11.

Appendix A to Subpart DDDDD—Methodology and Criteria for Demonstrating Eligibility for the Health-Based Compliance Alternatives

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4. How do I determine HAP emissions from my affected source?

* * * * *

(g) You must determine the maximum hourly emission rate for each appropriate emission point according to Equation 1 of this appendix. An appropriate emission point is any emission point emitting HCl, Cl_2, or Manganese from a subpart DDDDD emission unit.

$$E_{i,s} = \sum_{j=1}^{t} \left(R_{i,j} \times I_j \right) \qquad \text{(Eq. 1)}$$

Where:

$E_{i,s}$ = maximum hourly emission rate for HAP i at each emission point s associated with a subpart DDDDD emission unit j, lbs/hr

i = applicable HAP, where i = (HCl, Cl_2, or Manganese) s = individual emission point

j = each subpart DDDDD emission unit associated with an emission point, s

t = total number of subpart DDDDD emission units associated with an emission point s

$R_{i,j}$ = emission rate (the 3-run average as determined according to table 1 of this appendix or the pollutant concentration in the fuel samples analyzed according to § 63.7521) for HAP i at subpart DDDDD emission unit j associated with emission point s, lb per million Btu.

I_j = Maximum rated heat input capacity of each subpart DDDDD unit j emitting HAP i associated with emission point s, million Btu per hour.

5. What are the criteria for determining if my facility is eligible for the health-based compliance alternatives?

* * * * *

(c) * * *

(2) Your site-specific compliance demonstration indicates that none of your HI values for HCl and CL_2 are greater than 1.0 at locations where people live or congregate (e.g., schools, daycare centers, etc.);

(d) * * *

(2) Your site-specific compliance demonstration indicates that none of your HQ values for manganese are greater than 1.0 at locations where people live or congregate (e.g., schools, daycare centers, etc.).

6. How do I conduct a look-up table analysis?

You may use look-up tables to demonstrate that your facility is eligible for either the compliance alternative for HCl emissions limit or the compliance alternative for the TSM emissions limit, unless your permitting authority determines that the look-up table analysis in this section is not applicable to your facility on technical grounds due to site-specific variations that are not accounted for in the look-up table analysis (e.g. presence of complex terrain, rain caps, or building downwash effects).

(a) *HCl compliance alternative.* (1) Using the emission rates for HCl and Cl_2 determined according to section 4 of this appendix, calculate, using equation 2 of this appendix, the toxicity-weighted emission rate (expressed in HCl-equivalents) for each emission point that emits HCl or Cl_2 from any subpart DDDDD sources. Then, calculate the weighted average stack height using equation 3 of this appendix.

$$TW_s = E_{HCl,s} + E_{Cl_2,s}\left(\frac{RV_{HCl}}{RV_{Cl_2}}\right) \qquad \text{(Eq. 2)}$$

Where:

TW_s = the toxicity-weighted emission rate (in HCl-equivalent) for each emission point s, lb/hr.

s = individual emission points

$E_{HCl,s}$ = the maximum hourly emission rate for HCl at emission point s, lb/hr

$E_{Cl2,s}$ = the maximum hourly emission rate for Cl_2 at emission point s, lb/hr

RV_{Cl2} = the reference value for Cl_2

RV_{HCl} = the reference value for HCl (reference values for HCl and Cl_2 can be found at *http://www.epa.gov/ttn/atw/toxsource/summary.html*).

$$H_{HCl} = \frac{\sum_{s=1}^{n}\left(TW_s \times H_s\right)}{TW_T} \qquad \text{(Eq. 3)}$$

Where:

H_{HCl} = weighted average stack height for determining the maximum allowable HCl-equivalent emission rate (in Table 2 to this appendix), m.

s = individual emission points

n = total number of emission points

TW_s = toxicity-weighted HCl-equivalent emission rate from each emission point (from equation 2), lb/hr.

H_s = height of each individual stack, m

TW_T = total toxicity-weighted HCl-equivalent emission rate from the source (summed for all emission points), lb/hr.

(2) Calculate the total toxicity-weighted emission rate for your affected source by summing the toxicity-weighted emission rate for each appropriate subpart DDDDD emission point.

(3) Using the weighted average stack height and the minimum distance between any appropriate subpart DDDDD emission point at the source and the property boundary, identify the appropriate maximum allowable toxicity weighted emission rate for your affected source, expressed in HCl-equivalents, from table 2 of this appendix. Appropriate emission points are those that emit HCl or Cl_2, or both, from subpart DDDDD units. If one or both of these values does not match the exact values in the look-up tables, then use the next lowest table value. (**Note:** If your weighted average stack height is less than 5 meters (m), you must use the 5 meter row.) Your affected source is eligible to comply with the health-based alternative for HCl emissions if the value calculated in paragraph (a)(2) of this section, determined using the methods specified in this appendix, does not exceed the appropriate value in table 2 of this appendix.

(b) *TSM Compliance Alternative.* Using the emission rates for manganese determined according to section 4 of this appendix, calculate the total manganese emission rate for your affected source by summing the maximum hourly manganese emission rates for all your subpart DDDDD units. Identify the appropriate allowable emission rate in table 3 of this appendix for your affected source using the weighted average stack height value and the minimum distance between any appropriate subpart DDDDD emission point at the facility and the property boundary. Appropriate emission points are those that emit manganese from subpart DDDDD units. If one or both of these values does not match the exact values in the look-up tables, then use the next lowest table value. (**Note:** If your weighted average stack height is less than 5 meters, you must use the 5 meter row.) Your affected source is eligible to comply with the health-based alternative for manganese emissions and may exclude manganese when demonstrating compliance with the TSM emission limit if the total manganese emission rate, determined using the methods specified in this appendix, does not exceed the appropriate value specified in table 3 of this appendix.

$$H_{Mn} = \frac{\sum_{s=1}^{n}\left(E_{Mn,s} \times H_s\right)}{E_{Mn,T}} \qquad \text{(Eq. 4)}$$

Where:

H_{Mn} = weighted average stack height for determining the maximum allowable emission rate for manganese (in table 3 to this appendix), m.

s = individual emission points

n = total number of emission points

$E_{Mn,s}$= maximum hourly manganese emissions from emission point s, lbs/hr.

H_s = height of each individual stack s

$E_{Mn,T}$ = total maximum hourly manganese emissions from affected source (sum emission rates from all emission points), lb/hr

* * * * *

8. What Must My Health-Based Eligibility Demonstration Contain?

* * * * *

(b) * * *

(1) Calculations used to determine the weighted average stack height of the subpart DDDDD emission points that emit manganese, HCl, or Cl_2.

* * * * *

(d) To be eligible for either health-based compliance alternative, the parameters that defined your affected source as eligible for the health-based compliance alternatives must be submitted to your permitting authority for incorporation into your title V permit, as federally enforceable limits, at the same time you submit your health-based eligibility demonstration. These parameters include, but are not limited to, fuel type, fuel mix (annual average), emission rate, type of control devices, process parameters (e.g., maximum heat input), and non-process parameters (e.g., stack height).

9. When Do I Have to Complete and Submit My Health-Based Eligibility Demonstration?

* * * * *

(b) If you have a new or reconstructed affected source that starts up before the effective date of subpart DDDDD, or an affected source that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP before the effective date of subpart DDDDD, then you may submit an eligibility demonstration at any time after September 13, 2004 but you must comply with the emissions limits in table 1 to this subpart and all other requirements of subpart DDDDD until your eligibility demonstration is submitted to your permitting authority in accordance with the requirements of section 10 of this appendix.

(c) * * *

(1) You must complete and submit a preliminary eligibility demonstration based on the information (e.g., equipment types, estimated emission rates, process and non-process parameters, reference values, etc.) that will be used to apply for your title V permit. This preliminary eligibility demonstration must be submitted with your application for approval of construction or reconstruction. You must base your preliminary eligibility demonstration on the maximum emissions allowed under your title V permit. If the preliminary eligibility demonstration indicates that your affected source facility is eligible for either compliance alternative, then you may start up your new affected source and your new affected source will be considered in compliance with the alternative standard and subject to the compliance requirements in this appendix.

(2) You must conduct the emission tests or analyses specified in section 4 of this appendix upon initial startup and use the results of these emissions tests to complete and submit your eligibility demonstration within 180 days following your initial startup date.

10. When Do I Become Eligible for the Health-Based Compliance Alternatives?

(a) For existing sources, new sources, or reconstructed sources that start up before the effective date of subpart DDDDD, or an affected source that is an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP before the effective date of subpart DDDDD, you are eligible to comply with a health-based compliance alternative upon submission of a complete demonstration meeting all the requirements of paragraph 8 for the applicable alternative. However, your eligibility demonstration may be reviewed by the permitting authority or by EPA to verify that the demonstration meets the requirements of appendix A to this subpart and is technically sound (i.e. use of the look-up tables is appropriate or the site-specific assessment is technically valid). If you are notified by the permitting authority or by EPA of any deficiencies in your submission, then you are not eligible for the health-based compliance alternative until the permitting authority or EPA verifies that the deficiencies are corrected.

(b) For new or reconstructed sources that start up after the effective date of subpart DDDDD, you are eligible to comply with a the health-based compliance alternatives upon submission of a complete preliminary eligibility determination in accordance with paragraph (c)(1) of section 9 that demonstrates your affected source is eligible for the applicable alternative. You may then start up your source and conduct the necessary testing in accordance with paragraph (c)(2) of section 9. The eligibility demonstration submitted in accordance with paragraph (c)(2) of section 9 may be reviewed by the permitting authority or by EPA to verify that the demonstration meets the requirements of appendix A to this subpart and is technically sound (i.e. use of the look-up tables is appropriate or the site-specific assessment is technically valid). If you are notified in writing by the permitting authority of any deficiencies in your submission, then you have 30 days to correct the deficiencies unless the permitting authority agrees to extend this time to a period not to exceed 90 days. If the deficiencies are not corrected within the applicable time period, you will not be eligible for the health-based compliance alternative until the permitting authority verifies that the deficiencies are corrected.

(c) If the title V permit conditions requested in accordance with paragraph (d) of section 8 are disapproved by the permitting authority, then your affected source must comply with the applicable emission limits, operating limits, and work practice standards in subpart DDDDD by the compliance dates specified in § 63.7495. Until the requested conditions (or alternative conditions meeting the requirements of paragraph (d) of section 8) are incorporated into the permit, compliance with the proposed conditions shall be considered compliance with the health-based alternative.

11. How Do I Ensure That My Facility Remains Eligible for the Health-Based Compliance Alternatives?

(a) You must update your eligibility demonstration and resubmit it each time that any of the parameters that defined your affected source as eligible for the health-based compliance alternatives changes in a way that could result in increased HAP emissions or increased risk from exposure to emissions. These parameters include, but are not limited to, fuel type, fuel mix (annual average), type of control devices, HAP emission rate, stack height, process parameters (e.g., heat input capacity), relevant reference values, and locations where people live).

(b) If you are updating your eligibility demonstration to account for an action in paragraph (a) of this section that is under your control (e.g. change in heat input capacity of your boiler), you must submit your revised eligibility demonstration to the permitting authority prior to making the change and revise your permit to incorporate the change. If your affected source is no longer eligible for the health-based compliance alternatives, then you must comply with the applicable emission limits, operating limits, and compliance requirements in subpart DDDDD prior to making the process change and revising your permit. If you are updating your eligibility demonstration to account for an action in paragraph (a) of this section that is outside of your control (e.g. change in a reference value), and that change causes your source to no longer be able to meet the criteria for the health-based compliance alternatives, your source must comply with the applicable emission limits, operating limits, and compliance requirements in subpart DDDDD within 3 years.

(c) Your revised eligibility demonstration may be reviewed by the permitting authority or EPA to verify that the demonstration meets the requirements of appendix A to this subpart and is technically sound (i.e. use of the look-up tables is appropriate or the site-specific assessment is technically valid). If you are notified by the permitting authority or EPA of any deficiencies in your submission, you will not remain eligible for the health-based compliance alternatives until the permitting authority or EPA verifies that the deficiencies are corrected.

* * * * *

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December 28, 2005

Part III

Federal Housing Finance Board

12 CFR Part 951
Affordable Housing Program Amendments; Proposed Rule

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 951

[No. 2005–23]

RIN 3069–AB26

Affordable Housing Program Amendments

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its Affordable Housing Program regulation to remove prescriptive requirements, clarify certain operational requirements, remove certain authorities, and otherwise streamline and reorganize the regulation.

DATES: The Finance Board will accept written comments on the proposed rule that are received on or before April 27, 2006.

ADDRESSES: Submit comments by any of the following methods:

E-mail: *comments@fhfb.gov.*

Fax: 202–408–2580.

Mail/Hand Delivery: Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, ATTENTION: Public Comments.

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comments to the Federal eRulemaking Portal, please also send it by e-mail to the Finance Board at comments@fhfb.gov to ensure timely receipt by the agency.

Include the following information in the subject line of your submission: Federal Housing Finance Board. Proposed Rule: Affordable Housing Program Amendments. RIN Number 3069–AB26. Docket Number 2005–23.

We will post all public comments we receive on this rule without change, including any personal information you provide, such as your name and address, on the Finance Board Web site at *http://www.fhfb.gov/pressroom/pressroom_regs.htm.*

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Associate Director, Office of Supervision, by electronic mail at *mcleanc@fhfb.gov* or by telephone at 202–408–2537; Sylvia C. Martinez, Senior Advisor, Office of Supervision, by electronic mail at *martinezs@fhfb.gov* or by telephone at 202–408–2825; or Sharon B. Like, Senior Attorney, Office of General Counsel, by electronic mail at *likes@fhfb.gov* or by telephone at 202–408–2930. You can send regular mail to the Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) requires each Federal Home Loan Bank (Bank) to establish an affordable housing program (AHP), the purpose of which is to enable Bank members to provide subsidized financing for long-term, low- and moderate-income, owner-occupied and affordable rental housing. *See* 12 U.S.C. 1430(j)(1). The AHP has played an important role in allowing the Banks to support their members' efforts to meet the housing needs of their communities. Although the AHP is a shallow subsidy program, its strength lies in its capacity to leverage additional public and private resources for housing. Since the inception of the program in 1990, the Banks have awarded more than $2 billion in AHP subsidies to assist nearly 437,000 housing units. Seventy percent of the units receiving AHP subsidies were for very low-income households. AHP subsidies have proven to be useful in financing projects that present underwriting challenges, such as projects for the homeless and special needs populations, which may include persons with disabilities and the elderly. The AHP also has been used effectively with Low-Income Housing Tax Credits (LIHTC or tax credits) by filling financing gaps, thereby enabling a larger percentage of very low-income households to be served.

The AHP also serves as an important resource for low- or moderate-income homeowners and first-time homebuyers. From 1990 through 2004, the program has assisted in the financing of 102,810 owner-occupied units under the Banks' competitive application programs, and 47,813 units under their homeownership set-aside programs. Some of the units address specific housing needs, such as expanding homeownership opportunities for underserved households.

The Finance Board has promulgated regulations implementing these provisions of the Bank Act, which are codified at 12 CFR part 951. These regulations generally have reflected a prescriptive approach, which was appropriate for rules implementing a newly created program. As the program has matured, however, the Finance Board has revised the AHP regulations a number of times, in part to provide greater responsibility to the Banks in managing the program and in part to implement improvements based on lessons learned in overseeing the operation of the program. The Finance Board believes, based in part on its review of the AHP on a Bank System level conducted in 2003–2005, *Report of the Horizontal Review of the Affordable Housing Programs of the Federal Home Loan Banks* (March 15, 2005) (Horizontal Review), that there are a number of areas in which the regulation can be further revised to enhance the success of the program.[1]

In proposing these amendments, the Finance Board intends to address seven principal factors. First, additional definitions would be incorporated into the regulation at § 951.1. These definitions would serve to establish the precise use of key terms that are included in the regulation. Second, the proposal would reorganize the regulatory text so that operational provisions relating to the competitive application program and the homeownership set-aside program, respectively, would be fully contained within separate sections of the regulation. Proposed § 951.5 would address the competitive application program, while § 951.6 would address the homeownership set-aside program. The proposed reorganization is intended to make it easier for program sponsors and other interested parties to understand the operation of the competitive application and homeownership set-aside programs. Third, the use of AHP subsidy by loan pools and revolving loan funds would be permitted under the competitive application program, at the discretion of the particular Bank. This proposed change is intended to expand the range of eligible means of supporting affordable housing through the program. Fourth, restrictions on the use of AHP funds by projects located outside a Bank's district and scoring preferences for in-district projects, which the current regulation permits at the Bank's discretion, would no longer be permissible. This proposed change is in response to the expansion of interstate banking among Bank member institutions, which has resulted in many members serving markets outside a Bank's district boundaries. Fifth, provisions in the current regulation that allow a Bank to accelerate AHP contributions from the following year into the current year would be deleted. The Banks have not often used this authority, and it also may present some operational difficulties. Sixth, provisions in the regulation that would increase annually the maximum allowable dollar amount of a Bank's

[1] The Horizontal Review is available on the Housing Programs page of the Finance Board's Web site: *http://www.fhfb.gov/Default.aspx?Page=47.*

allocation to its homeownership set-aside program and maximum allowable dollar acceleration amount under a Bank's competitive application program, based on the annual inflation rate, would be deleted. This change would address the potential for inflation to increase the allocation of AHP contributions to the homeownership set-aside program relative to the competitive application program. Finally, prescriptive monitoring requirements in the current regulation, which detail specific monitoring and control processes with which a Bank must comply, would be replaced by standards based on required outcomes rather than prescribed control processes. The Finance Board invites comments on all aspects of the proposed rule.

II. Analysis of the Proposed Rule

A. Definitions: Proposed § 951.1

The proposed rule would revise certain of the existing AHP definitions and would define a number of other terms that are used throughout the regulation. *See* 12 CFR 951.1. Proposed new definitions are discussed in the context of specific regulatory requirements. The more substantive changes are described below.

Affordable. The existing definition would be revised by adding a reference, consistent with the AHP statutory term, to ''rent charged to a household,'' which would be defined to mean the rent that is actually paid by the household occupying the unit. *See* 12 U.S.C. 1430(j)(13)(D). The existing regulatory language may not be clear on this point and could be read to mean the amount of rent charged by the owner for the unit, which would be greater than the rent actually paid by the occupants if the occupants receive financial assistance for rent payments from other sources.

The proposed rule also would add a new paragraph (2), which would address units that are subsidized with low-income housing assistance under the Department of Housing and Urban Development (HUD) Section 8 program. *See* 42 U.S.C. 1437f. This provision is intended to clarify that rents charged to a household under a Section 8 agreement will be deemed to be ''affordable'' for AHP purposes, even if the rent increases after initial occupancy, if the rent met the AHP definition of ''affordable'' upon initial household occupancy and thereafter has continued to comply with the Section 8 agreement for that household. This provision would be applicable for purposes of the annual adjustment of targeting commitments after initial occupancy under proposed § 951.7(a)(3) (which is re-designated from current §§ 951.10(d) and 951.11(b)).

AHP project. The proposed rule would add a new definition, which would apply to both owner-occupied and rental projects that have been awarded or have received AHP subsidy through the competitive application program. This is intended to codify existing practice and clarify that the term ''project'' does not apply to direct subsidies, *i.e.*, grants, to households made pursuant to the homeownership set-aside program. The term would apply to both single-family and multifamily projects. The proposed rule also would make conforming changes to the definitions of ''owner-occupied project'' and ''rental project.''

Low- or moderate-income household and very low-income household. The existing regulation defines ''low- or moderate-income household'' to mean a household that has an income of 80 percent or less of the median income for the area, with the income limit adjusted for family (*i.e.*, household) size, in a Bank's discretion, in accordance with the methodology of the applicable median income standard. The proposed rule would amend the household-size adjustment provisions in paragraph (3) of the existing definition of ''low- or moderate-income household'' and (and similarly for the definition of ''very low-income household'') by changing the household-size adjustment from an optional to a mandatory requirement, provided that if the source for the area median income data has no methodology to adjust the household income limit for household size, the Bank is not required to make such an adjustment. This change would bring the AHP into conformance with other federal programs that adjust for household size.

As further discussed below, the proposed rule would relocate certain provisions of the existing definitions relating to when a household's income must be determined, to proposed §§ 951.5(c)(1) and 951.6(c)(2)(i) for the competitive application program and the homeownership set-aside program, respectively.

Median income for the area. The existing definition lists a number of median income standards that a Bank may adopt for purposes of determining household income eligibility. The regulation also provides that a Bank may request Finance Board approval of a median income for any definable geographic area, as published by a federal, state, or local government entity for purposes of that entity's housing programs. The proposed rule would remove the language ''for purposes of that entity's housing programs.'' This would enable the Finance Board to approve, upon a Bank's request, median income standards from sources, such as the Census Bureau, that publish median income data but do not have their own housing programs.

Owner-occupied project and rental project. The proposed rule would amend the existing definitions by clarifying that they apply only to the competitive application program and by deleting language requiring the project to involve ''the purchase, construction, or rehabilitation'' of owner-occupied housing or rental housing, respectively. That requirement would be relocated to the provisions addressing the eligibility requirements for the use of AHP subsidy, at proposed § 951.5(c)(1)(i) and (ii). The proposed rule also would add manufactured housing to the types of owner-occupied housing and emergency shelters and single-room occupancy (SRO) housing as types of rental housing, which are explicitly referenced in the rule.

Retention period. The proposed rule would amend the existing definition to clarify that, in the case of rehabilitated units that currently are occupied by the owner and do not involve a closing, the retention period would commence on the date of completion of the rehabilitation.

Sponsor. The proposed rule would amend the existing definition by authorizing a Bank to define certain terms in its AHP Implementation Plan and by adding 2 entities to the definition. The terms ''ownership interest'' and ''integrally involved'' are key terms in the existing definition of ''sponsor.'' The proposed rule would retain those terms but would require each Bank to define what they mean in its AHP Implementation Plan. Under the existing definition, a Bank must consider a ''sponsor'' to include any entity that has an ownership interest in a rental project, regardless of how small or temporary such ownership interest is. Requiring a Bank to define ''ownership interest'' in its AHP Implementation Plan would allow it to address concerns that some rental projects may manipulate ownership interests in order to receive points as not-for-profit sponsors under the competitive application program's scoring system. The proposed rule also would expand the definition to include revolving loan funds or entities that establish loan pools. Those terms would be used for purposes of implementing proposed amendments to the competitive application program rules, which would

deal with revolving loan funds and loan pools, respectively.

Subsidy. The proposed rule would revise the existing definition, principally by deleting the provisions that specify the dates as of which the amount of the subsidy is to be determined. The substance of those provisions would be incorporated into the section that sets forth the eligibility requirements relating to the competitive application program, at proposed § 951.5(c)(12). The proposed rule also would remove the term ''homeownership set-aside funds'' from the definition of ''subsidy'' because they are direct subsidies, which are included within the definition of ''subsidy.''

B. Required Annual AHP Contributions; Allocation of Contributions: Proposed § 951.2

Annual AHP contributions: Proposed § 951.2(a). Under the Bank Act, each Bank annually must contribute to its AHP an amount equal to the greater of 10 percent of the Bank's previous year's net income or such prorated amount as is required to assure that the aggregate contribution of the 12 Banks is no less than $100 million. 12 U.S.C. 1430(j)(5)(C). In recent years, the Banks have not used the pro rata allocation method because the annual contributions based on the 10 percent of income formula have exceeded $100 million. Nonetheless, proposed § 951.2(a)(2) would revise the existing provisions to clarify that if the pro rata formula were to be used in any future year, the required annual contribution for any Bank could not exceed its net earnings for the previous year. This is primarily intended as a safety and soundness measure to avoid the possibility that a Bank might otherwise be required to contribute an amount in excess of its income, thereby reducing its regulatory capital.

Net earnings of a Bank. Proposed § 951.1 would revise the existing definition to clarify existing practice with respect to how a Bank's earnings are determined for purposes of calculating its required AHP contribution. *See* 12 CFR 951.1. Pursuant to registration of its equity securities with the Securities and Exchange Commission (SEC), each Bank must present its financial statements in its SEC filings in accordance with Generally Accepted Accounting Principles in the United States (GAAP). The application of Statement of Financial Accounting Standards No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity* (SFAS 150), to the Banks requires them to categorize capital stock subject to a mandatory redemption request as a liability on the statement of condition and requires that they treat the dividends on capital stock subject to a mandatory redemption request as interest expense. The Bank Act provisions related to the AHP provide that each Bank shall make an annual contribution equal to 10 percent of its net earnings for the previous year after reduction for any payment required under 12 U.S.C. 1441b (regarding the Resolution Funding Corporation) and before declaring any dividend. 12 U.S.C. 1430(j)(8). Because the Bank Act requires that the AHP contribution be calculated before the declaration of dividends, net earnings for purposes of calculating the AHP contribution should not be reduced by any dividend declaration, including those associated with mandatorily-redeemable stock, even though those dividends may be treated as interest expense in the calculation of GAAP net income.

Allocation of contributions: Proposed § 951.2(b). The proposed rule would relocate the allocation of contributions provisions for the competitive application program and homeownership set-aside program in existing § 951.3(a) to proposed § 951.2(b), as they relate to the requirements for AHP contributions, which are set forth in proposed § 951.2.

Homeownership set-aside allocation: Proposed § 951.2(b)(2). AHP subsidies are disbursed through a Bank's competitive application program and its homeownership set-aside program. Under the existing rules, a Bank may set aside annually up to the greater of $3 million or 25 percent of its annual required AHP contribution to provide funds to members through its homeownership set-aside programs. *See* 12 CFR 951.3(a)(1)(i). If member demand in a given year exceeds the AHP subsidy amount available for that year, a Bank may accelerate or ''borrow'' additional amounts from the following year's AHP contribution, up to the greater of $3 million or 25 percent of the Bank's projected contribution for the following year, to the current year's set-aside program.

In addition to those amounts, a Bank may set aside annually up to the greater of $1.5 million or 10 percent of its annual required AHP contribution to fund a set-aside program to be used solely to provide financial assistance to first-time homebuyers. *See* 12 CFR 951.3(a)(1)(ii). If member demand for that set-aside program exceeds the amount of available AHP subsidy for a particular year, a Bank may accelerate or ''borrow'' additional amounts from the following year's AHP contribution, up to the greater of $1.5 million or 10 percent of the Bank's projected contribution for the following year, to the current year's first-time homebuyer set-aside program. These maximum allowable dollar amounts are adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI). *See* 12 CFR 951.3(a)(1)(iii).

The proposed rule would remove the annual CPI adjustment of the caps on the dollar amounts that may be allocated to the set-aside programs, principally because it has the potential over time to increase the amounts allocated to the set-aside programs at the expense of the competitive application program. As such, the CPI adjustment could potentially affect the balance between amounts allocated to owner-occupied housing and rental housing, respectively. Similarly, because the provision allowing acceleration of the maximum allowable dollar allocation under the competitive application program into the current year from the subsequent year would be eliminated, the provision authorizing a CPI adjustment of the accelerated amount, as provided under existing § 951.3(a)(2), would be eliminated as a conforming amendment.

The Finance Board is proposing to make a number of other changes regarding the allocation of AHP funds to the homeownership set-aside programs, as noted below.

Consolidation of separate program authorities: Proposed § 951.2(b)(2). Proposed § 951.2(b)(2) would retain the maximum allowable aggregate allocation of AHP dollars to the homeownership set-aside programs, *i.e.*, the greater of $4.5 million or 35 percent of a Bank's annual required AHP contribution, but would eliminate the first-time homebuyer set-aside program authority as a separate and distinct authority. *See* 12 CFR 951.3(a)(1). The proposed rule would replace the separate first-time homebuyer set-aside program provision with a requirement that at least one-third of a Bank's aggregate annual homeownership set-aside allocation be targeted for first-time homebuyers, which should be functionally equivalent to the results under the current structure. The Finance Board understands that most of the Banks currently dedicate a substantial portion of their general homeownership set-aside allocation to first-time homebuyers before setting aside funds under the separate homeownership set-aside authority that specifically targets first-time homebuyers. Therefore, the Finance

Board believes the proposed change would simplify the regulation but would not cause a substantive change in the allocation of homeownership set-aside funds to first-time homebuyers.

Removal of acceleration authority. The Finance Board also is proposing to remove the existing provisions that permit a Bank to accelerate or ''borrow'' AHP funds from the subsequent year to fund the current year's homeownership set-aside programs. *See* 12 CFR 951.3(a)(1)(i) and (ii). The Banks have not often used that authority (in 2004 only two Banks did so) and it presents operational difficulties because it requires the Banks to project future earnings in order to determine how much they may accelerate into the current year, and these projections may not prove to be accurate. Deleting this provision would eliminate some unnecessary complexity to the administration and monitoring of the AHP fund as well as to a Bank's balance sheet. For much the same reason, the Finance Board is proposing to eliminate the provision allowing acceleration of competitive application program allocations, as provided under existing § 951.3(a)(2).

C. AHP Implementation Plan: Proposed § 951.3

Proposed § 951.3(a) would reorganize and streamline requirements for a Bank's AHP Implementation Plan to conform them to amendments that are being proposed to other parts of the AHP regulation. *See* 12 CFR 951.3(b). The proposed amendments to the specific program operating requirements for AHP Implementation Plans are discussed elsewhere in this preamble in the context of the particular operating requirements. The proposed rule also would add a requirement that the AHP Implementation Plan include the Banks' retention agreement requirements.

Proposed § 951.3(c) would require a Bank to notify the Finance Board within 30 days of amending its AHP Implementation Plan and proposed § 951.3(d) would require a Bank to make the amended Plan publicly available through its Web site within 30 days after adoption of the amendments. Under the current rules, the Bank must submit all amendments to the Finance Board and must make its Plan available to members of the public upon request. See 12 CFR 951.3(b)(4)–(5). Making the AHP Implementation Plan available through the Banks' websites is intended to provide the public with easy access to important information about the AHP as well as to promote greater transparency and accountability in the program.

D. Advisory Councils: Proposed § 951.4

The proposed rule would make a number of revisions to the provisions dealing with the Advisory Councils of the Banks, many of which are intended to clarify but not change the substance of the existing rule. *See* 12 CFR 951.4. The provisions that have a substantive effect are described below.

Terms of Advisory Council members: Proposed § 951.4(b). Section 951.4(b) of the proposed rule is intended to enhance the effectiveness of the Advisory Councils by lessening the likelihood that the terms of more than one-third of the Advisory Council members will expire in any 1 year. To that end, the proposed rule would require each Bank to adopt policies governing how it would conduct the appointment process and would require each Bank to appoint members to terms of ''up to'' 3 years. The intent of the latter change is to allow the Banks to appoint some individuals to terms of 1 or 2 years as a means of ensuring an appropriate balance of experience and service among members of the Council as a whole. Under the current rules, the Banks must appoint members of the Council for a 3 year term. *See* 12 CFR 951.4(d).

Election of officers: Proposed § 951.4(c). Section 951.4(c) would impose on the Advisory Council an affirmative obligation to elect certain officers, which is intended to ensure that each Advisory Council has in place a chairman and vice chairman. The current rule permits, but does not require, such officers. *See* 12 CFR 951.4(e).

Duties: meetings with the Banks: Proposed § 951.4(d)(1). Section 951.4(d)(1) of the proposed rule would revise the duties of the Advisory Council principally by adding a list of specific matters on which the Advisory Council must provide recommendations to the Bank's board of directors. *See* 12 CFR 951.4(f)(1). Those matters include: the relative allocation of AHP subsidy between the competitive application and homeownership set-aside programs; eligibility criteria for each program; scoring criteria and related definitions for the competitive application program; any priority criteria for the homeownership set-aside program; and the AHP Implementation Plan.

Proposed § 951.4(d)(3) also would extend the deadline by which the Advisory Council must submit its annual analysis of the low- and moderate-income housing and community lending activity of the Bank to the Finance Board. *See* 12 CFR 951.4(f)(3). The proposed rule would extend that deadline from March 1 to May 1 and would require each Bank to publish the analysis on a publicly available website within 30 days of its submission to the Finance Board. The proposed change in the due date responds to requests received from some of the Advisory Councils, which meet quarterly, for additional time after the end of each calendar year to prepare, review, and approve their report. Making the Advisory Councils' analyses available to the public through the Banks' websites is intended to promote greater transparency and accountability in the Banks' AHP and in the work of the Banks' Advisory Councils.

No delegation: Proposed § 951.4(f). Proposed § 951.4(f) would prohibit a Bank's board of directors from delegating to Bank officers or other Bank employees its responsibility for appointing Advisory Council members or for meeting with the Advisory Council. This provision is intended to ensure that each board of directors fulfills its statutory obligations with regard to its interaction with the Advisory Council and is consistent with findings of the Finance Board's Horizontal Review, which indicated that Bank boards in general could improve how they interact with their Advisory Councils. *See* 12 U.S.C. 1430(j)(11).

E. Competitive Application Program: Proposed § 951.5

The proposed rule would consolidate existing regulatory provisions governing the operation of the competitive application program into a single section of the AHP rule—proposed § 951.5. Under the current regulation, a number of those provisions are located in different sections of the AHP regulations. The principal revisions to the existing regulatory structure are described below.

Eligible applicants: Proposed § 951.5(b)(2). Section 951.5(b)(2) of the proposed rule would eliminate the current provision that allows a Bank to accept AHP applications from institutions that are not members of the Bank, but that have applied for membership. *See* 12 CFR 951.6(b)(1). At one time, that provision may have encouraged institutions to become members of their district Bank but the Finance Board believes that given the growth in membership in recent years such an incentive is no longer necessary.

Eligibility requirements: Proposed § 951.5(c). Under the proposed rule, § 951.5(c) would set out all of the various eligibility requirements that may apply in connection with the

receipt of AHP subsidies under the competitive application program.

Timing of household income-eligibility determination: Proposed § 951.5(c)(1). With regard to the timing of when a household's income eligibility must be determined, the proposed rule would relocate the current provisions from the definitions of ''low- or moderate-income household'' and ''very low-income household'' in § 951.1 to proposed § 951.5(c)(1). The proposed rule also would incorporate into this section, without change, the requirements in the existing definitions of ''owner-occupied project'' and ''rental project'' that the AHP subsidy be used for the purchase, construction, or rehabilitation of owner-occupied or rental housing.

Need for subsidy, project costs, project feasibility: Proposed §§ 951.5(c)(2), 951.5(c)(3), and 951.5(c)(4). The proposed rule would make several changes to the project eligibility requirements applicable to the Banks in determining whether a project is eligible for funding. The Banks currently review projects to assess their ''need for subsidy,'' reasonableness of ''project costs,'' and ''feasibility.'' In determining a project's eligibility, the existing regulation requires that the project demonstrate a need for the subsidy, based on its estimated total sources and uses of funds. *See* 12 CFR 951.5(b)(2). The proposed rule would maintain this requirement but eliminate a related requirement that the estimated sources and uses of funds analysis include estimates of the market value of in-kind donations and volunteer professional labor or services. *See* 12 CFR 951.5(b)(2)(i)(B). Experience since 1998 indicates that estimates of non-cash costs generally do not affect the amount of subsidy needed for a project. Elimination of this requirement also would obviate the need for the Finance Board's Regulatory Interpretation 1999–03, which addresses non-cash sources and uses.[2] The proposed rule also would make the need for subsidy requirement independent of the project developmental and operational feasibility requirements. The changes are intended to provide the Banks with more opportunities to assist smaller projects and projects with higher production or operating costs, such as projects with services or more common space.

[2] Regulatory Interpretation 199–03 is available in the Freedom of Information Act Reading Room on the Finance Board's Web site: *http://www.thib.gov/Default.aspx?Page=59&ListCategory=8#8.*

Section 951.5(c)(3)(i) of the proposed rule would clarify that the determination of project costs is a separate eligibility requirement and would remove a requirement that project costs be ''customary'' and determined according to ''industry standards'' in accordance with the Bank's project feasibility guidelines. *See* 12 CFR 951.5(b)(2)(ii). In lieu of that requirement, the proposal would require a Bank to determine whether a project's costs are reasonable by taking into account the location of the project, development conditions, and other non-financial household or project characteristics, such as housing for the elderly or for persons with disabilities. The changes are intended to make the eligibility review process more adaptive to deeply subsidized projects such as those serving special needs populations.

The existing regulation does not differentiate between the developmental feasibility of a project and, in the case of rental housing, the operational feasibility of the project over time. The proposed rule, at § 951.5(c)(4), would separate these two aspects of project feasibility. Proposed § 951.5(c)(4)(i) would require that a project be developmentally feasible, which is defined as the likelihood that the project will be completed and occupied, based on relevant factors contained in the Bank's project feasibility guidelines, including the project's development budget, market analysis, and the sponsor's experience in providing the requested assistance to households. Proposed § 951.5(c)(4)(ii) would require that a rental project be operationally feasible, which is defined as the ability of the project to operate in a financially sound manner, in accordance with the Bank's project feasibility guidelines, as projected in the project's operating pro forma or similar statement of operational feasibility.

Financing costs: Proposed § 951.5(c)(5). The proposed rule would make a technical reorganizing change by relocating the provision regarding interest rates, points, fees, and other charges for loans financing the project from existing § 951.5(b)(2)(iii) to proposed § 951.5(c)(5). *See* 12 CFR 951.5(b)(2)(iii).

Refinancing: Proposed § 951.5(c)(8). Proposed § 951.5(c)(8) would make a technical change regarding the use of AHP subsidies in connection with a refinancing of a project. *See* 12 CFR 951.5(b)(6). The proposal would clarify that such refinancing is permitted only if it generated equity proceeds and if the proceeds are used to purchase, construct, or rehabilitate eligible housing units. The proposal also would clarify that the requirement regarding use of the equity proceeds applies only to an amount of equity proceeds that is at least equal to the amount of AHP subsidy in the project.

Project sponsor qualifications: Proposed § 951.5(c)(10). Proposed § 951.5(c)(10) would revise existing § 951.5(b)(8) by requiring a Bank to adopt written policies regarding the project sponsor qualifications for revolving loan funds and loan pools, which issues are discussed separately below. *See* 12 CFR 951.5(b)(8).

Calculation of AHP subsidy: Proposed § 951.5(c)(12). Proposed § 951.5(c)(12), which relates to the calculation of the AHP subsidy, would incorporate, without change, the provisions regarding the time at which the calculation of subsidy is to be made. Those provisions are currently included as part of the definition of ''subsidy'' in § 951.1.

Use of AHP subsidy by revolving loan funds and loan pools: Proposed §§ 951.5(c)(13) and 951.5(c)(14). The proposed rule would explicitly authorize the Banks, at their discretion, to allow two uses of AHP subsidy under their competitive application program, which would be for revolving loans funds and loan pools. The current rule defines the term ''sponsor'' to include certain organizations or public entities that have an ownership interest in a rental project, or that are integrally involved in an owner-occupied project. *See* 12 CFR 951.1. As noted previously, the proposed rule would expand that definition to add revolving loan funds and entities that establish loan pools to the list of eligible sponsors. A revolving loan fund is a capital fund that makes loans that comply with the requirements of the AHP rule, and then uses the proceeds received from principal payments on those loans to make additional loans to other borrowers. A loan pool is a group of AHP-eligible loans that are purchased, held in trust, and pledged as security for a financial instrument, such as a mortgage-backed security. Definitions of the two terms would be added in proposed § 951.1. Such entities that specialize in community development lending are able to leverage additional funds for low-income borrowers or bring added value to the services provided by non-profit corporations and local governments. These entities also may provide technical assistance in packaging loans, or may service loans, manage affordable housing revolving loan funds, or purchase and sell loans that cannot otherwise be sold in the mainstream secondary market due to their unique characteristics. Proposed

§ 951.5(c)(13) and (c)(14) would establish limitations on how such revolving loan funds and loan pools, respectively, may use the AHP subsidies, as described below.

Use of AHP subsidy by revolving loan funds: Proposed § 951.5(c)(13). The proposal would authorize the Banks to accept applications from members for projects in which the sponsor would use the AHP subsidy in a revolving loan fund, which in turn would make AHP loans to eligible projects. In order to exercise this authority, a Bank first must consult with its Advisory Council and then must adopt written policies and procedures governing the disbursement of the AHP subsidy through this type of entity. Both the initial loans made by the revolving loan fund, as well as any subsequent loans made with amounts received from repayments of the initial loans, must meet all of the applicable AHP eligibility requirements. The intent in referring to ''applicable'' AHP eligibility requirements is to make clear that those regulatory requirements that apply to AHP applications that involve a specific project, such as cost and feasibility requirements, will not automatically be applied to an AHP application from a revolving loan fund, which may not have identified a specific project at the outset.

The revolving loan fund also must assure that the initial loans are made to projects and households that meet the commitments in the approved AHP application and that they will be met for the full AHP retention period. Any subsequent lending of repaid AHP subsidy must be used for low-or moderate-income households (in the case of owner-occupied projects) or for rental projects where 20 percent or more of the units are occupied by and affordable for very low-income households, subject to the AHP retention period, monitoring and recapture requirements that the Bank must adopt. As a result of those requirements, AHP funds disbursed through a revolving loan fund may not be used for other purposes, such as to pay for operating costs or other uses unrelated to the purchase, construction, or rehabilitation of housing. In general, the Finance Board requests comment on how the revolving loan fund authority could be used within the requirements of the AHP.

Use of AHP subsidy in loan pools: Proposed § 951.5(c)(14). The proposed rule would authorize a Bank to provide AHP subsidies to its members under circumstances in which another entity would receive the subsidy and then commit to purchase AHP-eligible loans in order to pool them and sell interests in the pool of loans, such as through loan participations or a mortgage-backed security. For example, the proposed rule would allow a Bank to make a subsidized advance to a member with the understanding that the member would make a subsidized loan to another entity, which would commit to purchase similarly subsidized loans from other originators. In order to exercise this authority, a Bank first must consult with its Advisory Council, and then must adopt written policies and procedures governing the disbursement of the AHP subsidy through this type of arrangement. The proposed rule includes a number of provisions that are intended to ensure that subsidies disbursed through a loan pool actually benefit AHP-eligible households. Specifically, the proposal would require that a loan pool sponsor demonstrate that its use of the subsidy will meet all applicable eligibility requirements under the AHP regulation. The loan pool sponsor must provide to the Bank the acceptance standards that it intends to use in determining which loans to include in the pool, as well as the underwriting characteristics for such loans, and the number of eligible households (including their income levels) that have obtained loans over a given time period. The proposal would prohibit the use of AHP funds for the loan pool's operating costs, for secondary market transaction costs, or for providing liquidity to the originators or holders of the purchased loans.

In order to ensure that the AHP subsidy benefits eligible households, the proposed rule would require that the manager or trustee of the loan pool purchase the loans pursuant to a forward commitment that identifies the characteristics of the loans to be originated with principal or interest rate reductions, as specified in the approved AHP application. Where AHP direct subsidy is being used, the AHP subsidy must be used for a standard upfront buy-down of the interest rate or a reduction in the principal of the loans in the pool, as specified in the approved AHP application. All loans purchased by the loan pool, including both the initial loans and any subsequent loans that are intended to replace loans that have been paid off, must conform to the terms of the forward commitment. In general, the Finance Board requests comment on how the loan pool authority could be used within the requirements of the AHP. The proposed rule is silent on the length of time that a project sponsor would have, as specified in the forward commitment, for the sponsor to expend the full amount of the AHP subsidy. The Finance Board requests comment on whether it is preferable to establish a time limit by regulation and if so, the duration of that time limit, or to allow a Bank to establish a time limit as part of its AHP Implementation Plan, as proposed.

In the alternative, the loan pool would be permitted to purchase an initial round of loans that are not purchased pursuant to a forward commitment, provided that the entities from which the loans are purchased are required to use the proceeds from the initial loan purchases within time limits specified in the Bank's AHP Implementation Plan. The proceeds must assist households that are income-eligible under the approved AHP application during subsequent rounds of lending, and the assistance must be provided in the form of a principal reduction or a below-market AHP subsidized interest rate, as specified in the approved AHP application.

In addition, each AHP-assisted owner-occupied unit receiving AHP direct subsidy would be required to be subject to an AHP 5-year retention agreement. As currently written, the proposed rule explicitly permits the use of AHP subsidy in loan pools backed by owner-occupied units. The Finance Board requests comment on whether, in addition to loans for AHP-assisted owner-occupied units, rental housing loans should also be eligible under the AHP loan pool authority, and if so, what kinds of loans and activities, consistent with the AHP requirements, should be eligible.

Out-of-district projects eligibility requirement: Proposed § 951.5(c)(15). The proposed rule would remove the existing provision that allows a Bank, at its discretion, to require as an eligibility requirement that a project assisted with AHP subsidy must be located in the Bank's district. *See* 12 CFR 951.5(b)(10)(i)(B). Proposed § 951.5(c)(17) also would prohibit a Bank from establishing an eligibility requirement that a project must be located in the Bank's district. See the further discussion of this issue below, under AHP projects outside the district.

Minimum Bank credit product usage requirement: Proposed § 951.5(c)(15). The current rule authorizes a Bank to require its members to have used a minimum amount of the Bank's other credit products within the previous 12 months as a condition to applying for additional amounts of AHP subsidy. *See* 12 CFR 951.5(b)(10)(i)(C). The Finance Board is proposing to remove this requirement in the belief that AHP funding should go, without restriction,

to applications from members that score highest under a Bank's competitive application scoring criteria.

Counseling requirement: Proposed § 951.5(c)(15)(ii). The proposed rule would authorize a Bank to require homebuyer or homeowner counseling as an optional eligibility requirement for owner-occupied projects under the competitive application program. Under such a requirement, the Banks could limit AHP subsidies to owner-occupied projects that provide this resource for low- or moderate-income households. Such counseling can contribute to successful, long-term homeownership, which the Finance Board has recognized in supporting such counseling for low- or moderate-income households receiving home purchase assistance under the AHP homeownership set-aside program. *See* 12 CFR 951.5(a)(2)(ii).

Prohibited use of AHP subsidy: prepayment fees: Proposed § 951.5(c)(16)(i). The current rule allows a project to use AHP subsidy to pay prepayment fees imposed by a Bank on a member if the member prepays a subsidized advance, provided that the project continues to comply with the terms of the approved AHP application for the duration of the original retention period and any unused AHP subsidy is returned to the Bank and made available for other AHP projects. *See* 12 CFR 951.5(b)(4)(i). The proposed rule would eliminate this provision, consistent with the principle that AHP funds should be used for purchase, construction, or rehabilitation of housing.

Changes to the scoring system: Proposed § 951.5(d). The proposed rule would retain the current provisions that require each Bank to adopt written scoring guidelines for its AHP applications and to allocate 100 points among 9 scoring criteria. *See* 12 CFR 951.6(b)(4). The proposal would not make any substantive changes to those criteria, except for those relating to disaster areas and out-of-district projects, but would make a number of technical revisions to the current rules and would codify certain staff interpretations.

The proposed rule would retain the provisions relating to fixed-point and variable-point scoring criteria, but would make technical changes to the latter, the effect of which would be to codify a current staff interpretation that allows a Bank to implement variable-point scoring criteria either through a fixed scale or on a scale relative to the other applications that are to be scored in the same funding round. *See* 12 CFR 951.6(b)(4)(iii). That provision would be located at § 951.5(d)(3)(ii) of the proposed rule.

Section 951.5(d)(5)(iii)(A) of the proposed rule would remove a provision of the existing rule, which allows a Bank to score rental projects according to the targeting commitments made by the project to a governmental or tax-credit allocating entity that provides funds or tax credits, respectively, to the project. *See* 12 CFR 951.6(b)(4)(iv)(C)(1). That provision would no longer be necessary because of other proposed changes to the rule, to be located at § 951.7(a)(2)(ii)(B), discussed further below, which would allow a Bank to rely on monitoring by governmental or tax-credit monitoring agencies.

The proposed rule also would clarify regulatory practice relating to the scoring criterion for income targeting in owner-occupied projects. That provision, which would be located at § 951.5(d)(5)(iii)(B), would clarify that a Bank may determine in its AHP Implementation Plan how to award scoring points on a declining scale, taking into consideration the percentages of units and targeted income levels.

Disaster areas and displaced households scoring criterion: Proposed § 951.5(d)(5)(vi)(E). The current regulation permits the Banks to award scoring points to the financing of housing that is located in federally declared disaster areas. *See* 12 CFR 951.6(b)(4)(iv)(F)(5). Because disasters may displace families from their homes, the Finance Board believes that this criterion should be expanded to address such situations. Accordingly, in order to accommodate families that have been displaced from a disaster area, § 951.5(d)(5)(vi)(E) of the proposed rule would permit a Bank to award scoring points for applications that would provide housing for persons located in a disaster area, as well as for applications proposing to provide housing for low- or moderate-income households that have been displaced from a federally declared disaster area due to a disaster, irrespective of the household's current residential location.

AHP projects outside the district: Proposed §§ 951.5(c)(17) and 951.5(d)(5)(vii). Under the current regulation, a Bank may, at its discretion, deny consideration of applications to the AHP competitive application program from members proposing to fund projects located outside a Bank's district. Another provision of the current rule permits a Bank to give scoring point preference to the creation of housing located within the Bank's district. *See* 12 CFR 951.5(b)(10)(i)(B) and 951.6(b)(4)(iv)(F)(12). The proposed rule would rescind the Banks'' authority to prohibit or restrict applications to fund projects located outside a Bank's district. This authority may have been appropriate when all Bank members did business only within the boundaries of a state within the Bank's district. As a result of interstate branching, however, many members now do business in communities outside their Bank district. The authority to restrict AHP projects to the Bank's district, if exercised, would limit a member's ability to support otherwise eligible AHP projects in certain of the communities that it serves solely because those communities were located outside the Bank's district boundaries.

The Bank Act does not set up the AHP as a geographically targeted program. Rather, it requires each Bank to establish a program to provide subsidized funding to its members. *See* 12 U.S.C. 1430(j)(1). Restrictions on out-of-district projects can disadvantage members with geographically dispersed operations to the extent the Bank limits funding of projects outside of its boundaries, irrespective of the market areas served by its members. Such restrictions could also serve to disadvantage communities that are served by financial institutions headquartered in a state located in a different Bank district. The Finance Board believes that AHP projects should be awarded funds based on the merits of each particular application. If an application has sufficient merit to compete successfully, it should be awarded AHP funds irrespective of the project location, so long as the project is within a community served by a member.

Finally, the existing authority in the current AHP regulation has not been extensively invoked by the Banks. In 2004, only one Bank prohibited the use of AHP funds for out-of-district projects and only two Banks elected to give scoring preference to in-district projects. Nor has there been a significant outflow of AHP funds as a result of member financing of projects outside the district. Out of 10,391 AHP projects funded since the beginning of the program in 1990, only 323 projects, or 3.1 percent, have been located outside a Bank's district. These findings support a conclusion that funding of out-of-district projects has a minimal impact on the AHP. Therefore, a prohibition against out-of-district projects or a preference for projects within a district may not be warranted.

As a result of all these considerations, the proposed rule would eliminate the two provisions in the existing regulation

that preclude or limit the ability of a member to receive AHP subsidies for projects located outside its district, and proposed § 951.5(c)(17) would expressly prohibit a Bank from requiring that a project be located within its district. In addition, proposed § 951.5(d)(5)(vii) would prohibit a Bank from adopting as its Second District Priority a scoring preference for projects located in the Bank's district. *See* 12 CFR 951.6(b)(4)(iv)(G).

Modifications of approved applications: Proposed § 951.5(f). The proposed rule would codify current practice by adding a requirement that a Bank must document in writing its analysis and justification for any modification of a previously approved project. *See* 12 CFR 951.7(a).

Progress towards use of AHP subsidies: Proposed § 951.5(g)(2). The proposed rule would require each Bank to establish policies and procedures, such as time limits, for determining whether progress is being made towards drawdown and use of AHP subsidies by approved projects, and whether to cancel an application approval for lack of such progress. Progress requirements must be included in the Bank's AHP Implementation Plan. Affordable housing projects often may encounter delays due to changes in funding, legal, or community challenges, or other events. These delays may affect the ability of a project to progress towards its scheduled drawdown and use of the AHP subsidy. The current AHP regulation requires a Bank to specify a time period in its AHP Implementation Plan for the drawdown and use of the AHP subsidy. If a project does not do so within such period, the Bank must cancel its approval of the application. *See* 12 CFR 951.8(c)(1). The rigidity of this requirement sometimes has impaired the ability of the Banks to determine whether the delays are significant enough to affect a particular project's ability to draw down and use the subsidy. While the Banks have extended the time period for certain projects in an effort to take into account such delays, the requirement that a fixed time period be stated in the AHP Implementation Plan limits a Bank's ability to manage this process. Accordingly, the proposed rule would give the Banks greater capacity to manage this process by requiring them to adopt policies and procedures that address how they will make such determinations.

Compliance upon disbursement: Proposed § 951.5(g)(3). Section 951.5(g)(3) of the proposed rule would require a Bank to establish policies and procedures for determining, prior to initial disbursement of AHP subsidy, and prior to subsequent disbursement if the need for AHP subsidy has changed, whether the project continues to meet the applicable eligibility requirements and all obligations committed to in the approved AHP application. The Bank's requirements must be included in its AHP Implementation Plan. Under the current AHP regulation, a Bank is required to verify compliance with eligibility requirements and application commitments prior to each disbursement of AHP subsidy. *See* 12 CFR 951.8(c)(2). The requirement to repeatedly verify project compliance during every stage of the disbursement process may be more than is necessary to ensure compliance with the rules, and effectively precludes a Bank from using its best judgment to determine whether the circumstances of a particular AHP project warrant repeated verification of compliance with the rules. The proposed amendment would give the Banks greater latitude in determining when it is appropriate to verify compliance prior to disbursing AHP funds.

Bank board of directors duties and delegation: Proposed § 951.5(h). The proposed rule would set forth the Bank board of directors' various duties regarding establishment and implementation of the competitive application program requirements in one section, proposed § 951.5(h), and would reiterate that the Bank's board cannot delegate these responsibilities to Bank officers or other Bank employees.

F. Homeownership Set-Aside Program: Proposed § 951.6

The proposed rule would reorganize the existing regulation, generally by combining various homeownership set-aside program provisions into one section, to be located at proposed § 951.6.

Eligible applicants: Proposed § 951.6(b). The existing AHP regulations permit a Bank to accept applications for homeownership set-aside program subsidies from an institution that is not a member of the Bank, but which has pending an application for membership. *See* 12 CFR 951.6(a). The proposed rule would eliminate this provision and would require an applicant to be a member of the Bank at the time that it submits an AHP application. The rationale for this revision was discussed in connection with a similar amendment that is proposed for the competitive application program.

Timing of household income-eligibility determination: Proposed § 951.6(c)(2)(i). Section 951.6(c)(2)(i) of the proposed rule would clarify that a household's income eligibility is to be determined at the time that it is enrolled in the set-aside program. This change is intended to address confusion with respect to the income eligibility, for example, of a household that is enrolled in a matched savings account program, an Individual Development Account program, a Welfare-to-Work program, or any other similar empowerment program designed to assist low-income households accumulate assets. The existing regulation has been interpreted by some Banks as requiring that the household's income qualification for purposes of the AHP be determined at the time that the household is qualified for a loan. *See* 12 CFR 951.1 and 951.5(a)(2)(i). The proposal would permit income eligibility to be determined at the time that the household is accepted by the member and the Bank to enroll in the AHP set-aside program, even though at that time the household may not qualify for a mortgage. This clarification is consistent with existing Finance Board policy and reflects the Finance Board's understanding that the purpose of these programs is to prepare households for homeownership. Activities designed to qualify low- or moderate-income households for mortgages should be encouraged. Such programs, however, require careful administration by a Bank and the participating member and should be subject to reasonable Bank policies and procedures on the timely use of AHP subsidy. Moreover, it is the Finance Board's expectation that Bank policies will preclude use of the program by individuals whose low- or moderate-income eligibility is a temporary condition, such as students, who would ordinarily have a reasonable prospect for a substantial increase in income upon entering the workforce.

Counseling: Proposed § 951.6(c)(2)(ii). Under the existing regulation, all households receiving AHP funds under a Bank's homeownership set-aside program must complete a homeowner or homebuyer counseling program. *See* 12 CFR 951.5(a)(2)(ii). The Finance Board is proposing to make this an option rather than a requirement, for obtaining subsidies under the homeownership set-aside program. As a practical matter, not all households will necessarily require such counseling. Moreover, there are some areas of the country in which such counseling may not be readily available, and the quality of the counseling can also vary. Accordingly, § 951.6(c)(2)(ii) of the proposed rule would allow each Bank to determine whether to include counseling as an eligibility requirement in its AHP Implementation Plan. These

revisions are consistent with the proposed change that would allow a Bank to adopt such a counseling requirement under its competitive application program, which is located at proposed § 951.5(c)(15)(ii). Notwithstanding the change, the Finance Board encourages the Banks to consider requiring homeowner and homebuyer counseling when they believe it to be appropriate. Proposed § 951.6(c)(8) would retain the current provision that allows homeownership set-aside funds to be used to pay for the costs of obtaining such counseling for those homebuyers that actually purchase an AHP-assisted unit. *See* 12 CFR 951.5(a)(7).

Member financial incentives: Proposed § 951.6(c)(6). The proposed rule would revise the existing regulation by requiring a Bank to establish incentives for members to provide financial or other assistance in connection with providing the homeownership set-aside subsidy. Under existing § 951.5(a)(6), a member that provides mortgage financing to a participating household under the set-aside program must also provide financial or other incentives in connection with the mortgage financing. *See* 12 CFR 951.5(a)(6). Some Banks have observed that this requirement may place small members, such as those located in rural areas, at a disadvantage and may encourage them to pass the AHP subsidy to a larger institution, which may or may not be a member of that Bank. The existing requirement may thus place a greater obligation to provide subsidized financing on a member than on a nonmember mortgage provider and may result in a disincentive for member financing. The Finance Board specifically requests comment on: (1) Whether it should require all originators of AHP-assisted mortgage loans to provide financial or other incentives in connection with the mortgage financing, irrespective of whether the originator is a member or nonmember; (2) whether the current financial incentive requirement should remain as a mandatory requirement or be made a matter of discretion for the Bank, as a preferential selection criterion for its homeownership set-aside program(s); and (3) whether additional incentives should be required, such as a matching funds requirement, member-provided financing, or preference to a member working in partnership with a nonprofit sponsor assisting first-time homebuyers to qualify for a mortgage.

Financing costs: Proposed § 951.6(c)(7). Section 951.5(a)(6) of the current regulations requires that the rate of interest, points, fees, and other charges imposed by the member not exceed a reasonable market rate. *See* 12 CFR 951.5(a)(6). As currently worded, the requirement applies only to situations in which the member provides the financing, but not if a third party does so. The Finance Board is concerned that the existing language has the potential to create opportunities for using AHP funds in conjunction with the origination of loans with interest rates, points, fees, and other charges that exceed a reasonable market rate, if the loans are originated by a nonmember. In order to avoid that possibility, § 951.6(c)(7) of the proposed rule would revise the regulation to state that such charges that are ''used directly or indirectly in conjunction with the AHP direct subsidy'' must not exceed a reasonable market rate. That revision is consistent with the statutory requirement that Finance Board regulations must ''ensure that subsidies provided by Banks to member institutions * * * are passed on to the ultimate borrower.'' *See* 12 U.S.C. 1430(j)(9)(E).

Progress towards use of AHP subsidy: Proposed § 951.6(c)(9). For reasons similar to those discussed above under the competitive application program, proposed § 951.6(c)(9) would revise the existing regulation by requiring that progress be made towards draw-down and use of the AHP direct subsidies by eligible households pursuant to policies and procedures adopted by the Bank. *See* 12 CFR 951.5(a)(8).

Cash backs: Proposed § 951.6(c)(10). The Finance Board's Horizontal Review identified problems in the operations of the homeownership set-aside programs at some of the Banks. Although those problems were limited to a few situations, the proposed rule seeks to address them by clearly identifying ineligible uses of AHP set-aside funds. Therefore, § 951.6(c)(10) of the proposed rule would expressly prohibit a member from providing cash back to a household at the closing on the mortgage loan and would require a member to use any AHP subsidy beyond what is needed for closing costs and the approved mortgage amount to further reduce the principal of the mortgage loan.

Progress towards use of AHP subsidies: Proposed § 951.6(e)(2). For reasons similar to those discussed above under the competitive application program, proposed § 951.6(e)(2) would require a Bank to establish policies and procedures, such as time limits, for determining whether progress is being made towards drawdown and use of homeownership set-aside funds by eligible households, and whether to cancel application approvals for lack of such progress. *See* 12 CFR 951.8(b)(1). The requirements must be specified in the Bank's AHP Implementation Plan. A Bank would be required to determine, pursuant to such policies and procedures, whether progress is being made by eligible households, and whether to cancel any application approvals for lack of progress.

G. Monitoring: Proposed § 951.7

The proposed rule would retain the current requirement for annual certifications by rental project owners to the Bank under the competitive application program, but would make a number of changes to the monitoring provisions under both the competitive application and homeownership set-aside programs. A number of the current monitoring provisions are prescriptive in nature and set deadlines by which the Bank and other parties must undertake certain actions. *See* 12 CFR 951.10 and 951.11. The proposed rule would replace those provisions with more broadly stated performance objectives, which are intended to allow the Banks more latitude in determining the type and frequency of reports and certifications that are best suited for monitoring a particular project's compliance with the AHP rules. The proposed amendments would accomplish this goal by requiring the Banks to adopt policies and procedures for monitoring progress made towards project completion and compliance with other AHP requirements.

1. Monitoring Requirements for the Competitive Application Program: Proposed § 951.7(a)

Initial monitoring policies and procedures: Proposed § 951.7(a)(1). For both owner-occupied and rental projects under the competitive application program, the proposed rule would require each Bank to adopt written policies and procedures for monitoring AHP projects prior to, and within a reasonable period of time after, project completion. Specifically, a Bank's monitoring polices and procedures must enable it to determine: Whether the construction or rehabilitation is progressing satisfactorily; whether a completed project is progressing satisfactorily toward occupancy by eligible households; and whether a project is meeting the commitments made in the approved AHP application and is otherwise in compliance with applicable AHP requirements within a reasonable time after the project has been completed. The proposed rule would remove the existing requirement

that the Banks must monitor project habitability, and also would remove the definition of ''habitable'' from the existing definitions. *See* 12 CFR 951.1 and 951.10(a)(2)(ii)(B)(2) and (c). Proposed § 951.7(a)(1)(ii) would require a Bank's monitoring policies and procedures to include provisions requiring Bank review of back-up documentation regarding household incomes and rents that are maintained by the project sponsor or owner, and would allow a Bank to include requirements for maintenance and Bank review of other project documentation, at the Bank's discretion.

Long-term monitoring policies and procedures: Proposed § 951.7(a)(2). The proposed rule would require a Bank to adopt written policies and procedures for monitoring completed rental projects, commencing in the second year after project completion and continuing for the full 15-year retention period. The monitoring polices must enable a Bank to determine whether household income, rents, and populations served comply with the respective commitments made in the AHP application. The proposed rule would remove the existing requirement that the Banks monitor project habitability for the full AHP retention period. *See* 12 CFR 951.11(a)(3). The policies also must take into account various risk factors and could allow the Bank to use a reasonable risk-based sampling plan.

Proposed § 951.7(a)(2)(iii) would require that monitoring policies include provisions addressing: Bank review of annual certifications by project owners that household incomes and rents comply with commitments made in the AHP application and other AHP requirements; Bank review of back-up project documentation regarding household incomes and rents, as maintained by the project owner; and maintenance and Bank review of such other project documentation that the Bank deems necessary.

The current regulation requires the Banks to select from 1of 3 approved methods for long-term monitoring of rental projects: (1) Monitoring by a federal, state, or local government entity in connection with a project that also is receiving tax credits or funds from that entity, subject to certain other limits stated in the rule; (2) monitoring of such projects by a contractor; or (3) monitoring by the Bank, its members, and project owners. *See* 12 CFR 951.11(a). The existing regulation contains prescriptive procedural requirements for projects monitored by the Banks, their members, and project owners under the third option. It details specific monitoring and certification duties for the parties and includes deadlines for submission of specific monitoring reports. These deadlines may not comport with construction and development schedules and can result in regulatory noncompliance for reasons that do not reflect the actual performance of a project. The existing regulation requires a Bank to review project documentation and verify compliance with rent, income, and project habitability requirements according to a schedule based on the amount of AHP subsidy received by a project, such that projects receiving greater amounts of subsidy have more stringent and frequent monitoring requirements. *See* 12 CFR 951.11(a)(3)(iii).

Such prescriptive monitoring requirements do not necessarily promote accurate assessments of program effectiveness or take into account the true risks to the Bank's AHP. The existing monitoring requirements also may fail to capture adequately the operational risk, financial performance risk, location risk, or other relevant performance factors affecting the Bank's AHP project portfolio. Moreover, the prescriptive nature of the regulations implies that the particular approach to monitoring that is embodied in the regulation is the optimal approach for such matters, irrespective of the risk characteristics that may be associated with a particular AHP project or the compliance record of the participating member, sponsor, or owner.

Proposed § 951.7(a)(2) would require a Bank to develop written policies and procedures for long-term monitoring of rental projects, taking into account various risk factors. Those policies and procedures would be subject to Finance Board examination annually. A Bank's policies and procedures would be required to take into account certain risk factors, such as the amount of AHP subsidy in the project, the type, size, and location of the project, sponsor experience, and any monitoring provided by a federal, state, or local entity, as discussed further in the following section.

Reliance on other monitoring: Proposed § 951.7(a)(2)(ii)(B). Section 951.7(a)(2)(ii)(B) of the proposed rule would expand the ability of the Banks to rely on the monitoring of AHP-assisted rental projects by other governmental agencies that are providing tax credits or other funds to the projects. In the case of AHP projects that also receive tax credits or other governmental funds, the existing regulation permits a Bank to rely on the monitoring conducted by the federal, state, or local government entity providing the tax credits or funds, or by certain third parties, provided that the income targeting, rents, and retention period requirements monitored by such entities for their own programs are the same as, or more restrictive than, those committed to in the approved AHP application. *See* 12 CFR 951.11(a)(1).

The LIHTC, which often is used by projects that receive some form of AHP subsidy, has two elective eligibility standards related to the units in the project and the income of the households occupying the units: (1) that 20 percent of the units must be occupied by households with incomes at or below 50 percent of the area median income; or (2) that 40 percent of the units must be occupied by households with incomes at or below 60 percent of the area median income. *See* 26 U.S.C. 42(g)(1). The Bank Act imposes similar limits on the use of AHP subsidies for rental housing, *i.e.*, eligible rental projects must have at least 20 percent of the units occupied by households with incomes at or below 50 percent of the area median income. *See* 12 U.S.C. 1430(j)(2)(B). Because this AHP standard is identical to the first tax credit standard, the Finance Board has deemed it to be substantively equivalent to the income eligibility standard required for an LIHTC project. For AHP-assisted tax credit projects that employ the first standard, the current AHP regulation permits a Bank to accept the project monitoring that is conducted by, or on behalf of, the government agencies that have provided the tax credits.

With respect to AHP-assisted tax credit projects that employ the second standard, under which 40 percent of the units must be occupied by households with incomes at or below 60 percent of the area median income, the current AHP regulation allows a Bank to rely on monitoring conducted by or on behalf of other governmental agencies only if those entities also monitor the project for compliance with the AHP standard. Because this tax credit standard differs from the AHP standard, a Bank may be required to negotiate agreements with various state agencies or contractors to conduct their monitoring of the project in accordance with the AHP standard, which is common to both programs. Such additional monitoring entails additional costs to the Bank, which a number of the Banks have contended is not an effective means of monitoring the project, as it is largely duplicative of existing monitoring conducted by other parties. A number of AHP users also have contended that this level of

monitoring is superfluous and adds unnecessary burdens to the project.

After reviewing several studies on the performance of the LIHTC, the Finance Board has concluded that the overwhelming majority of these tax credit projects—irrespective of their income eligibility standard—meet the AHP income eligibility standard in a substantially equivalent manner. A 1997 General Accounting Office study found that 75 percent of households in tax credit projects had incomes under 50 percent of the area median income, which would be well within the AHP requirement that 20 percent of units be occupied by households with incomes at or below 50 percent of the area median income. Other subsequent studies, such as those prepared by Abt Associates for HUD, and one by Ernst and Young, have come to similar conclusions regarding the targeting of tax credit projects to very low-income households. Moreover, the Finance Board notes that the length of the retention periods for AHP rental projects and tax credit projects is the same, and that noncompliance with the income-eligibility requirements by tax credit projects is relatively rare, as it would lead to adverse tax consequences for investors in such projects. The Finance Board also notes that the affordability standard for tax credit projects, *i.e.*, the rent requirement, is substantially equivalent to the AHP rent requirement that the rents charged may not exceed 30 percent of the targeted household income. *See* 12 U.S.C. 1430(j)(13)(D) and 26 U.S.C. 42(g)(2). Accordingly, the Finance Board is proposing to amend the AHP regulation to allow a Bank to rely on the monitoring by the state-designated housing credit agency administering the tax credits of the income targeting, rent, and retention period requirements applicable under the LIHTC, provided that the compliance profiles of the AHP and the LIHTC continue to be substantively equivalent.

In addition, for AHP projects that receive funds from federal, state, or local government entities, the proposed rule would allow a Bank to rely on the monitoring by such entities of the income targeting, rent, and retention period requirements applicable under their programs, provided that: The income targeting, rent, and retention period requirements for those programs are substantively equivalent to those of the AHP; the entity has demonstrated and continues to demonstrate its ability to monitor the project; the entity agrees to provide reports to the Bank on the project's incomes and rents for the full 15-year AHP retention period; and the Bank reviews the reports from the monitoring entity to confirm that they comply with the Bank's monitoring policies and procedures.

2. Monitoring Requirements for the Homeownership Set-Aside Program: Proposed § 951.7(b)

The proposed rule would retain the member certification requirements from the existing regulation and would require a Bank to adopt and implement its own written monitoring policies and procedures for determining compliance with the requirements of its homeownership set-aside programs. *See* 12 CFR 951.8(b)(2). The Banks would be allowed to use a reasonable sampling plan to select the households to be monitored and to review the back-up and any other documentation received by the Bank. The proposed rule also would provide that the Bank's monitoring policies and procedures must include requirements for the Bank to review back-up documentation regarding household incomes maintained by the member, and may include requirements for maintenance and Bank review of other documentation, in the Bank's discretion.

H. Remedial Actions for Noncompliance: Proposed § 951.8

Proposed § 951.8 would reorganize and streamline the language in the existing regulations regarding remedial actions for noncompliance with the AHP regulations in order to eliminate redundancy and provide greater clarity. *See* 12 CFR 951.12.

Repayment of AHP subsidy by project sponsor or owner: Proposed § 951.8(b)(2). Proposed § 951.8(b)(2) would add a provision allowing a Bank to determine whether a project sponsor or owner must repay AHP subsidies directly to the Bank or to the member, which would then repay the Bank, in the event that the project fails to comply with any of the AHP requirements. Under the existing regulation, project sponsors or owners are required to repay AHP subsidies to the member, which in turn is required to repay the subsidies to the Bank. *See* 12 CFR 951.12(b). The proposed change would give the Banks greater flexibility in managing how AHP subsidies are required to be repaid in the event of a failure to comply with the rules.

Finance Board approval of settlements: Proposed § 951.8(d)(2). The proposed rule also would revise provisions of the existing regulation that allow a Bank to obtain approval from the Board of Directors of the Finance Board to settle a disputed claim regarding an AHP subsidy. *See* 12 CFR 951.12(c)(2)(ii). As revised, the rule would allow the Bank to obtain the approval from ''the Finance Board,'' which would allow Finance Board staff to approve the Bank's proposed settlements relating to the AHP subsidy.

Bank reimbursement of AHP fund: Proposed § 951.8(e)(1). The proposed rule would add a provision requiring a Bank to reimburse its AHP fund in the amount of any AHP subsidies (plus interest, if appropriate) misused as a result of the Bank's actions or omissions, even without a Finance Board order to do so. *See* 12 CFR 951.12(c)(3). Where noncompliance with AHP requirements is the result of a Bank's actions or omissions, the Bank should reimburse its AHP fund without the Finance Board having to order it to do so.

Parties to enforcement proceedings. The proposed rule would remove an existing regulatory provision, located at 12 CFR 951.12(d), that allows a Bank to enter into a written agreement with a member, project sponsor, or project owner under which it consents to be a party to a Finance Board enforcement action regarding the repayment of AHP subsidies that it has received or to suspension or debarment, provided that it has agreed to be bound by the Finance Board's final determination in the enforcement proceeding. This provision would be removed because regulatory authorization is not necessary for a Bank to enter into such an agreement.

Re-use of repaid AHP direct subsidies in same project: Proposed § 951.8(f)(2). The proposed rule would clarify that a Bank must consult with its Advisory Council in determining whether to allow the re-use of AHP direct subsidies in the same project, as is authorized under this section. *See* 12 CFR 951.12(e)(2). That provision also would clarify that a Bank's board of directors cannot delegate to Bank officers or other Bank employees the responsibility to adopt any Bank policies on re-use of repaid AHP direct subsidies in the same project under this section.

I. Agreements: Proposed § 951.9

The existing regulations require each Bank to have in place with each member that receives AHP subsidies a written agreement that includes certain provisions set out in the regulation. *See* 12 CFR 951.13. The proposed rule, at § 951.9, would revise the provisions of the existing regulation in order to eliminate redundancy and provide greater clarity.

Notification of member: Proposed § 951.9(a)(1). The proposed rule, at § 951.9(a)(1), would add a provision requiring the AHP agreements to

acknowledge that the member has been notified of the AHP requirements and all Bank policies relevant to the member's approved AHP application.

Monitoring agreements: Proposed § 951.9(a)(5). Proposed § 951.9(a)(5) would revise the provisions relating to monitoring in order to conform them to the changes proposed elsewhere to the substantive monitoring requirements. *See* 12 CFR 951.13(b)(4). Under the proposed change, the Banks' agreements with their members would have to set forth the members' specific monitoring responsibilities, as required under the Banks' monitoring policies and procedures. In addition, these agreements would have to require the member to have in place its own agreement with each project sponsor and project owner setting forth the specific monitoring responsibilities of those sponsors and owners, as required under the Banks' monitoring policies and procedures.

Refinancing of owner-occupied units: Proposed § 951.9(a)(7)(ii)(A). Proposed § 951.9(a)(7)(ii)(A) would revise existing § 951.13(c)(4)(i)(B) by providing that, in the case of a refinancing prior to the end of the 5-year retention period of a permanent mortgage loan that was funded by an AHP subsidized advance, the household would not have to repay the AHP subsidy it already used in the unit. *See* 12 CFR 951.13(c)(4)(i)(B). The existing regulation requires the household to repay the full amount of the AHP subsidy received (*i.e.*, the value of the interest rate subsidy for the time the household has been paying on the mortgage loan) from any net gain realized upon the refinancing, unless the unit continues to be subject to a retention agreement. The proposed change would be consistent with the existing regulatory provision providing that a household subsidized with AHP direct subsidy that refinances an owner-occupied unit must repay only the amount of AHP subsidy that has not been used (*i.e.*, the subsidy required to be repaid is reduced for every year the household owned the unit). *See* 12 CFR 951.13(d)(1)(iii). In addition, the proposed change would help remove a possible deterrent to refinancing by households that seek to make their units more affordable or obtain equity for purposes of their economic betterment.

Relocation of households in rental projects: Proposed § 951.9(a)(8)(iii)(B). Proposed § 951.9(a)(8)(iii)(B) would revise the existing regulation by providing that, in the case of a sale or refinancing of an AHP-assisted rental project prior to the end of the retention period, the AHP subsidy would not have to be repaid to the Bank if the households are relocated to another property that is made subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the remainder of the retention period. *See* 12 CFR 951.13(c)(5)(iii) and 951.13(d)(2)(iii). The proposed change would allow Banks to deal with situations where approved rental projects are forced to relocate for reasons such as the exercise of eminent domain or a need for additional units or services, and the project sponsors will be transferring the same residents to a new building. Currently, the AHP regulation treats these situations as a sale that requires the repayment of the entire amount of AHP subsidy, thereby releasing the project from its AHP commitments and making the AHP subsidy available for other AHP-eligible projects, unless the property continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the AHP application for the remainder of the retention period. Allowing project sponsors to transfer the AHP subsidies, along with the corresponding income-eligibility and affordability commitments, to a new building would result in the retention of the affordable units for the duration of the original retention period and ensure that existing tenants are not adversely affected.

Agreements between Banks and project sponsors or owners: Proposed § 951.9(b). As discussed above, proposed § 951.8(b)(2) would allow a Bank to determine whether to require a project sponsor or owner to repay AHP subsidies directly to the Bank in the event of noncompliance, in contrast to the existing regulation which requires project sponsors or owners to repay AHP subsidies to the member, which in turn repays the subsidies to the Bank. Under proposed § 951.9(b), if a Bank intends to require project sponsors or owners to repay AHP subsidies directly to the Bank, the Bank first must have in place an agreement with each project sponsor or project owner under which the party agrees to repay the AHP subsidies directly to the Bank.

Application to existing projects: Proposed § 951.9(c). The proposed rule would streamline the language in existing § 951.16, which addresses the application of the regulation to existing AHP projects, and relocate the provision to proposed § 951.9(c). *See* 12 CFR 951.16.

J. Conflicts of Interest: Proposed § 951.10

The proposed rule would relocate the provisions governing the adoption of conflict of interest policies from existing § 951.3(c) to proposed § 951.10. See 12 CFR 951.3(c). The proposed rule also would add new provisions that would prohibit Bank directors or employees or Advisory Council members, and their family members, from engaging in the conflicts of interest prohibited by the conflict of interest policies. Proposed § 951.10(c) would prohibit a Bank's board of directors from delegating to any Bank officers or other Bank employees its responsibility to adopt the conflict of interest policies.

K. Temporary Suspension of AHP Contributions: Proposed § 951.11

Proposed § 951.11 would remove various procedural requirements in existing § 951.14, leaving these decisions to the discretion of the Finance Board in the event an application is received from a Bank for a temporary suspension of its required annual AHP contribution. *See* 12 CFR 951.14. In addition, certain of the information required to be provided by the Banks is readily obtainable by the Finance Board without the necessity of a regulatory requirement.

L. Affordable Housing Reserve Fund: Proposed § 951.12

Proposed § 951.12 would remove the requirements in existing § 951.15 that a Bank report by January 15th of each year the amount of any unused and uncommitted AHP funds from the prior year that will be deposited in an Affordable Housing Reserve Fund (Reserve Fund), and that the Finance Board notify the Banks of the total amount of funds, if any, available in the Reserve Fund. *See* 12 CFR 951.15. The amount of any unused and uncommitted AHP funds is readily obtainable by the Finance Board without imposing such a regulatory mandate. Moreover, the Finance Board has never had to establish a Reserve Fund and does not expect to in the future, given the high demand for AHP funds that has always exceeded the amount of AHP funds available.

III. Paperwork Reduction Act

The information collection contained in the current AHP regulation, entitled ''Affordable Housing Program (AHP),'' has been assigned control number 3069–0006 by the Office of Management and Budget (OMB). The OMB control number is due to expire on July 31, 2007. This proposed rule, if adopted as a final rule, will not substantively or

materially modify the approved information collection. Consequently, the Finance Board has not submitted any information to OMB for review under the Paperwork Reduction Act of 1995 (PRA).[3]

IV. Regulatory Flexibility Act

The proposed rule, if adopted as a final rule, will apply only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 951

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Finance Board proposes to revise 12 CFR, chapter IX, part 951, to read as follows:

PART 951—AFFORDABLE HOUSING PROGRAM

Sec.

951.1 Definitions.
951.2 Required annual AHP contributions; allocation of contributions.
951.3 AHP implementation plan.
951.4 Advisory Councils.
951.5 Competitive application program.
951.6 Homeownership set-aside programs.
951.7 Monitoring.
951.8 Remedial actions for noncompliance.
951.9 Agreements.
951.10 Conflicts of interest.
951.11 Temporary suspension of AHP contributions.
951.12 Affordable Housing Reserve Fund.

Authority: 12 U.S.C. 1430(j).

§ 951.1 Definitions.

As used in this part:

Affordable means that:

(1) The rent charged to a household for a unit that is to be reserved for occupancy by a household with an income at or below 80 percent of the median income for the area, does not exceed 30 percent of the income of a household of the maximum income and size expected, under the commitment made in the AHP application, to occupy the unit (assuming occupancy of 1.5 persons per bedroom or 1.0 persons per unit without a separate bedroom); or

(2) The rent charged to a household, for rental units subsidized with Section 8 assistance under 42 U.S.C. 1437f, if the rent complied with this § 951.1 at the time of the household's initial occupancy and continues to comply with the Section 8 agreement for that household.

AHP project means a single-family or multifamily housing project for owner-occupied or rental housing that has been awarded or has received AHP subsidy under the competitive application program.

Competitive application program means a program established by a Bank under which the Bank awards and disburses AHP subsidy through a competitive application scoring process pursuant to the requirements of § 951.5.

Cost of funds means, for purposes of a subsidized advance, the estimated cost of issuing Bank System consolidated obligations with maturities comparable to that of the subsidized advance.

Direct subsidy means an AHP subsidy in the form of a direct cash payment.

Eligible household means a household that meets the income limits and other requirements specified by a Bank for its competitive application program and homeownership set-aside programs, provided that:

(1) In the case of owner-occupied housing, the household's income may not exceed 80 percent of the median income for the area; and

(2) In the case of rental housing, the household's income in at least 20 percent of the units may not exceed 50 percent of the median income for the area.

Eligible project means a project eligible to receive AHP subsidy pursuant to the requirements of this part.

Family member means any individual related to a person by blood, marriage, or adoption.

Funding period means a time period, as determined by a Bank, during which the Bank accepts AHP applications for subsidy.

Homeownership set aside program means a program established by a Bank under which the Bank disburses AHP direct subsidy pursuant to the requirements of § 951.6.

Household means one or more persons living in a dwelling unit.

Loan pool means a group of mortgage or other loans meeting the requirements of this part that are purchased, held in trust, and pledged as security for a financial instrument.

Low- or moderate-income household means a household that has an income of 80 percent or less of the median income for the area, with the income limit adjusted for household size in accordance with the methodology of the applicable median income standard, unless such median income standard has no household size adjustment methodology.

Low- or moderate-income neighborhood means any neighborhood in which 51 percent or more of the households have incomes at or below 80 percent of the median income for the area.

Median income for the area means one or more of the following median income standards as determined by a Bank, after consultation with its Advisory Council, in its AHP implementation plan:

(1) The median income for the area, as published annually by HUD;

(2) The median income for the area obtained from the Federal Financial Institutions Examination Council;

(3) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a state agency or instrumentality;

(4) The median income for the area, as published by the United States Department of Agriculture; or

(5) The median income for an applicable definable geographic area, as published by a federal, state, or local government entity, and approved by the Finance Board, at the request of a Bank, for use under the AHP.

Multifamily building means a structure with five or more dwelling units.

Net earnings of a Bank means the net earnings of a Bank for a calendar year after deducting the Bank's annual contribution to the Resolution Funding Corporation required under section 21B of the Act (12 U.S.C. 1441b), and before declaring or paying any dividend under section 16 of the Act (12 U.S.C. 1436). For purposes of this part, ''dividend'' includes any dividends on capital stock subject to a redemption request even if under GAAP, those dividends are treated as an ''interest expense.''

Owner-occupied project means, for purposes of the competitive application program, one or more owner-occupied units in a single-family or multifamily building, including condominiums, cooperative housing, and manufactured housing.

Owner-occupied unit means a dwelling unit occupied by the owner of the unit. Housing with two to four dwelling units consisting of one owner-occupied unit and one or more rental units is considered a single owner-occupied unit.

[3] *See* 44 U.S.C. 3501 *et seq.* This proposed rule does not incorporate the proposed changes to AHP data reporting discussed in detail in the PRA notice published in April 2005. *See* 70 FR 21411 (Apr. 26, 2005).

Program means the Affordable Housing Program established pursuant to this part.

Rental project means, for purposes of the competitive application program, one or more dwelling units for occupancy by tenants or households that are not owner-occupants, including overnight and emergency shelters, transitional housing for homeless households, mutual housing, and single-room occupancy housing.

Retention period means the following period of time during which AHP-assisted owner-occupied units or rental projects must meet the applicable income targeting and rent commitments in the approved AHP application for subsidy:

(1) Five years from closing for an AHP-assisted owner-occupied unit, or in the case of rehabilitation of a unit currently occupied by the owner where there is no closing, 5 years from the date of completion of the rehabilitation; and

(2) Fifteen years from the date of project completion for a rental project.

Revolving loan fund means a capital fund established to make mortgage or other loans meeting the requirements of this part whereby loan principal is re-paid into the fund and re-lent to other borrowers.

Single-family building means a structure with one to four dwelling units.

Sponsor means a not-for-profit or for-profit organization or public entity that:

(1) Has an ownership interest (including any partnership interest), as defined by the Bank in its AHP implementation plan, in a rental project;

(2) Is integrally involved, as defined by the Bank in its AHP implementation plan, in an owner-occupied project, such as by exercising control over the planning, development, or management of the project, or by qualifying borrowers and providing or arranging financing for the owners of the units;

(3) Establishes a loan pool; or

(4) Is a revolving loan fund.

Subsidized advance means an advance to a member at an interest rate reduced below the Bank's cost of funds, by use of a subsidy.

Subsidy means:

(1) A direct subsidy, provided that if a direct subsidy is used to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the subsidy must equal the net present value of the interest foregone from making the loan below the lender's market interest rate; or

(2) The net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds.

Very low-income household means a household that has an income at or below 50 percent of the median income for the area, with the income limit adjusted for household size in accordance with the methodology of the applicable median income standard, unless such median income standard has no household size adjustment methodology.

Visitable means, in either owner-occupied or rental housing, at least one entrance is at-grade (no steps) and approached by an accessible route such as a sidewalk, and the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, offering 32 inches of clear passage space.

§ 951.2 Required annual AHP contributions; allocation of contributions.

(a) *Annual AHP contributions.* Each Bank shall contribute annually to its Program the greater of:

(1) 10 percent of the Bank's net earnings for the previous year; or

(2) That Bank's pro rata share of an aggregate of $100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year, except that the required annual AHP contribution for a Bank shall not exceed its net earnings in the previous year.

(b) *Allocation of contributions.* Each Bank, after consultation with its Advisory Council and pursuant to written policies adopted by the Bank's board of directors, shall allocate its annual required AHP contribution as follows:

(1) *Competitive application program.* Each Bank shall allocate annually that portion of its annual required AHP contribution that is not set aside to fund homeownership set-aside programs under paragraph (b)(2) of this section, to provide funds to members through a competitive application program, pursuant to the requirements of this part.

(2) *Homeownership set-aside programs.* (i) *Allocation amount; first-time homebuyers.* A Bank, at its discretion, may set aside annually, in the aggregate, up to the greater of $4.5 million or 35 percent of the Bank's annual required AHP contribution to provide funds to members participating in homeownership set-aside programs established by the Bank, provided that at least one-third of the Bank's aggregate annual set-aside allocation to such programs shall be to assist first-time homebuyers, pursuant to the requirements of this part. A Bank may establish one or more homeownership set-aside programs pursuant to written policies adopted by the Bank's board of directors.

(ii) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility for adopting its homeownership set-aside program policies.

§ 951.3 AHP implementation plan.

(a) *Adoption; no delegation.* Each Bank, after consultation with its Advisory Council, shall adopt a written AHP implementation plan, and shall not amend the plan without first consulting its Advisory Council. The Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to consult with the Advisory Council prior to adopting or amending the AHP implementation plan. The AHP implementation plan shall set forth, at a minimum:

(1) The applicable median income standard or standards adopted by the Bank consistent with the definition of median income for the area in § 951.1;

(2) The Bank's requirements for its competitive application program established pursuant to § 951.5, including the schedule for AHP funding periods, definition of sponsor, project cost, and feasibility guidelines, any additional optional District eligibility requirements, scoring guidelines, and related definitions, requirements for timely use of AHP subsidies, and requirements for determining compliance upon disbursement of AHP subsidies;

(3) The Bank's requirements for any homeownership set-aside programs established by the Bank pursuant to § 951.6, including eligibility requirements and priority criteria and related definitions, AHP funding requirements, and requirements for timely use of the AHP subsidy;

(4) The Bank's requirements for funding revolving loan funds, if adopted by the Bank pursuant to § 951.5(c)(13);

(5) The Bank's requirements for funding loan pools, if adopted by the Bank pursuant to § 951.5(c)(14);

(6) The Bank's requirements for monitoring under its competitive application program and any Bank homeownership set-aside programs, adopted pursuant to § 951.7;

(7) The Bank's requirements, including time limits, for re-use of repaid AHP direct subsidy, if adopted by the Bank pursuant to § 951.8(f)(2); and

(8) Retention agreement requirements for projects and households under the competitive application program and any Bank homeownership set-aside

programs, pursuant to § 951.9(a)(7) and (a)(8).

(b) *Advisory Council review.* Prior to the adoption or amendment of a Bank's AHP implementation plan, the Bank shall provide its Advisory Council an opportunity to review the document, and the Advisory Council shall provide its recommendations to the Bank's board of directors.

(c) *Notification of plan amendments to the Finance Board.* A Bank shall notify the Finance Board of any amendments made to its AHP implementation plan within 30 days after the date of their adoption by the Bank's board of directors.

(d) *Public access.* A Bank shall publish its current AHP implementation plan on a publicly available website, and shall publish any amendments to the plan on the website within 30 days after the date of their adoption by the Bank's board of directors.

§ 951.4 Advisory Councils.

(a) *Appointment.* (1) Each Bank's board of directors shall appoint an Advisory Council of from 7 to 15 persons who reside in the Bank's District and are drawn from community and not-for-profit organizations that are actively involved in providing or promoting low- and moderate-income housing, and community and not-for-profit organizations that are actively involved in providing or promoting community lending, in the District.

(2) Each Bank shall solicit nominations for membership on the Advisory Council from community and not-for-profit organizations pursuant to a nomination process that is as broad and as participatory as possible, allowing sufficient time for responses.

(3) The Bank's board of directors shall appoint Advisory Council members from a diverse range of organizations so that representatives of no one group shall constitute an undue proportion of the membership of the Advisory Council, giving consideration to the size of the Bank's District and the diversity of low- and moderate-income housing and community lending needs and activities within the District.

(b) *Terms of Advisory Council members.* Pursuant to policies adopted by the Bank's board of directors, Advisory Council members shall be appointed by the Bank's board of directors to serve for terms of up to 3 years, and such terms shall be staggered to provide continuity in experience and service to the Advisory Council. No Advisory Council member may be appointed to serve for more than three full consecutive terms. An Advisory Council member appointed to fill a vacancy shall be appointed for the unexpired term of his or her predecessor in office.

(c) *Election of officers.* Each Advisory Council shall elect from among its members a chairperson, a vice chairperson, and any other officers the Advisory Council deems appropriate.

(d) *Duties.* (1) *Meetings with the Banks.* (i) The Advisory Council shall meet with representatives of the Bank's board of directors at least quarterly to provide advice on ways in which the Bank can better carry out its housing finance and community lending mission, including, but not limited to, advice on the low- and moderate-income housing and community lending programs and needs in the Bank's District, and on the use of AHP subsidies, Bank advances, and other Bank credit products for these purposes.

(ii) The Advisory Council's advice shall include recommendations on:

(A) The amount of AHP subsidies to be allocated to the Bank's competitive application program and any Bank homeownership set-aside programs;

(B) The AHP implementation plan and any subsequent amendments thereto;

(C) The scoring criteria, related definitions, and any additional optional District eligibility requirements for the competitive application program; and

(D) The eligibility requirements and any priority criteria for any Bank homeownership set-aside programs.

(2) *Summary of AHP applications.* The Bank shall comply with requests from the Advisory Council for summary information regarding AHP applications from prior funding periods.

(3) *Annual analysis; public access.* (i) Each Advisory Council shall submit to the Finance Board annually by May 1 its analysis of the low- and moderate-income housing and community lending activity of the Bank by which it is appointed.

(ii) Within 30 days after the date the Advisory Council's annual analysis is submitted to the Finance Board, the Bank shall publish the analysis on a publicly available website.

(e) *Expenses.* The Bank shall pay Advisory Council members' travel expenses, including transportation and subsistence, for each day devoted to attending meetings with representatives of the board of directors of the Bank and meetings requested by the Finance Board.

(f) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to appoint persons as members of the Advisory Council or to meet with the Advisory Council at least quarterly.

§ 951.5 Competitive application program.

(a) *Establishment of program.* A Bank shall establish a competitive application program pursuant to the requirements of this part.

(b) *Funding periods and application process.* (1) *Funding periods.* A Bank may accept applications for AHP subsidy under its competitive application program during a specified number of funding periods each year, as determined by the Bank.

(2) *Eligible applicants.* A Bank shall accept applications for AHP subsidy under its competitive application program only from institutions that are members of the Bank at the time the application is submitted to the Bank.

(3) *Submission of applications.* A Bank shall require applications for AHP subsidy to contain information sufficient for the Bank to:

(i) Determine that the proposed AHP project meets the eligibility requirements of paragraph (c) of this section; and

(ii) Evaluate the application pursuant to the scoring guidelines adopted by the Bank pursuant to paragraph (d) of this section.

(4) *Review of applications submitted.* A Bank shall review the applications for AHP subsidy to determine that the proposed AHP project meets the eligibility requirements of paragraph (c) of this section, and shall evaluate the applications pursuant to the Bank's scoring guidelines adopted pursuant to paragraph (d) of this section.

(c) *Minimum eligibility requirements.* Projects receiving AHP subsidies pursuant to a Bank's competitive application program must meet the following eligibility requirements:

(1) *Owner-occupied or rental housing.* The AHP subsidy shall be used exclusively for:

(i) *Owner-occupied housing.* The purchase, construction, or rehabilitation of an owner-occupied project by or for very low-income or low- or moderate-income households. A household must have an income meeting the income targeting commitments in the approved AHP application at the time it is qualified by the project sponsor for participation in the project; or

(ii) *Rental housing.* The purchase, construction, or rehabilitation of a rental project, where at least 20 percent of the units in the project are occupied by and affordable for very low-income households. A household must have an income meeting the income targeting commitments in the approved AHP application upon initial occupancy of

the rental unit, or for projects involving the purchase or rehabilitation of rental housing that already is occupied, at the time the application for AHP subsidy is submitted to the Bank for approval.

(2) *Need for subsidy.* The project's estimated cash uses of funds shall equal its estimated cash sources of funds as reflected in the project's development budget. A project's cash sources of funds shall include estimates of funds the project sponsor intends to obtain from other sources but which have not yet been committed to the project.

(3) *Project costs.* (i) *In general.* Project costs, as reflected in the project's development budget, must be reasonable, in accordance with the Bank's project cost guidelines, taking into consideration the geographic location of the project, development conditions, and other non-financial household or project characteristics.

(ii) *Cost of property and services provided by a member.* The purchase price of property or services, as reflected in the project's development budget, sold to the project by a member providing AHP subsidy to the project, or, in the case of property, upon which such member holds a mortgage or lien, may not exceed the market value of such property or services as of the date the purchase price was agreed upon. In the case of real estate owned property sold to a project by a member providing AHP subsidy to the project, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the ''as-is'' or ''as-rehabilitated'' value of the property, whichever is appropriate. That value shall be reflected in an independent appraisal of the property performed by a state certified or licensed appraiser, as defined in 12 CFR 564.2(j) and (k), within 6 months prior to the date the Bank disburses AHP subsidy to the project.

(4) *Project feasibility.* (i) *Developmental feasibility.* The project must be likely to be completed and occupied, based on relevant factors contained in the Bank's project feasibility guidelines, including, but not limited to, the development budget, market analysis, and project sponsor's experience in providing the requested assistance to households.

(ii) *Operational feasibility of rental projects.* A rental project must be able to operate in a financially sound manner, in accordance with the Bank's project feasibility guidelines, as projected in the project's operating pro forma or similar statement of operational feasibility.

(5) *Financing costs.* The rate of interest, points, fees, and any other charges for all loans financing the project shall not exceed a reasonable market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(6) *Timing of AHP subsidy use.* The AHP subsidy must be likely to be drawn down by the project or used by the project to procure other financing commitments within 12 months of the date of approval of the application for AHP subsidy funding the project.

(7) *Counseling costs.* AHP subsidies may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(ii) The cost of the counseling has not been covered by another funding source, including the member.

(8) *Refinancing.* The project may use AHP subsidies to refinance an existing single-family or multifamily mortgage loan, provided that the refinancing produces equity proceeds and such equity proceeds up to the amount of the AHP subsidy in the project shall be used only for the purchase, construction, or rehabilitation of housing units meeting the eligibility requirements of this paragraph (c).

(9) *Retention.* The AHP-assisted projects are, or are committed to be, subject to retention agreements as follows:

(i) *Owner-occupied projects.* Each AHP-assisted unit in an owner-occupied project is, or is committed to be, subject to a 5-year retention agreement described in § 951.9(a)(7).

(ii) *Rental projects.* AHP-assisted rental projects are, or are committed to be, subject to a 15-year retention agreement described in § 951.9(a)(8).

(10) *Project sponsor qualifications.* (i) *In general.* A project's sponsor must be qualified and able to perform its responsibilities as committed to in the application for AHP subsidy funding the project.

(ii) *Revolving loan fund.* Pursuant to written policies adopted by a Bank's board of directors, a project sponsor that is a revolving loan fund shall:

(A) Provide evidence of sound business practices and fiscal sustainability;

(B) Provide audited statements or equivalent evidence that its operations are consistent with acceptable business practices; and

(C) Demonstrate the ability to revolve subsidy repayments on a timely basis and track the use of the AHP subsidy.

(iii) *Loan pool.* Pursuant to written policies adopted by a Bank's board of directors, a project sponsor that establishes a loan pool shall:

(A) Provide evidence of sound asset/liability management practices and fiscal sustainability;

(B) Provide audited statements or equivalent evidence that its operations are consistent with acceptable business practices; and

(C) Demonstrate the ability to track the use of the AHP subsidy.

(11) *Fair housing.* The project, as proposed, must comply with applicable federal and state laws on fair housing and housing accessibility, including, but not limited to, the Fair Housing Act, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Architectural Barriers Act of 1969, and must demonstrate how the project will be affirmatively marketed.

(12) *Calculation of AHP subsidy.* (i) Where an AHP direct subsidy is provided to a project to write down the interest rate on a loan extended by a member, sponsor, or other party to a project, the net present value of the interest foregone from making the loan below the lender's market interest rate shall be calculated as of the date the application for AHP subsidy is submitted to the Bank, and subject to adjustment under paragraph (g)(4) of this section.

(ii) Where an AHP subsidized advance is provided to a project, the net present value of the interest revenue foregone from making a subsidized advance at a rate below the Bank's cost of funds shall be determined as of the earlier of the date of disbursement of the subsidized advance or the date prior to disbursement on which the Bank first manages the funding to support the subsidized advance through its asset/liability management system, or otherwise.

(13) *Use of AHP subsidy by revolving loan funds.* Pursuant to written policies adopted by a Bank's board of directors after consultation with its Advisory Council, a Bank, in its discretion, may provide AHP subsidies to members for lending by revolving loan funds to eligible projects and households under a Bank's competitive application program, provided the following requirements are met:

(i) *Initial use of subsidy.* (A) The revolving loan fund's initial lending of the AHP subsidy shall meet all applicable eligibility requirements under this paragraph (c).

(B) The revolving loan fund's initial lending of the AHP subsidy shall be to projects and households meeting the commitments in the approved

application for AHP subsidy, and the income eligibility and affordability commitments in such application shall be met for the full AHP retention period.

(ii) *Revolving uses of repaid subsidy.* (A) The revolving loan fund's subsequent lending of repaid AHP subsidy shall meet all applicable eligibility requirements under this paragraph (c).

(B) The revolving loan fund's subsequent lending of repaid AHP subsidy shall be for low- or moderate-income households in the case of owner-occupied projects, or for rental projects where at least 20 percent of the units are occupied by and affordable for very low-income households, subject to retention period, monitoring and recapture requirements that the Bank shall adopt.

(iii) The revolving loan fund shall return to the Bank any repaid AHP subsidy that will not be used according to the requirements in this paragraph (c)(13).

(14) *Use of AHP subsidy in loan pools.* Pursuant to written policies adopted by a Bank's board of directors after consultation with its Advisory Council, a Bank, at its discretion, may provide AHP subsidies to members for projects involving the purchase of eligible AHP-assisted loans to AHP-eligible households for inclusion in a loan pool under a Bank's competitive application program, provided the following requirements are met:

(i) *Eligibility requirements.* The loan pool's use of the AHP subsidies shall meet all applicable eligibility requirements under this paragraph (c)(14), and shall not be for the sole purpose of providing liquidity to the originator or holder of the loans. The loan pool sponsor must provide to the Bank proposed loan acceptance standards for the pool, the number of eligible households and income levels of loans served in a given time period, and the sponsor must make available to the Bank for its review and approval the underwriting characteristics of loans that the loan pool will purchase.

(ii) *Forward commitment.* (A) The loan pool sponsor shall purchase the loans pursuant to a forward commitment that identifies the loans to be originated with principal or interest rate reductions as specified in the approved AHP applications to the targeted low- or moderate-income households. Both initial purchases of loans for the AHP loan pool and subsequent purchases of loans to substitute for repaid loans in the pool shall be made pursuant to the terms of such forward commitment and subject to time limits on the use of the AHP subsidy as specified by the Bank in its AHP implementation plan under § 951.3(a)(2) and the Bank's agreement with the loan pool sponsor.

(B) In the alternative, the loan pool shall purchase an initial round of loans that are not purchased pursuant to a forward commitment, provided that the originator or holder of the loans is required to use the proceeds from the initial loan purchases within time limits on use of the AHP subsidy as specified by the Bank in its AHP implementation plan under § 951.3(a)(2) and the Bank's agreement with the loan pool sponsor. The proceeds shall assist households that are income-eligible under the approved AHP applications for subsidy during subsequent rounds of lending, and such assistance shall be provided in the form of a principal reduction or a below-market AHP-subsidized interest rate as specified in the approved AHP application.

(iii) Each AHP-assisted owner-occupied unit receiving AHP direct subsidy shall be subject to an AHP 5-year retention agreement as required under paragraph (c)(9)(i) of this section.

(iv) Where AHP direct subsidy is being used in connection with the purchase of a loan or loans from a member or other party, the loan pool sponsor shall use the AHP direct subsidy for a standard upfront buy-down of the interest rate on such loan or loans, or a reduction in the principal of the loans.

(15) *Optional District eligibility requirements.* A Bank may require a project receiving AHP subsidies to meet one or more of the following additional eligibility requirements adopted by the Bank's board of directors after consultation with its Advisory Council:

(i) *AHP subsidy limits.* A requirement that the amount of AHP subsidy requested for the project does not exceed limits established by the Bank as to the maximum amount of AHP subsidy available per member each year, or per member, per project, or per project unit in a single funding period.

(ii) *Counseling.* A requirement that a household must complete a homebuyer or homeowner counseling program provided by, or based on one provided by, an organization recognized as experienced in homebuyer or homeowner counseling, respectively.

(16) *Prohibited uses of AHP subsidies.* The project shall not use AHP subsidies to pay for:

(i) *Prepayment fees.* Prepayment fees imposed by a Bank on a member for a subsidized advance that is prepaid.

(ii) *Cancellation fees.* Cancellation fees and penalties imposed by a Bank on a member for a subsidized advance commitment that is canceled.

(iii) *Processing fees.* Processing fees charged by members for providing direct subsidies to a project.

(17) *Prohibited eligibility requirement for in-District projects.* A Bank shall not establish a requirement that a project be located in the Bank's District.

(d) *Scoring of applications.* (1) *In general.* A Bank shall adopt written scoring guidelines setting forth the Bank's AHP competitive application program scoring criteria and related definitions and point allocations, and implementing other applicable requirements pursuant to this paragraph (d). A Bank shall not adopt additional scoring criteria or point allocations, except as specifically authorized under this paragraph (d).

(2) *Point allocations.* (i) A Bank shall allocate 100 points among the 9 scoring criteria identified in paragraph (d)(5) of this section.

(ii) The scoring criterion for targeting identified in paragraph (d)(5)(iii) of this section shall be allocated at least 20 points.

(iii) The remaining scoring criteria shall be allocated at least five points each.

(3) *Fixed point and variable point scoring criteria.* A Bank shall designate each scoring criterion as either a fixed-point or a variable-point criterion, defined as follows:

(i) Fixed-point scoring criteria are those which cannot be satisfied in varying degrees and are either satisfied or not, with the total number of points allocated to the criterion awarded by the Bank to an application meeting the criterion.

(ii) Variable-point criteria are those where there are varying degrees to which an application can satisfy the criteria, with the number of points that may be awarded to an application for meeting the criterion varying, depending on the extent to which the application satisfies the criterion, based on a fixed scale or on a scale relative to the other applications being scored. A Bank shall designate the targeting and subsidy-per-unit scoring criteria identified in paragraphs (d)(5)(iii) and (d)(5)(viii), respectively, of this section, as variable-point criteria.

(4) *Satisfaction of scoring criteria.* A Bank shall award scoring points to applications for proposed projects based on satisfaction of the scoring criteria adopted by the Bank pursuant to paragraph (d)(5) of this section.

(5) *Scoring criteria.* An application for a proposed project may receive scoring points based on satisfaction of the following nine scoring criteria:

(i) *Use of donated or conveyed government-owned or other properties.* The financing of housing using a significant proportion of:

(A) Land or units donated or conveyed by the federal government or any agency or instrumentality thereof; or

(B) Land or units donated or conveyed by any other party for an amount significantly below the fair market value of the property, as defined by the Bank in its AHP implementation plan.

(ii) *Sponsorship by a not-for-profit organization or government entity.* Project sponsorship by a not-for-profit organization, a state or political subdivision of a state, a state housing agency, a local housing authority, a Native American Tribe, an Alaskan Native Village, or the government entity for Native Hawaiian Home Lands.

(iii) *Targeting.* The extent to which a project provides housing for very low- and low- or moderate-income households, as follows:

(A) *Rental projects.* An application for a rental project shall be awarded the maximum number of points available under this scoring criterion if 60 percent or more of the units in the project are reserved for occupancy by households with incomes at or below 50 percent of the median income for the area. Applications for projects with less than 60 percent of the units reserved for occupancy by households with incomes at or below 50 percent of the median income for the area shall be awarded points on a declining scale based on the percentage of units in a project that are reserved for households with incomes at or below 50 percent of the median income for the area, and on the percentage of the remaining units reserved for households with incomes at or below 80 percent of the median income for the area.

(B) *Owner-occupied projects.* Applications for owner-occupied projects shall be awarded points based on a declining scale to be determined by the Bank in its AHP implementation plan, taking into consideration percentages of units and targeted income levels.

(C) *Separate scoring.* For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(iv) *Housing for homeless households.* The financing of rental housing, excluding overnight shelters, reserving at least 20 percent of the units for homeless households, the creation of transitional housing for homeless households permitting a minimum of 6 months occupancy, or the creation of permanent owner-occupied housing reserving at least 20 percent of the units for homeless households, with the term ''homeless households'' as defined by the Bank in its AHP implementation plan.

(v) *Promotion of empowerment.* The provision of housing in combination with a program offering employment; education; training; homebuyer, homeownership, or tenant counseling; daycare services; resident involvement in decision making affecting the creation or operation of the project; or other services that assist residents to move toward better economic opportunities, such as welfare to work initiatives.

(vi) *First District priority.* The satisfaction of one of the following criteria, or one of a number of the following criteria, as recommended by the Bank's Advisory Council and adopted by the Bank's board of directors and set forth in the Bank's AHP implementation plan, as long as the total points available for meeting the criterion or criteria adopted under this category do not exceed the total points allocated to this category:

(A) *Special needs.* The financing of housing in which at least 20 percent of the units are reserved for occupancy by households with special needs, such as the elderly, mentally or physically disabled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS; or the financing of housing that is visitable by persons with physical disabilities who are not occupants of such housing.

(B) *Community development.* The financing of housing meeting housing needs documented as part of a community revitalization or economic development strategy approved by a unit of a state or local government.

(C) *First-time homebuyers.* The financing of housing for first-time homebuyers.

(D) *Member financial participation.* Member financial participation (excluding the pass-through of AHP subsidy) in the project, such as providing market rate or concessionary financing, fee waivers, or donations.

(E) *Disaster areas and displaced households.* The financing of housing located in federally declared disaster areas, or for households displaced from federally declared disaster areas due to a disaster.

(F) *Rural.* The financing of housing located in rural areas.

(G) *Urban.* The financing of urban in-fill or urban rehabilitation housing.

(H) *Economic diversity.* The financing of housing that is part of a strategy to end isolation of very low-income households by providing economic diversity through mixed-income housing in low- or moderate-income neighborhoods, or providing very low- or low- or moderate-income households with housing opportunities in neighborhoods or cities where the median income equals or exceeds the median income for the larger surrounding area, such as the city, county, or Primary Metropolitan Statistical Area, in which the neighborhood or city is located.

(I) *Fair housing remedy.* The financing of housing as part of a remedy undertaken by a jurisdiction adjudicated by a federal, state, or local court to be in violation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), the Fair Housing Act (42 U.S.C. 3601 *et seq.*), or any other federal, state, or local fair housing law, or as part of a settlement of such claims.

(J) *Community involvement.* Demonstrated support for the project by local government, other than as a project sponsor, in the form of property tax deferment or abatement, zoning changes or variances, infrastructure improvements, fee waivers, or other similar forms of non-cash assistance, or demonstrated support for the project by community organizations or individuals, other than as project sponsors, through the commitment by such entities or individuals of donated goods and services, or volunteer labor.

(K) *Lender consortia.* The involvement of financing by a consortium of at least two financial institutions.

(vii) *Second District priority: defined housing need in the District.* The satisfaction of a housing need in the Bank's District, as defined and recommended by the Bank's Advisory Council and adopted by the Bank's board of directors. The Bank may, but is not required to, use one of the criteria listed in paragraph (d)(5)(vi) of this section, provided it is different from the criterion or criteria adopted by the Bank under such paragraph. The Bank may not adopt as its scoring criterion under this paragraph (d)(5)(vii) the financing of housing located in the Bank's District.

(viii) *AHP subsidy per unit.* (A) *Amount of subsidy.* The extent to which a project proposes to use the least amount of AHP subsidy per AHP-targeted unit. In the case of an application for a project financed by a subsidized advance, the total amount of AHP subsidy used by the project shall be estimated based on the Bank's cost of funds as of the date on which all applications are due for the funding period in which the application is submitted.

(B) *Separate scoring.* For purposes of this scoring criterion, applications for owner-occupied projects and rental projects may be scored separately.

(ix) *Community stability.* The promotion of community stability, such as by rehabilitating vacant or abandoned properties, being an integral part of a neighborhood stabilization plan approved by a unit of state or local government, and not displacing low- or moderate-income households, or if such displacement will occur, assuring that such households will be assisted to minimize the impact of such displacement.

(e) *Approval of AHP applications.* (1) A Bank shall approve applications for AHP subsidy in descending order starting with the highest scoring application until the total funding amount for the particular funding period, except for any amount insufficient to fund the next highest scoring application, has been allocated.

(2) The Bank also shall approve at least the next four highest scoring applications as alternates and, within 1 year of approval, may fund such alternates if any previously committed AHP subsidies become available.

(f) *Modifications of approved AHP applications.* (1) *Modification procedure.* If, prior to or after final disbursement of funds to a project from all funding sources, there is or will be a change in the project that would change the score that the project application received in the funding period in which it was originally scored and approved, had the changed facts been operative at that time, a Bank, in its discretion, may approve in writing a modification to the terms of the approved application, provided that:

(i) The project, incorporating any such changes, would meet the eligibility requirements of paragraph (c) of this section;

(ii) The application, as reflective of such changes, continues to score high enough to have been approved in the funding period in which it was originally scored and approved by the Bank; and

(iii) There is good cause for the modification, and the analysis and justification for the modification are documented by the Bank in writing.

(2) *AHP subsidy increases; no delegation.* Modifications involving an increase in AHP subsidy shall be approved or disapproved by a Bank's board of directors. The authority to approve or disapprove such requests shall not be delegated to Bank officers or other Bank employees.

(g) *Procedure for funding.* (1) *Disbursement of AHP subsidies to members.* (i) A Bank may disburse AHP subsidies only to institutions that are members of the Bank at the time they request a draw-down of the subsidies.

(ii) If an institution with an approved application for AHP subsidy loses its membership in a Bank, the Bank may disburse AHP subsidies to a member of such Bank to which the institution has transferred its obligations under the approved application, or the Bank may disburse AHP subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved AHP application.

(2) *Progress towards use of AHP subsidies.* A Bank shall establish policies and procedures, such as time limits, for determining whether progress is being made towards draw-down and use of AHP subsidies by approved projects, and whether to cancel AHP application approvals for lack of such progress. Pursuant to such policies and procedures, a Bank shall determine whether progress is being made by approved projects, and whether to cancel any AHP application approvals. If a Bank cancels any AHP application approvals, it shall make the AHP subsidies available for other AHP-eligible projects.

(3) *Compliance upon disbursement of AHP subsidies.* A Bank shall establish policies and procedures for determining, prior to its initial disbursement of AHP subsidies for an approved project, and prior to subsequent disbursement if the need for AHP subsidy has changed, that the project meets the eligibility requirements of paragraph (c) of this section and all obligations committed to in the approved AHP application.

(4) *Changes in approved AHP subsidy amount where a direct subsidy is used to write down prior to closing the principal amount or interest rate on a loan.* If a member is approved to receive AHP direct subsidy to write down prior to closing the principal amount or the interest rate on a loan to a project and the amount of AHP subsidy required to maintain the debt service cost for the loan decreases from the amount of AHP subsidy initially approved by the Bank due to a decrease in market interest rates between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank shall reduce the AHP subsidy amount accordingly. If market interest rates rise between the time of approval and the time the lender commits to the interest rate to finance the project, the Bank, in its discretion, may increase the AHP subsidy amount accordingly.

(5) *AHP outlay adjustment.* If a Bank reduces the amount of AHP subsidy approved for a project, the amount of such reduction shall be returned to the Bank's AHP fund. If a Bank increases the amount of AHP subsidy approved for a project, the amount of such increase shall be drawn first from any currently uncommitted or repaid AHP subsidies and then from the Bank's required AHP contribution for the next year.

(6) *Project sponsor notification of re-use of repaid AHP direct subsidy.* Prior to disbursement by a project sponsor of AHP direct subsidy repaid to and retained by such project sponsor pursuant to a subsidy re-use program authorized by the Bank under § 951.8(f)(2), the project sponsor shall provide written notice to the member and the Bank of its intent to disburse the repaid AHP subsidy to a household satisfying the requirements of this part and the commitments in the approved AHP application.

(h) *Bank board duties and delegation.* (1) *Duties.* A Bank's board of directors, after consultation with its Advisory Council, shall be responsible for:

(i) The establishment of any optional District eligibility requirements;

(ii) The establishment of any policies and procedures for use of AHP subsidies by revolving loan funds or loan pools;

(iii) The establishment of scoring criteria and related definitions and point allocations; and

(iv) Approving or disapproving the applications for AHP subsidy.

(2) *No delegation.* The Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibilities set forth in paragraph (h)(1) of this section.

§ 951.6 Homeownership set-aside programs.

(a) *Establishment of program.* A Bank may establish one or more homeownership set-aside programs pursuant to the requirements of this part.

(b) *Eligible applicants.* A Bank shall accept applications for AHP direct subsidy under its homeownership set-aside programs only from institutions that are members of the Bank at the time the application is submitted to the Bank.

(c) *Minimum eligibility requirements.* A Bank's homeownership set-aside programs must meet the following eligibility requirements:

(1) *Member allocation criteria.* AHP direct subsidies shall be provided to members pursuant to allocation criteria established by the Bank in its AHP implementation plan.

(2) *Eligible households.* Members shall provide AHP direct subsidies only to households that:

(i) Have incomes at or below 80 percent of the median income for the area at the time the household is accepted for enrollment by the member and the Bank in the Bank's homeownership set-aside program; and

(ii) Meet the first-time homebuyer requirement, in the case of households receiving funds pursuant to the first-time homebuyer requirement in § 951.2(b)(2), and meet such other eligibility criteria that may be established by the Bank in its AHP implementation plan, such as a matching funds requirement, counseling requirement, or criteria that give priority for the purchase or rehabilitation of housing in particular areas or as part of a disaster relief effort.

(3) *Maximum grant amount.* Members shall provide AHP direct subsidies to households as a grant, in an amount up to a maximum of $15,000 per household, as established by the Bank in its AHP implementation plan, which limit shall apply to all households.

(4) *Eligible uses of AHP direct subsidy.* Households shall use the AHP direct subsidies to pay for down payment, closing cost, counseling, or rehabilitation assistance in connection with the household's purchase or rehabilitation of an owner-occupied unit, including a condominium or cooperative housing unit, to be used as the household's primary residence.

(5) *Retention agreement.* An owner-occupied unit purchased or rehabilitated using AHP direct subsidy shall be subject to a 5-year retention agreement described in § 951.9(a)(7).

(6) *Member financial incentives.* The Bank shall establish incentives for members to provide financial or other assistance in connection with providing the AHP direct subsidy.

(7) *Financing costs.* The rate of interest, points, fees, and any other charges for loans used directly or indirectly in conjunction with the AHP direct subsidy shall not exceed a reasonable market rate of interest, points, fees, and other charges for loans of similar maturity, terms, and risk.

(8) *Counseling costs.* The AHP direct subsidies may be used to pay for counseling costs only where:

(i) Such costs are incurred in connection with counseling of homebuyers who actually purchase an AHP-assisted unit; and

(ii) The cost of the counseling has not been covered by another funding source, including the member.

(9) *Progress towards use of AHP subsidy.* Progress shall be made towards draw-down and use of the AHP direct subsidies by eligible households pursuant to the requirements in the Bank's policies and procedures.

(10) *No cash back to household.* A member shall not provide cash back to a household at closing on the mortgage loan, and shall use any AHP subsidy beyond what is needed at closing for closing costs and the approved mortgage amount to further reduce the principal of the mortgage loan.

(d) *Approval of AHP applications.* The Bank shall approve applications for AHP direct subsidy in accordance with the Bank's criteria governing the allocation of funds.

(e) *Procedure for funding.* (1) *Disbursement of AHP subsidies to members.* (i) A Bank may disburse AHP direct subsidies only to institutions that are members of the Bank at the time they request a draw-down of the subsidies.

(ii) If an institution with an approved application for AHP direct subsidy loses its membership in a Bank, the Bank may disburse AHP direct subsidies to a member of such Bank to which the institution has transferred its obligations under the approved AHP application, or the Bank may disburse AHP direct subsidies through another Bank to a member of that Bank that has assumed the institution's obligations under the approved AHP application.

(2) *Progress towards use of AHP subsidies.* A Bank shall establish policies and procedures, such as time limits, for determining whether progress is being made towards draw-down and use of the AHP direct subsidies by eligible households, and whether to cancel AHP application approvals for lack of such progress. Pursuant to such policies and procedures, a Bank shall determine whether progress is being made towards such draw-down and use, and whether to cancel any AHP application approvals. If the Bank cancels any AHP application approvals, it shall make the AHP direct subsidies available for other applicants for AHP direct subsidies under the homeownership set-aside program or for other AHP-eligible projects.

§ 951.7 Monitoring.

(a) *Competitive application program.* (1) *Initial monitoring policies and procedures.* (i) A Bank shall adopt and implement written policies and procedures for monitoring of owner-occupied and rental projects prior to, and within a reasonable period of time after, project completion to determine, at a minimum, whether:

(A) Construction or rehabilitation of projects that are underway is making satisfactory progress towards completion, in compliance with the commitments in the approved AHP applications, Bank policies, and the requirements of this part.

(B) Following completion of projects, satisfactory progress is being made towards occupancy of the projects by eligible households.

(C) Within a reasonable period of time after project completion, the projects meet the following requirements, at a minimum:

(*1*) The AHP subsidy was used for eligible purposes according to the commitments in the approved AHP applications;

(*2*) The household incomes and rents comply with the income targeting and rent commitments in the approved AHP applications;

(*3*) The projects' actual costs were reasonable in accordance with the Bank's project cost guidelines, and the AHP subsidies were necessary for the completion of the project as currently structured;

(*4*) The AHP-assisted units are subject to retention agreements meeting the requirements of § 951.9(a)(7) or (a)(8), as applicable; and

(*5*) In the case of rental projects, the services and activities committed to in the approved AHP applications have been provided in connection with the projects.

(ii) *Back-up documentation.* A Bank's written monitoring policies and procedures shall include requirements for:

(A) Bank review of back-up project documentation regarding household incomes and rents maintained by the project sponsor or owner; and

(B) Maintenance and Bank review of other project documentation in the Bank's discretion.

(2) *Long-term monitoring policies and procedures.* (i) A Bank shall adopt and implement written policies and procedures for monitoring of approved rental projects commencing in the second year after project completion to determine, at a minimum, whether during the full 15-year retention period, the household incomes, rents, and populations served comply with the income targeting, rent, and targeted population commitments, respectively, in the approved AHP applications.

(ii) *Risk factors and reliance on other monitoring.* (A) *Risk factors.* A Bank's monitoring policies and procedures shall take into account risk factors such as the amount of AHP subsidy in the project, type of project, size of project, location of project, sponsor experience, and any monitoring provided by a federal, state, or local entity as described in this paragraph (a)(2)(ii).

(B) *Reliance on other monitoring.* (*1*) *Tax credit monitoring.* For AHP projects that are allocated Federal Low-Income Housing Tax Credits (tax credits), a Bank may rely on the monitoring by the state-designated housing credit agency administering the tax credits of the income targeting, rent, and retention period requirements applicable under the Low-Income Housing Tax Credit Program, provided that the compliance profiles of the AHP and the Low-Income Housing Tax Credit program continue to be substantively equivalent.

(*2*) *Other governmental monitoring.* For AHP projects that receive funds from Federal, State, or local government entities, a Bank may rely on the monitoring by such entities of the income targeting, rent, and retention period requirements applicable under their programs, provided that:

(*i*) The income targeting, rent, and retention period requirements for those programs are substantively equivalent to those of the AHP;

(*ii*) The entity has demonstrated and continues to demonstrate its ability to monitor the project;

(*3*) The entity agrees to provide reports to the Bank on the project's incomes and rents for the full 15-year AHP retention period; and

(*4*) The Bank reviews the reports from the monitoring entity to confirm that they comply with the Bank's monitoring policies and procedures.

(C) *Risk-based sampling plan.* A Bank may use a reasonable, risk-based sampling plan to select the rental projects to be monitored and to review the back-up and any other project documentation received by the Bank. The risk-based sampling plan and its basis shall be in writing.

(iii) *Annual certifications and back-up documentation.* A Bank's written monitoring policies and procedures shall include requirements for:

(A) Bank review of annual certifications by project owners to the Bank that household incomes and rents are in compliance with the commitments in the approved AHP application and the requirements of this part;

(B) Bank review of back-up project documentation regarding household incomes and rents maintained by the project owner; and

(C) Maintenance and Bank review of other project documentation in the Banks' discretion.

(3) *Annual adjustment of targeting commitments.* For purposes of determining compliance with the targeting commitments in an approved AHP application for both initial and long-term monitoring purposes under a Bank's competitive application program, such commitments shall be considered to adjust annually according to the current applicable median income data. A rental unit may continue to count toward meeting the targeting commitment of an approved AHP application as long as the rent charged to a household remains affordable, as defined in § 951.1, for the household occupying the unit.

(b) *Homeownership set-aside programs: Monitoring policies and procedures.* (1) A Bank shall adopt and implement written policies and procedures for monitoring compliance with the requirements of its homeownership set-aside programs, including monitoring to determine, at a minimum, whether:

(i) The AHP subsidy was provided to households meeting all applicable eligibility requirements in § 951.6(c)(2) and the Bank's homeownership set-aside program policies; and

(ii) All other applicable eligibility requirements in § 951.6(c) and the Bank's homeownership set-aside program policies are met, including that the AHP-assisted units are subject to retention agreements required under § 951.6(c)(5).

(2) *Sampling plan.* A Bank may use a reasonable sampling plan to select the households to be monitored, and to review the back-up and any other documentation received by the Bank. The sampling plan and its basis shall be in writing.

(3) *Member certifications and back-up documentation.* A Bank's written monitoring policies and procedures shall include requirements for:

(i) Bank review of certifications by members to the Bank, prior to disbursement of the AHP subsidy, that the subsidy will be provided in compliance with all applicable eligibility requirements in § 951.6(c);

(ii) Bank review of back-up documentation regarding household incomes maintained by the member; and

(iii) Maintenance and Bank review of other documentation in the Bank's discretion.

(c) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt the Bank's monitoring policies and procedures under its competitive application program and homeownership set-aside programs.

§ 951.8 Remedial actions for noncompliance.

(a) *Recovery of AHP subsidies.* A Bank shall recover the amount of any AHP subsidies (plus interest, if appropriate) that are not used in compliance with the terms of the approved application for AHP subsidy and the requirements of this part, if the misuse is the result of the actions or omissions of the member, the project sponsor, or the project owner.

(b) *Responsible party for repayment of AHP subsidies.* Except as provided in paragraph (c) of this section:

(1) If the member causes the AHP subsidies to be misused through its actions or omissions, the member shall repay the AHP subsidies to the Bank.

(2) If the project sponsor or owner causes the AHP subsidies to be misused through its actions or omissions, the following shall apply, as determined by the Bank in its discretion:

(i) The member shall recover the AHP subsidies from the project sponsor or owner and repay them to the Bank; or

(ii) The project sponsor or owner shall repay the AHP subsidies directly to the Bank.

(c) *Recovery not required.* Recovery of the AHP subsidies is not required if:

(1) The member, project sponsor, or project owner cures the noncompliance within a reasonable period of time;

(2) The circumstances of noncompliance are eliminated through a modification of the terms of the approved application for AHP subsidy pursuant to § 951.5(f); or

(3) The member is unable to collect the AHP subsidy after making reasonable efforts to collect it.

(d) *Settlements.* A Bank may settle a claim for AHP subsidies that it has against a member, project sponsor, or project owner for less than the full amount due. If a Bank enters into such a settlement, the Finance Board may require the Bank to reimburse its AHP fund in the amount of any shortfall under paragraph (e)(2) of this section, unless:

(1) The Bank has sufficient documentation showing that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the non-complying parties and the extent of the Bank's recovery efforts); or

(2) The Bank obtains a determination from the Finance Board that the sum agreed to be repaid under the settlement is reasonably justified, based on the facts and circumstances of the noncompliance (including the degree of culpability of the non-complying parties and the extent of the Bank's recovery efforts).

(e) *Reimbursement of AHP fund.* (1) *By the Bank.* A Bank shall reimburse its

AHP fund in the amount of any AHP subsidies (plus interest, if appropriate) misused as a result of the actions or omissions of the Bank.

(2) *By Finance Board order.* The Finance Board may order a Bank to reimburse its AHP fund in an appropriate amount upon determining that:

(i) The Bank has failed to reimburse its AHP fund as required under paragraph (e)(1) of this section; or

(ii) The Bank has failed to recover AHP subsidy from a member, project sponsor, or project owner pursuant to the requirements of paragraph (a) of this section, and has not shown that such failure is reasonably justified, considering factors such as the extent of the Bank's recovery efforts.

(f) *Use of repaid AHP subsidies.* (1) *Use of repaid AHP subsidies in other AHP-eligible projects.* Except as provided in paragraph (f)(2) of this section, amounts of AHP subsidy, including any interest, repaid to a Bank pursuant to this part shall be made available by the Bank for other AHP-eligible projects.

(2) *Re-use of repaid AHP direct subsidies in same project.* (i) *Requirements.* AHP direct subsidy, including any interest, repaid to a member or project sponsor under a homeownership set-aside program or the competitive application program, respectively, may be repaid by such parties to the Bank for subsequent disbursement to and re-use by such parties, or retained by such parties for subsequent re-use, as authorized by the Bank, in its discretion, after consultation with its Advisory Council, in its AHP implementation plan, provided all of the following requirements are satisfied:

(A) The member or the project sponsor originally provided the AHP direct subsidy as down payment, closing cost, rehabilitation, or interest rate buy down assistance to an eligible household to purchase or rehabilitate an owner-occupied unit pursuant to an approved AHP application.

(B) The AHP direct subsidy, including any interest, was repaid to the member or project sponsor as a result of a sale by the household of the unit prior to the end of the retention period to a purchaser that is not a low- or moderate-income household.

(C) The repaid AHP direct subsidy is made available by the member or project sponsor, within the period of time specified by the Bank in its AHP implementation plan, to another AHP-eligible household to purchase or rehabilitate an owner-occupied unit in the same project in accordance with the terms of the approved AHP application.

(ii) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt any Bank policies on re-use of repaid AHP direct subsidies in the same project pursuant to paragraph (f)(2)(i) of this section.

(g) *Suspension and debarment.* (1) *At a Bank's initiative.* A Bank may suspend or debar a member, project sponsor, or project owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an approved application for AHP subsidy or the requirements of this part.

(2) *At the Finance Board's initiative.* The Finance Board may order a Bank to suspend or debar a member, project sponsor, or project owner from participation in the Program if such party shows a pattern of noncompliance, or engages in a single instance of flagrant noncompliance, with the terms of an approved application for AHP subsidy or the requirements of this part.

(h) *Transfer of Program administration.* Without limitation on other remedies, the Finance Board, upon determining that a Bank has engaged in mismanagement of its Program, may designate another Bank to administer all or a portion of the first Bank's annual AHP contribution, for the benefit of the first Bank's members, under such terms and conditions as the Finance Board may prescribe.

(i) *Finance Board actions under this section.* Except as provided in paragraph (d)(2) of this section, actions taken by the Finance Board under this section are reviewable under § 907.9 of this chapter.

§ 951.9 Agreements.

(a) *Agreements between Banks and members.* A Bank shall have in place with each member receiving an AHP subsidized advance or AHP direct subsidy, an agreement or agreements containing, at a minimum, the following provisions, where applicable:

(1) *Notification of Program requirements and policies.* The member has been notified of the requirements of this part and all Bank policies relevant to the member's approved application for AHP subsidy.

(2) *AHP subsidy pass-through.* The member shall pass on the full amount of the AHP subsidy to the project or household, as applicable, for which the subsidy was approved.

(3) *Use of AHP subsidy.* (i) *Use of AHP subsidy by the member.* The member shall use the AHP subsidy in accordance with the terms of the member's approved application for the subsidy, and the requirements of this part.

(ii) *Use of AHP subsidy by the project sponsor or owner.* The member shall have in place an agreement with each project sponsor and project owner, in which the project sponsor and project owner agree to use the AHP subsidy in accordance with the terms of the member's approved application for the subsidy, and the requirements of this part.

(4) *Repayment of AHP subsidies in case of noncompliance.* (i) *Noncompliance by the member.* The member shall repay AHP subsidies to the Bank in accordance with the requirements of § 951.8(b)(1).

(ii) *Noncompliance by a project sponsor or owner.* (A) *Agreement.* The member shall have in place an agreement with the each project sponsor and project owner, in which the project sponsor and project owner agree to repay AHP subsidies to the member or the Bank in accordance with the requirements of § 951.8(b)(2)(i) or (b)(2)(ii), respectively (as applicable).

(B) *Recovery of AHP subsidies.* The member shall recover from the project sponsor or project owner and repay to the Bank any AHP subsidy in accordance with the requirements of § 951.8(b)(2)(i) (if applicable).

(5) *Project monitoring.* (i) *Monitoring by the member.* The member shall comply with the monitoring requirements applicable to such party, as established by the Bank in its monitoring policies and procedures (and set forth in the agreement) pursuant to § 951.7.

(ii) *Agreement.* The member shall have in place an agreement with each project sponsor and project owner, in which the project sponsor and project owner agree to comply with the monitoring requirements applicable to such parties, as established by the Bank in its monitoring policies and procedures (and set forth in the agreement) pursuant to § 951.7.

(6) *Transfer of AHP obligations.* (i) *To another member.* The member shall make best efforts to transfer its obligations under the approved application for AHP subsidy to another member in the event of its loss of membership in the Bank prior to the Bank's final disbursement of AHP subsidies.

(ii) *To a nonmember.* If, after final disbursement of AHP subsidies to the member, the member undergoes an acquisition or a consolidation resulting in a successor organization that is not a

member of the Bank, the nonmember successor organization assumes the member's obligations under its approved application for AHP subsidy, and where the member received an AHP subsidized advance, the nonmember assumes such obligations until prepayment or orderly liquidation by the nonmember of the subsidized advance.

(7) *Retention agreements for owner-occupied units.* The member shall ensure that an AHP-assisted owner-occupied unit is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The Bank or its designee is to be given notice of any sale or refinancing of the unit occurring prior to the end of the retention period.

(ii) In the case of a sale or refinancing of the unit prior to the end of the retention period, an amount equal to a pro rata share of the AHP subsidy that financed the purchase, construction, or rehabilitation of the unit, reduced for every year the seller owned the unit, shall be repaid to the Bank from any net gain realized upon the sale or refinancing, unless:

(A) The unit was assisted with a permanent mortgage loan funded by an AHP subsidized advance;

(B) The unit is sold to a very low-, or low- or moderate-income household; or

(C) Following a refinancing, the unit continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism described in this paragraph (a)(7).

(iii) In the case of a direct subsidy, such repayment of AHP subsidy shall be made:

(A) *To the Bank.* If the Bank has not authorized re-use of the repaid AHP subsidy or has authorized re-use of the repaid subsidy but not retention of such repaid subsidy by the member or project sponsor, pursuant to § 951.8(f)(2), or has authorized retention and re-use of such repaid subsidy by the member or project sponsor, pursuant to such section and the repaid subsidy is not re-used in accordance with the requirements of the Bank and such section.

(B) *To the member or project sponsor.* To the member or project sponsor for re-use by such member or project sponsor, if the Bank has authorized retention and re-use of such subsidy by the member or project sponsor pursuant to § 951.8(f)(2).

(iv) The obligation to repay AHP subsidy to the Bank shall terminate after any foreclosure.

(8) *Retention agreements for rental projects.* The member shall ensure that an AHP-assisted rental project is subject to a deed restriction or other legally enforceable retention agreement or mechanism requiring that:

(i) The project's rental units, or applicable portion thereof, must remain occupied by and affordable for households with incomes at or below the levels committed to be served in the approved AHP application for the duration of the retention period.

(ii) The Bank or its designee is to be given notice of any sale or refinancing of the project occurring prior to the end of the retention period.

(iii) In the case of a sale or refinancing of the project prior to the end of the retention period, the full amount of the AHP subsidy received by the owner shall be repaid to the Bank, unless:

(A) The project continues to be subject to a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application for the duration of the retention period; or

(B) The households are relocated to another property that is made subject to the terms of the approved AHP application as well as a deed restriction or other legally enforceable retention agreement or mechanism incorporating the income-eligibility and affordability restrictions committed to in the approved AHP application, for the remainder of the retention period.

(iv) The income-eligibility and affordability restrictions applicable to the project shall terminate after any foreclosure.

(9) *Lending of AHP direct subsidies.* If a member or a project sponsor lends AHP direct subsidy to a project, any repayments of principal and payments of interest received by the member or the project sponsor must be paid forthwith to the Bank, unless the direct subsidy is being lent by a revolving loan fund pursuant to § 951.5(c)(13).

(10) *Special provisions where members obtain AHP subsidized advances.* (i) *Repayment schedule.* The term of an AHP subsidized advance shall be no longer than the term of the member's loan to the project funded by the advance, and at least once in every 12-month period, the member shall be scheduled to make a principal repayment to the Bank equal to the amount scheduled to be repaid to the member on its loan to the project in that period.

(ii) *Prepayment fees.* Upon a prepayment of an AHP subsidized advance, the Bank shall charge a prepayment fee only to the extent the Bank suffers an economic loss from the prepayment.

(iii) *Treatment of loan prepayment by project.* If all or a portion of the loan or loans financed by an AHP subsidized advance are prepaid by the project to the member, the member may, at its option, either:

(A) Repay to the Bank that portion of the advance used to make the loan or loans to the project, and be subject to a fee imposed by the Bank sufficient to compensate the Bank for any economic loss the Bank experiences in reinvesting the repaid amount at a rate of return below the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance.

(B) Continue to maintain the advance outstanding, subject to the Bank resetting the interest rate on that portion of the advance used to make the loan or loans to the project to a rate equal to the cost of funds originally used by the Bank to calculate the interest rate subsidy incorporated in the advance.

(b) *Agreements between Banks and project sponsors and owners.* A Bank shall have in place an agreement with each project sponsor and project owner, in which the project sponsor and project owner agree to repay AHP subsidies directly to the Bank in accordance with the requirements of § 951.8(b)(2)(ii) (if applicable).

(c) *Application to existing AHP projects.* The requirements of section 10(j) of the Act (12 U.S.C. 1430(j)) and the provisions of this part, as amended, are incorporated into all agreements between Banks, members, project sponsors, or project owners receiving AHP subsidies. To the extent the requirements of this part are amended from time to time, such agreements are deemed to incorporate the amendments to conform to any new requirements of this part. No amendment to this part shall affect the legality of actions taken prior to the effective date of such amendment.

§ 951.10 Conflicts of interest.

(a) *Bank directors and employees.* (1) Each Bank's board of directors shall adopt a written policy providing that if a Bank director or employee, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in a project that is the subject of a pending or approved AHP application, the Bank director or employee shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring, or any remedial process for such project.

(2) If a Bank director or employee, or such person's family member, has a financial interest in, or is a director,

officer, or employee of an organization involved in an AHP project such that he or she is subject to the requirements in paragraph (a)(1) of this section, such person shall not participate in or attempt to influence decisions by the Bank regarding the evaluation, approval, funding, monitoring, or any remedial process for such project.

(b) *Advisory Council members.* (1) Each Bank's board of directors shall adopt a written policy providing that if an Advisory Council member, or such person's family member, has a financial interest in, or is a director, officer, or employee of an organization involved in a project that is the subject of a pending or approved AHP application, the Advisory Council member shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(2) If an Advisory Council member, or such person's family member, has a financial interest in, or is a director, officer or employee of an organization involved in an AHP project such that he or she is subject to the requirements in paragraph (b)(1) of this section, such person shall not participate in or attempt to influence decisions by the Bank regarding the approval for such project.

(c) *No delegation.* A Bank's board of directors shall not delegate to Bank officers or other Bank employees the responsibility to adopt the conflict of interest policies required by this section.

§ 951.11 Temporary suspension of AHP contributions.

(a) *Request to Finance Board.* If a Bank finds that the contributions required pursuant to § 951.2 are contributing to the financial instability of the Bank, the Bank may apply in writing to the Finance Board for a temporary suspension of such contributions.

(b) *Board of Directors review.* (1) In determining the financial instability of a Bank, the Board of Directors shall consider such factors as:

(i) Severely depressed Bank earnings;

(ii) A substantial decline in Bank membership capital; and

(iii) A substantial reduction in Bank advances outstanding.

(2) *Limitations on grounds for suspension.* The Board of Directors shall not suspend a Bank's annual AHP contributions if it determines that the Bank's reduction in earnings is due to:

(i) A change in the terms of advances to members that is not justified by market conditions;

(ii) Inordinate operating and administrative expenses; or

(iii) Mismanagement.

§ 951.12 Affordable Housing Reserve Fund.

(a) *Deposits.* If a Bank fails to use or commit the full amount it is required to contribute to the Program in any year pursuant to § 951.2(a), 90 percent of the unused or uncommitted amount shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Finance Board. The remaining 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion shall be deposited in the Affordable Housing Reserve Fund.

(b) *Use or commitment of funds.* Approval of applications for AHP subsidies from members sufficient to exhaust the amount a Bank is required to contribute pursuant to § 951.2(a) shall constitute use or commitment of funds. Amounts remaining unused or uncommitted at year-end are deemed to be used or committed if, in combination with AHP subsidies that have been returned to the Bank or de-committed from canceled projects, they are insufficient to fund:

(1) The next highest scoring AHP application in the Bank's final funding period of the year for its competitive application program;

(2) Pending applications for funds under the Bank's homeownership set-aside programs; and

(3) Project modifications approved by the Bank pursuant to the requirements of this part.

(c) *Carryover of insufficient amounts.* Such insufficient amounts as described in paragraph (b) of this section shall be carried over for use or commitment in the following year in the Bank's competitive application program or homeownership set-aside programs.

Dated: December 14, 2005.

By the Board of Directors of the Federal Housing Finance Board.

Ronald A. Rosenfeld,

Chairman.

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December 28, 2005

Part IV

Department of Housing and Urban Development

Public Housing Operating Fund; Variable Coefficients for Public Housing Operating Fund Project Expense Levels; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5016–N–01]

Public Housing Operating Fund; Variable Coefficients for Public Housing Operating Fund Project Expense Levels

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice provides supplemental information to public housing agencies (PHAs) and members of the public regarding HUD's method of calculating public housing operating subsidy in accordance with the Public Housing Operating Fund Program regulation at 24 CFR part 990. Subpart C of the final rule describes how formula expenses will be calculated under the new Operating Fund Formula. This notice explains the computation of the project expense level (PEL), which is one factor in the formula expenses component of the Operating Fund Formula.

DATES: Effective Date: January 27, 2006.

FOR FURTHER INFORMATION CONTACT: The Office of Public and Indian Housing, Real Estate Assessment Center (PIH–REAC), Attention: Wanda Funk, Department of Housing and Urban Development, Real Estate Assessment Center, 550 Twelfth Street, SW., Suite 100, Washington, DC 20410; telephone the PIH–REAC Technical Assistance Center at (888) 245–4860 (this is a toll free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. Additional information is available from the PIH–REAC Web site at *http://www.hud.gov/reac/*.

SUPPLEMENTARY INFORMATION:

Purpose of the Notice

The purpose of this notice is to provide additional information about the computation of the operating subsidy under the revised Operating Fund Program rule. HUD published a final rule, Revisions to the Public Housing Operating Fund Program (79 FR 54983), in the **Federal Register** on September 19, 2005, revising the Department's Public Housing Operating Fund Program regulation at 24 CFR part 990 and adopting a final Operating Fund Formula for determining the payment of operating subsidies to PHAs. The final rule, developed through negotiated rulemaking conducted in 2004, became effective November 18, 2005.

The new Operating Fund Formula for calculating operating subsidy is comprised of three major components. These three components are: Eligible unit months, formula expenses, and formula income. The formula expense component, as described in subpart C of the final rule, consists of the project expense level (PEL), the utility expense level, and other formula expenses (add-ons). This notice provides a step-by-step description of the computation of the PEL. In the event that insufficient funds are available, as noted in the final rule at 24 CFR 990.210(c), HUD shall have discretion to revise, on a pro rata basis, the amounts of operating subsidy to be paid to PHAs.

Variables and Coefficient Values

In accordance with 24 CFR 990.165 of the final rule, HUD will calculate the PEL for each public housing project using the ten variables and associated coefficients from the Harvard University Graduate School of Design Cost Model (cost model). The PEL will be expressed as a per unit per month (PUM) amount.

The coefficient for each of the ten formula variables that determine a PEL is expressed in percentage terms. The proper coefficients applied to a particular variable for a project depend on the physical, demographic, or geographic characteristics of the project. Therefore, the coefficient that will be applied for each of the variables depends upon the characteristics of the project. The ten variables are listed in Table 1:

TABLE 1.—OPERATING SUBSIDY VARIABLES

Number	Variables
1	Size of Project.
2	Age of Property.
3	Unit Size (Bedroom Mix).
4	Building Type.
5	Occupancy Type.
6	Location.
7	Neighborhood Poverty Rate.
8	Percent of Households Assisted.
9	Ownership Type.
10	Geographic.

The coefficient values for variables one through nine are set forth in Appendix A. The value for the tenth coefficient, Geographic, is set forth in Appendix B.

In addition to the ten variables described above, the PEL calculation includes the application of what are called ''cost adjustments.'' There are four cost adjustments and they are:

(1) A national floor of $200 PUM for elderly projects and of $215 PUM for family projects.

(2) A national ceiling of $420 PUM for all projects, except for projects owned by the New York City Housing Authority (NYCHA), which have a ceiling of $480 PUM.

(3) When the calculated PEL is over $325 PUM, the result is reduced by 4 percent, but it will not be reduced to less than $325 PUM. Note: This step does not apply to NYCHA properties.

(4) The reduction in the amount of audit costs as a PUM reported for FFY 2003.

All of the variables and the cost adjustments will yield a PEL for a project in year 2000 dollars. After the PEL in year 2000 dollars is created, it will be inflated using the HUD-determined annual inflation factor on Line A7 of the form HUD–52723, Operating Fund Calculation of Operating Subsidy, OMB Approval Number 2577–0029, expires June 30, 2006, from 2001, 2002, 2003, and 2004, to arrive at the initial PEL in year 2004 dollars. The initial PEL in 2004 dollars then will be adjusted annually beginning in 2005 by the HUD-determined local inflation factor (see 24 CFR 990.165).

Determination of Coefficients

For each PEL calculation, the proper coefficient for each variable will be determined as follows:

- *Size of Project.* The size of project is the total number of ACC units in the project.
- *Age of Property.* The age of the project is determined by the difference between the Date of Full Availability (DOFA) and December 31, 2000. When different projects are combined or buildings from different projects are combined to form a ''new project,'' the age of the property will be the weighted average age of the different buildings in the new project based on their number of units (unit weighted average).
- *Unit Size (Bedroom Mix).* The unit size of a project is determined by the percentage of two, three, and four or more bedroom units in that project.
- *Building Type.* The building type is determined by the type of structure(s) that comprise the project. For example, a single family home is a detached/semi-detached building type. When there are different building types in one project (e.g., detached and row/townhouses), the building type is determined by the majority of the units in that project.
- *Occupancy Type.* The occupancy type is determined by the percentage of efficiency and one bedroom units in the

project. If there are more than 50 percent efficiencies and one bedroom units, the project is considered senior. All other properties are considered family properties. When different projects are combined, or buildings from different projects are combined to form a ''new project,'' the occupancy type will be the weighted average occupancy type of the different buildings in the new project based on their number of units (unit weighted average).

- *Location.* The location variable is based on the property census tract. The property is classified as within the central city of a Metropolitan Statistical Area (MSA), a non-central city area of an MSA, or a rural area.
- *Neighborhood Poverty Rate.* The neighborhood poverty rate for each project is taken from the 1990 Census, using the project address to determine the census tract. If buildings in a project are in different census tracts, the tract with the highest number of units determines the neighborhood poverty rate.
- *Percent of Households Assisted.* Although there are five categories within the cost model for the percentage of units within a project that are assisted, for purposes of the PEL calculations for public housing, all PHA projects will be considered to be 100 percent assisted.
- *Ownership Type.* The ownership type for all public housing projects is non-profit.
- *Geographic.* The geographic coefficient is taken from the table in Appendix A that provides a coefficient for each area listed.

The PEL Calculation Process

HUD will calculate the PEL for each project using the following steps in the order presented.

Step 1: For a given project, the proper coefficient for each of the ten variables from which the cost model is constructed is determined using Appendices A and B. The proper coefficient to be applied for each variable depends on the physical, demographic, or geographic characteristics of the project.

Step 2: Sum the coefficient values identified in step 1 for the following eight variables:

- Size of Project.
- Age of Property.
- Building Type.
- Occupancy Type.
- Location.
- Neighborhood Poverty Rate.
- Percent of Households Assisted.
- Geographic.

Step 3: Determine the coefficient value of the Unit Size (Bedroom Mix) variable by calculating the percentage of two, three, and four or more bedroom units in the property. The percentage of two, three, and four or more bedroom units in the property is then multiplied by the applicable coefficient.

- The percentage of 2 bedroom units is multiplied by 17.61 percent, the coefficient for 2 bedroom units.
- The percentage of 3 bedroom units is multiplied by 37.65 percent, the coefficient for 3 bedroom units.
- The percentage of 4 or more bedroom units is multiplied by 48.73 percent, the coefficient for 4 bedroom units.

The resulting values for each bedroom size are then summed.

Step 4: Add the totals of steps 2 and 3 to 520.18 percent, the formula constant.

Step 5: Compute the exponent of the result of step 4. In Microsoft (MS) Excel, the formula for determining the exponent is: EXP (sum of coefficients). For example, if the result in step four is 575.6 percent, in MS Excel the exponent is determined by EXP (575.6 percent). For this example, the exponent would be 316.08 and it would be expressed as a dollar amount.

Step 6: Multiply the result from step 5 by the product of one plus the coefficient value of the Ownership Type variable. Because the ownership type of public housing is non-profit, the product of one plus the coefficient value of the Ownership Type variable (i.e., non-profit adjustment) is 110 percent, or 1.10. This result is also expressed as a dollar amount.

Step 7: When the result of step 6 is greater than $325, the result is reduced by 4 percent, but it will not be reduced to less than $325.

Note: This step does not apply to NYCHA properties. The dollar amount that results from step 7 represents the PEL before the floor and ceiling cost adjustments and before the application of the inflation factor.

Step 8: Apply the following floor and ceiling cost adjustments, as necessary:

- If the result of step 7 is less than $200 and the project Occupancy Type is identified as senior, the result is raised to $200.
- If the result of step 7 is less than $215 and the project Occupancy Type is identified as family, the result is raised to $215.
- If the result of step 7 is greater than $420 and the project is not owned by the NYCHA, nor is the project NYCHA mixed finance rental housing, the result is decreased to $420.
- If the result of step 7 is greater than $480 and the project is either owned by the NYCHA, or is NYCHA mixed finance rental housing, the result is decreased to $480.

Step 9: Subtract the PUM cost of the audit expenses for FY 2003 from the result of step 8. To determine the initial PEL, the PUM audit expenses are taken from Line A12 of the PHA's 2003 form HUD–52723, Operating Fund Calculation of Operating Subsidy, OMB Approval Number 2577–0029, expires June 30, 2006.

Step 10: Inflate the initial PEL from year 2000 dollars to 2004 dollars by multiplying the result of step 9 by the local annual inflation factors for the four intervening years (2001, 2002, 2003 and 2004) and round the result to the nearest penny from the third decimal place with a half a penny or more rounded up (e.g., all values between $206.005 and $206.014, inclusive, would be rounded to $206.01, and all values between $206.015 and $206.024, inclusive, would be rounded to $206.02). The local annual inflation factors are found on Line 7 of the HUD–52723, Operating Fund Calculation of Operating Subsidy, OMB Approval Number 2577–0029, expires June 30, 2006, forms for those years. For example: assume the 2000 PEL is $397.85 and the 2001 inflation factor is 1.019, the 2002 inflation factor is 1.023, the 2003 inflation factor is 1.015, and the 2004 inflation factor is 1.031.

(1) Multiply: 1.019 times 1.023 times 1.015 times 1.031. This equals 1.090874.

(2) Multiply: $398.77 times 1.090874. This equals 435.0078.

(3) Round the result to the nearest penny. This equals $435.01, which is the initial PEL in 2004 dollars.

The initial PEL in year 2004 dollars then will be adjusted annually by the HUD-determined local inflation factor beginning in FY 2005.

PHA PEL Calculation FFY 2007

In FFY 2007, HUD will fund operating subsidy at the PHA level by calculating a PHA's PEL using a weighted average of the PELs for each project in the PHA based on the number of units. Accordingly, in FFY 2007, the three following steps will be added to the ten steps described above in order to arrive at the PHA weighted average PEL.

Step 11: Multiply each project PEL by the number of ACC units in that property.

Step 12: Sum the amounts calculated in step 11 and divide that number by the total number of units in the PHA. The result is the weighted average 2004 PHA PEL that HUD will use to determine the transition funding for each PHA.

Step 13: The PHA PEL for 2006 will be calculated by multiplying the 2004

PHA PEL by the HUD inflation factors for 2005, 2006, and 2007.

PHA PEL Calculation FFY 2008 and After

Beginning in FY 2008 and every fiscal year thereafter, HUD will calculate a PEL for each project and fund PHA operating subsidy on a project-by-project basis. Accordingly, beginning in FY 2008, the result in step 10 will be the PEL for each project.

PELs for ''New'' Asset Management Projects

For purposes of asset management, in accordance with subpart H of 24 CFR part 990 of the final rule, PHAs may either combine existing developments, divide existing developments, or combine some or all of the buildings from more than one existing development to create a new project. After these changes are made, HUD will calculate a PEL for the new project and, when applicable, for any existing developments based on the remaining buildings.

A. For each new project, the Age of Property variable will be a unit weighted average age of the buildings from the different developments. To determine the unit weighted average age of the buildings, HUD will:

(1) Calculate the age of each building in days from DOFA until December 31, 2000, using a 360-day year where each month has 30 days.

(2) Calculate the unit days for each building by multiplying the number of units in each building by the age in days for that building.

(3) Total the unit days for all buildings.

(4) Divide the total unit days by the total number of units in all of the buildings in the new project. Divide the result by 360 and round to the nearest whole number.

HUD will use the result as the applicable age coefficient for that project in accordance with the steps described, above, and shown in Appendix C. Further guidance on grouping projects for purpose of asset management will be provided through a PIH notice.

B. For each new project, the Occupancy Type variable will be a unit weighted average occupancy type of the different buildings in the project. HUD will:

(1) Compute the proportion of units that are in senior buildings by dividing the number of units in the senior buildings by the total number of units in the new project;

(2) Multiply the result by the senior property coefficient, i.e., –5.83; and

(3) Round the result to the nearest hundredth.

HUD will use the result as the occupancy type coefficient for the new project in accordance with the steps described, above, and shown in Appendix C.

Moving-to-Work PHAs

For the PHAs that are participating in the Moving-to-Work (MTW) Demonstration authorized under section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, PELs will be determined in accordance with the steps set forth above. However, pursuant to 24 CFR 990.165(f), these PHAs may receive operating subsidy as provided in Attachment A of their MTW Agreements executed prior to November 18, 2005, the effective date of the rule.

Mixed Finance Developments

For mixed finance developments that have either closed prior to November 18, 2005, or for which the PHA has filed documents in accordance with 24 CFR 941.606 (as amended prior to such date), the operating subsidy will be funded based on the higher of the new PEL or the former allowable expense level under the regulation that was in effect prior to November 18, 2005.

Example

A step-by-step example of a project PEL calculation and a PHA PEL calculation is set forth in Appendix C.

Data Used for Calculations

The project characteristics that HUD will use to calculate the PELs for all PHA properties in year 2000 dollars will be based on the Development field information in the Public and Indian Housing Information Center (PIC) database. The date upon which HUD will extract the data from PIC for each year's subsidy calculation will be provided in an annual PIH notice.

Environmental Impact

This notice provides operating instructions and procedures in connection with activities under 24 CFR part 990 of the final rule, which has previously been subject to a required environmental review. Accordingly, under 24 CFR 50.19(c)(4), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: December 9, 2005.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

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Federal Register

Wednesday,
December 28, 2005

Part V

The President

Proclamation 7972—National Mentoring Month, 2006

Federal Register
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Wednesday, December 28, 2005

Presidential Documents

Title 3—

The President

Proclamation 7972 of December 22, 2005

National Mentoring Month, 2006

By the President of the United States of America

A Proclamation

Through countless acts of kindness, mentors across America are changing our Nation for the better. Every child deserves the opportunity to realize the promise of our country, and mentors show that a single soul can make a difference in a young person's life. During National Mentoring Month, we recognize the many individuals who dedicate their time, talents, and energy to help children develop character and integrity.

Mentors are soldiers in the armies of compassion, sharing their time to help provide a supportive example for a young person. Mentors help children resist peer pressure, achieve results in school, stay off drugs, and make the right choices. Many people become mentors because of the impact of a mentor in their own lives, creating a chain of compassion over the course of generations.

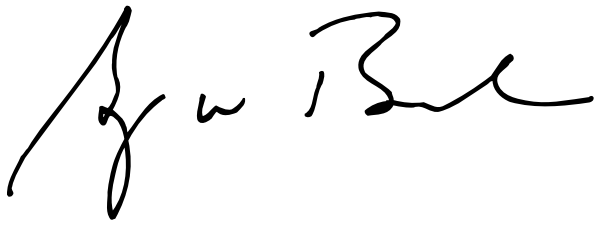
My Administration remains committed to promoting mentoring as an opportunity to strengthen our country. Through the Helping America's Youth initiative, led by First Lady Laura Bush, we will continue to focus on identifying best practices and programs across this great Nation that are changing lives for the better and helping young people grow up to be responsible and successful adults.

In 2006, my Administration will support funding programs to mentor children who have a parent in prison and for youth at risk of gang influence and involvement. The Federal Government can also help local communities by fostering communication between those who are running successful programs and those who want to get involved. Americans can find valuable mentoring opportunities in their hometown by visiting the USA Freedom Corps website at www.USAFreedomCorps.gov or calling 1–877–USACORP.

I appreciate the faith-based and community organizations and all those dedicated to improving the lives of America's children through mentoring. By showing love, support, and compassion, one person can make a difference in the life of a child and help that child learn the importance of serving a cause greater than self. The teachers, coaches, religious leaders, relatives, and other caring adults who mentor contribute to a culture of good citizenship. Their efforts strengthen our country and demonstrate the great influence of one person's kindness and its ability to touch a life.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 2006 as National Mentoring Month. I call upon the people of the United States to recognize the importance of mentoring, to look for opportunities to serve as mentors in their communities, and to observe this month with appropriate activities and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of December, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 797/P.L. 109–136
Native American Housing Enhancement Act of 2005 (Dec. 22, 2005; 119 Stat. 2643)

H.R. 3963/P.L. 109–137
To amend the Federal Water Pollution Control Act to extend the authorization of appropriations for Long Island Sound. (Dec. 22, 2005; 119 Stat. 2646)

H.R. 4195/P.L. 109–138
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H.R. 4436/P.L. 109–140
To provide certain authorities for the Department of State, and for other purposes. (Dec. 22, 2005; 119 Stat. 2650)

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H.J. Res. 38/P.L. 109–142

Recognizing Commodore John Barry as the first flag officer of the United States Navy. (Dec. 22, 2005; 119 Stat. 2657)

S. 335/P.L. 109–143

To reauthorize the Congressional Award Act. (Dec. 22, 2005; 119 Stat. 2659)

S. 467/P.L. 109–144

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S. 1047/P.L. 109–145

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Little Rock Central High School Desegregation 50th Anniversary Commemorative Coin Act (Dec. 22, 2005; 119 Stat. 2676)

H.R. 327/P.L. 109–147

To allow binding arbitration clauses to be included in all contracts affecting land within the Gila River Indian Community Reservation. (Dec. 22, 2005; 119 Stat. 2679)

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