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8–18–05 Thursday
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Presidential Documents

Title 3—

The President

Proclamation 7917 of August 15, 2005

National Airborne Day, 2005

By the President of the United States of America

A Proclamation

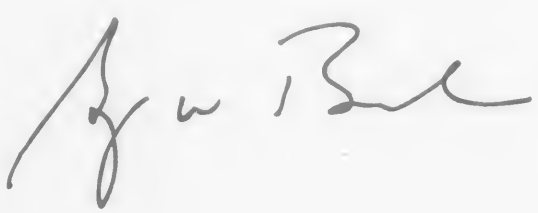
Americans live in freedom because of the extraordinary bravery, sacrifice, and dedication to duty of the members of our Armed Forces. From the first official Army parachute jump 65 years ago, our country's Airborne troops have played a crucial role in the defense of our Nation and our liberty. On National Airborne Day, we pay special tribute to these courageous soldiers who served with honor and integrity.

On August 16, 1940, the successful first jump of the Army Parachute Test Platoon laid the foundation for a new and innovative method of combat that helped contribute to an Allied victory in World War II. These bold pioneers answered the call of duty and set an example for future generations to follow. Since the designation of the Army's first Airborne division, the 82nd Airborne, on August 15, 1942, our Airborne troops have performed with valor. The brave men and women of our Airborne forces have worked to defeat tyranny, advance the cause of liberty, and build a safer world.

Today a new generation of Airborne forces is fighting a war against an enemy that threatens the peace and stability of the world. At this critical time, Airborne forces of the Army, Navy, Marines, and Air Force are continuing the noble tradition of the first sky soldiers. Americans are grateful for the service of our Airborne forces and all our troops, and we are inspired by the strength and sacrifice of our military members and their families.

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 August 16, 2005, as National Airborne Day. I encourage all Americans to honor those who have served in the Airborne forces, and I also call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of August, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–16496
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Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–072]

RIN 1625–AA08

Special Local Regulations for Marine Events; Atlantic Ocean, Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for "Thunder over the Boardwalk", an aerial demonstration to be held over the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action will restrict vessel traffic in portions of the Atlantic Ocean adjacent to Atlantic City, New Jersey during the aerial demonstration.

DATES: This rule is effective from 10:30 a.m. to 3 p.m. on August 31, 2005.

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 CGD05–05–072 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 11, 2005, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Atlantic Ocean, Atlantic City, NJ in the **Federal Register** (70 FR 39697). No letters were received commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area. However, advance notifications will be made to mariners via marine information broadcasts, area newspapers and local radio stations.

Background and Purpose

On August 31, 2005, the Atlantic City Chamber of Commerce will sponsor the "Thunder over the Boardwalk". The event will consist of high performance jet aircraft performing low altitude aerial maneuvers over the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. A fleet of spectator vessels is expected to gather nearby to view the aerial demonstration. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Regulatory Evaluation

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

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

Although this regulation prevents traffic from transiting a portion of the Atlantic Ocean adjacent to Atlantic City, New Jersey during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, area newspapers and local radio stations so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of the Atlantic Ocean during the event.

This proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 10:30 a.m. to 3 p.m. on August 31, 2005. Affected waterway users can pass safely around the regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions

annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

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.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary section, § 100.35–T05–072 to read as follows:

§ 100.35–T05–072 Atlantic Ocean, Atlantic City, NJ.

(a) *Regulated area.* The regulated area is established for the waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21′31″ N, longitude 074°25′04″ W, thence to latitude 39°21′08″ N, longitude 074°24′48″ W, thence southwesterly to latitude 39°20′16″ N, longitude 074°27′17″ W, thence northwesterly to a point along the shoreline at latitude 39°20′44″ N, longitude 074°27′31″ W, thence northeasterly along the shoreline to latitude 39°21′31″ N, longitude 074°25′04″ W. All coordinates reference Datum NAD 1983.

(b) Definitions: (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by the Coast Guard Patrol Commander or any Official Patrol.

(ii) Proceed as directed by the Coast Guard Patrol Commander or any Official Patrol.

(d) Enforcement period. This section will be enforced from 10:30 a.m. to 3 p.m. on August 31, 2005.

Dated: August 5, 2005.

L.L. Hereth,

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

[FR Doc. 05–16413 Filed 8–17–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–090]

RIN 1625–AA08

Special Local Regulation for Marine Events; Patuxent River, Solomons, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the "Patuxent River Air Expo 2005", an event to be held over the waters of the lower Patuxent River near Solomons, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Patuxent River during the event.

DATES: This rule is effective from 9 a.m. on September 2, 2005 to 5 p.m. on September 4, 2005.

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 CGD05–05–090 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the late submission of marine event request by the event organizer, there is not sufficient time for the publishing of an NPRM before the event. The event will take place September 2–4, 2005. Publishing an NPRM would be contrary to the public interest as there is not sufficient time for a notice and comment period and immediate action is needed to protect persons and vessels from the event's potential hazards. Because of the danger posed by low flying aircraft performing precision maneuvers and aerial stunts, special local regulations are necessary to provide for the safety of event participants, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have the regulations in effect during the event.

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**. Making this rule effective 30 days after publication is both impractical and contrary to the public interest since there is not sufficient time to publish a proposed rule in advance of the event and immediate action is needed to protect persons and vessels from the potential hazards associated with this event. However, advance notifications will be made to affected waterway users via marine information broadcasts, local radio stations and area newspapers.

Background and Purpose

From September 2, through September 4, 2005, U.S. Naval Air Station Patuxent River will conduct the "Patuxent River Air Expo 2005". This event will take place over the waters of the lower Patuxent River, between Fishing Point and the base of the breakwall marking the entrance to the East Seaplane Basin at Naval Air Station Patuxent River. The event will consist of military and civilian aircraft performing low-flying high speed precision maneuvers and aerial stunts over the waters of the Patuxent River. To provide for the safety of spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the air show.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the lower Patuxent River between Fishing Point and the base of the breakwall marking the entrance to the East Seaplane Basin at the Naval Air Station. The regulated area includes a portion of the waters of the Patuxent River that is approximately 850 yards long and 700 yards wide. The temporary special local regulations will be in effect from 9 a.m. on September 2, 2005 until 5 p.m. on September 4, 2005. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance safety of participants, spectators and transiting vessels.

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.

Although this regulation will prevent traffic from transiting a portion of the Patuxent River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary.

Small Entities

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

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

entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Patuxent River during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if 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.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35–T05–090 to read as follows:

§ 100.35–T05–090 Patuxent River, Solomons, Maryland.

(a) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(b) *Regulated area* includes all waters of the lower Patuxent River, near Solomons, Maryland, located between Fishing Point and the base of the breakwall marking the entrance to the East Seaplane Basin at Naval Air Station Patuxent River. The regulated area is approximately 850 yards long and 700 yards wide, bounded by a line connecting position, 38°17′58.4″ N, 076°25′28″ W; along the shoreline to 38°17′38.6″ N, 076°25′47.7″ W; thence to 38°17′51.5″ N, 076°26′08.6″ W; thence to 38°18′10.7″ N, 076°25′48.8″ W; thence to point of origin. All coordinates reference Datum NAD 1983.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) *Effective period.* This section is effective from 9 a.m. on September 2, 2005 to 5 p.m. on September 4, 2005.

Dated: August 5, 2005.

L.L. Hereth,

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

[FR Doc. 05–16414 Filed 8–17–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–091]

RIN 1625–AA08

Special Local Regulations for Marine Events; Susquehanna River, Port Deposit, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for "Ragin' on the River", a power boat race to be held on the waters of the Susquehanna River adjacent to Port Deposit, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Susquehanna River adjacent to Port Deposit, Maryland during the power boat race.

DATES: This rule is effective from 11:30 a.m. on September 3, 2005 to 6:30 p.m. on September 4, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–05–091 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: D.M. Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Because the event organizer provided the Coast Guard late notice of the event, there is not sufficient time for the publishing of an NPRM before the event. The event will take place on September 3 and 4, 2005. Publishing an NPRM would be contrary to the public interest as there is not sufficient time for a notice and comment period. Immediate action is needed to protect the safety of life at sea from the danger posed by high-speed power boats. For the safety concerns noted, it is in the public interest to have the regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area. However advance notifications will be made to affected waterway users via marine information broadcasts and area newspapers.

Background and Purpose

On September 3 and 4, 2005, the Perryville Chamber of Commerce will sponsor the "Ragin' on the River", on the waters of the Susquehanna River. The event will consist of approximately 60 inboard hydroplanes and runabouts racing in heats counter-clockwise around an oval racecourse. A fleet of spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Susquehanna River adjacent to Port Deposit, Maryland. The regulated area includes a section of the Susquehanna River approximately 3500 yards long, and bounded in width by each shoreline. The temporary special local regulations will be enforced from 11:30 a.m. to 6:30 p.m. on September 3 and 4, 2005, and will restrict general navigation in the regulated area during the power boat race. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period.

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 temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Susquehanna River adjacent to Port Deposit, Maryland during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts and area newspapers so

mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this section of the Susquehanna River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 11:30 a.m. to 6:30 p.m. on September 3 and 4, 2005. Although the regulated area will apply to the entire width of the river, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area during the event, vessels shall proceed at the minimum speed necessary to maintain a safe course that reduces wake near the race course. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

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.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under those sections.

Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary section, § 100.35–T05–091 to read as follows:

§ 100.35–T05–091 Susquehanna River, Port Deposit, Maryland.

(a) *Regulated area.* The regulated area is established for the waters of the Susquehanna River, adjacent to Port Deposit, Maryland, from shoreline to shoreline, bounded on the south by the U.S. I–95 fixed highway bridge, and bounded on the north by a line running southwesterly from a point along the shoreline at latitude 39°36′22″ N, longitude 076°07′08″ W, thence to latitude 39°36′00″ N, longitude 076°07′46″ W. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must stop the vessel immediately when directed to do so by any Official Patrol.

(3) All persons and vessels must comply with the instructions of the Official Patrol. The operator of a vessel in the regulated area shall stop the vessel immediately when instructed to do so by the Official Patrol and then proceed as directed. When authorized to transit the regulated area, all vessels shall proceed at a minimum speed not to exceed six (6) knots necessary to maintain a safe course that reduces wake near the race course.

(d) *Enforcement period.* This section will be enforced from 11:30 a.m. to 6:30 p.m. on September 3 and 4, 2005. If the races are postponed due to weather, then the temporary special local regulations will be enforced during the same time period on September 5, 2005.

Dated: August 5, 2005.

L.L. Hereth,

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

[FR Doc. 05–16415 Filed 8–17–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7889]

Suspension of Community Eligibility

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

ACTION: Final rule.

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

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

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

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

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

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities

listed in this final rule have been adequately notified.

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

National Environmental Policy Act

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

Regulatory Flexibility Act

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

Regulatory Classification

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

Paperwork Reduction Act

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

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

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VII				
Nebraska: Bristow, Village of, Boyd County.	310012	January 13, 1976, Emerg; June 3, 1986, Reg; August 18, 2005, Susp.	08/18/05	08/18/05
Creighton, City of, Knox County.	310360	June 6, 1996, Emerg; September 1, 1996, Reg; August 18, 2005, Susp.	08/18/05	08/18/05
Crofton, City of, Knox County	310361	July 9, 1976, Emerg; September 1, 1986, Reg; August 18, 2005, Susp.	08/18/05	08/18/05
Lynch, Village of, Boyd County.	310013	November 21, 1975, Emerg; June 15, 1988, Reg; August 18, 2005, Susp.	08/18/05	08/18/05
Niobrara, Village of, Knox County.	310132	July 25, 1974, Emerg; August 19, 1986, Reg; August 18, 2005, Susp.	08/18/05	08/18/05
Spencer, Village of, Boyd County.	310399	July 9, 1976, Emerg; September 24, 1984, Reg; August 18, 2005, Susp.	08/18/05	08/18/05
Verdigre, Village of, Knox County.	310133	May 16, 1975, Emerg; September 1, 1986, Reg; August 18, 2005, Susp.	08/18/05	08/18/05

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

Dated: August 11, 2005.

Michael K. Buckley,

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

[FR Doc. 05–16381 Filed 8–17–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ08

Endangered and Threatened Wildlife and Plants; Removal of *Helianthus eggertii* (Eggert's Sunflower) From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are removing the plant *Helianthus eggertii* (Eggert's sunflower) from the List of Endangered and Threatened Plants pursuant to the Endangered Species Act of 1973, as amended (Act), because recovery actions have secured a number of populations and identified additional populations not previously known. Therefore, the threatened designation no longer correctly reflects the current status of this plant. This action is based on a review of all available data, which indicate that the species is now protected on Federal, State, and county lands; is more widespread and abundant than was documented at the time of listing; and is more resilient and less vulnerable to certain activities than previously thought. Due to the recent development of a management plan for

H. eggertii, a management plan for the barrens/woodland ecosystem, and an Integrated Natural Resources Management Plan at the U.S. Air Force's Arnold Engineering and Development Center, on whose land a significant number of sites/populations occur, new management practices will include managing for, and monitoring the areas that contain, this species. Occurrences of *H. eggertii* are also found on six other Federal, State, or county lands, five of which now have conservation agreements with us to protect, manage, and monitor the species. The remaining site is jointly owned by the Kentucky State Nature Preserves Commission and The Nature Conservancy and has a dedicated conservation easement and a management plan in place to protect *H. eggertii*.

At the time of listing, there were 34 known *H. eggertii* sites occurring in 1 county in Alabama, 5 counties in Kentucky, and 8 counties in Tennessee. The species was not defined in terms of "populations" at that time. Increased knowledge of *H. eggertii* and its habitat has resulted in increased success in locating new plant sites. Presently, there are 287 known *H. eggertii* sites (making up 73 populations) distributed across 3 counties in Alabama, 9 counties in Kentucky, and 15 counties in Tennessee. Consequently, *H. eggertii* is not likely to become endangered within the foreseeable future throughout all or a significant portion of its range and, therefore, is no longer considered to be threatened.

DATES: This final rule is effective September 19, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Tennessee Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, Tennessee 38501.

You may obtain copies of the final rule from the field office address above, by calling 931–528–6481, or from our Web site at *http://cookeville.fws.gov*.

FOR FURTHER INFORMATION CONTACT: Timothy Merritt, Tennessee Field Office (telephone 931–528–6481, extension 211; facsimile 931–528–7075).

SUPPLEMENTARY INFORMATION:

Background

Helianthus eggertii (Eggert's sunflower) is a perennial member of the aster family (Asteraceae) known only from Alabama, Kentucky, and Tennessee. Although it was originally described in 1897, most collections have been made since 1990, when extensive searches for the species began (Jones 1991; USFWS 1999a). The species is commonly associated with the barrens/woodland ecosystem, a complex of generally subxeric (somewhat dry) plant communities maintained by drought and fire with a grassy ground cover and scattered medium-to-small-canopy trees (USFWS 1999a).

H. eggertii is a tall plant, growing up to 2.5 meters (8 feet), with round stems arising from fleshy rhizomes (lateral storage stems that grow along or just below the soil's surface). The stems and upper leaf surfaces have a blue-waxy coloration and the lower leaf surfaces are conspicuously whitened (Jones 1991). It has opposite (rarely whorled) leaves that are sessile (without a stalk), lanceolate (lance-shaped) to narrowly ovate (egg-shaped) in shape, and are either scabrous (rough) or glabrous (smooth) on the upper surface. Leaf edges are smooth or minutely toothed, and the tip is usually pointed. Large yellow flowers 8 centimeters (3 inches) in diameter are borne on the upper third of the stem. Seeds are blackish or grayish and mottled, 5 to 6 millimeters (0.20 to 0.24 inch) long, faintly striated (striped), and with a few scattered hairs. Flowering begins in early August and continues through mid-September and achenes (small, dry, hard, one-celled, one-seeded fruit that stays closed at maturity) mature from early September to early October (Jones 1991). Jones (1991) observed fruit set at between 5 and 25 seeds per flower head. Originally, seed germination rates were thought to be low (rarely exceeding 25 percent), possibly requiring exposure to cold to break dormancy (USFWS 1999a). However, recent data suggest that seed germination rates are relatively high (around 65 percent) if the seeds go through a stratification process (a period of cold weather, moisture, and darkness needed to break dormancy) (Cruzan 2002).

This sunflower develops an extensive rhizome system that may result in the production of dense clusters or patches of stems. These rhizomes can live for many years. Because of this extensive rhizome system, the plant does not have to produce seeds every year to ensure its survival. If environmental conditions change (*e.g.*, increased competition, shading, etc.), it can survive for several years by vegetative means, as Jones (1991) has noted in several populations. Plants may also be established from seeds within these patches, so a mix of different individuals can eventually contribute to these extensive patches (Jones 1991). Cruzan (2002) concluded that the level of genetic diversity in this species appears to be relatively high and that the highest levels of genetic diversity occur in the southern portion of the species' range. Cruzan (2002) also concluded that the range of *H. eggertii* is not geographically subdivided into distinct genetic units.

H. eggertii is a hexaploid (composed of cells that have six chromosome sets) sunflower, and, although its distinctiveness as a species has been established by morphological studies (USFWS 1999a) and biochemical studies (Spring and Schilling 1991), it probably outcrosses (breeds with less closely related individuals) with other hexaploid sunflowers (Jones 1991). It is not known how commonly outcrossing occurs and to what degree this can eventually degrade the genetic integrity of the species. *Helianthus strumosus* (pale-leaved woodland sunflower), occasionally found in association with *H. eggertii*, has been identified as a sunflower with a compatible ploidy (number of sets of chromosomes) level (Jones 1991).

H. eggertii typically occurs on rolling-to-flat uplands and in full sun or partial shade. It is often found in open fields or in thickets along woodland borders and with other tall herbs and small trees. It persists in, and may even invade, roadsides, power line rights-of-way, or fields that have suitable open habitat. The distribution of this species shows a strong correlation with the barrens (and similar habitats) of the Interior Low Plateau Physiographic Province, with some records from the Cumberland Plateau Section of the Appalachian Plateau Physiographic Province.

When *H. eggertii* was listed as threatened in 1997, it was known from only 1 site in 1 county in Alabama, 13 sites in 5 counties in Kentucky, and 20 sites in 8 counties in Tennessee. While the species was not defined in terms of "populations" at that time, the Alabama site was described as vigorous, while most sites in Kentucky contained less than 15 stems, with 4 sites having 5 or fewer stems, and about 50 percent of the Tennessee sites contained fewer than 20 stems (62 FR 27973; May 22, 1997). When the recovery plan for this species was finalized in 1999, there was 1 known site in Alabama, 27 sites in 6 counties in Kentucky, and 203 sites in 12 counties in Tennessee.

The term "population," as it relates to *H. eggertii*, was first defined in the recovery plan as "a group of plants that is isolated by geographic discontinuity or a distance of one-half mile" (USFWS 1999a). Recent studies on *H. eggertii* genetics by Cruzan (2002) suggested that a population of fewer than 100 flowering stems is unlikely to be

sufficiently large enough to maintain genetic diversity, while more recently Starnes (2004) has stated that populations larger than 50 stems showed a "high amount of genetic diversity." Cruzan (2002) also estimated a reasonable fragmentation threshold of 1 kilometer (km) (0.6 mile (mi)); that is, sites within that distance of each other were close enough to exchange genetic material. The further use of the term "population" in this document indicates a site, or sites, that cumulatively have more than 100 flowering plants and that do not occur more than 1 km (0.6 mi) apart. Based on 2004 data from the Alabama, Kentucky, and Tennessee Natural Heritage Programs and the Service, there are 10 known sites in 3 counties in north Alabama, 33 sites in 9 counties in central Kentucky, and 244 sites in 15 counties in middle Tennessee (Alabama Natural Heritage Database 2003, 2004; Kentucky Natural Heritage Database 2003, 2004; Tennessee Natural Heritage Database 2003, 2004; Service unpublished data). Applying the definition above to the current situation for this species, Alabama has 7 populations, Kentucky has 18 populations, and Tennessee has 48 populations; 27 of these 73 populations occur on public lands. Furthermore, the total of 287 currently known sites of *H. eggertii* far exceeds the 34 sites known at the time the species was listed.

Previous Federal Actions

Federal actions on this species began in 1973, when the Act (16 U.S.C. 1531 *et seq.*) was passed. Section 12 of the Act directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 9451, was presented to Congress on January 9, 1975. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, we also acknowledged our intention to review the status of those plant taxa named within the report. *Helianthus eggertii* was included in the Smithsonian report and also in the July 1, 1975, Notice of Review (FR 27823). On June 16, 1976, we published a notice in the **Federal Register** (41 FR 24523) that determined approximately 1,700 vascular plant taxa, including *H. eggertii*, to be endangered pursuant to section 4 of the Act.

The 1978 amendments to the Act required that all proposals that were not finalized within 2 years be withdrawn. On December 10, 1979 (44 FR 70796), we published a notice withdrawing all plant species proposed in the June 16, 1976, rule. The revised Notice of Review for Native Plants published on December 15, 1980 (45 FR 82480), included *H. eggertii* as a category 2 species. Category 2 species were described as those taxa for which the Service had information indicating that proposing to list them as endangered or threatened might be appropriate, or for which substantial data on biological vulnerability and threats were not known at the time or were not on file to support the listing. It was subsequently retained as a category 2 species when the Notice of Review for Native Plants was revised in 1983 (48 FR 53640), 1985 (50 FR 39526), and 1990 (55 FR 6184).

All plant taxa included in the comprehensive plant notices are treated as if under a petition. Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. This was the case for *H. eggertii* because of the acceptance of the 1975 Smithsonian report as a petition. In 1983, we found that the petition calling for the listing of *H. eggertii* was not warranted because of insufficient data on its distribution, vulnerability, and degrees of threat. We funded a survey in 1989 to determine the status of *H. eggertii* in Alabama, Kentucky, and Tennessee. In 1990, the Service had not yet received the results of the survey we had funded, and it was believed that additional surveys of potential habitat and further identification of threats were needed before a decision could be made on whether to propose listing the species.

In 1991, we accepted a final report on these surveys (Jones 1991). Information contained in the 1991 final report completed informational gaps and provided what was then thought to be sufficient data to warrant preparation of a proposed rule to list the species. *H. eggertii* was accepted as a category 1 species on August 30, 1993, and was included in the revised Notice of Review for Native Plants published on September 30, 1993 (58 FR 51144). On September 9, 1994 (59 FR 46607), we published a proposal to list *H. eggertii* as a threatened species. A final rule placing *H. eggertii* on the Federal List of Endangered and Threatened Plants as a threatened species was published on May 22, 1997 (62 FR 27973). That decision included a determination that the designation of critical habitat was not prudent for *H. eggertii*.

The final recovery plan for *H. eggertii* was completed in December 1999. The recovery plan provides the following criteria to consider *H. eggertii* for delisting: (1) The long-term conservation/protection of 20 geographically distinct, self-sustaining populations (distributed throughout the species' range or as determined by genetic uniqueness) must be provided through management agreements or conservation easements on public land or land owned by private conservation groups, and (2) these populations must be under a management regime designed to maintain or improve the habitat and each population must be stable or increasing for 5 years. There are presently 27 populations that are under a management regime that benefits the species and that occur on public land or land owned by a private conservation group (*i.e.*, The Nature Conservancy (TNC)). These are geographically distinct (separated by more than 1 km (0.6 mi)), and self-sustaining (greater than 100 flowering stems). These populations are scattered throughout the species' historic range. We have 5 years of monitoring data on each of the 27 populations that show they are stable or increasing. We have finalized cooperative management agreements with Kentucky Transportation Cabinet (KTC) (1 population), Tennessee Wildlife Resources Agency (TWRA) (8 populations), City of Nashville's A.G. Beaman Park (AGBP) (2 populations), TNC's Baumberger Barrens (1 population), Arnold Air Force Base (AAFB) (11 populations), and Mammoth Cave National Park (MCNP) (3 populations) for the long-term protection of *H. eggertii*. These cooperative management agreements will remain in place even if the species is delisted. The Kentucky State Nature Preserves Commission (KSNPC) and TNC each hold a 50 percent undivided interest in the Eastview Barrens in Hardin County, Kentucky. There is a permanent conservation easement for the Eastview Barrens as well as a management plan to protect and maintain the barrens, which includes one population of *H. eggertii*.

Other Federal involvement with *H. eggertii* subsequent to listing has included funding for recovery activities such as surveys for new locations, monitoring of known populations, population and ecological genetics studies, and collection and analysis of ecological and biological data. We have also been involved with the

development of the Eggert's Sunflower Management Plan, Barrens Management Plan, and the Integrated Natural Resources Management Plan for AAFB in Tennessee. All of these plans address *H. eggertii* and its habitat (see discussion under Factor A). We have evaluated potential impacts to this species from 262 Federal actions. The majority of these actions were highway and pipeline projects. We have conducted two formal consultations, one resulting in a "no effect" to the species finding and the other a "not likely to jeopardize the continued existence" of the species finding. No plants were adversely affected by either project.

On October 12, 2000, the Southern Appalachian Biodiversity Project filed suit against us, challenging our determination that designation of critical habitat for *H. eggertii* was not prudent (*Southern Appalachian Biodiversity Project* v. *U.S. Fish and Wildlife Service et al.* (CN 2:00–CV–361 (E.D. Tenn.). On November 8, 2001, the District Court for the Eastern District of Tennessee issued an order directing us to reconsider our previous prudency determination and submit a new prudency determination for *H. eggertii* no later than December 29, 2003. On January 8, 2004, the court extended the submission deadline to March 30, 2004. On April 5, 2004, we published a proposal in the **Federal Register** (69 FR 17627) to delist *H. eggertii*. In that proposal, we submitted a new prudency determination in which we determined that designation of critical habitat for *H. eggertii* would not be prudent.

Summary of Comments and Recommendations

In the April 5, 2004, proposed rule, we requested that all interested parties submit comments or information concerning the proposed delisting of *Helianthus eggertii* (69 FR 17627). We provided notification of this document through e-mail, telephone calls, letters, and news releases faxed and/or mailed to the appropriate Federal, State, and local agencies, county governments, elected officials, media outlets, local jurisdictions, scientific organizations, interest groups, and other interested parties. We also provided the document on the Service's Tennessee Field Office Internet site following its release.

We accepted public comments on the proposal for 60 days, ending June 4, 2004. By that date, we received comments from two parties, specifically one Federal agency and one nonprofit organization. One commenter supported the proposed delisting, and one was opposed.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from three knowledgeable individuals who have expertise with the species, who are within the geographic region where the species occurs, and/or are familiar with the principles of conservation biology. We received comments from all three of the peer reviewers, all of whom are employed by State agencies, which are included in the summary below and are incorporated into the final rule.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the proposed delisting of *H. eggertii*. Substantive comments received during the comment period have been addressed below and, where appropriate, incorporated directly into this final rule. The comments are grouped below according to peer review or public comments.

Peer Review/State Comments

(1) *Comment:* The commenter concurred with our reasons for proposing to remove *H. eggertii* from the List of Endangered and Threatened Plants pursuant to the Act. The commenter stated that *H. eggertii* was indeed more widespread and abundant than previously known at the time of its listing and that it was also more resilient and less vulnerable to certain habitat-altering activities than previously believed. The species appears to be sufficiently protected on Federal, State, county, and private conservation lands. The commenter concurred that the species now meets the recovery criteria as defined in the species' recovery plan.

Response: We appreciate the support we have received from our Federal, State, and private partners and acknowledge their role in this joint effort to recover and delist this species.

(2) *Comment:* Although the 27 protected populations under a management regime are distributed across the species' known range, the commenter believes that cooperative management agreements should be pursued prior to removal of the species' protection under the Act in order to ensure population persistence.

Response: We have completed cooperative management agreements for 26 of the 27 populations on public lands and a conservation easement for 1 population on land owned by a private conservation group (*i.e.*, TNC). We have finalized cooperative management agreements with KTC (1 population), TWRA (8 populations), AGBP (2 populations), TNC Baumberger Barrens (1 population), AAFB (11 populations), and MCNP (3 populations) for the long-term protection of *H. eggertii*. These cooperative management agreements will remain in place after the species is delisted. The KSNPC and TNC each hold a 50 percent undivided interest in the Eastview Barrens in Hardin County, Kentucky. There is a conservation easement for the Eastview Barrens as well as a management plan to protect and maintain the barrens, which includes one population of *H. eggertii*. This conservation easement is more restrictive than our cooperative management agreements.

(3) *Comment:* The commenter suggests that the Service work with the Tennessee Department of Transportation (TDOT) to develop and maintain rights-of-way mowing regimes similar to those developed in Kentucky and Alabama to benefit existing occurrences of *H. eggertii* along Tennessee's transportation rights-of-way.

Response: None of the 27 populations that occur on public lands are in rights-of-ways maintained by the State highway departments. The Service will continue to work with State highway departments to adopt a rights-of-way mowing regime that would be favorable to *H. eggertii*. However, these sites are not required in order to meet the delisting requirements for this species.

(4) *Comment:* The Tennessee Department of Environment and Conservation (TDEC) manages the Carter Cave State Natural Area in Franklin County, Tennessee. A population of *H. eggertii* occurs on this land. There was no mention in the proposed rule of a cooperative management agreement being pursued with TDEC for this site.

Response: We visited the Carter Cave State Natural Area site on August 8, 2003. We counted 250 total stems, including 150 flowering stems. However, the entire stand appeared to have hybrid characteristics. We could not find any individuals that we could clearly determine to be pure *H. eggertii*. We believe that further research needs to be conducted to determine if this site contains any pure *H. eggertii* before a cooperative management agreement is pursued. Since we need only 20 protected populations to meet the delisting criteria and we have 27 protected populations, it was not necessary to complete an agreement for this site before *H. eggertii* could be delisted. We will pursue an agreement if it is determined that the site does contain non-hybridized *H. eggertii*.

(5) *Comment:* The commenter believes that the agencies which have signed cooperative management

agreements need to continue reporting the status of populations in Kentucky over the next few years.

Response: Under the Act, the status of all species that are delisted due to recovery must be monitored for at least 5 years. The Service is committed to conducting at least 5 years of monitoring of these 27 populations of *H. eggertii* to ensure that the species remains stable or improving. (For more information, see the Post-delisting Monitoring section later in this notice). If the monitoring data show that the species is declining, there is a mechanism for emergency re-listing of the species.

(6) *Comment:* The commenter believes that the inclusion of the relocated *H. eggertii* at the U.S. Army Corps of Engineers (USACE) property at Nolin Lake should not be considered a functioning population, since this was a preliminary experiment to determine whether this species could be relocated.

Response: Personnel with the USACE were contacted concerning the relocated *H. eggertii* at Nolin Lake in Kentucky. They advised us that in about 1999–2000, approximately 120 stems were moved onto Nolin Lake property from a highway project 0.8 km (0.5 mi) off of the USACE property. There are presently about 136 stems at the Nolin Lake site. We concur that this site, at this time, should not be considered a functioning population and, as such, have not included it in the 27 populations that are being protected and managed under a cooperative management agreement.

(7) *Comment:* The commenter believes that pertinent literature for the delisting proposal should be comprehensive, and should have included the 1994 journal article on "The status of *Helianthus eggertii* Small in the southeastern United States" in Castanea 59(4):319–330.

Response: The references listed were only those that were cited in the proposed rule. It was not intended to be a complete list of pertinent literature for the species.

(8) *Comment:* One commenter noted that several other species of sunflowers, especially *Helianthus strumosus*, can be easily misidentified as *H. eggertii*, and some populations that are attributed to *H. eggertii* may be of hybrid origin.

Response: We are aware that there are other species of sunflowers similar to *H. eggertii* and have even observed hybrid sunflowers in the field. However, we were diligent in identifying and counting only those sites that contained true *H. eggertii*. We also have confidence in the identifications made by State botanists for Alabama, Kentucky, and Tennessee, since we revisited many of these sites and verified their findings.

(9) *Comment:* The unprotected populations of *H. eggertii* will continue to exist only if there is sufficient "natural" barrens habitat available, or if there is sufficient human-caused disturbance in the near vicinity of the populations.

Response: There are presently 73 populations of *H. eggertii* occurring in Alabama, Tennessee, and Kentucky. The majority of these populations occur along roadsides and power line right-of-ways. Most of these sites receive periodic mowing, which appears to be sufficient disturbance for the *H. eggertii* at these sites to continue to exist. We have cooperative management agreements in place for all of the 27 populations on public lands. These agreements ensure that these populations of *H. eggertii* will be properly managed. This exceeds the number of protected populations (20) required in the recovery plan for delisting.

(10) *Comment:* One commenter noted that attempting to protect a plant species by maintaining only a few populations on public land is like trying to protect endangered mammals by only keeping a few breeding pairs in zoos, and not worrying about those in the wild. These efforts are rarely successful.

Response: The 27 protected populations on public lands are in habitat that is as wild and natural as that of any of the other 46 populations that occur on private lands. We have exceeded the delisting criteria of 20 protected populations. Even though the populations on private lands do not have cooperative management agreements, it is highly unlikely that all of these 46 populations that are not covered by an agreement will disappear. Many of these populations occur along road and power line rights-of-way and receive periodic maintenance that keeps these areas open and free of trees. All of the 46 populations have 100 or more flowering stems. However, even if we lose all the 46 populations, we still have enough protected populations on public lands to delist the species and ensure its continued survival.

Public Comments

(11) *Comment:* One commenter noted that the protection of barrens habitat was overlooked in the proposal to delist *H. eggertii*.

Response: Protection under section 4 of the Act is limited to listed species and designated critical habitat (which was not designated for this plant). However, since *H. eggertii* does occur on barrens habitat, barrens have also received some ancillary protection by the listing of *H. eggertii*. For example, AAFB, which contains the largest known concentration of *H. eggertii* (11 populations), has developed and implemented a barrens restoration plan that includes protections for many of the species normally associated with a barrens habitat, including *H. eggertii*. We concur that the barrens habitat needs to be protected, and we are working with our partners to protect this habitat type along with *H. eggertii*. However, our current actions have enabled us to meet the delisting criteria in the recovery plan and we believe that this species no longer needs the protections of the Act.

(12) *Comment:* One commenter noted that because there has been no determination of the optimal habitat for seedling establishment, the actions required under the recovery plan have not been met.

Response: We have met the recovery criteria outlined in the recovery plan for delisting this species. While not every recovery task has been completed, we have taken the steps necessary to ensure the long-term conservation/protection of 27 populations of *H. eggertii* that are distributed throughout its range. The recovery plan only requires 20 populations. Recent research has shown that genetic diversity was high at both MCNP (3 populations) and AAFB (11 populations) (Starnes 2004). Starnes (2004) found that the high genetic diversity observed suggests that while clones may exist in a population, seedling establishment is actively putting new genetically diverse individuals into a population. Starnes' results showed that the current management strategies (burning and mowing) are suitable for protecting this species. We have incorporated these two management strategies into each of the cooperative management agreements in place for the 27 *H. eggertii* populations on publicly owned lands.

(13) *Comment:* Cruzan (2002) suggested that populations with less than 100 stems are unlikely to be self-sustaining, but there are no data to suggest what is sufficient. More research is required to determine what constitutes a viable population before delisting proceeds.

Response: The recovery plan requires self-sustaining populations. As defined in the recovery plan, a self-sustaining population is one that is self-regenerating and maintains sufficient genetic variation to enable it to survive and respond to natural habitat changes. Cruzan (2002) suggested that less than 100 flowering stems within an isolated

1 km (0.6 mi) radius are "unlikely to be sufficiently large for the maintenance of genetic diversity" and included areas of 100 or more flowering stems within a 1 km radius in the study area into his estimation of functional metapopulations. Furthermore, in a more recent study, Starnes (2004) stated that a "high amount of genetic diversity [was] seen in populations larger than 50 stems." The recovery plan also requires that these populations must be under a management regime designed to maintain or improve the habitat and each population must be stable or increasing for 5 years. Based on the best available science, we believe that a population of *H. eggertii* that contains 100 flowering stems or more and has been stable or improving for the past 5 years meets the definition of a self-sustaining population. We have 27 populations throughout the range of the species (Alabama, Kentucky, and Tennessee) that are self-sustaining, based on the above definition, and are protected through cooperative management agreements on public lands. The recovery plan only requires 20 protected populations to meet the delisting criteria. Further, while we use the more conservative minimum number of flowering stems (*i.e.*, 100) to define a self-sustaining population, it is important to note that all of the 27 populations we have identified consist of well over 100 flowering stems.

(14) *Comment:* The Tennessee National Guard (TNG) expressed its support of the proposed removal of *H. eggertii* from the Federal List of Endangered and Threatened Plants and its belief that the existing Barrens Restoration and Management Plan, Integrated Natural Resources Management Plan, Eggert's Sunflower Management Plan, and the Cooperative Management Agreement between AAFB and the Service will ensure the long-term protection of *H. eggertii*.

Response: We appreciate the opportunity to work with the TNG to recover *H. eggertii*. We concur that the Barrens Restoration and Management Plan, Integrated Natural Resource Management Plan, Eggert's Sunflower Management Plan, and the cooperative management agreement with AAFB will ensure the long-term protection of *H. eggertii* on AAFB property, including the TNG training area.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and the regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the Federal List of Endangered and Threatened Wildlife and Plants. These five factors and their application to *Helianthus eggertii* are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. In 1997, when *H. eggertii* was listed as threatened, most of the 34 known sites of this species were thought to be threatened with destruction or modification of their habitat. It was estimated that over 50 percent of the known sites were threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants that produce shade and compete with this species for limited water and nutrients. Active management was listed as a requirement to ensure the plant's continued survival at all sites. Since most of the sites where this species survives are not natural barrens, but areas such as rights-of-way or similar habitats that mimic barrens, direct destruction of this habitat for commercial, residential, or industrial development or intensive rights-of-way maintenance (*e.g.*, herbicide use) was thought to be a significant threat to the known sites at the time of listing.

Overall, the activities affecting the species' habitat, such as encroachment of more competitive vegetation, direct destruction of habitat for commercial and residential development, intensive rights-of-way maintenance, and conversion of barrens habitat to croplands, pasture, or development, appear to have changed very little since listing. However, the risk that those threats pose for *H. eggertii*'s survival and conservation are considerably less than what was understood at the time of listing. *H. eggertii* appears to respond favorably to mild-to-moderate types of disturbance. One site that occurs in Coffee County, Tennessee, was known to have hundreds of stems in 1998, before the site was clearcut. In 2000, TDEC found that there were very few plants left, and it was thought that the logging had resulted in the destruction of the plants at this site. However, in 2003, we found that the site had 1,578 total stems, including 951 flowering stems. Logging had only a temporary negative effect, and the land disturbance resulted in greatly increasing the population size and vigor of the plants at this site (Service, unpublished data). This same phenomenon has occurred on AAFB. Pine stands that had few to no *H. eggertii* had been clearcut, followed by either the new appearance of *H. eggertii* or a significant increase in population size and vigor of existing plants (K. Fitch, Arnold Engineering and Development Center, pers. comm. 2003). Many of the known *H. eggertii* sites occur along road and power line rights-of-way. This is probably due to the disturbance of these areas from continual maintenance activities. Plants will not grow and flower well in very deep shade (*i.e.*, 80 percent shade). Moderate levels of shade (from 40 to 60 percent) where *H. eggertii* normally occurs do not appear to have large negative consequences for its growth or reproduction (Cruzan 2002). Cruzan (2002) also found that *H. eggertii* competes well against other more widespread species under full sunlight and 60 percent shade conditions, a fact that was not known at the time of listing.

At the time of listing, we did not fully understand that *H. eggertii* could readily adapt to certain manmade disturbances that are replacing the dwindling natural barrens. We originally thought the species was restricted to these natural barren areas. When *H. eggertii* was listed, manmade areas were thought to be low-quality sites where the species was making a last-ditch effort to survive. Upon discovering that manmade sites were a significant habitat that *H. eggertii* was exploiting and in which it was thriving, we began finding a significant number of new sites. In fact, since listing, an additional 253 sites have been found that contain the species (Alabama Natural Heritage Database 2003, 2004; Kentucky Natural Heritage Database 2003, 2004; Tennessee Natural Heritage Database 2003, 2004; Service unpublished data). The species is also more widespread than originally thought, occurring in 3 counties in Alabama, 9 counties in Kentucky, and 15 counties in Tennessee. The number of stems has also increased dramatically from the time of listing. In Alabama, the one site known at the time of listing was described as vigorous; presently, there are 10 sites and 7 have more than 100 stems (Alabama Natural Heritage Database 2003, 2004; Service unpublished). In Kentucky, most of the 13 original sites at the time of listing contained fewer than 15 stems and 4 sites had fewer than 5 stems. Presently in Kentucky, there are 33 known sites; 18 of these sites have more than 100 stems, and are now considered viable populations (Kentucky Natural Heritage Database 2003, 2004). In Tennessee, about one-half of the 20 original sites at the time of listing contained fewer than 20 stems. Currently in Tennessee, there are 244 known sites, 63 of which have more than 100 stems and are now considered viable populations

(Tennessee Natural Heritage Database 2003, 2004; Service unpublished data).

Of the 287 sites where *H. eggertii* is known to occur in Alabama, Kentucky, and Tennessee, 126 (which make up 27 total populations) are in public ownership or on land owned by TNC and are being managed to protect the species. Protection for the species will continue on these sites after it is delisted. AAFB has 115 of these sites (11 populations) and is the largest Federal landowner harboring this species. Protection and management strategies for *H. eggertii* are covered by AAFB's Integrated Natural Resources Management Plan (INRMP), a Barrens Management Plan (BMP), and a separate Eggert's Sunflower Management Plan (ESMP). The INRMP, BMP, and ESMP are active management plans that provide for the long-term conservation of this species by focusing on restoring barrens habitat and maintaining the necessary ecological processes in habitats the species requires. These processes include various silvicultural treatments (*e.g.*, clearcuts, marked thinning, and row thinning), prescribed burning, and invasive pest plant management (*e.g.*, manual removal and herbicide spot application). Regardless of the Federal status of *H. eggertii*, the BMP, ESMP, and INRMP will continue to provide for the protection and management of this species (U.S. Air Force (USAF) 2001, 2002). AAFB also recently signed a Cooperative Management Agreement with us to further ensure the protection of *H. eggertii* populations on its property even after delisting. In Kentucky, MCNP has three populations. MCNP is actively managing *H. eggertii* populations and has implemented a prescribed burning regime to provide for the long-term protection of this species. In 2004, we signed a 10-year Cooperative Management Agreement with MCNP to provide long-term protection of the three *H. eggertii* populations occurring on Park property. These populations, and the barrens habitats on which they occur, will be sustained by implementing habitat management activities, such as prescribed burns, tree thinning, and invasive plant removal, and will be monitored. These cooperative management agreements will aid in sustaining *H. eggertii* populations on these Federal lands regardless of the Federal status of this species.

H. eggertii is an early successional species and, while historic barrens habitat is becoming increasingly rare, this species readily responds to barrens restoration activities and colonizes manmade disturbed areas. The key to long-term survival of *H. eggertii* is periodic burning, mowing, or thinning of the competing vegetation. KTC has signed a management agreement with us to maintain, enhance, and monitor *H. eggertii* on its property (41 acres, one population) which includes restoring barrens habitat by thinning the existing trees near *H. eggertii* occurrences, conducting periodic prescribed burns, and monitoring the success of these management practices to refine them if necessary.

The Alabama and Tennessee State Departments of Transportation are working with us to develop and maintain roadside mowing regimes that would benefit existing *H. eggertii* sites. This will also encourage new establishment of plants along road rights-of-way by reducing the competing vegetation and keeping the areas open. TWRA, which owns four wildlife management areas that contain eight *H. eggertii* populations, is managing these areas for small game, which indirectly benefits this species by keeping the area in early successional vegetation. TWRA has signed a Cooperative Management Agreement with us to provide for the long-term protection of *H. eggertii* on its lands. This agreement, like agreements with Federal agencies, involves habitat management activities such as prescribed burns, tree thinning, and invasive plant removal, and monitoring the plants and their habitat to ensure the protection and management of these sites regardless of the Federal status of *H. eggertii* Similarly, we have signed a Cooperative Management Agreement with the City of Nashville, Metro Parks and Recreation, which owns and operates A.G. Beaman Park in Davidson County, Tennessee. AGBP contains two populations of *H. eggertii* This park is new and plans are being developed for future uses such as hiking trails, picnic areas, park headquarters, and maintenance buildings. The Cooperative Management Agreement will ensure that AGBP and the Service will continue to work together to protect the existing *H. eggertii* populations regardless of the species' Federal status.

TNC in Kentucky owns a site known as Baumberger Barrens, which contains one population of *H. eggertii*. TNC has an existing management plan for the barrens that includes *H. eggertii*. The site is undergoing management, such as removal of woody species, periodic prescribed burns, and invasive plant removal, to ensure the native barrens species, including *H. eggertii*, are maintained and protected. We signed a 10-year Cooperative Management Agreement with TNC to manage and monitor the *H. eggertii* population that occurs on this site.

TNC of Kentucky and the State of Kentucky each own 50 percent of a site known as Eastview Barrens. One population of *H. eggertii* occurs at Eastview Barrens. These two landowners are working together to manage the barrens on this site by removing woody species, conducting periodic prescribed burns, and preventing and removing invasive plants to ensure the native barrens species, including *H. eggertii*, are maintained and protected. This site is protected by a conservation easement that will protect the natural barrens and *H. eggertii* in perpetuity for the citizens of Kentucky.

The large increase in new *H. eggertii* sites (253) since listing, the increased understanding of the plant's adaptability, and the protection and management provided by State and Federal landowners and nongovernmental organizations have led us to conclude that the threats to *H. eggertii*'s habitat have been adequately addressed and habitat destruction is no longer considered to be a threat to the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* We have no documented evidence, records, or information to indicate that overutilization for commercial, recreational, scientific, or educational purposes is a threat to *H. eggertii*. We have found no records of unauthorized collection during our literature review or in discussions with researchers. This species is not believed to be a significant component of the commercial trade in native plants, and overutilization does not constitute a threat for this species.

C. *Disease or predation.* Disease has been observed by the Service and other observers on small numbers of *H. eggertii* plants (T. Gulya, U.S. Department of Agriculture, pers comm. 2004). This disease is believed to be a rust fungus of either the *Puccinia* or *Coleosporium* genera (T. Gulya, pers comm. 2004). This rust attacks the vegetation and causes orange-to-brown pustules (raised bumps or areas) on the surfaces. It does not appear to kill the plants, and we do not believe that it is a threat to the species' existence. Predation from insects and herbivores has also been noted on small isolated patches of *H. eggertii*. These incidents appear to result from normal environmental conditions. Because of the ability of this plant to sprout stems from rhizomes, the small amount of predation observed does not pose a threat to this species.

D. *The inadequacy of existing regulatory mechanisms.* The Act does not provide protection for plants on private property unless the landowner's activity is federally funded or requires Federal approval. In all three States (Alabama, Kentucky, and Tennessee), plants have no direct protection under State law on private property. Plants on private property are afforded ancillary protection under State criminal trespass laws. Once this delisting rule is in effect, the only change to the protection of *H. eggertii* on private land would be that we would no longer consult under section 7 of the Act for the activities that are federally funded or require Federal approval. However, there are enough populations of *H. eggertii* on public lands (27 populations) to afford the long-term conservation of this species based on the recovery criteria (20 populations) in the recovery plan. The recovery criteria called for the 20 populations to be distributed throughout the species' historical range and, based on the number and distribution of populations known at that time, determined that the relative proportions would be 1 population in Alabama, 3 populations in Kentucky, and 16 populations in Tennessee. Although none of the seven populations in Alabama are currently under a management plan, we believe that the current distribution of populations under such plans meets the intent of the recovery criteria because they are "distributed throughout the species' historical range," including populations that occur near the Tennessee/Alabama border.

Section 9(a)(2)(B) of the Act prohibits removal and possession of endangered plants from areas under Federal jurisdiction. Kentucky has 4 populations and Tennessee has 11 populations of *H. eggertii* that occur on Federal lands. None of the seven populations in Alabama occurs on public lands. *H. eggertii* sites on MCNP in Kentucky are also protected from take by Code of Federal Regulations (CFR), Title 36, Volume 1, which protects all plants on Department of the Interior lands. We have Cooperative Management Agreements with the MCNP and AAFB. These agreements provide for the management and protection of these important *H. eggertii* sites, regardless of the Federal status of the species. Both the plant and its habitat will be protected, managed, and monitored under these agreements.

On public lands in Tennessee and Kentucky, on which 27 populations (composed of 126 of the 287 known sites, and including the 15 populations on Federal lands just discussed) of the plants are found, *H. eggertii* is adequately protected by other laws. Air Force Instruction 32–7064 at 7.1.1 provides the same protection for candidate and State listed species as for federally listed species "when practical" on AAFB. It is our understanding that the State of Tennessee has no plans to delist *H. eggertii* in the immediate future. In addition, as mentioned previously, *H. eggertii* is covered under three management plans covering AAFB (INRMP, BMP, and ESMP), all of which will continue for some years regardless of whether the species is delisted. TWRA has a rule (1660–1–14–.14) that protects all vegetation on designated wildlife management areas from take regardless of its State or Federal status. There are eight known populations of *H. eggertii* that occur on four different State wildlife management areas managed by the TWRA (Service unpublished data 2004). We mentioned in error 10 populations in our proposed rule. There were only 7 populations known at the time of the proposed rule (69 FR 17627), and now there are 8 with the additional one discovered on Laurel Hill Wildlife Management Area in 2004. On public lands in Kentucky, every natural component is considered public domain and is, therefore, protected from take under State law. Kentucky has three populations of *H. eggertii* that occur on State-owned public lands. This State law will remain in effect regardless of whether this species remains federally listed or not.

The Act protects plants on private lands only if the actions which might adversely impact them are conducted, permitted, or funded by a Federal agency, or constitute criminal trespass or theft of the plants. The limited protection afforded by the Act under these circumstances would be lost through delisting, and other existing regulations do not provide complete protection to all existing habitat on private lands. However, we believe the significant protections afforded to the 27 populations occurring on public lands are adequate to ensure those populations of *H. eggertii* remain viable, and such populations by themselves meet or exceed the recovery goals listed in the recovery plan.

E. *Other natural or manmade factors affecting its continued existence.* Extended drought conditions and an increase in the potential for inbreeding depression due to dwindling numbers were thought to affect the continued existence of *H. eggertii* at the time of listing. The known sites of *H. eggertii* have now increased in number to 287 (73 populations) and are scattered throughout 27 counties in 3 States. This makes the likelihood of a drought adversely affecting all the known sites much less than originally thought, when there were only 34 known sites. Also, there are 7 populations in Alabama, 18 populations in Kentucky, and 48 populations in Tennessee, for a total of 73 populations that have more than 100 flowering stems. The recovery plan criterion requires only 20 populations to be considered for delisting. Cruzan (2002) suggested that 100 flowering stems or more were needed to maintain genetic diversity and prevent inbreeding depression within a population. Inbreeding depression due to low numbers of individuals per population is no longer a threat to *H. eggertii*. We believe the known number of sites, the numbers of existing populations, and their distribution are sufficient to protect against potential catastrophic events (*e.g.*, drought) and no longer consider such events to be a threat to this species. There are no other natural or manmade factors known to affect the continued existence of *H. eggertii*; therefore, we do not believe these factors will affect the continued existence of this species.

Summary of Findings

According to 50 CFR 424.11(d), a species may be delisted if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, or (3) error in the original data for classification of the species.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Helianthus eggertii*. Based on surveys conducted in 2001, 2002, 2003, and 2004, we conclude that the threatened designation no longer correctly reflects the current status of this plant. Relative to the information available at the time of listing, recovery actions have resulted in new information that shows a significant (1) expansion in the species' known range, (2) increase in the number of known sites, and (3) increase in the number of individual plants. Furthermore, recovery efforts have provided increased attention and focus on this species. This in turn has led to greater protection for the species such that the recovery criteria in the recovery plan for this species have been met. After conducting a review of the species' status, we have determined that the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become in danger of extinction within the

foreseeable future throughout all or a significant portion of its range. Given the expanded range, number of newly discovered population locations and individuals, the increased knowledge of the genetics of this species, and the protection offered by State and Federal landowners, we conclude, based on the best scientific and commercial information, that *H. eggertii* does not warrant the protection of the Act. Therefore, we are removing *H. eggertii* from the Federal List of Endangered and Threatened Plants.

Effect of This Rule

This rule will revise 50 CFR 17.12(h) to remove *Helianthus eggertii* from the List of Endangered and Threatened Plants. Because no critical habitat was ever designated for this species, this rule will not affect 50 CFR 17.96.

Once this species is removed from the List of Endangered and Threatened Plants, Endangered Species Act protection will no longer apply. Removal of *H. eggertii* from the List of Endangered and Threatened Plants will relieve Federal agencies from the need to consult with us to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of this species.

Post-Delisting Monitoring

The 1988 amendments to the Act (section 4(g)(1)) require us to implement a system, in cooperation with the States, to monitor all species that have been delisted due to recovery for at least 5 years following delisting. The purpose of this post-delisting monitoring (PDM) is to verify that a species that is delisted due to recovery remains secure from the risk of extinction after it no longer has the protections of the Act. If the species does not remain secure, we can use the emergency listing authorities under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs. However, we are responsible for compliance with section 4(g) and must remain actively engaged in all phases of the PDM.

The Service has drafted a PDM plan for Eggert's sunflower and is making it available for review and comment in a separate notice in this issue of the **Federal Register** (see the Notices section of today's **Federal Register**). Following the end of the comment period, any comments will be incorporated as appropriate into the final PDM plan.

Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Timothy Merritt (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

■ For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

§ 17.12 [Amended]

■ 2. Amend § 17.12(h) by removing the entry *"Helianthus eggertii"* under "Flowering Plants" from the List of Endangered and Threatened Plants.

Dated: July 20, 2005.

Marshall Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 05–16274 Filed 8–17–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 080405B]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the daily Atlantic bluefin tuna (BFT) retention limits for the Atlantic tunas General and Highly Migratory Species (HMS) Charter/Headboat categories should be adjusted. The adjustment will allow maximum utilization of the General category September time-period subquota, and will enhance recreational BFT fishing opportunities aboard HMS Charter/Headboat vessels in the later portion of the season. Therefore, NMFS increases the daily BFT retention limits to provide enhanced commercial General category and recreational HMS Charter/Headboat fishing opportunities in all areas while minimizing the risk of an overharvest of the General and Angling category BFT quotas.

DATES: The effective dates for BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION:

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2005 BFT fishing year began on June 1, 2005, and ends May 31, 2006. The final initial 2005 BFT specifications and General category effort controls were provided on June 7, 2005 (70 FR 33033). During this rulemaking, NMFS specifically requested comment on options related to a recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) regarding a four-year average, 8 percent tolerance on harvest of school BFT. Numerous comments were received on this issue as well as a wide range of topics, including inseason management measures for the General and HMS Charter/Headboat categories throughout the 2005 fishing year. Section 635.27 subdivides the U.S. BFT quota recommended by the ICCAT among the various domestic fishing categories.

Daily Retention Limits

Pursuant to this action and the final initial 2005 BFT specifications, noted above, the daily BFT retention limits for Atlantic tunas General, HMS Charter/Headboat, and HMS Angling categories are as follows:

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Areas	BFT Size Class Limit
General	August 1 through September 30, 2005, inclusive	All	Two BFT per vessel per day/trip, measuring 73 inches (185 cm) curved fork length (CFL) or larger
	October 1, 2005, through January 31, 2006, inclusive	All	One BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger
Charter/Headboat	August 1 - 31, 2005, inclusive	All	One BFT per vessel per day/trip, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL
	September 1 - 30, 2005, inclusive	All	Three BFT per vessel per day/trip, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL. Of the three BFT, a maximum of two BFT are allowed per vessel per day/trip measuring 27 to less than 47 inches (69 to less than 119 cm) CFL
	October 1, 2005, through May 31, 2006, inclusive	All	One BFT per vessel per day/trip, measuring 27 to less than 73 inches (119 to less than 185 cm) CFL
Angling	June 1, 2005, through May 31, 2006, inclusive	All	One BFT per vessel per day/trip, measuring 27 to less than 73 inches (69 to less than 185 cm) CFL

Adjustment of General Category Daily Retention Limits

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on Restricted Fishing Days) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. On June 7, 2005 (70 FR 33039), NMFS adjusted the commercial daily BFT retention limit, in all areas, for those vessels fishing under the General category quota, to two large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip. This retention limit was to remain in effect through August 31, 2005, inclusive. From September 1, 2005, through January 31, 2006, inclusive, the General category daily BFT retention limit was scheduled to revert to one large medium or giant BFT per vessel per day/trip.

The June through August time-period subquota allocation for the 2005 fishing year totaled approximately 540 metric tons (mt). As of August 5, 2005, 32.5 mt have been landed in the General

category and catch rates equal approximately 0.5 mt per day. If catch rates are to remain at current levels, approximately 13 mt would be landed during the remainder of August. This projection would bring the June though August time-period subquota landings to approximately 45 mt, resulting in an underharvest of approximately 500 mt. This carryover combined with the September time-period subquota allocation of 270 mt would allow for 770 mt to be harvested in the month of September. In combination with an expected subquota rollover from the June through August time-period, the September time-period subquota allocation, current catch rates, and the daily retention limit reverting to one large medium or giant BFT per vessel per day on September 1, 2005, NMFS anticipates the full September time-period subquota will not be harvested. This could result in a potential excessive rollover into the October through January time-period. Adding an excessive amount of unused quota from one time-period subquota to the subsequent time period subquota is undesirable because it effectively changes the time-period subquota allocation percentages established in the HMS Fishery Management Plan (FMP). This issue has been discussed extensively during public comment periods for annual BFT quota specification and during HMS Advisory Panel meetings.

Therefore, based on a review of dealer reports, daily landing trends, available quota, and the availability of BFT on the fishing grounds, NMFS has determined that an increase in the General category daily BFT retention limit effective from September 1, 2005, through September 30, 2005, inclusive, is warranted. Thus, the general category daily retention limit of two large medium or giant BFT per vessel per day/trip (see Table 1) will be extended through September 30, 2005. Starting on October 1, 2005, through January 31, 2006, inclusive, the General category default daily BFT retention limit of one large medium or giant BFT per vessel per day/trip will apply. It is highly likely that, with a combination of the default retention limit starting on October 1, 2005, and the large amount of General category quota available, there will be sufficient quota for the coastwide General category season to extend into the winter months and allow for a southern Atlantic fishery to take place on an order of magnitude of prior years.

The intent of this adjustment is to allow for maximum utilization of the U.S. landings quota of BFT while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Adjustment of HMS Charter/Headboat Permit Category Daily Retention Limits

A recommendation of ICCAT requires that NMFS limit the catch of school BFT, measuring 27 to less than 47 inches (69 to less than 119 cm) CFL, to no more than 8 percent by weight of the total domestic landings quota over each four-consecutive-year period. NMFS is implementing this ICCAT recommendation through annual and inseason adjustments to the school BFT retention limits, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999). The ICCAT recommendation allows for interannual adjustments for overharvests and underharvests, provided that the 8 percent landings limit is not exceeded over the applicable four-consecutive-year period. The 2005 fishing year is the third year in the current accounting period. This multi-year block quota approach provides NMFS with the flexibility to enhance fishing opportunities and to collect information on a broad range of BFT size classes while minimizing the risk of overharvest of the school size class.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 set the daily recreational retention limits for BFT and allow for adjustments to the daily recreational retention limits in order to provide for maximum utilization of the Angling category quota over the longest possible period of time. NMFS may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit or vice versa. Such adjustments to the retention limits may be applied separately for persons aboard a specific vessels type, such as private vessels, headboats and charter boats.

On June 7, 2005 (70 FR 33039), NMFS adjusted the daily recreational retention limit, in all areas, for vessels permitted in the HMS Charter/Headboat category, to three BFT per vessel per day/trip, consisting of BFT measuring 27 to less than 73 inches (69 to less than 185 cm) CFL in the school, large school, or small medium size classes. Of the three BFT, a maximum of two school BFT were allowed per vessel per day/trip, measuring 27 to less than 47 inches (69 to less than 119 cm) CFL. This retention limit remained in effect through July 31, 2005, inclusive. Starting on August 1, 2005, inclusive, the daily retention limit for vessels permitted in the HMS Charter/Headboat category, reverted back to one school, large school, or small medium BFT, per vessel per day/trip. This default daily retention limit was scheduled to remain in place through May 31, 2006, inclusive.

Based on available quota, historical information regarding fish migration patterns, BFT availability off the east coast, particularly off the mid-Atlantic states, and current recreational BFT catch information derived from the Maryland BFT tagging program and Automated Landing Reporting System (ALRS), NMFS has determined that a modest increase in the daily retention limit, of a limited duration, is appropriate for HMS Charter/Headboat permitted vessels. NMFS deemed this modest increase as appropriate because of concerns regarding how the default one BFT retention limit might impact charterboat operations late in the season particularly where long distances must be traveled to locate BFT as well as a concern that a recreational retention limit of less than three BFT per vessel per day/trip may not provide reasonable fishing opportunities for charter/headboats, which carry multiple fee-paying passengers. Thus, NMFS adjusts the daily BFT retention limit, in all areas, for vessels permitted in the HMS Charter/Headboat category, effective September 1, 2005, through September 30, 2005, inclusive, to three BFT per vessel per day/trip, consisting of BFT measuring 27 to less than 73 inches (69 to less than 185 cm) CFL in the school, large school, or small medium size classes. Of the three BFT, a maximum of two school BFT are allowed per vessel per day/trip, measuring 27 to less than 47 inches (69 to less than 119 cm) CFL.

Effective October 1, 2005, through May 31, 2006, the default daily recreational retention limit of one school, large school, or small medium BFT measuring 27 to less than 73 inches (69 to less than 185 cm) CFL, per vessel per day/trip will apply in all areas, for all vessels permitted in the HMS Charter/Headboat category.

HMS Angling Category Daily Retention Limits

For privately owned and operated recreational vessels, permitted in the HMS Angling category, the daily recreational retention limit will remain at one school, large school, or small medium BFT measuring 27 to less than 73 inches (69 to less than 185 cm) CFL, per vessel per day/trip effective June 1, 2005 through May 31, 2006, inclusive.

Monitoring and Reporting

NMFS selected the daily retention limits and their duration after examining current and previous fishing year catch and effort rates, taking into consideration public comment on the options to achieve the ICCAT recommended four-year average 8 percent tolerance on harvest of school BFT, and inseason management measures for the General and HMS Charter/Headboat categories received during the 2005 BFT quota specifications rulemaking process, and analyzing the available quota for the 2005 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports, the ALRS, state harvest tagging programs in North Carolina and Maryland, and the Large Pelagics Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or, to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260 for updates on quota monitoring and retention limit adjustments. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS ALRS via toll-free phone at (888) 872–8862; or the Internet *www.nmfspermits.com*; or, if landed in the states of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North Carolina by calling (800) 338–7804, and in Maryland by calling (410) 213–1531.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action.

NMFS has recently become aware of increased availability of large medium and giant BFT on the New England fishing grounds. This increase in abundance provides the potential to increase General category landings rates for the New England fishery if participants are authorized to harvest two large medium or giant BFT per day. Also, since the end of the 2005 BFT specification comment period to the present day, the HMS Management Division has continued to receive more information refining its understanding of both the commercial and charter/headboat sectors' specific needs regarding BFT retention limits. The regulations implementing the HMS FMP provide for inseason retention limit adjustments in order to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Adjustment of retention limits is also necessary in order to avoid excessive quota rollovers to subsequent General category time-period subquotas.

Recreational size class BFT traditionally start to migrate during the early fall and are currently available in the northern area. NMFS has already provided a window of enhanced fishing opportunities to HMS Charter/Headboat vessels operating off the coast of mid-Atlantic states from mid-June through July. In order to balance concerns regarding continued utilization of available quota with not exceeding allotted amounts providing for reasonable fishing opportunities along the entire Atlantic coast, NMFS needs to act promptly to provide enhanced fishing opportunities to northern area fishermen similar to those previously provided to the mid-Atlantic area. Preliminary recreational BFT data also show that a limited increase in the recreational BFT retention limit is possible for the HMS Charter/Headboat fleet while minimizing risks of exceeding the ICCAT allocated quota and the school limit recommendation.

Delays in increasing the retention limits would be contrary to the public interest. Such delays would adversely affect those General and HMS Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than one BFT per day and would further exacerbate the problem of quota rollovers, and/or lack of booked charters. Limited opportunities to access the respective quotas may have negative social and economic impacts to U.S. fishermen that either depend on catching the available quota within the time-periods designated in the HMS FMP, or depend on multiple BFT retention limits to attract individuals to book charters. For both the General and the HMS Charter/Headboat sectors, an adjustment to the retention limits needs to be done as expeditiously as possible for the impacted sectors to benefit from the adjustment.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., current, default retention limit is one fish per vessel/trip but this action relaxes that limit and allows retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 12, 2005.

Anne M. Lange,

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

[FR Doc. 05–16386 Filed 8–15–05; 3:54 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 159
Thursday, August 18, 2005

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 05–004–1]

RIN 0579–AB93

Importation of Whole Cuts of Boneless Beef from Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of meat and other edible animal products by allowing, under certain conditions, the importation of whole cuts of boneless beef from Japan. We are proposing this action in response to a request from the Government of Japan and after conducting an analysis of the risk that indicates that such beef can be safely imported from Japan under the conditions described in this proposal.

DATES: We will consider all comments that we receive on or before September 19, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–004–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–004–1.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Other Information: All comments submitted in response to this proposal, as well as analyses for this proposal, are available at the EDOCKET Web site shown above and our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. You may also view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Director, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA or the Department) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases. The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE), a chronic degenerative disease affecting the central nervous system of cattle.

Section 94.18 of the regulations prohibits or restricts the importation into the United States of meat and certain other edible products due to BSE. Paragraph (a)(1) of § 94.18 lists regions in which BSE is known to exist. Paragraph (a)(2) of § 94.18 lists regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because the regions have inadequate surveillance for BSE. Paragraph (a)(3) of § 94.18 lists regions that present a minimal risk of introducing BSE into the United States. Except for certain controlled transit movements, § 94.18(b) prohibits the importation of meat, meat products, and most other edible products of ruminants that have been in any region listed in § 94.18(a)(1) or (a)(2) and restricts the importation of those commodities from any region listed in § 94.18(a)(3).

In an interim rule published in the **Federal Register** on October 16, 2001 (66 FR 52483–52484, Docket No. 01–094–1), and effective on September 10, 2001, we amended the regulations by adding Japan to the list in § 94.18(a)(1) of regions where BSE exists. That action was prompted by the confirmation of BSE in a native-born animal in Japan. The effect of the interim rule was to prohibit the importation of ruminants that have been in Japan, as well as meat, meat products, and most other products and byproducts of ruminants that have been in Japan.

Immediately following the detection of the BSE-infected cow, the Government of Japan initiated an epidemiological investigation and took a series of measures to detect and control BSE in Japan, including measures to ensure that tissues that have the potential to carry infectious levels of the BSE agent are removed from cattle at slaughter, a ban on the feeding of mammalian protein to ruminants is in place, and increase BSE surveillance.

The Government of Japan has requested that APHIS consider allowing the resumption of trade in beef from Japan to the United States. Prior to the 2001 ban on the importation of ruminants and ruminant products from Japan, Japan primarily exported to the United States boneless cuts of beef from cattle born, raised and slaughtered in Japan. Therefore, in response to Japan's request, we considered allowing the importation of whole cuts of boneless beef derived from cattle that were born, raised, and slaughtered in Japan and analyzed the animal health risks associated with that product.[1] For a consideration of the risks to human

[1] In this proposal, we use the term "whole cuts of boneless beef" to refer to meat derived from the skeletal muscle of a bovine carcass, excluding all parts of the animal's head and diaphragm. Meat that has been ground, flaked, shaved, or otherwise processed, comminuted, or mechanically separated would not be whole cuts of boneless beef.

health, we consulted with the Food Safety and Inspection Service (FSIS) of USDA, which is the public health agency that is responsible for ensuring the food safety of this product. The risk analysis is available on EDOCKET and in the APHIS reading room. (Information on accessing EDOCKET as well as the location and hours of the APHIS reading room may be found at the beginning of this document under **ADDRESSES**.) You may also request paper copies of the analysis by calling or writing the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. 05–004–1 when requesting copies of the risk analysis.

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture may prohibit the importation of any animal or article if the Secretary determines that the prohibition is necessary to prevent the introduction into or dissemination within the United States of any pest or disease of livestock. The Secretary has determined that it is not necessary to continue to prohibit the importation of whole cuts of boneless beef derived from cattle that were born, raised, and slaughtered in Japan, provided that the conditions described in this proposal are met. This determination is based on a number of factors, including research on BSE and the risk analysis prepared for this rulemaking.

In this proposed rule, we will first provide some background on BSE. Next, we discuss the scientific evidence that provides a basis for the proposed conditions, then discuss the proposed conditions in further detail. Finally, we will briefly discuss the proposed conditions as they relate to international guidelines on BSE.

Bovine Spongiform Encephalopathy

BSE is a progressive and fatal neurological disorder of cattle that results from an unconventional transmissible agent. BSE belongs to the family of diseases known as transmissible spongiform encephalopathies (TSEs). All TSEs affect the central nervous system of infected animals. However, the distribution of infectivity in the body of the animal and mode of transmission differ according to the species and TSE agent. In addition to BSE, TSEs include, among other diseases, scrapie in sheep and goats, chronic wasting disease (CWD) in deer and elk, and variant Creutzfeldt-Jakob disease in humans.

The agent that causes BSE has yet to be fully characterized. The theory that is most accepted in the international scientific community is that the agent is an abnormal form of a normal protein known as cellular prion protein. The BSE agent does not evoke a traditional immune response or inflammatory reaction in host animals. BSE is confirmed by post-mortem microscopic examination of an animal's brain tissue or by detection of the abnormal form of the prion protein in an animal's brain tissues. The pathogenic form of the protein is both less soluble and more resistant to degradation than the normal form. The BSE agent is resistant to heat and to normal sterilization processes. BSE is not a contagious disease; according to internationally accepted research, the only confirmed, natural route of transmission of BSE in cattle is the consumption of animal feed containing protein from ruminants infected with BSE.

BSE was first documented in the United Kingdom in 1986 and has since been confirmed in native-born cattle in 22 European countries in addition to the United Kingdom, and in some non-European countries, including Japan, Israel, Canada, and the United States. Since November 1986, there have been more than 186,000 confirmed cases of BSE in cattle worldwide. As of July 2005, Japan had reported a total of 20 cases of BSE, including the initial case of BSE in September 2001 and two cases that are currently under further investigation.[2]

In the United States, there have been two confirmed cases of BSE, one an imported cow and one a native cow. The first case of BSE in the United States was identified in a dairy cow in Washington State on December 23, 2003. The epidemiological investigation and DNA test results confirmed that the infected cow was not indigenous to the United States, but rather was born and most likely became infected in Alberta, Canada, before Canada's 1997 implementation of a ban on feeding most mammalian protein to ruminants, which prevents the use of most mammalian protein in cattle feed. The second case of BSE in the United States was confirmed in an approximately 12-year-old beef cow in Texas on June 29, 2005. This animal was born well before the United States instituted a mammalian-to-ruminant feed ban in August 1997.

Variant Creutzfeldt-Jakob disease (vCJD), a chronic and fatal neurodegenerative disease of humans, has been linked since 1996 through epidemiological, neuropathological, and experimental data to exposure to the BSE agent, most likely through consumption of cattle products contaminated with the agent before BSE control measures were in place. To date, approximately 170 probable and confirmed cases of vCJD have been identified worldwide. The majority of these cases have either been identified in the United Kingdom or were linked to exposure that occurred in the United Kingdom, and all cases have been linked to exposure in countries with native cases of BSE. Some studies estimate that more than 1 million cattle may have been infected with BSE throughout the epidemic in the United Kingdom. This number of infected cattle could have introduced a significant amount of infectivity into the human food supply. Yet, the low number of cases of vCJD identified to date indicates that there is a substantial species barrier that protects humans from widespread illness due to exposure to the BSE agent.

Factors Considered in the Development of the Proposed Import Conditions

BSE Infectivity

Examination of naturally-occurring BSE cases and extensive well-controlled BSE challenge studies have clearly demonstrated that the primary site for BSE accumulation in cattle is the central nervous system (brain, spinal cord, trigeminal ganglia, dorsal root ganglia (DRG), and eye).[3] Small amounts of BSE infectivity accumulate in the distal ileum, and only trace amounts have been found in tonsil samples. Importantly, BSE studies in cattle to date have not detected infectivity in any other tissues than those listed above. These studies also have found that the level of infectious agent in these tissues varies with the age of the animal, with the highest levels of infectivity detected in the brain and spinal cord at the end stages of disease.

BSE has a long incubation period. Research demonstrates that the incubation period for BSE in cattle is linked to the infectious dose received—*i.e.*, the larger the infectious dose received, the shorter the incubation period. Cattle typically develop clinical signs after an average incubation of 4 to 6 years post-infection.

This research on BSE has been used to develop effective, proven strategies for removal of these tissues from animals of appropriate age so that these tissues do not enter the food chain. In the United States, the FSIS regulations contained in 9 CFR 310.22 designate the brain, spinal cord, vertebral column

[2] See the risk analysis for further information.

[3] DRG are clusters of nerve cells attached to the spinal cord that are contained within the bones of the vertebral column. Trigeminal ganglia are clusters of nerve cells connected to the brain that lie close to the exterior of the skull.

(excluding the vertebrae of the tail, the transverse process of the thoracic and lumbar vertebrae, and the wings of the sacrum), DRG, trigeminal ganglia, skull, and eyes of cattle 30 months of age and older, and the tonsils and the distal ileum of cattle of any age as SRMs and prohibit their use as human food.[4]

BSE infectivity has never been demonstrated in the muscle tissue of cattle experimentally or naturally infected with BSE at any stage of the disease. Studies performed using TSEs other than BSE in non-bovine animals have detected prions in muscle tissue. However, the international scientific community largely considers that these studies cannot be directly extrapolated to BSE in cattle because of the significant interactions between the host species and the prion strain involved.

Pathogenesis studies of naturally and experimentally infected cattle have not detected BSE infectivity in blood. However, transmission of BSE was demonstrated in sheep that received a transfusion of a large volume of blood drawn from other sheep that were experimentally infected with the BSE agent. The United Kingdom's Department for Environment, Food and Rural Affairs' Spongiform Encephalopathy Advisory Committee (SEAC) and the European Commission's Scientific Steering Committee (SSC), which are scientific advisory committees, evaluated the implication of this finding in relation to food safety.[5] The SEAC concluded that the finding did not represent grounds for recommending any changes to the current control measures for BSE. The SSC determined that the research results do not support the hypothesis that bovine blood or muscle meat constitute a risk to human health.[6]

Based on this information, APHIS concludes that whole cuts of boneless beef do not present a BSE risk, provided that certain measures are in place to avoid contamination of the beef with potentially infectious tissues.

[4] The skull and vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum) of cattle 30 months of age and older were designated as SRMs in the FSIS regulations because they contain high-risk tissues such as the brain and spinal cord.

[5] Spongiform Encephalopathy Advisory Committee, Oct 19, 2000, Summary of SEAC Committee Meeting 29 September 2000. Available at *http://www.defra.gov.uk/news/seac/seac500.htm.*

[6] European Commission Scientific Steering Committee. "The Implications of the Recent Papers on Transmission of BSE by Blood Transfusion in Sheep (Houston et al, 2000); Hunter et al, 2002), Adopted by the SSC at its Meeting of 12–13 September." Available at *http://europa.eu.int/comm/food/fs/sc/ssc/out280_en.pdf.*

BSE Risk Factors for Whole Cuts of Boneless Beef

The most significant risk management strategy for ensuring the safety of whole cuts of boneless beef is the prevention of cross-contamination of the beef with SRMs during stunning and slaughter of the animal. Control measures that prevent contamination of such beef involve the establishment of procedures for the removal of SRMs, prohibitions on air-injection stunning and pithing, and splitting of carcasses. These potential pathways for contamination and the control measures that prevent contamination are described in detail in the risk analysis for this rulemaking.

SRM Removal. Research has demonstrated that SRMs from infected cattle may contain BSE infectivity. Because infectivity has not been demonstrated in muscle tissue, the most important mitigation measure for whole cuts of boneless beef is the careful removal and segregation of SRMs. Removal of SRMs in a manner that avoids contamination of the beef with SRMs minimizes the risk of exposure to materials that have been demonstrated to contain the BSE agent in cattle.

Air-Injection Stunning. Generally speaking, there are two types of captive bolt stunners used worldwide on livestock at slaughter: penetrative and non-penetrative. Penetrative captive bolt stun guns render cattle unconscious, quickly and painlessly, prior to slaughter. Penetrative captive bolt stun guns have steel bolts, powered by either compressed air or a blank cartridge, which are driven into the animal's brain. Captive bolt stun guns built or modified to inject compressed air into the cranium of cattle have been shown to force pieces of brain and other CNS tissue into the circulatory system of stunned cattle, thereby potentially spreading CNS tissue throughout the carcass. These studies prompted a prohibition on the use of air-injection stunning in the United States.[7] Other types of penetrative captive bolt stunners include pneumatically operated stunners that do not inject air and standard cartridge-fired captive bolt stunners. In general, studies do not indicate that these other types of penetrative captive bolt stunners pose a significant risk of causing CNS tissue to be forced into the circulatory system of cattle.

Pithing. Pithing involves the insertion of an elongated rod-shaped instrument into the cranial cavity of a stunned animal to further lacerate the CNS tissue. This process could cause dissemination of CNS tissue throughout the body of the animal during slaughter. This stunning method is banned in the European Union and has never been used in the United States.

Carcass Splitting. During processing, infectivity could contaminate muscle tissue in cattle if tissue debris, specifically spinal cord, accumulates in the carcass splitting saw and is transferred to subsequent carcasses. This potential means of cross-contamination is very unlikely, however, provided that the SRMs of the cattle are effectively removed and cleaning and sanitation procedures that reduce the likelihood of cross-contamination from splitting saws are in place.

To mitigate these risk factors, we are proposing to require the conditions discussed below to ensure that whole cuts of boneless beef exported to the United States from Japan are free of BSE contamination.

Proposed Import Conditions

This proposal would allow the importation of whole cuts of boneless beef that are derived from cattle born, raised, and slaughtered in Japan, provided that the following conditions have been met:

- The beef is prepared in an establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the regulations in 9 CFR 327.2 and the beef meets all other applicable requirements of the FMIA and regulations thereunder (9 CFR chapter III), including the requirements for removal of specified risk materials (SRMs) and the prohibition on the use of air-injection stunning devices prior to slaughter on cattle from which the beef is derived.
- The beef is derived from cattle that were not subjected to a pithing process at slaughter.
- An authorized veterinary official of the Government of Japan certifies on an original certificate that the above conditions have been met.

Following is a further description of and rationale for each of these proposed conditions.

Establishment Eligibility

This proposal would require that the beef be prepared in an establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act (FMIA)

[7] See FSIS' interim final rule entitled, "Prohibition of the Use of Certain Stunning Devices Used To Immobilize Cattle During Slaughter" (Docket No. 01–033IF, 69 FR 1885–1891), published on January 12, 2004, for further information.

(21 U.S.C. 601 *et seq.*) and the regulations in 9 CFR 327.2.

As required under the FMIA, FSIS ensures that imported meat in the U.S. marketplace is safe, wholesome, unadulterated, and properly labeled by (1) Determining if foreign countries and their establishments have implemented food safety system and inspection requirements equivalent to those in the United States and (2) reinspecting imported meat and poultry products from those countries through random sampling of shipments. The FSIS regulations in 9 CFR 327.2 provide that countries eligible to export meat to the United States must have a meat inspection system determined by FSIS to be equivalent to the U.S. meat inspection system. The FSIS equivalency determination is based on a review of the foreign country's relevant laws and regulations and an on-site audit of the foreign country's inspection system. FSIS has determined that Japan's meat inspection system is equivalent and that Japan is eligible to export meat and meat products to the United States.

Once a country is listed as eligible to export meat and meat products to the United States, it is responsible for certifying individual exporting establishments to FSIS and for providing annual recertification documentation. FSIS regularly conducts on-site audits of the eligible foreign inspection systems to ensure they remain equivalent to the U.S. system.

Other Applicable Requirements Under the FMIA

This proposal would also require that the beef meet all other applicable requirements of the FMIA and regulations thereunder (9 CFR chapter III), including the requirements for removal of SRMs and the prohibition on the use of air-injection stunning devices prior to slaughter on cattle from which the beef is derived.

SRM Removal. The FSIS regulations contained in 9 CFR 310.22 provide that establishments are responsible for ensuring that SRMs are completely removed from the carcass, segregated from edible products, and disposed of in an appropriate manner.[8] Under the FSIS regulations, an establishment must incorporate such procedures into its Hazard Analysis and Critical Control Point (HACCP) plan or in its sanitation standard operating procedures (SOPs) or other prerequisite program. (HACCP is a process control system designed to identify and prevent microbial and other hazards in food production.) These procedures and requirements help to ensure that SRMs are effectively removed and handled in a manner to avoid contamination of the carcass.

As mentioned above, one potential pathway for cross-contamination of muscle tissue of cattle is if potentially infectious tissue debris accumulates in the carcass splitting saw and is transferred to subsequent carcasses. FSIS has developed procedures to verify that cross-contamination of edible tissue with SRMs is reduced to the maximum extent practical in facilities that slaughter cattle, or process carcasses or parts of carcasses of cattle.[9] This includes verification of sanitization procedures for equipment used to cut through SRMs.

Air-injection Stunning. The FSIS regulations in 9 CFR part 313 prohibit the use of captive bolt stunners that deliberately inject compressed air into the cranium of cattle at the end stage of the penetration cycle. This requirement addresses the potential risk posed by the use of air-injection stunning devices, which may force pieces of brain and other CNS tissue into the circulatory system of stunned cattle.

Pithing

This proposal would prohibit the use of pithing processes on the cattle from which the beef is derived. This requirement addresses the potential risk posed by pithing, which may force pieces of brain and other CNS tissue into the circulatory system of stunned cattle.

Certification

We conclude that whole cuts of boneless beef derived from cattle born, raised, and slaughtered in Japan can be safely imported from Japan into the United States, provided the above-mentioned mitigation measures are met, as certified to on an original certificate issued by an authorized veterinary official of the Government of Japan.

International Guidelines on BSE

International guidelines for trade in animal and animal products are developed by the World Organization for Animal Health (formerly known as the Office International des Epizooties (OIE)), which is recognized by the World Trade Organization (WTO) as the international organization responsible for the development of standards, guidelines, and recommendations with respect to animal health and zoonoses (diseases that are transmissible from animals to humans). The OIE guidelines for trade in terrestrial animals (mammals, birds, and bees) are detailed in the Terrestrial Animal Health Code (available on the internet at http://www.oie.int). The guidelines on BSE are contained in Chapter 2.3.13 of the Code and supplemented by Appendix 3.8.4 of the Code.

The 2005 OIE guidelines on BSE provide for three possible BSE classifications for an exporting country, zone, or compartment (referred to below as a region): Negligible risk, controlled risk, and undetermined risk.

The OIE guidelines for negligible risk regions apply to those regions where either (1) there has been no indigenous cases of BSE or any imported cases of BSE have been completely destroyed, or (2) the last indigenous case of BSE was reported more than 7 years ago. In addition, a region may be considered a negligible risk for BSE if it has demonstrated, through an appropriate level of control and audit, that meat-and-bone meal and greaves derived from ruminants have not been fed to ruminants for at least 8 years, among other criteria. Controlled risk regions, in contrast, include regions where an indigenous case of BSE was reported within the last 7 years and regions that cannot demonstrate that a ruminant-to-ruminant feed ban has been in place for at least 8 years. The OIE guidelines for undetermined risk regions apply to those regions that do not meet the recommended criteria for any other category.

The export conditions contained in the OIE guidelines grow increasingly stringent as the status of a region moves from negligible risk through controlled risk to undetermined risk. For controlled risk regions, the OIE guidelines recommend that meat and meat products not contain SRMs and mechanically separated meat from the skull and vertebral column from cattle over 30 months of age, and that the meat and meat products be derived from cattle that received ante-mortem and post-mortem inspections and that the cattle were not subjected to an air-injection stunning or pithing process at slaughter, among other criteria.

The proposed import conditions for whole cuts of boneless beef from Japan, including the requirements that the beef come from an establishment eligible to export meat to the United States under the FMIA and FSIS regulations, are consistent with the criteria for controlled risk regions. We believe this is appropriate, given that Japan has reported indigenous cases of BSE within

[8] See FSIS' interim final rule entitled, "Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle" (Docket No. 03–025IF, 69 FR 1862–1874), published on January 12, 2004, for further information.

[9] See FSIS Notice 10–04.

the last 7 years and has measures in place to control BSE risks, but these measures have not been in place long enough for Japan to be considered a negligible risk region. More details on the BSE situation in Japan and Japan's actions to protect animal and human health are contained in the risk analysis.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Under the Animal Health Protection Act of 2002 (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture is authorized to promulgate regulations that are necessary to prevent the introduction or dissemination of any pest or disease of livestock into the United States.

This proposed rule would amend the regulations governing the importation of meat and other edible animal products by allowing, under certain conditions, the importation of whole cuts of boneless beef derived from cattle born, raised, and slaughtered in Japan. We are proposing this action in response to a request from the Government of Japan and after conducting an analysis of the risk that indicates that such beef can be safely imported from Japan under the conditions described in this proposal.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the impact of this proposed rule on small entities.[10] This analysis also serves as our cost-benefit analysis under Executive Order 12866. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic impact on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on the potential effects. In particular, we are interested in determining the number and kinds of small entities that would incur benefits or costs from the implementation of this proposed rule and the economic effect of those benefits and costs.

This proposal would allow the importation of whole cuts of boneless beef derived from cattle that were born, raised, and slaughtered in Japan, provided that certain conditions are met. We expect that this proposal would have little or no economic impact on the majority of consumers and beef producers in the United States because the volume of beef imported from Japan is likely to be small and have only a minor impact on the overall domestic beef market.

In 2001, APHIS placed a ban on the importation of ruminants and most ruminant products from Japan following the confirmation of one case of BSE in a native-born animal in that country. Prior to that ban, U.S. imports of boneless beef from Japan were negligible when compared to total imports of that commodity. Over the 4-year period, 1997–2000, for example, the volume of U.S. imports of boneless beef from Japan—reported to be entirely fresh/chilled, as opposed to frozen—averaged a little less than 9 metric tons per year. This amount was less than 0.005 percent of average annual U.S. imports of fresh/chilled boneless beef worldwide for the same period (202,540 metric tons).[11] The average annual value of U.S. imports of boneless beef from Japan over this 4-year period was $808,000, less than 0.2 percent of the 4-year average annual value of U.S. imports of fresh/chilled boneless beef from all regions ($600 million). Including frozen boneless beef in the comparison over the same 4-year period diminishes Japan's annual average percentage share all the more, to about 0.001 percent of the quantity and about 0.05 percent of the value of all U.S. boneless beef imports. This impact would be further reduced if Japan's share of the U.S. total beef supply (domestic production plus imports minus exports, disregarding carryover stocks) were considered.

Based on the unit price of beef imported into the United States from Japan prior to the 2001 ban on the importation of ruminants and most ruminant products from Japan, it is assumed that all of the boneless beef imported from Japan prior to the ban was Wagyu beef. (The term "Wagyu," which literally translates to Japanese cattle, refers to purebred Japanese Black or Japanese Brown breeds of cattle. Wagyu beef is a high-priced specialty meat widely acclaimed for its flavor and tenderness. "Kobe beef" refers to Wagyu beef that is produced in the Kobe area of Japan.) Japan also produces Holstein breed dairy cattle, but it is unlikely that Japan would try to compete in the U.S. import market for lower-grade beef from culled dairy cattle. Accordingly, we expect only Wagyu beef to be imported under the proposed rule.

We expect that Japan would continue to be a minor supplier of beef to the United States if this proposal were adopted. We estimate that the volume of imports is likely to range between about 8 metric tons and 15 metric tons per year, a quantity aligned with import levels in the years immediately prior to the ban. There are three reasons for the small import volume. First, the demand for Japanese Wagyu beef in the United States would likely be small, because the beef is expensive. In October 2004, for example, the average actual selling price of Wagyu sirloin in Japanese supermarkets was just under $50 per pound.[12] The price of Japanese Wagyu beef would be higher in the United States because of transportation and other costs associated with the importation of the beef from Japan.

Second, Japanese agricultural officials have indicated to APHIS staff that they would expect the volume of Wagyu exports to the United States to be approximately 10 metric tons per year. This quantity aligns with historic import levels, as described above, and would be well below the annual tariff rate quota for Japan of 200 metric tons.[13] Over the 10-year period from 1991 to 2000 U.S. imports of boneless beef—both fresh/chilled and frozen—from Japan never exceeded 27.0 metric tons in any one year.

Finally, Japan's boneless beef exports to countries other than the United States have also been minor. Over the 4-year period 1997–2000, Japan's exports of boneless beef to the world—both fresh/chilled and frozen—averaged only 81 metric tons per year, and the largest export volume in any one of those years was 95 metric tons (in 1999). For fresh/chilled boneless beef alone, the 4-year annual average was 37 metric tons, with no one year exceeding 47 metric tons.[14]

Because we expect that Japan would export only Wagyu beef if this proposal

[10] A copy of the full economic analysis is available for review on EDOCKET or in our reading room. (Information on accessing EDOCKET as well as the location and hours of the reading room may be found at the beginning of this document under ADDRESSES.)

[11] Trade statistics, unless otherwise indicated, are taken from the World Trade Atlas or the Global Trade Atlas (Global Trade Information Services), which report data from the Department of Commerce, U.S. Bureau of the Census. The Harmonized Tariff Schedule (HTS) 6-digit code for fresh/chilled boneless beef cuts is 020130; the HTS code for frozen boneless beef is 020230.

[12] Source: "Monthly Statistics," January 2005, Agricultural & Livestock Industries Corporation. The selling price was calculated using an exchange rate of 105 yen per U.S. dollar and it is the price for Wagyu sirloin from all regions in Japan, including Kobe.

[13] Harmonized Tariff Schedule of the United States (2005), Chapter 2, Meat and Edible Meat Offal.

[14] Foreign Agricultural Service, USDA.

were adopted, this action has the potential to affect farmers and ranchers in the United States who raise Wagyu and Wagyu hybrid cattle for the high-end domestic beef market. However, the impact, if any, on these so-called "Kobe-style" beef producers is unclear, without an approximation of the quantity of Kobe-style beef sold in the United States and information on the extent to which the two products would directly compete. The number of these producers is unknown, but it is believed to be very small.

Cost-Benefit Analysis

Given the high price and small quantity of Wagyu beef expected to be imported, the proposed rule is likely to have little impact for most U.S. consumers. A relatively small segment of beef consumers would benefit because they would be allowed, once again, to buy this product in the United States. Importers, brokers and others in the United States who would participate in the importation of Wagyu beef from Japan also stand to benefit, due to the increased business activity.

U.S. beef producers, in general, would not be affected by the proposed rule; demand is expected to remain low reflecting pre-ban consumption patterns, with a minor impact on less expensive domestically produced beef. Any producer impact of the rule would likely fall upon producers of Kobe-style beef, and then only to the extent that the commodities would be competing for the same niche market.

In general, trade of a commodity increases social welfare. To the extent that consumer choice is broadened and the increased supply of the imported commodity leads to a price decline, gains in consumer surplus will outweigh losses in domestic producer surplus.[15] Although the rule's impact on the relatively small number of U.S. producers of Kobe-style beef is uncertain, it is expected to provide benefits to consumers (domestic importers, wholesalers, retailers, as well as final consumers) that would exceed any potential losses to domestic producers. The net welfare effect for the United States of reestablished Wagyu beef imports from Japan would be positive.

Effects on Small Entities

We do not expect that this proposal would have significant economic impact on a substantial number of small entities. As discussed above, the proposed rule has the potential to primarily affect farmers and ranchers in the United States who produce Kobe-style beef. The number of these producers is unknown, but it is believed to be very small. The American Wagyu Association, a Wagyu breeder group, lists approximately 75 members in the United States.[16]

The size distribution of Kobe-style beef producers in the United States is also unknown, but it is reasonable to assume that most are small, under the U.S. Small Business Administration's (SBA) standards. This assumption is based on composite data for all beef producers in the United States. In 2002, there were 664,431 U.S. farms in North American Industry Classification System (NAICS)'112111, a classification comprised of establishments primarily engaged in raising cattle. Of the 664,431 farms, 659,009 (or 99 percent) had annual receipts that year of less than $500,000.[17] The SBA's small entity threshold for farms in NAICS 112111 is annual receipts of $750,000.

Executive Order 12988

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

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed importation of whole cuts of boneless beef from Japan, we have prepared an environmental assessment. The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment may be viewed on the EDOCKET Web site (see **ADDRESSES** above for instructions for accessing EDOCKET) or on the APHIS Web site at *http://www.aphis.usda.gov/lpa/issues/bse/bse.html*. You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies. The environmental assessment is also available for review in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this notice).

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Government Paperwork Elimination Act Compliance

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In § 94.18, paragraph (b) would be revised to read as follows:

§ 94.18 Restrictions on importation of meat and edible products from ruminants due to bovine spongiform encephalopathy.

* * * * *

[15] Consumer surplus is the difference between the amount a consumer is willing to pay for a good and the amount actually paid. Producer surplus is the amount a seller is paid for the good minus the seller's cost.

[16] Source: American Wagyu Association Web site.

[17] 2002 Census of Agriculture, National Agricultural Statistics Service.

(b) Except as provided in paragraph (d) of this section or in §§ 94.19 or 94.27, the importation of meat, meat products, and edible products other than meat (except for gelatin as provided in paragraph (c) of this section, milk, and milk products) from ruminants that have been in any of the regions listed in paragraph (a) of this section is prohibited.

* * * * *

3. A new § 94.27 would be added to read as follows:

§ 94.27 Importation of whole cuts of boneless beef from Japan.

Notwithstanding any other provisions of this part, whole cuts of boneless beef derived from cattle that were born, raised, and slaughtered in Japan may be imported into the United States under the following conditions:

(a) The beef is prepared in an establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the regulations in 9 CFR 327.2 and the beef meets all other applicable requirements of the Federal Meat Inspection Act and regulations thereunder (9 CFR chapter III), including the requirements for removal of SRMs and the prohibition on the use of air-injection stunning devices prior to slaughter on cattle from which the beef is derived.

(b) The beef is derived from cattle that were not subjected to a pithing process at slaughter.

(c) An authorized veterinary official of the Government of Japan certifies on an original certificate that the above conditions have been met.

Done in Washington, DC, this 15th day of August 2005.

W. Ron DeHaven,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 05–16422 Filed 8–16–05; 9:43 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22125; Directorate Identifier 2005–NM–130–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model ERJ 170 airplanes. This proposed AD would require replacing the very high frequency (VHF) antenna located in position 1 of the fuselage with a new, improved VHF antenna. This proposed AD results from a report of the loss of all voice communications due to a lightning strike damaging all the VHF antennas. We are proposing this AD to prevent the loss of voice communication, which when combined with the complexity of the national airspace system, could result in reduced flightcrew situational awareness, increased flightcrew workload, and increased risk of human error, and consequent reduced ability to maintain safe flight and landing of the airplane.

DATES: We must receive comments on this proposed AD by September 19, 2005.

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

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

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil for service information identified in this proposed AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number "FAA–2005–22125; Directorate Identifier 2005–NM–130–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on all EMBRAER Model ERJ 170 airplanes. The DAC advises that there was a report of the loss of all voice communications due to a lightning strike that damaged

all the aircraft radio very high frequency (VHF) antennas. A new, more robust VHF antenna has been developed to prevent loss of communication during lightning strikes. Combined with the complexity of the national airspace system, loss of voice communication, if not corrected, could result in reduced flightcrew situational awareness, increased flightcrew workload, and increased risk of human error, and consequent reduced ability to maintain safe flight and landing of the airplane.

Relevant Service Information

EMBRAER has issued Service Bulletin 170–23–0005, dated December 29, 2004. The service bulletin describes procedures for replacing the VHF antenna located in position 1 of the fuselage with a new, improved VHF antenna. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2005–04–04, dated April 30, 2005, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously except as discussed under "Difference Between Proposed AD and Foreign AD."

Difference Between Proposed AD and Foreign AD

Brazilian airworthiness directive 2005–04–04, dated April 30, 2005, is applicable to "all EMBRAER ERJ–170() aircraft models in operation." However, this does not agree with EMBRAER Service Bulletin 170–23–0005, dated December 29, 2004, which states that only certain EMBRAER Model ERJ 170 airplanes are affected and identifies them by serial number. This proposed AD would be applicable only to the airplanes identified in the service bulletin. This difference has been coordinated with the DAC.

Costs of Compliance

This proposed AD would affect about 43 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost $654. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $33,712, or $784 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2005–22125; Directorate Identifier 2005–NM–130–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 19, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model ERJ 170–100LR, –100 STD, –100SE, and –100 SU airplanes, certificated in any category, as identified in EMBRAER Service Bulletin 170–23–0005, dated December 29, 2004.

Unsafe Condition

(d) This AD results from a report of the loss of all voice communications due to a lightning strike damaging all the very high frequency (VHF) antennas. We are issuing this AD to prevent the loss of voice communication, which when combined with the complexity of the national airspace system, could result in reduced flightcrew situational awareness, increased flightcrew workload, and increased risk of human error, and consequent reduced ability to maintain safe flight and landing of the airplane.

Compliance

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

Modification

(f) Within 700 flight hours after the effective date of this AD, replace the VHF antenna located in position 1 of the fuselage with a new, improved VHF antenna in accordance with the Accomplishment Instructions of EMBRAER has issued Service Bulletin 170–23–0005, dated December 29, 2004.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, Transport Airplane Directorate,

FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) Brazilian airworthiness directive 2005–04–04, dated April 30, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on August 9, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16362 Filed 8–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22121; Directorate Identifier 2004–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40 and –50 Series Airplanes, and Model DC–9–81 (MD–81), and DC–9–82 (MD–82) Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model DC–9–10, –20, –30, –40 and –50 series airplanes, and Model DC–9–81 (MD–81), and DC–9–82 (MD–82) airplanes. That AD currently requires installing a water drain system for the slant pressure panels in the left and right wheel wells of the main landing gear (MLG). This proposed AD would also require inspecting the seal assemblies of the overwing emergency exit doors for defects and constant gap; replacing defective door seals; performing repetitive operational checks of the water drain system auto drain valve and corrective actions if necessary; and, for certain airplanes, modifying the insulation blankets on the slant pressure panels in the left and right MLG wheel wells. This proposed AD is prompted by reports of water runoff from the slant pressure panels in the left and right MLG wheel wells, which subsequently froze on the lateral control mixer and control cable assemblies. We are proposing this AD to prevent ice from forming on the lateral control mixer and control cable assemblies, which could reduce controllability of the airplane.

DATES: We must receive comments on this proposed AD by October 3, 2005.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–22121; the directorate identifier for this docket is 2004–NM–128–AD.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2005–22121; Directorate Identifier 2004–NM–128–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

On June 29, 1993, we issued AD 93–13–07, amendment 39–8620 (58 FR 38511, July 19, 1993), for certain McDonnell Douglas Model DC–9–10, –20, –30, –40 and –50 series airplanes, Model DC–9–81 and DC–9–82 airplanes, and Model C–9 (Military) airplanes. That AD requires installing a water drain system for the slant pressure panels in the left and right wheel wells of the main landing gear (MLG). That AD was prompted by reports of water freezing on the control cables. We issued that AD to prevent water from draining into the wheel wells and subsequently freezing, which could restrict the movement of the control cables and lead to reduced controllability of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 93–13–07, we received a report of in-flight loss of aileron control on a Model DC–9–32 airplane. Investigation revealed that, due to failure of the auto drain valve in the drain system installed by AD 93–13–07, water accumulated at the slant pressure panels and subsequently froze, forming ice around the aileron control cables and pulleys in the MLG wheel wells.

Relevant Service Information

We have reviewed Boeing Service Bulletin DC9–53–179, Revision 2, dated May 27, 2004 (the original issue, dated January 18, 1985, is referenced as the appropriate source of service information for accomplishing AD 93–13–07). The procedures described in Revision 2 of the service bulletin are essentially the same, except for the addition of procedures for performing a visual inspection for defects and constant gap of the seal assemblies of the overwing emergency exit doors, and replacing defective door seals with new door seals. The service bulletin also describes procedures for revising the maintenance program by adding on-aircraft maintenance program reports (OAMP) relating to repetitive operational checks of the auto drain valve of the water drain system in the slant pressure panel.

Boeing Service Bulletin DC9–53–179, Revision 2, specifies prior or concurrent accomplishment of McDonnell Douglas Service Bulletin DC9–53–268, on certain airplanes.

We have reviewed McDonnell Douglas Service Bulletin DC9–53–268 R01, Revision 01, dated July 18, 1996, which describes procedures for modifying the insulation blankets on the slant pressure panels in the left and right wheel wells of the MLG.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

The unsafe condition described previously is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would supersede AD 93–13–07. This proposed AD would retain the requirements of the existing AD. This proposed AD would also require inspecting the seal assemblies of the overwing emergency exit doors for defects and constant gap; replacing defective door seals; performing repetitive operational checks of the water drain system auto drain valve and corrective actions if necessary; and, for certain airplanes, modifying the insulation blankets on the slant pressure panels in the left and right MLG wheel wells. This proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Between the Proposed AD and Referenced Service Bulletins."

Differences Between the Proposed AD and Referenced Service Bulletins

Although the service bulletins recommend accomplishing the modifications "* * * at the earliest practical maintenance period * * *," we have determined that this imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, we find a compliance time of 24 months for completing the required actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing.

Where Boeing Service Bulletin DC9–53–179, Revision 2, specifies prior or concurrent accomplishment of McDonnell Douglas Service Bulletin DC9–53–268 R01 on certain airplanes, this proposed AD would, under certain circumstances, allow accomplishment of Service Bulletin DC9–53–268 R01 within 24 months after the effective date of this proposed AD. We find that this compliance time would prevent the immediate grounding of any airplane.

As discussed under "Relevant Service Information," Boeing Service Bulletin DC9–53–179, Revision 2, describes procedures for adding certain OAMPs to the maintenance programs. These OAMPs relate to repetitive operational checks of the auto drain valve and replacing any auto drain valve found to be obstructed or inoperative with a new auto drain valve. This proposed AD would not require you to revise the maintenance programs as described; rather, this proposed AD would require you to perform the repetitive operational checks and any auto drain valve replacement, in accordance with a method approved by the FAA. Chapter 51–10–01 of the Boeing MD–80 Aircraft Maintenance Manual is one approved method of performing these actions.

Clarification of Inspection Terminology

The service information specifies to "inspect" the seal assemblies of the overwing emergency exit doors for defects and constant gap. To prevent any confusion about the proper type of inspection, this proposed AD would require a general visual inspection. We have included a definition of this type of inspection in this proposed AD.

Clarification of Change to Applicability of Existing AD

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

Costs of Compliance

There are about 2,025 airplanes of the affected design in the worldwide fleet. There are about 1,131 airplanes of U.S. registry that would be affected by this proposed AD. The following table provides the estimated costs, using an average labor rate of $65 per hour, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Install water drain system (required by AD 93–13–07)	8	$613	$1,133	$1,281,423
Inspect overwing emergency exit door seal assemblies (new proposed action)	1	N/A	65	73,515
Modify insulation blankets of slant pressure panel (new proposed action)	8	N/A	520	N/A
Check auto drain valve of slant pressure panel water drain system (new proposed action)	1	N/A	*65	73,515

*per inspection cycle

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–8620 (58 FR 38511, dated July 19, 1993) and adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2005–22121; Directorate Identifier 2004–NM–128–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 3, 2005.

Affected ADs

(b) This AD supersedes AD 93–13–07, amendment 39–8620.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC 9–32F (C–9A, C–9B), DC–9–41, DC–9–51, DC–9–81 (MD–81), and DC–9–82 (MD–82) airplanes; as identified in Boeing Service Bulletin DC9–53–179, Revision 2, dated May 27, 2004; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of water runoff from the slant pressure panels in the left and right main landing gear (MLG) wheel wells, which subsequently froze on the lateral control mixer and control cable assemblies. We are issuing this AD to prevent ice from forming on the lateral control mixer and control cable assemblies, which could reduce controllability of the airplane.

Compliance

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

Restatement of Requirements of AD 93–13–07

Installation of Water Drain System

(f) Within 24 months after August 18, 1993 (the effective date of AD 93–13–07), install a water drain system in the slant pressure panel, in accordance with McDonnell Douglas DC–9 Service Bulletin 53–179, dated January 18, 1985, as amended by Service Bulletin Change Notification 53–179 CN1, dated February 28, 1985, and Service Bulletin Change Notification 53–179 CN2, dated May 30, 1985; or in accordance with McDonnell Douglas Service Bulletin DC–9–53–179, Revision 01, dated March 30, 1999; or Boeing Service Bulletin DC9–53–179, Revision 2, dated May 27, 2004. After the effective date of this AD, only Boeing Service Bulletin DC9–53–179, Revision 2, dated May 27, 2004, may be used.

New Requirements of This AD

Inspection of Door Seal Assemblies

(g) For all airplanes: Within 24 months after the effective date of this AD, perform a general visual inspection of the seal assemblies of the overwing emergency exit doors for defects and constant gap, and, before further flight, replace any defective door seal with a new door seal; in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC9–53–179, Revision 2, dated May 27, 2004.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Inspections Already Accomplished

(h) Inspections accomplished before the effective date of this AD in accordance with McDonnell Douglas Service Bulletin DC9–53–179, Revision 01, dated March 30, 1999; are considered acceptable for compliance with the requirements of paragraph (g) of this AD.

Operational Check of Drain Valve

(i) For all airplanes: Within 24 months after the effective date of this AD, perform an operational check of the auto drain valve of the slant pressure panel water drain system and repeat this check every 24 months. If any auto drain valve is found to be obstructed or inoperative, before further flight, replace the auto drain valve with a new auto drain valve according to a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Chapter 51–10–01 of the Boeing MD–80 Aircraft Maintenance Manual is one approved replacement method.

Note 2: After an operator complies with the requirements of paragraph (h) of this AD, paragraph (h) does not require that operators subsequently record accomplishment of those requirements each time a auto drain valve is checked or replaced according to that operator's FAA-approved maintenance inspection program.

Concurrent Service Bulletin

(j) For airplanes identified in McDonnell Douglas Service Bulletin DC9–53–268 R01, Revision 01, dated July 18, 1996: At the applicable compliance time specified in paragraph (j)(1) or (j)(2) of this AD, modify the insulation blankets on the slant pressure panels in the left and right wheel wells of the MLG, in accordance with the service bulletin.

(1) For airplanes which have been modified, as specified in paragraph (f) of this AD, prior to the effective date of this AD: Within 24 months after the effective date of this AD.

(2) For airplanes which have not been modified, as specified in paragraph (f) of this AD, prior to the effective date of this AD: Prior to or concurrently with the accomplishment of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) AMOCs approved previously according to AD 93–13–07 are approved as AMOCs for the corresponding requirements of this AD.

Issued in Renton, Washington, on August 10, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16363 Filed 8–17–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–097]

RIN 1625–AA08

Special Local Regulations for Marine Events; Delaware River, Philadelphia, PA and Camden, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the "Liberty Grand Prix", a power boat race to be held on the waters of the Delaware River adjacent to Philadelphia, PA and Camden, NJ. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic between the Walt Whitman and Benjamin Franklin bridges in the Delaware River during the power boat race.

DATES: Comments and related material must reach the Coast Guard on or before September 2, 2005.

ADDRESSES: You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–05–097), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

In order to provide notice and an opportunity to comment before issuing an effective rule, we are providing a shorter than normal comment period. A 15-day comment period is sufficient to allow those who might be affected by this rulemaking to submit their comments because the regulations have a narrow, local application, and there will be local notifications in addition to the **Federal Register** publication such as press releases, marine information broadcasts, and the Local Notice to Mariners.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 24 and 25, 2005, the Offshore Performance Association, Inc. will conduct the "Liberty Grand Prix", on the waters of the Delaware River, between Philadelphia, Pennsylvania and Camden, New Jersey. The event will consist of approximately 40 V-hull and twin-hull inboard hydroplanes racing in heats counter-clockwise around a oval race course. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Delaware River adjacent to Philadelphia, PA and Camden, NJ. The regulated area includes a section of the Delaware River approximately two miles long, and bounded in width by each shoreline, the course is bounded to the south by the Walt Whitman Bridge and bounded to the north by the Benjamin Franklin Bridge. The temporary special local regulations will be enforced from 9:30 a.m. to 3:30 p.m. on September 24 and 25, 2005, and will restrict general navigation in the regulated area during the power boat race. The Coast Guard, at its discretion, when practical will allow the passage of vessels when races are not taking place. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area during the enforcement period. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

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

Although this proposed regulation will prevent traffic from transiting a segment of the Delaware River adjacent to Philadelphia, PA and Camden, NJ during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be enforced. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations. so mariners can adjust their plans accordingly. Vessel traffic

will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit this section of the Delaware River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Although the regulated area will apply to the entire width of the Delaware River between the Walt Whitman and Benjamin Franklin bridges, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard patrol commander. In the case where the patrol commander authorizes passage through the regulated area during the event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section

2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary *§ 100.35–T05–097* to read as follows:

§ 100.35–T05–097 Delaware River, Philadelphia, PA, Camden, NJ.

(a) *Regulated area* includes all waters of the Delaware River, from shoreline to shoreline, bounded to the north by the Benjamin Franklin Bridge and bounded to the south by the Walt Whitman Bridge.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Liberty Grand Prix under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Delaware Bay.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(3) All persons and vessels shall comply with the instructions of the Official Patrol.

(4) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 9:30 a.m. to 3:30 p.m. on September 24 and 25, 2005.

Dated: August 5, 2005.

L.L. Hereth,

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

[FR Doc. 05–16411 Filed 8–17–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567 and 584

[Docket No. NHTSA 2005–22061]

RIN 2127–AJ56

Identification Requirements for Buses Manufactured in Two or More Stages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend Part 567 to require that, in addition to the vehicle identification number, additional information be recorded on the certification label of each bus manufactured in two or more stages. The information would identify the bus body manufacturer and various vehicle attributes. This document also proposes to add a new Part 584 to require manufacturers of bus bodies for buses manufactured in two or more stages to obtain a manufacturer's identifier and to provide information to NHTSA about the bus bodies manufactured.

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

ADDRESSES: You may submit comments identified by the docket number by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Rulemaking Analyses and Notice regarding documents submitted to the agency's dockets.

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: For non-legal issues, you may call Mr. Charles Hott, Office of Crashworthiness Standards, at 202–366–0247; *Charles.Hott@nhtsa.dot.gov.* For legal issues, you may call Mr. George Feygin, Office of Chief Counsel, at 202–366–2992; *George.Feygin@nhtsa.dot.gov.*

You may send mail to these officials at National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. Why the Agency Needs More Precise Information on Buses Manufactured in Two or More Stages

On November 2, 1999, the National Transportation Safety Board (NTSB) issued recommendations to the U.S. Department of Transportation (DOT) to develop standard definitions and classifications for each of the different bus body types and to include these definitions and classifications in the Federal Motor Vehicle Safety Standards (FMVSSs).[1] Specifically, the NTSB recommended:

> In 1 year and in cooperation with the bus manufacturers, complete the development of standard definitions and classifications for each of the different bus body types, and include these definitions and classifications in the Federal Motor Vehicle Safety Standards (FMVSS). (H–99–43)
>
> Once the standard definitions and classifications for each of the different bus types have been established in the Federal Motor Vehicle Safety Standards, in cooperation with the National Association of Governors' Highway Safety Representatives, amend the Model Minimum Uniform Crash Criteria's bus configuration coding to incorporate the FMVSS definitions and standards. (H–99–44)

The recommendations were a result of the NTSB September 1999 safety study "Bus Crashworthiness." During that study, NTSB experienced difficulty determining detailed descriptive characteristics of buses manufactured in two or more stages from the Fatality Analysis Reporting System (FARS) database. Although bus body manufacturers are required to certify that their vehicles meet the FMVSSs, they are not required to encode in the certification label affixed to the completed vehicle any descriptive information about the body they install.

When buses are involved in crashes, the police report and FARS record the vehicle identification number (VIN). The name of the manufacturer is required to be on the certification label, but this information is not typically recorded on the police accident report form. For vehicles manufactured in one stage, the type of vehicle and bus body information is already encoded into the VIN. However, for buses manufactured in more than one stage, the VIN only identifies the incomplete vehicle manufacturer. The final stage manufacturer name and bus model are not encoded in the VIN and are not recorded in the police accident reports.

NTSB recommended that descriptive information be captured on police accident report forms, thereby greatly simplifying identification work when conducting investigations or analyses of FARS. NTSB believes that "the incorporation of bus identification into the VIN and expansion of the use category will correct some of the inaccuracies in FARS data."[2]

In June and August of 2000, meetings were held between the Office of the Secretary of the Department of Transportation, National Highway Traffic Safety Administration (NHTSA), Federal Motor Carrier Safety Administration (FMCSA), Federal Transit Administration, NTSB, bus manufacturers, and industry association representatives. At the meetings, the parties discussed whether bus configuration or bus use would be appropriate determining factors in devising a coding scheme for the final stage manufacturers' certification labels and police accident report forms.

At the meetings, it was suggested that in-service bus uses vary considerably and often change, and therefore, it would be impractical to develop bus definitions based on use. Instead, attendees suggested that basic descriptive information such as length, seating configuration, or accessibility features for persons with disabilities, could be provided to better identify the type of bus body installed on the chassis.

It was also suggested that, in addition to the VIN, descriptive information could be encoded on the final stage manufacturer's certification label. Because the final stage bus manufacturers already routinely record a body number on the certification label, this would not be a complex or controversial task. We have considered the issues raised at the meetings in preparing this proposal.

Currently, the FARS records fatalities in the following bus type categories: intercity, transit, school, other, and unknown. Little is known about the type of buses involved in the fatalities that appear in "other" and "unknown" bus type categories. These buses are typically specialty type buses that are manufactured in two or more stages. They include the buses that are used for shuttle services to and from airports, transit systems for transporting the medically fragile and mobility impaired, churches to transport people to and from religious events, and businesses to shuttle people from location to location. These buses typically incorporate a cutaway chassis provided by an incomplete vehicle manufacturer. The bus body is typically manufactured and installed by a final stage manufacturer.

The last five years of FARS data reveal that there are about twelve fatalities per year that fall within the "other" or "unknown" bus type categories. There is no way to identify in the FARS database buses that are manufactured in two or more stages and are involved in fatal crashes. The current system requires that the VIN be recorded on the police accident report filed by the state. Although the final stage manufacturer name must be recorded on the certification label, the current system does not require that police record this information on the police accident report. If this proposal is adopted, it would give researchers and analysts the ability to determine the descriptive information about the defined characteristics of the bus body without the need to perform a study of each crash. This information could be used by researchers and others to better define safety improvements to reduce the number of fatalities and serious injuries in bus crashes.

B. Current Certification Process for Buses Manufactured in Two or More Stages

Although some buses are manufactured in a single stage by a single manufacturer, many smaller buses are manufactured in multiple stages by a series of manufacturers. For example, an incomplete vehicle manufacturer may provide chassis and engine, while the final stage manufacturer would install a body, thus completing the bus. Under the current requirements in 49 CFR Part 565, the incomplete vehicle manufacturer assigns the VIN. The VIN and other required information is sent with the incomplete vehicle document (IVD) that is required by 49 CFR part 568, *Vehicles Manufactured in Two or More Stages*. The final stage manufacturer, when completing the vehicle, then transcribes this information to the vehicle certification label that is required by 49 CFR Part 567, *Certification*. This NPRM proposes to require final stage manufacturers to add additional information to the certification label as a suffix to the VIN. This information would describe the vehicle manufacturer and certain attributes about the type of bus, *e.g.*, model number, seat configuration, and bus body length.

II. The Proposed Rule

This NPRM proposes to amend Part 567 to require that a new ten-digit suffix be appended to the VIN on the

[1] See *http://www.ntsb.gov/recs/letters/1999/h99%5F43%5F44.pdf.*

[2] Highway Special Report: "*Bus Crashworthiness Issues, National Transportation Safety Board*," September 1999.

certification label for buses manufactured in two or more stages. The new suffix would identify the bus body manufacturer and certain attributes about the type of bus, *e.g.*, model number, seat configuration, and bus body length. It also proposes to add a new Part 584 to require that bus body manufacturers of buses manufactured in two or more stages obtain a manufacturer's identifier and provide the descriptive information necessary to decode the suffix. This manufacturer identifier will be part of the unique descriptive information that will be recorded on the certification label.

NHTSA believes that the proposed coding scheme would provide the minimum necessary information so that when it is recorded on the police incident report and in FARS or National Automotive Sampling System General Estimates System (NASS/GES), crash investigators and analysts would have sufficient information to ascertain the type of bus as well as other make and model information such as bus length and seat configuration. We believe the proposed final stage manufacturer suffix should be kept as simple as possible to reduce the chance that it will be improperly recorded at the scene of the incident or crash. NHTSA believes that a ten-digit descriptor would be large enough to capture this information.

The first three digits would identify the final stage bus manufacturer. These digits would be alphanumeric characters, 0–9, and A–Z. This would allow for as many as 46,656 manufacturers in the database. This should be a sufficient number of digits to allow for many years of expansion. The fourth digit would be an alphanumeric character and would identify the manufacturer's model number. This allows for as many as 36 different models within a given manufacturer. The fifth digit would identify the as-built gross vehicle weight rating (GVWR) of the vehicle. The sixth digit would be an alphanumeric character that identifies the bus body length and seating configuration. The manufacturer would assign the sixth digit in accordance with Table 1. The last four digits, digits seven through ten, would consist of a sequence number that would identify the body production sequence.

TABLE 1.—BUS LENGTH AND SEATING CONFIGURATION CODES

Seating configuration	Bus body length (mm)				
	≤6,096	>6,096 ≤6,706	>6,706 ≤7,620	>7,620 ≤8,534	>8,534
Forward	A	E	I	M	Q
Rearward	B	F	J	N	R
Side	C	G	K	O	S
Combination	D	H	L	P	T

The "Manufacturer's Identification" would require that each manufacturer of a bus that is manufactured in two or more stages have a unique identifier. NHTSA would assign these manufacturer identification numbers and would maintain a database. Manufacturers would write to the agency to have an identification code assigned.

The manufacturer assigns the "Model" digit. This would identify the particular model that the manufacturer assigns to the bus. Having this number recorded would allow a researcher or investigator to contact the manufacturer to find out the specifics of the bus.

The "GVWR" digit would identify the GVWR in the as-built configuration. If the manufacturer does not change the GVWR provided in the IVD, then they need only to provide an identification code for that value. If the manufacturer changes the GVWR that is provided in the IVD, then they would have to identify that value.

The "Body Length and Seat Configuration" digit identifies the bus body length and seating configuration. The bus body length is defined as the overall length of the vehicle and is modeled after the National Truck Equipment Association s Mid-Size Bus Manufacturers Association specifications. This specification identifies five categories for bus lengths:

≤6,096 mm (20 feet)
>6,096 mm (20 feet) ≤ 6,706 mm (22 feet)
>6,706 mm (22 feet) ≤ 7,620 mm (25 feet)
>7,620 mm (25 feet) ≤ 8,534 mm (28 feet)
>8,534 mm (28 feet)

Currently, school buses are the only buses that have known seating configurations. School buses are required to have all the passenger seats forward facing. Other buses, such as airport shuttles, rental car shuttles and transit buses, typically have forward facing and side facing seats. Some specialty buses have "social seating." Social seating is defined herein as having sets of two rows of seats that face each other in the fore and aft direction of the bus body, *i.e.*, one row of seats is rear facing and the row immediately after that is forward facing. Some buses have all side facing seats.

NHTSA believes that a scheme that encodes the body length and seating configuration would be beneficial in assessing the safety of the various seating configurations used in today's buses. Seating configuration can be grouped into four categories: forward facing, rear facing, side facing and combination. The combination category would include buses that have seats arranged in more than one seating direction. NHTSA proposes the letter codes shown in Table 1 above, that will uniquely identify the bus body length and seating configurations.

The last four digits would indicate a manufacturer sequence number. This number could be the model sequence number or the body production sequence that manufacturers currently assign and provide.

We are proposing to make the proposed rule effective 18 months after publication of a final rule.

III. Benefits

This rulemaking does not have any directly attributable benefits. However, indirect derivative benefits for future safety improvements from this proposal are possible since it would provide crash investigators information about the bus manufacturer and other information related to the construction of the bus body. The unique descriptor would assist investigators, analysts, the public, and industry by providing new safety-related information that identifies the manufacturer and other specifics about buses that are manufactured in two or more stages.

IV. Costs

NHTSA believes that there would be a one-time administrative cost for the

bus manufacturer to go through the process of obtaining a manufacturer identifier, learn the final rule and change their certification label system. NHTSA estimates that it will take manufacturers approximately one hour ($40 per hour) to apply for the number, eight hours ($40 per hour) to learn the final rule, and three 8-hour days ($80 per hour) for a software programmer to setup the system. The total cost of this effort is estimated to be $2,280 per manufacturer [(9 hours @ $40 per hour = $360) + (24 hours @ $80 per hour = 1,920) = $2,280]. NHTSA is aware of 80 manufacturers of buses in two or more stages. Therefore, NHTSA estimates the total one time cost to be approximately $182,400 (80 X $2,280).

NHTSA also believes that adding more numbers to the label would result in an additional cost of approximately $0.01 per bus. Using the information for the 2003 production year for school buses and mid-sized buses, NHTSA estimates that there are approximately 43,000 buses manufactured in two or more stages annually. Therefore, NHTSA estimates that the recurring cost to all the manufacturers would be $430 (43,000 X $0.01). NHTSA estimates that it would take manufacturers one-hour ($40) to prepare the paper work for annual submission for a annual cost of $3,200 (80 X $40) for a total annual recurring cost of $3,630 ($430 + $3,200).

Most, if not all, manufacturers of buses built in two or more stages are small businesses. Although we expect additional costs to be minimal, we seek comment on what impact this added data recording would have on manufacturers of buses built in two or more stages.

V. Request for Comments

We request comments on the following issues:

1. Because the primary purpose of the police officer on the scene of a fatal crash is to secure the crash site for the safety of other motorists on the highway, we are seeking comment on the burden recording this final stage manufacturer suffix, in addition to the VIN, would impose on the police investigator.

2. Benefits from this rulemaking may be limited by mistakes made in the transcription of the new ten-digit suffix. NHTSA has been concerned about errors in the FARS data as a result of transcription errors when recording the VIN. The same risk of transcription errors exists in the context of recording the final stage manufacturer suffix. We are seeking comment on the likelihood that the final stage manufacturer suffix would be recorded at the crash scene by the police officers and then transcribed in the FARS database correctly.

3. To address the problem of transcription errors, many of the larger vehicle manufacturers are placing universal product codes (bar codes) on the certification label, and in some police jurisdictions each officer has a bar code reader for reading drivers license information and vehicle information electronically at the scene to reduce the chance for error. We seek comment about what proportion of police investigators of fatal crashes would have such technology. Given that transcription errors do exist, in the FARS database, should NHTSA require that buses built in two or more stages place bar code information on the certification label? In the event that NHTSA decided to require the manufacturers to provide the certification label information in a bar code format, NHTSA is also seeking information on the cost of bar code equipment and associated software.

4. NHTSA proposes that the new ten-digit suffix identifying the bus body manufacturer and certain attributes about the bus type be included in the Model Minimum Uniform Crash Criteria's (MMUCC) document. The MMUCC is the document that States use as a template for the police accident reports used to collect information at the crash scene. The MMUCC is produced through a committee process involving the States. The States then voluntarily incorporate these model codes into their accident report forms.

If the States incorporate this new information into the MMUCC, manufacturer information and descriptive information about buses manufactured in two or more stages would be available in the FARS database. Achieving the full potential benefits of this rulemaking would be dependent upon State adoption of the revised MMUCC. We are seeking comment from State and local government regarding whether they would voluntarily change their police accident reports to include this information, and if so, what would be the burden to record the additional information.

5. There may be other possible methods to obtain information about fatalities in buses manufactured in two or more stages. Given that the population for bus crashes in the "other" and "unknown" categories is very small, 12 fatalities a year, there may be non-regulatory solutions to make this data readily available so it can be used by researchers, investigators, analysts, the public, and the industry when conducting safety investigations or studies. NHTSA seeks comments regarding other approaches to obtaining information about buses manufactured in two or more stages that have been involved in fatal crashes.

One possible solution would be to perform a study of buses involved in fatal crashes each year and produce a publicly available report. Researchers and other parties could review this report and make inquiries to the manufacturer about the attributes of the bus body if needed for their research. Currently, FMCSA performs such a study annually. Given that FMCSA produces an annual report, we are seeking comment about what value requiring this description information on the certification label would add.

Another possible solution would be to record final stage manufacturer information on the police accident reports. With the name of the final stage manufacturer and the VIN, researchers could contact bus manufacturers and obtain the necessary information regarding the vehicle's configuration. Currently, the investigative police officer at the crash scene completes a police accident report (PAR) that includes the VIN and other information required by the state for fatal crashes. The PAR information is then transcribed by the state analyst into the FARS database and submitted to NHTSA annually. Given that the name of the final stage manufacturer is already required on the certification label, what is the viability of having the police officer record the name of the final stage bus manufacturer on the PAR?

NHTSA seeks any other suggestions for capturing information on buses manufactured in two or more stages for researchers and analysts to perform safety research. NHTSA requests public comments on specific suggestions.

6. We are proposing to add a new Part 584 to Chapter 49. However, we are also considering incorporating these proposed requirements into one or more existing regulations, such as Part 566. Comments are invited on this issue.

How Do I Prepare and Submit Comments?

Interested persons are invited to submit comments in response to this request for comments. For easy reference, the agency has consecutively numbered its questions. We request that commenters respond to each question by these numbers and provide all relevant factual information of which they are aware to support their conclusion or opinions, including but not limited to statistical data and estimated cost and benefits, and the source of such information.

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are 9 a.m. to 5 p.m., Monday to Friday, except Federal holidays.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

On that page, click on "search."

On the next page (*http://dms.dot.gov/search/*), type in the five-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–2001–12345," you would type "12345." After typing the docket number, click on "search."

On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. The Office of Management and Budget has not reviewed this rulemaking document under E.O. 12866, "Regulatory Planning and Review." This rulemaking is not considered significant under the Department of Transportation's regulatory policies and procedures. This proposed rule would impose minimal costs on regulated parties or on the American public since it would merely require final stage bus manufacturers to print ten additional digits on a label that the manufacturers are already required to produce.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This action would not have a significant economic impact on a substantial number of small businesses even though most, if not all, manufacturers of buses manufactured in two or more stages are small businesses. This rule would not have a significant economic impact on these entities because all manufacturers already record a "body number" on the buses. This rule only standardizes the body number scheme so that the same information can be collected and analyzed as is done for buses that are built by a single manufacturer.

C. Executive Order 13132 (Federalism)

Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), requires NHTSA 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 agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Although, the agency would seek voluntary cooperation by the States in the gathering and reporting of information, the final rule, if issued, would have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nevertheless, the agency seeks comment from State and local officials regarding this rulemaking.

D. Executive Order 12988 (Civil Justice Reform)

The proposed rule would not have any retroactive effect. A petition for reconsideration or other administrative proceeding would not be a prerequsite to an action seeking judicial review of a final rule. If adopted as a final rule, the regulation would preempt state laws and regulations that are in actual conflict with the Federal regulation.

E. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045 applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other

potentially effective and reasonably feasible alternatives considered by us.

This rulemaking is not economically significant.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of Management and Budget (OMB) control number. This proposed rule would introduce new collection of information requirements in that the proposal, if made final, would require new information to be provided on existing NHTSA specified labels and Standard Forms. If made final, this proposed rule would result in the following changes to two collections of information for which NHTSA has obtained Collection of Information Clearances from OMB.

The first OMB approved collection of information that may be affected would be OMB Clearance No. 2127–0510 "Consolidated VIN Requirements and Motor Vehicle Theft Prevention Standards." The clearance expires on March 21, 2008, and OMB has approved NHTSA to collect 1,535,249 hours (affecting 23,000,000 responses) under Clearance No. 2127–0510. As earlier stated, if made final, this proposed rule would require the affected 80 bus manufacturers to go through the process of creating VIN suffixes. Each of the bus manufacturers would obtain a manufacturer identifier, learn the final rule and change their certification label system. There would be the following one-time costs: one hour (at $40 an hour) to apply for the number, and eight hours (at $40 an hour) to learn the final rule; plus three days for a software programmer to set up the system (at $80 an hour). The total cost of this effort per bus manufacturer is $2,280 [(9 hours multiplied by $40 per hour = $360) + (24 hours multiplied by $80 per hour = 1,920) = $2,240]. NHTSA estimates the total one-time cost to be 80 manufacturers times $2,280 or $182,400.

NHTSA further estimates that adding more numbers to the VIN and certification labels will result in an additional cost of approximately $0.01 per bus and 1/3600 burden hours (one second) per bus. Using the information for the 2003 production year for school buses and mid-sized buses, NHTSA estimates that there are approximately 43,000 buses manufactured in two or more stages annually. Therefore, NHTSA estimates that if this proposed rule is made final, the total recurring cost to all bus manufacturers would be an increase of $430 (43,000 × $0.013) and approximately 12 hours (43,000 divided by 1/3600 of an hour) per year under Clearance No. 2127–0510.

The second OMB approved collection of information that may be affected would be OMB Clearance No. 2127–0006 "Fatality Analysis Reporting System (FARS)." The clearance expires on March 31, 2008, and OMB has approved NHTSA to collect 82,364 hours (affecting 38,309 responses) under Clearance No. 2127–0006. This clearance includes OMB approval for Standard Forms HS–214, HS–214A, HS–214B, and HS–214C." As earlier stated, if made final, this proposed rule would require extra data to be collected on the approximately twelve bus crashes occurring each year that result in fatalities to bus passengers.

If this rule is made final, NHTSA would amend one or more of the approved Standard Forms to include the bus attributes earlier described in this notice. Those collecting the information at the crash site would include the extra information about the attributes of the bus in which a passenger died as a result of a crash. NHTSA believes that it would take the person filling out the report an extra minute to provide information about the bus attributes. Therefore, NHTSA estimates that if this proposed rule is made final, the total recurring collection of information burden on all those collecting information pursuant to FARS would be approximately 12 minutes (1 minute multiplied by 12 crashes) per year under Clearance No. 2127–0006.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [3] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, with an explanation of the reasons for not using such standards. This rulemaking only addresses the information to be included on a certification label. As such, the issues involved here are not amenable to the development of voluntary standards.

[3] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specifications and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). The final rule, if issued, would not require the expenditure of resources above and beyond $100 million annually.

I. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

J. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

K. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

VIII. Proposed Regulatory Text

In consideration of the foregoing, NHTSA proposes to amend 49 CFR

Parts 567 and add Part 584 to read as follows:

List of Subjects in 49 CFR Parts 567 and 584

Labeling, Motor vehicle safety, Reporting and recordkeeping requirements.

PART 567—CERTIFICATION

1. The authority citation for Part 567 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, 33108, and 33109; delegation of authority at 49 CFR 1.50.

§ 567.5 [Amended]

2. Section 567.5 would be amended by adding new paragraph (c)(10) to read as follows:

* * * * *

(c)(10) In the case of a bus, the final stage manufacturer's descriptor in accordance with Part 584 of this chapter.

* * * * *

PART 584—BUSES MANUFACTURED IN TWO OR MORE STAGES

A new Part 584 would be added to read as follows:

PART 584—BUSES MANUFACTURED IN TWO OR MORE STAGES

Sec.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30141, 30146, 30166, and 30168; delegation of authority at 49 CFR 1.50.

§ 584.1 Purpose and scope.

This part specifies format and content requirements for a suffix to the vehicle identification number (VIN) to simplify the identification of particular types of buses, facilitate the retrieval, comparison, and analysis of crash data, and increase the accuracy and efficiency of vehicle recall campaigns.

§ 584.2 Applicability.

This part applies to buses manufactured in two or more stages.

§ 584.3 Definitions.

Final stage manufacturers identification means a unique identification code that is assigned by the National Highway Traffic Safety Administration to the manufacturer.

Model means the type of bus body type as assigned by the bus body manufacturer.

GVWR means the gross vehicle weight rating as defined in 49 CFR Part 567 in the as built configuration.

Body length means the overall length of the vehicle main structure from front bumper to rear bumper, but does not include any attachment hardware that may be projecting outward from the vehicle.

Seating configuration means seating placement with respect to the longitudinal axis of the bus body.

Sequence number means the number sequentially assigned by the manufacturer in the production process.

§ 584.4 General requirements.

(a) Each bus manufactured in two or more stages shall have a suffix to the vehicle identification number that is assigned by the bus body manufacturer.

(b) Each character in the final stage manufacturer suffix shall be one of the letters in the set: [ABCDEFGHIJKLMNOPQRSTUVWXYZ] or a numeral in the set: [0123456789]

§ 584.5 Content requirements for buses manufactured in two or more stages.

Manufacturers and alterers of buses manufactured in two or more stages shall affix a unique (within the model type for each manufacturer) suffix after the VIN. This suffix shall be separated by a hyphen and be placed after the VIN on the vehicle certification label as shown in figure 1.

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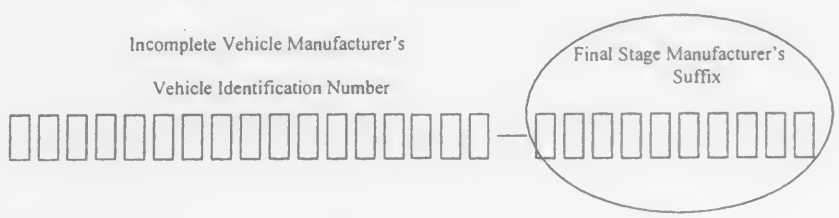
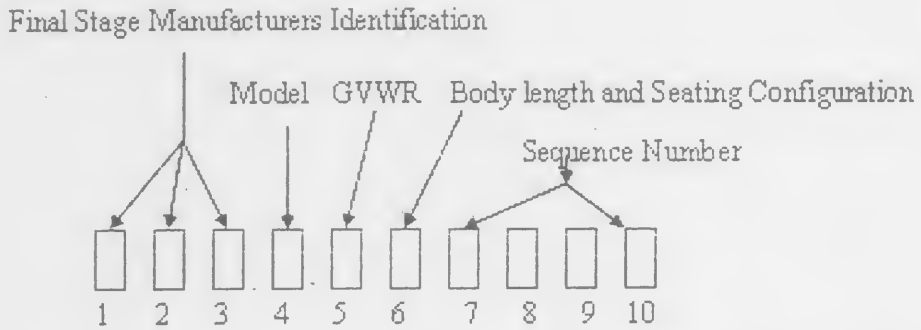
Figure 1 – Final stage bus manufacturer's suffix



The final stage manufacturer's descriptor shall consist of 10 alphanumeric characters that shall be grouped as shown in figure 2:

Figure 2 – Final stage manufacturer's suffix - arrangement of alphanumeric descriptors



BILLING CODE 4910–59–C

(a) The first section shall consist of three alphanumeric characters that occupy positions one through three (1–3) in the final stage manufacturer suffix. This section shall uniquely identify the final stage manufacturer.

(b) The second section shall consist of a single alphanumeric character that occupies position four (4) in the final stage manufacturer suffix. This identifies the manufacturer's model and is assigned by the final stage manufacturer.

(c) The third section shall consist of a single digit that represents the gross vehicle weight rating of the bus in the as built configuration.

(d) The fourth section shall consist of a single alphanumeric character that occupies position six (6) in the final stage manufacturer suffix. This identifies the bus body length and seating configuration and is assigned by the manufacturer as per Table 1.

(e) The fifth section shall consist of sequence number that occupies positions seven through ten (7–10). This sequence identifies the body production sequence as assigned by the bus manufacturer.

TABLE 1

Seating configuration	Bus body length (mm)				
	≤6,096	>6,096 ≤6,706	>6,706 ≤7,620	>7,620 ≤8,534	>8,534
Forward	A	E	I	M	Q
Rearward	B	F	J	N	R
Side	C	G	K	O	S
Combination	D	H	L	P	T

§ 584.6 Reporting requirements.

(a) All requests for assignments of a final stage manufacturer identifier should be forwarded directly to: Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Attention: Bus Manufacturer's Coordinator.

(b) Manufacturers of vehicles subject to this part shall submit to NHTSA, either directly or through an agent, the unique descriptor for each make and model of vehicle it manufacturers at least 60 days before affixing the label to the first bus using the identifier.

(c) Manufacturers of vehicles subject to this part shall submit to NHTSA the information necessary to decipher the characters contained in its final stage manufacturer suffix. The agency will not routinely provide written approvals of these submissions, but will contact the manufacturer should any corrections to these submissions be necessary.

(d) The information required under paragraph (c) of this section shall be submitted at least 60 days prior to offering for sale the first bus identified by a final stage manufacturer suffix containing that information. The information shall be addressed to: Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Attention: Bus Manufacturer's Coordinator.

Issued: August 12, 2005.

Roger A. Saul,

Director, Office of Crashworthiness Standards.

[FR Doc. 05–16324 Filed 8–17–05; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 70, No. 159
Thursday, August 18, 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

Agricultural Marketing Service

[DA–03–07]

Milk for Manufacturing Purposes and Its Production and Processing; Requirements Recommended for Adoption by State Regulatory Agencies

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final notice.

SUMMARY: This document proposes to adopt as a final notice add to the recommended manufacturing milk requirements (Recommended Requirements) by providing provisions for sheep milk, adding follow-up procedures used when plant-commingled milk in storage tanks exceeds the maximum allowable bacterial estimate, and providing a definition for heat-treated cream. The notice to add to the recommended manufacturing milk requirements (Recommended Requirements) was initiated at the request of the Dairy Division of the National Association of State Departments of Agriculture (NASDA) and developed in cooperation with NASDA, the Food and Drug Administration (FDA), dairy trade associations, and producer groups. This document also proposes certain other changes to the Recommended Requirements for clarity and consistency.

DATES: Submit written or electronic comments on or before October 17, 2005.

ADDRESSES: You may use any of the following methods to file comments on this action:

By mail: Reginald Pasteur, Marketing Specialist, Standardization Branch, Dairy Programs, STOP 0230 (Room 2746 South Building), Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–0230

By fax: (202) 720–2643,

By e-mail: Reginald.Pasteur@usda.gov or via the electronic process available at the Federal eRulemaking portal at *http://www.regulations.gov*

Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Any comments received may be inspected at the above address during regular business hours (8 a.m.—4:30 p.m.) or accessed via the Internet at *http://www.ams.usda.gov/dairy/stand.htm.*

The current Recommended Requirements are available either from the above mailing address or by accessing the following internet address: *http://www.ams.usda.gov/dairy/manufmlk.pdf.* The proposed changes to the Recommended Requirements are also available from the above mailing address or by accessing the following Internet address: *http://www.ams.usda.gov/dairy/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Reginald Pasteur, Marketing Specialist, Standardization Branch, Dairy Programs, AMS, USDA, telephone (202) 720–7473 or e-mail *Reginald.Pasteur@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), the United States Department of Agriculture maintains a set of model regulations relating to quality and sanitation requirements for the production and processing of manufacturing grade milk. These Recommended Requirements are developed by AMS and recommended for adoption and enforcement by the various States that regulate manufacturing grade milk. The purpose of the model requirements is to promote uniformity in State dairy laws and regulations relating to manufacturing grade milk.

In consultation with representatives from NASDA, State regulatory agencies, FDA, and dairy industry trade associations, the Department prepared the Recommended Requirements to promote uniformity in State dairy laws and regulations for manufacturing grade milk. To accommodate changes that have occurred in the dairy industry, NASDA and various State officials have from time to time requested USDA to update the Recommended Requirements.

During its July 2003 annual meeting, the Dairy Division of NASDA passed resolutions requesting USDA to provide provisions for sheep milk, add follow-up procedures used when plant-commingled milk in storage tanks exceeds the maximum allowable bacterial estimate, and providing a definition for heat-treated cream. AMS reviewed these resolutions and developed a draft that identified the changes associated with this request. This draft was provided to State regulatory officials and dairy trade association representatives for informal discussion prior to publication in the **Federal Register.**

The requirements of Executive Order 13132, Federalism, were considered in developing this notice, and it has been determined that this action does not have federalism implications as defined under the executive order. This action does not have substantial effects on the States (the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government). The adoption of the Recommended Requirements by State regulatory agencies is voluntary. States maintain the responsibility to establish dairy regulations and continue to have the option to establish regulations that are different from the Recommended Requirements. A State may choose to have requirements less restrictive or more stringent than the Recommended Requirements. Their decision to have different requirements would not affect the ability of milk producers to market milk or of procession plants to produce dairy products in their state. AMS is publishing this notice with a 60-day comment period to provide a sufficient time for interested persons to comment on the changes.

Based on the recommended requirements which were published in the **Federal Register** issue of April 7, 1972 (37 FR 7046) and amended August 27, 1985 (50 FR 34726), May 6, 1993 (58 FR 86), and September 12, 1996 (61 FR 48120), the changes are summarized as follows:

Sheep Milk Definition

The definition of sheep milk will be to include: *Section B2(l)(3)*—Sheep milk is the lacteal secretion practically free

from colostrums obtained by the complete milking of one or more healthy ewes. Sheep milk shall be produced according to the sanitary standards of this ordinance.

Water Buffalo Milk Definition

The definition of water buffalo milk will be to include: *Section B2(l)(4)*—Water buffalo milk is the normal lacteal secretion practically free of colostrums, obtained by the complete milking of one or more healthy water buffalo. Water buffalo milk shall be produced according to the sanitary standards of this ordinance.

Lactating Animals Definition

The definition of lactating animals will be to include: Section B2(l)(5)—Lactating animals are cows, goats, sheep, and water buffalo producing milk for manufacturing purposes.

Milk Term

The term "milk" will be to include: *Section B2(l)(6)*—The word "milk" used herein includes only milk, goat's milk, sheep's milk, and water buffalo milk for manufacturing purposes.

Somatic Cell Count

The requirements for sheep milk somatic cell count will be to include: *Section C11 (e), (e)2, and (f)*—750,000 per ml for sheep milk.

Farm Requirements

The requirements for abnormal sheep milk will be to include: *Section D1(d)*—Abnormal milk is milk which is ropy, stringy, clotted, thick, or abnormal in any way. It includes milk containing pesticides, insecticides, or medicinal agents. Regular equipment may be used but not until all other animals are milked.

Milking Facility and Housing

The requirements for a sheep milking facility will include: *Section D2(b)*—Floors for a sheep milking facility shall be constructed of concrete or equally impervious material maintained free of breaks or depressions. They must be sloped to drain properly. Joints between floor and wall shall be water tight.

Ramps and platforms used to elevate the sheep for milking must be constructed of an impervious material such as steel (wooden platforms and ramps are not allowed). Rubber cow mats may be used as long as they are not placed over a wooden platform. Sheep are generally housed in a loose housing building near the milking parlor. This area should be kept reasonably clean. No excessive accumulation of manure is allowed. Complete separation between the sheep housing area and the sheep milking parlor is required if sheep milker units are stored in the parlor. Hogs and fowl shall not be housed with sheep.

Milking Procedure

The requirements for sheep milking procedure will include: *Section D3(d)*—Milking equipment used for handling abnormal milk must be washed and sanitized after such use. *Section D3 (e)*—Abnormal milk must not be squirted on the floor, on the platform, or in the producer's hand. Producers should also wash their hands after handling such equipment and handling the teats and udders of animals producing abnormal milk.

Cooling and Storage

The requirements for cooling sheep milk will include:

A. Milk in plastic bags shall be cooled to 40 °F or lower within two hours of milking. Sheep milk shall be cooled to 45 degrees Fahrenheit or less within two (2) hours of milking. Cooling water used in bulk tanks in which bags of sheep milk are cooled shall be chlorinated. If milk is cooled by pouring into plastic bags and then floating the bags of milk in cooling water, the process must preclude contamination of the milk by the water. All water must be safe and of sanitary quality in accordance to Section D7.

B. Bags used to store frozen sheep milk shall be constructed of plastic that is listed under the NCIMS Certified Manufacturers of Single-Service Containers and Related Products.

C. Bags may be up to 5 gallons in size. Each bag shall be numbered, dated, and identified with a patron name or number.

D. Frozen sheep milk should remain frozen at 0°F or less for a period not to exceed 12 months.

Milkhouse or Milkroom

The requirements will include: *Sec. D5(a)(i)*—A milkhouse must be provided for storage and cooling of milk and proper cleaning and storage of equipment. The milkhouse area is the area that needs to be modified to meet the peculiar needs of sheep milking operations. The following requirements apply to a milkhouse whether or not a bulk tank is used: milk may not be placed directly in the freezer prior to cooling.

Natural and/or artificial light shall be provided in all working areas for conducting milkhouse operations. At least 20 foot candles of artificial light are required in a milking parlor. Parlors must be properly ventilated in order to prevent excessive condensation and odors. Light fixtures shall not be installed directly above bulk milk tanks, areas where milk may be strained, or areas where equipment is stored.

Sec. D5(b)(i)—A double compartment wash sink with hot and cold running water plumbed to the sink is required. Each compartment must be large enough to accommodate the largest piece of equipment. Hot water heaters or hot water supply systems for use in the milkhouse or milk room shall have a capacity of at least 30 gallons for the manual washing of equipment. Clean in place washing of pipelines, units, and bulk tanks requires the capacity of 75 gallons. Water under pressure must be piped into the milkhouse to perform cleaning of the equipment. Walls and ceilings must be reasonably smooth and be painted or whitewashed or have other acceptable finish; it shall be kept in good repair and surfaces shall be finished whenever wear or discoloration is evident. Ceilings must be dust tight. Hay or straw chutes must have dust-tight doors that must be kept closed during milking.

Utensils and Equipment

Requirements will include: *Sec. D6 (a)(i)*—Milk contact surfaces shall be made of stainless steel of the 300 series, equally corrosion-resistant non-toxic metals or heat-resistant glass. Plastic or rubber-like material must be relatively inert and resistant to scoring, chipping, or decomposition, and it must be non-toxic and not impair flavor or odor to the product. All milk contact material must be easily cleaned and must be cleaned after each use. Sanitizers must be an approved type with full label directions. Syringes and bolus guns shall be stored in a manner to preclude any contamination of milk or milk contact surfaces.

All containers and utensils must be free from breaks and corrosion, and points must be free from pits or cracks. Bulk tank and freezer thermometers should be accurate within ±2 degrees Fahrenheit.

All milk containers and equipment, including milking machine vacuum hoses, must be stored in the milkhouse. Milking equipment must be stored to assure complete drainage. Filters and single-service plastic bags shall be stored in the original container inside a protective box. Bags for milk storage must be stored in a manner which protects them from contamination. It is recommended they be stored in an enclosed cabinet.

Commingled Milk

Requirements will include:

Sec. E1.8 Raw product storage

A. All milk shall be held and processed under conditions and at temperatures that will avoid contamination and rapid deterioration. Drip milk from can washers or any other source shall not be used for the manufacture of dairy products. Bulk milk in storage tanks within the dairy plant shall be handled in such a manner as to minimize bacterial increase and shall be maintained at 45 degrees Fahrenheit or lower until processing begins. This does not preclude holding milk at higher temperatures for a period of time, where applicable to particular manufacturing or processing practices.

B. The bacterial estimate of commingled milk in plant storage tanks shall be 1 million per milliliter or lower.

C. During any consecutive six months, at least four samples of commingled raw milk for processing shall be taken by the regulatory agency from each plant.

D. A laboratory test of these samples to determine the bacterial estimate shall be performed at a laboratory approved by the regulatory agency.

E. Whenever a bacterial estimate of commingled milk in a plant indicates the presence of more than 1 million per milliliter, the following procedures shall be applied:

1. The regulatory agency shall notify plant management with a warning of excessive bacterial estimate and recommend that appropriate action be taken to eliminate the bacterial problem.

2. Whenever two of the last four consecutive commingled milk bacterial estimates exceed 1 million per milliliter, the regulatory agency shall notify plant management with a written warning notice. The notice shall be in effect so long as two of the last four consecutive samples exceed 1 million per milliliter. Plant management should continue to work to eliminate the bacterial problem.

3. An additional sample shall be taken by the regulatory agency after a lapse of 3 days but within 21 days of the notice required in paragraph (e)(1) of this section. If this sample also exceeds 1 million per milliliter, the plant license shall be suspended. A temporary status may be assigned to the plant by the appropriate regulatory agency when an additional sample of commingled milk is tested and found satisfactory. The plant shall be assigned a full reinstatement status when three out of four consecutive commingled bacterial estimates do not exceed 1 million per milliliter. The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

Heat-Treated Cream Definition

The definition of heat-treated cream will be added to include: *E 1.9(i) Heat-treated cream*—Heat-treated cream is cream in which the product may be heated to less than 160 degrees Fahrenheit in a continuing heating process and immediately cooled to 45 degrees Fahrenheit or less for a functional reason.

(Authority: 7 U.S.C. 1621–1627)

Dated: August 15, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–16376 Filed 8–17–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 05–064–1]

Notice of Request for Extension of Approval of an Information Collection; Animal Welfare

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations issued under the Animal Welfare Act governing the humane handling, care, treatment, and transportation of certain animals by dealers, research institutions, exhibitors, carriers, and intermediate handlers

DATES: We will consider all comments that we receive on or before October 17, 2005.

ADDRESSES: You may submit comments by either of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* 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 you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 05–064–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 05–064–1.

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

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for the humane handling, care, treatment, and transportation of certain animals by dealers, research institutions, exhibitors, carriers, and intermediate handlers, contact Dr. Jerry DePoyster, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7586. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Animal Welfare.

OMB Number: 0579–0036.

Type of Request: Extension of approval of an information collection.

Abstract: The regulations in 9 CFR parts 1 through 3 were promulgated under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) to ensure the humane handling, care, treatment, and transportation of regulated animals under the Act. The regulations in 9 CFR part 2 require documentation of specified information by dealers, research institutions, exhibitors, carriers, and intermediate handlers. The regulations in 9 CFR part 2 also require that facilities that use animals for regulated purposes obtain a license or register with the U.S. Department of Agriculture (USDA). Before being issued a USDA license, individuals are required to undergo prelicense inspections; once licensed, a licensee must periodically renew the license.

The Act and regulations are enforced by USDA's Animal and Plant Health Inspection Service (APHIS), which performs unannounced inspections of regulated facilities. A significant component of the inspection process is review of records that must be

established and maintained by regulated facilities. The information contained in these records is used by APHIS inspectors to ensure that dealers, research facilities, exhibitors, intermediate handlers, and carriers comply with the Act and regulations.

Facilities must make and maintain records that contain official identification for all dogs and cats and certification of those animals received from pounds, shelters, and private individuals. These records are used to ensure that stolen pets are not used for regulated activities. Dealers, exhibitors, and research facilities that acquire animals from nonlicensed persons are required to have the owners of the animals sign a certification statement verifying the owner's exemption from licensing under the Act. Records must also be maintained for animals other than dogs and cats when the animals are used for purposes regulated under the Act.

Research facilities must also make and maintain additional records for animals covered under the Act that are used for teaching, testing, and experimentation. This information is used by APHIS personnel to review the research facility's animal care and use program.

APHIS needs the reporting and recordkeeping requirements contained in 9 CFR part 2 to enforce the Act and regulations. APHIS also uses the collected information to provide a mandatory annual Animal Welfare Enforcement report to Congress.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.4796408 hours per response.

Respondents: Research facilities, "A" and "B" dealers, exhibitors, carriers, and intermediate handlers.

Estimated annual number of respondents: 7,305.

Estimated annual number of responses per respondent: 9.1175906.

Estimated annual number of responses: 66,604.

Estimated total annual burden on respondents: 98,550 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of August 2005.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–16377 Filed 8–17–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Yakus Creek Project, Clearwater National Forest, Idaho County, ID

AGENCY: Forest Service, USDA

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) to disclose the environmental effect of timber harvest and watershed restoration activities in the Yakus Creek project area on the Lochsa Ranger District of the Clearwater National Forest. The Yakus Creek project area is located in the Yakus Creek drainage, a tributary to Lolo Creek, approximately 12 air-miles eat of the town of Kamiah, Idaho.

DATES: This project was previously scoped in February 2004, and the comments received will be included in the documentation for the EIS. A 45-day public comment period will follow the release of the draft environmental impact statement that is expected in December 2005. The final environmental impact statement is expected in May 2006.

ADDRESSES: Written comments and suggestions concerning the scope of this project should be sent to Cindy Land (*clane@fs.fed.us*), District Ranger, Lochsa Ranger District, Rt. 1 Box 398, Kooskia, ID 83539.

FOR FURTHER INFORMATION CONTACT: George Harbaugh (*gharbaugh@fs.fed.us*), Project Leader, Lochsa Ranger District. Phone: (208) 926–4274.

SUPPLEMENTARY INFORMATION: The Yakus Creek project area contains approximately 7,900 acres, of which 5,240 acres are National Forest lands and 2,660 acres are other ownership (State, timber companies, and private). The legal location is in portions of Sections 1, 2, 12, and 13, T33N, R5E; Sections 3–9, 17, and 18, T33N, R6E; Sections 25, 26, 35, and 36, T34N, R5E; and Sections 30–33, T34N, R6E, Boise Meridian, Idaho County, Idaho. The proposed actions would occur on National Forest lands and are all outside the boundaries of any inventoried roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Clearwater National Forest Plan or by any past or present legislative wilderness proposals.

Purpose and Need for Action is to: (1) Improve forest health and start the shift towards desired patch sizes by: (1) Shifting species composition from grand fir to white pine and western larch; (b) reducing tree densities in immature stands; (c) regenerating decadent mature stands; (d) regenerating stands with insect and root rot problems; (e) creating desired patches (300–500 acres) with timber harvest; and (f) connecting existing seedling/sapling stands, where possible; (2) restore watershed function to improve soil productivity and instream conditions; and (3) manage the landscape to provide for goods and services deemed important to society.

The Proposed Action would harvest timber through regeneration harvest and commercial thinning on approximately 670 acres of forestland within the Yakus Creek drainage. Regeneration harvest (520 acres) would leave approximately 20–25 trees per acre as individual trees and in groups, where feasible, to provide future snags and down woody material for wildlife habitat. Commercial thinning (150 acres) would reduce the basal area in dense timbered stands down to about 160–180 square feet. There is also an opportunity to precommercial thin approximately 1,620 acres of young stands scattered throughout the project area. Use of existing, temporary and permanent roads would be needed to access timber harvest areas. An estimated 1.8 miles of existing roads would be reconstructed in addition to 1.2 miles of new specified

road construction to facilitate timber removal. An estimated 2.2 miles of temporary roads would be constructed and obliterated following completion of sale related activities. Watershed restoration activities would consist of an estimated 11.6 miles of road decommissioning, an estimated 13.7 miles of existing roads put into intermittent storage (self-maintaining), and the decompaction of approximately 190 acres of old skid trains and landings.

The Possible Alternatives the Forest Service will consider include the "no action" alternative in which none of the proposed activities would be implemented. Additional alternatives being considered examine varying levels and locations for the proposed activities to achieve the proposal's purpose and need, as well as to respond to the issues and other resource concerns.

The Responsible Official is the Forest Supervisor of the Clearwater National Forest, 12730 Highway 12, Orofino, ID 83544. The Responsible Official will decide if the proposed project will be implemented and will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations. The responsibility for preparing the DEIS and FEIS has been delegated to Cindy Lane, District Ranger, Lochsa Ranger District, Rt. 1 Box 398, Kooskia, ID 83539.

The Scoping Process was initiated with the release of a Scoping Letter on February 10, 2004. Comments received as a result of that effort will be included in the documentation for the EIS. Additional scoping will follow the release of the DEIS, expected in December 2005. This proposal also includes openings greater than 40 acres. A 60-day public review period and approval by the Regional Forester for exceeding the 40 acre limitation will occur prior to the signing of the Record of Decision. The 60-day public review period is initiated with this Notice of Intent.

Preliminary Issues that could be affected by proposal activities include: air quality; economics; grazing; heritage resources; old growth habitat; recreation access; risk of landslides; scenic quality; size of openings; snag habitat; spread of noxious weeds; threatened, endangered and sensitive species of wildlife, fish and plants; tribal treaty rights; and water quality.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(**Authority:** 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: August 10, 2005.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. 05–16360 Filed 8–17–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Board Approval of Liquidation and Dissolution of the Bank

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of Board approval of liquidation and dissolution of the Rural Telephone Bank.

SUMMARY: In a meeting held August 4, 2005, the Board of Directors (Board) of the Rural Telephone Bank (Bank) approved resolutions to liquidate and dissolve the Bank, subject to lifting of the current statutory restriction limiting the amount of Government-owned Class A stock that the Bank can redeem. This notice is being published to ensure that all interested parties are informed of the details of the resolutions approved by the Board.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Assistant Secretary, Rural Telephone Bank, STOP 1590—Room 5151, 1400 Independence Avenue, SW., Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION: In a special meeting held on March 11, 2005, and during its regularly scheduled meeting held on May 4, 2005, the Board discussed the possibility of liquidating and dissolving the Bank. In its meeting on August 4, 2005, a resolution to liquidate and dissolve the Bank was passed unanimously by the Board. The full text of the resolution is presented with this notice including two attachments referenced within the resolution.

BILLING CODE 3410–15–P

Resolution No. 2005-8

WHEREAS, the Board of Directors (the "Board") believes it is in the best interests of the Rural Telephone Bank ("Bank") and rural telecommunication subscribers to transfer the Bank's loan portfolio to the Rural Utilities Service ("RUS") and to liquidate and dissolve the Bank pursuant to Section 411 of the Rural Electrification Act ("Act,") 7 U.S.C. § 901 *et seq.*;

WHEREAS, the liquidation and dissolution of the Bank cannot be consummated until Section 713 of the *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2005* (Pub. L. 108-447, 118 Stat. 2804) (the "Appropriations Act") ceases to be effective, thus removing the five percent (5%) cap on the redemption of the Bank's Class A Stock, and such cap is not reinstated; and

WHEREAS, the liquidation and dissolution of the Bank also require the retirement or payment of the Bank's Class A, Class B, and Class C Stock pursuant to Section 411 of the Act;

THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD:

1. Approval of Liquidation and Dissolution of the Bank. That the Board approve the liquidation and dissolution of the Bank in accordance with Section 411 of the Act, subject to there being no legal restriction on the redemption of Class A Stock.

2. Transfer of Certain Bank Assets to RUS. That the Bank's Liquidating Account loan portfolio and records be transferred to the United States of America, acting through the RUS, pursuant to the terms of the Loan Transfer Agreement, substantially in the form attached hereto.

3. Authorization to Sign Transfer Agreement. That the Chairman of the Bank be authorized on behalf of the Bank to execute and deliver as many counterparts of the Loan Transfer Agreement as he deems necessary or desirable.

4. Bank to Conduct No Further Business. That upon effectiveness of the Loan Transfer Agreement on October 1, 2005, the Bank will conduct no further business, except that which is necessary to document loans approved during FY 2005, to liquidate the Bank's assets, and to wind up its affairs.

5. Retirement and Payment of Bank's Stock. That the Board approve the retirement or payment of the Bank's Class A, Class B, and Class C Stock with funds in the Liquidating Account pursuant to Section 411 of the Act, subject to there being no legal restriction on the redemption of the Class A Stock.

6. Amendment of Section 2.3 of Bylaws. That Section 2.3 of the Bylaws be amended and restated in its entirety to read as follows:

Section 2.3 SHARE CERTIFICATES.

(a) All shares of stock of the Bank shall be evidenced by entry on the books of the Bank. All paper stock certificates issued by the Bank are cancelled as of October 1, 2005, and replaced by entry on the books of the Bank.

(b) The Bank shall issue stock only upon payment in full of the par value thereof.

(c) The Bank shall issue stock evidencing the distribution of patronage refunds as hereinafter provided.

7. Amendment of Section 2.4 of Bylaws. That Section 2.4 of the Bylaws be amended and restated in its entirety to read as follows:

Section 2.4 TRANSFER OF SHARES. Shares in the capital stock of the Bank shall be transferred only on the books of the Bank by authorization from the holder thereof or by the holder's legal representative upon proof of the legal representative's authority filed with the Secretary of the Bank. The entity in whose name shares stand on the books of the Bank shall be deemed to be the owner thereof for all purposes.

8. Determination of Record Date. That the record date for determination of stockholders and stockholdings for purposes of payments made pursuant to Section 411 of the Act and for fixing the number of private sector and public sector directors on the Board during the liquidation phase of the Bank shall be October 1, 2005; no stock conversions, purchases, or transfers subsequent to said date shall be recorded on the Bank's books.

9. Stockholders to Receive Stock Redemption Agreement. That from thirty (30) to sixty (60) days from the date there ceases to be restrictions on the redemption of Class A Stock, all record stockholders of Class B and Class C Stock shall be sent a Stock Redemption Agreement in substantially the form attached hereto.

10. Authorization to Sign Stock Redemption Agreement. That the Chairman be authorized on behalf of the Bank to execute and deliver as many counterparts of the Stock Redemption Agreements as required with such changes as he deems advisable, and to evidence his signature thereon by facsimile.

11. Authorization of Bank to Make Stock Redemption Payments. That commencing from one hundred twenty (120) days to one hundred eighty (180) days from the date there cease to be any restriction on the redemption of Class A Stock, stock redemption payments shall be made in accordance with Section 411 of the Act to the Government, pursuant to the Loan Transfer Agreement, and to those stockholders who have returned a validly executed Stock Redemption Agreement, pursuant to the terms of the Stock Redemption Agreement.

12. Disputed Claims and Unredeemed Shares. That the Governor be authorized to withhold payment of disputed claims and to take such action with respect to disputed claims and unredeemed shares as he may determine with the advice of counsel.

13. Use of Remaining Funds. That two (2) years from the date there ceases to be any restrictions on the redemption of Class A Stock, any funds remaining in the Liquidating Account, after the payment of all of the Bank's liabilities, redemption of all of the Bank's Class A, Class B, and Class C Stock, and set-aside of amounts held for disputed claims and unredeemed shares, be distributed to the Class A and Class B stockholders in accordance with Section 411 of the Act.

14. Closing Audit and Final Report. That thirty (30) months after the date there ceases to be any restriction on the redemption of Class A Stock, the Bank shall obtain a closing audit and submit a final report to the Board.

15. Other Actions. That, in the name and on behalf of the Bank, each of the Chairman, Governor, and Assistant Secretary be authorized to execute all such agreements, amendments, or documents, including those documenting loans approved by the Bank prior to October 1, 2005; make all such assignments and payments; and do all such other acts as in the opinion of the officer or officers acting may be necessary or appropriate in order to carry out the purposes and intent of the foregoing resolutions.

16. Publication in Federal Register. That these resolutions be immediately published in the Federal Register and any such other places as the Asst. Secretary of the Bank considers appropriate.

LOAN TRANSFER AGREEMENT (the "Agreement,") dated as of August 4, 2005, is between the **UNITED STATES OF AMERICA** (hereinafter the "Government,") acting through the Administrator of the Rural Utilities Service ("RUS,") successor to the Rural Electrification Administration, and the **RURAL TELEPHONE BANK** ("Bank,") a corporation existing under the laws of the United States of America, acting through the Chairman of the Bank.

WHEREAS, the Board of Directors of the Bank has authorized the liquidation and dissolution of the Bank and approved a plan of liquidation in Resolutions adopted at the board meeting held on August 4, 2005;

WHEREAS, the Bank shall transfer on October 1, 2005, its Liquidating Account Loans, as hereinafter defined, as part of the consideration for RUS' commitment to return all Class A Stock to the Bank for redemption and cancellation upon the Class A Stock Redemption Cap, as hereinafter defined, ceasing to be effective; and

WHEREAS, the Financing Account Loans, as hereinafter defined, shall continue to be serviced by RUS, in accordance with Section 403 of the Act (7 U.S.C. § 943).

THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties agree and bind themselves as follows:

ARTICLE I

DEFINITIONS

"Act" means Title IV of the Rural Electrification Act of 1936, 7 U.S.C. § 941 *et seq.*, as amended.

"Agreement" means this Loan Transfer Agreement between the Government and the Bank, as amended or otherwise modified from time to time.

"Class A Stock" means all of the outstanding shares of Class A stock of the Bank held by RUS pursuant to Section 406(c) of the Act.

"Class A Stock Redemption Cap" means the provision in the *Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2005* (Pub. L. 108-447, 118 Stat. 2804) restricting the redemption of Class A Stock to no more than five percent (5%) of the Class A Stock, and any similar restrictions on the redemption of Class A Stock appearing in federal appropriations legislation for the federal fiscal year 2006.

"Financing Account Loans" mean all Loans owed to or held by the Bank on or after October 1, 1991.

"Lien" means any mortgage, lien, pledge, charge, assignment for security purposes, security interest, or encumbrance of any kind with respect to a Transferred Asset.

"Liquidating Account Loans" mean all Loans obligated by, owed to, or held by the Bank before October 1, 1991, including the loans listed in Schedule 1 hereto.

"Loan Documents" mean the agreements, instruments, certificates, or other documents at any time evidencing or otherwise relating to, governing, or executed in connection with or as security for a Loan, including without limitation notes, bonds, loan agreements, mortgages, assignments, security agreements, pledges, subordination or priority agreements, lien priority agreements, undertakings, security instruments, certificates, documents, legal opinions, inter-creditor agreements, and all amendments, modifications, renewals, extensions, rearrangements and substitutions with respect to any of the foregoing.

"Loans" mean all of the following owed to or held by the Bank as of October 1, 2005:

(a) Liquidating Account Loans; and

(b) all amendments, modifications, renewals, extensions, refinancings, and refundings of or for any of the foregoing listed in clause (a) immediately above.

"Records" mean any document, microfiche, microfilm, and electronic record (including but not limited to magnetic tape, disc storage, card forms, and printed copy) of the Bank.

"Transferred Assets" mean all assets of the Bank transferred pursuant to Article II.

ARTICLE II

TRANSFER OF ASSETS

Section 2.1 ***Assets Transferred to RUS by the Bank***. Subject to Article V, the Bank hereby sells, conveys, grants, assigns, and transfers, as is and without warranty, on October 1, 2005, to RUS all of its right, title, and interest to the following assets (collectively, the "Transferred Assets:")

(a) Loans;

(b) Loan Documents;

(c) All associated Liens, rights (including rights of set-off and subrogation), remedies, powers, privileges, demands, claims, priorities, equities and benefits owned or held by, or accruing to the benefit of the Bank with respect to the Loans, including but not limited to those arising under or based upon the Loan Documents, casualty insurance policies and binders, title insurance policies and binders, payment bonds and performance bonds; and

(d) Records.

ARTICLE III

RUS' ASSUMPTION OF LIABILITIES

Section 3.1 ***Loan Documents***. Subject to Article V, RUS hereby assumes all of the obligations and liabilities of the Bank under the Loan Documents upon the transfer of the Transferred Assets pursuant to Article II, except for the obligation to make advances on the Liquidating Account Loans.

Section 3.2 ***Financing Account Loans***. RUS agrees to continue servicing the Financing Account Loans in accordance with Section 403 of the Act (7 U.S.C. § 943).

ARTICLE IV

TRANSFER OF CLASS A STOCK

Section 4.1 ***Prerequisites to Transfer of Class A Stock.*** The obligation of the Government to deliver the Class A Stock to the Bank for redemption and cancellation is subject to the satisfaction of each of the following conditions precedent:

(a) The Class A Stock Redemption Cap ceases to be effective;

(b) At least one hundred and twenty (120) days, but no more than one hundred and eighty (180) days, after the Class A Stock Redemption Cap ceases to be effective, receipt by the Government of funds in an amount equal to the difference between the value of the Class A Stock and the value of the Liquidating Account Loans, as such amount is determined by the Government as of October 1, 2005.

Section 4.2 ***Notification of Amount Owed.*** No later than January 1, 2006, RUS shall provide written notice to the Bank of the difference between the value of the Class A Stock and the value of the Liquidating Account Loans required to be paid pursuant to Section 4.1(b) above.

Section 4.3 ***Transfer of Class A Stock.*** Upon satisfaction of the conditions precedent contained in Section 4.1 hereof, the Government shall transfer the Class A Stock to the Bank for redemption and cancellation by executing and delivering the Class A Stock Redemption Certificate attached hereto as Exhibit A.

ARTICLE V

OPTION TO RESCIND TRANSFER OF ASSETS AND RUS' ASSUMPTION OF BANK'S LIABILITIES

Section 5.1 ***Rescission of Transfer of Assets.*** The Government and Bank shall each have the right to rescind the sale, conveyance, grant, assignment, and transfer of Assets as set forth in Article II, if the Class A Stock Redemption Cap remains in effect subsequent to March 1, 2006.

Section 5.2 ***Rescission of RUS' Assumption of Obligations.*** Upon rescission of the transfer of Assets as provided for in Section 5.1, RUS shall immediately transfer back to the Bank all right, title, and interest in the Transferred Assets. Upon such transfer, the obligations and liabilities of RUS under Article III shall terminate.

ARTICLE VI

INDEMNIFICATION AND LIABILITY

Section 6.1 ***Indemnification.*** From the date of this Agreement until dissolution of the Bank, the Bank agrees to indemnify and hold RUS harmless against any and all costs, losses, liabilities, expenses (including attorneys' fees) arising in connection with the liquidation and dissolution of the Bank including, but not limited to, claims based on: (1) the rights of any present or former shareholder as such of the Bank; (2) the rights of any present or former director, officer, or agent of the Bank; and (3) any action, inaction, malfeasance, misfeasance or nonfeasance, prior to dissolution, of the Bank, its directors, officers, or agents as such.

Section 6.2 ***Limited Liability.*** Except as expressly stated herein, RUS does not assume any liability with respect to liquidation and dissolution of the Bank.

ARTICLE VII

MISCELLANEOUS

Section 7.1 . ***Entire Agreement.*** This Agreement, together with all attachments hereto, which are incorporated herein, embodies the entire agreement of the parties hereto in relation to the subject matter herein and supersedes all prior understandings or agreements, oral or written, between the parties.

Section 7.2 ***Headings.*** The headings and subheadings contained in this Agreement, except the terms identified for definition in Article I and elsewhere in this Agreement, are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

Section 7.3 ***Counterparts.*** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

Section 7.4 ***Governing Law.*** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES OF AMERICA, AND IN THE ABSENCE OF CONTROLLING FEDERAL LAW, IN ACCORDANCE WITH THE LAWS OF THE DISTRICT OF COLUMBIA.

Section 7.5 ***Successors.*** All terms and conditions of this Agreement shall be binding on the successors and assigns of RUS and the Bank. Except as otherwise specifically provided in this Agreement, nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than RUS and the Bank, any legal or equitable right, remedy or claim under or with respect to this Agreement or any provisions contained herein, it being the intention of the parties hereto that this Agreement, the obligations and statements of responsibilities hereunder, and all other conditions and provisions hereof are for the sole and exclusive benefit of RUS and the Bank.

Section 7.6 ***Modification; Assignment.*** No amendment or other modification, or assignment of any part of this Agreement shall be effective except pursuant to a written agreement subscribed by the duly authorized representatives of the parties hereto.

Section 7.7 ***Schedule Update, Correction of Errors and Omissions.***

(a) The Bank agrees to provide RUS, by October 14, 2005, with Schedules 1 and 2 hereto updated as of September 30, 2005, which will replace and substitute for the currently attached Schedules.

(b) In the event any bookkeeping omissions or errors are discovered in preparing any *pro forma* statement or in completing the transfers and assumptions contemplated hereby, the parties hereto agree to correct such errors and omissions, it being understood that, as far as practicable, all adjustments will be made consistent with the judgments, methods, policies or accounting principles utilized by RUS in preparing and maintaining accounting records.

Section 7.8 ***Further Assurances.*** The Bank shall execute such further documents to evidence the sale, conveyance, grant, assignment, and transfer of Assets to the Government as may be requested by the Government.

Section 7.9 ***Remedies***. The Government and the Bank may pursue all rights and remedies available to the Government and the Bank to enforce this Agreement, including, but not limited to, a suit for specific performance, injunctive relief, or damages. Nothing herein shall limit the rights of the Government and Bank to pursue such rights and remedies. Each right, power, and remedy of the Government and Bank shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power, or remedy.

Section 7.10 ***Notice.*** All notices and other communications hereunder to be made to any party shall be in writing and shall be addressed as specified below, as appropriate. The address or facsimile number for either party may be changed at any time and from time to time upon written notice given by such changing party to the other party hereto. A properly addressed notice or other communication shall be deemed to have been delivered at the time it is sent by facsimile (fax) transmission, provided that the original of such faxed notice or other communication shall have been received within five (5) business days.

RUS
Rural Utilities Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1500
Attention: Administrator
Fax: (202) 720-1725

The Bank
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1500
Attention: Asst. Secretary of the Bank
Fax: (202) 720-0810

Section 7.11 ***Waiver***. Either party hereto may waive its respective rights, powers or privileges under this Agreement; *provided, that* such waiver shall be in writing; *and further provided, that* no failure or delay on the part of either party to exercise any right, power or privilege under this Agreement shall operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege by either party under this Agreement, nor will any such waiver operate or be construed as a future waiver of such right, power or privilege under this Agreement.

Section 7.12 ***Severability***. If any provision of this Agreement is declared invalid or unenforceable, then, to the extent possible, all of the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

Section 7.13 ***No Obligation of Funds***. This Agreement is not a fiscal or funds obligation instrument. Nothing in this Agreement will be construed to affect the authorities of RUS or the Bank to act as provided by statute or regulation, or to bind either party beyond their respective authorities. In addition, nothing herein will be construed to require RUS or the Bank to obligate or expend funds in excess of available appropriations.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

UNITED STATES OF AMERICA

by _____
as Acting Administrator
of the Rural Utilities Service

RURAL TELEPHONE BANK

by _____
as Chairman of the Rural Telephone Bank

(Seal)

Attested to by:_____
Assistant Secretary
of the Rural Telephone Bank

SCHEDULE 1

LIQUIDATING ACCOUNT LOANS

Loan Designation	Borrower Name	Principal Balance

EXHIBIT A

CLASS A STOCK REDEMPTION CERTIFICATE

The **UNITED STATES OF AMERICA** (hereinafter the "Government,") acting through the Administrator of the Rural Utilities Service, successor to the Rural Electrification Administration, hereby delivers as of the date hereof all of its Class A Stock to the **RURAL TELEPHONE BANK** for redemption and cancellation.

The Government hereby acknowledges full payment and satisfaction for said Class A Stock.

UNITED STATES OF AMERICA

by _____
as Acting Administrator
of the Rural Utilities Service

Date: _____

ACKNOWLEDGED:

RURAL TELEPHONE BANK

by _____
as Chairman of the Rural Telephone Bank

STOCK REDEMPTION AGREEMENT (this "Agreement,") dated as of [date], 2005, is between the **RURAL TELEPHONE BANK** (the "Bank") a corporation existing under the laws of the United States of America, acting through the Chairman of the Bank and _____ (the "Holder,") a [corporation/limited liability company] existing under the laws of the State of [State].

WHEREAS, the Board of Directors of the Bank has authorized the liquidation and dissolution of the Bank and approved a plan of liquidation in a Resolution adopted at its board meeting held on August 4, 2005;

WHEREAS, the Bank and the United States of America ("Government,") acting through the Rural Utilities Service ("RUS,") have entered into a Loan Transfer Agreement, dated as of August 4, 2005, pursuant to which the Bank has conveyed to RUS the Bank's liquidating account loan portfolio as part of the consideration for RUS' agreement to return all of its Class A Stock to the Bank for redemption and cancellation;

WHEREAS, upon transfer to the Government, no further advances will be made on the Liquidating Account Loans, as hereinafter defined;

WHEREAS, pursuant to Section 411 of the Act (defined herein), the Bank will pay all of its liabilities and will redeem and cancel all of its outstanding Class A Stock;

WHEREAS, the Bank has converted the paper stock certificates of its outstanding shares of Class B Stock and Class C Stock to electronic "book-entry" certificates and has canceled its printed stock certificates;

WHEREAS, pursuant to the Board of Directors' plan of liquidation, the Bank is required to redeem all of its outstanding Class B Stock and Class C Stock;

WHEREAS, pursuant to Sections 2.2 and 2.4 of the Bylaws of the Bank, as amended, the Holder is the owner of certain shares of Class B Stock and/or Class C Stock of the Bank; and

WHEREAS, the Holder has heretofore adopted, executed, and returned the Redemption Resolution (defined herein), authorizing the undersigned to execute and deliver this Agreement to the Bank on behalf of the Holder;

THEREFORE, in consideration of the mutual promises and covenants herein contained, the parties agree and bind themselves as follows:

ARTICLE I

DEFINITIONS

"Act" means Title IV of the Rural Electrification Act of 1936, 7 U.S.C. § 941 *et seq.*, as amended.

"Agreement" means this Stock Redemption Agreement between the Bank and the Holder.

"Class A Stock" means all of the shares of Class A Stock of the Bank issued and outstanding pursuant to Section 406(c) of the Act.

"Class B Stock" means all of the shares of Class B Stock of the Bank issued and outstanding pursuant to Section 406(d) of the Act.

"Class C Stock" means all of the shares of Class C Stock of the Bank issued and outstanding pursuant to Section 406(e) of the Act.

"Financing Account Loan(s)" mean all loans of the Holder owed to or held by the Bank on or after October 1, 1991.

"Liquidating Account" means the Rural Telephone Bank Liquidating Account, as identified by Treasury account code 12-4231-0-3-452.

"Liquidating Account Loan(s)" mean all loans of the Holder owed to or held by the Bank before October 1, 1991, as listed on Schedule I.

"Loan Transfer Agreement" means the Loan Transfer Agreement, dated as of August 4, 2005, between the United States of America, acting through the Administrator of RUS, successor to the Rural Electrification Administration, and the Bank.

"Redemption Resolution" means that certain resolution passed by the board of directors or other governing body of the Holder which authorizes the execution and delivery of this Agreement by the undersigned on behalf of the Holder.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE HOLDER

Section 2.1 ***Representations and Warranties.*** The Holder does hereby represent and warrant as follows:

(a) The Holder is the lawful owner of Class B Stock and/or Class C Stock of the Bank in the amounts listed on Schedule II hereto.

(b) All of the information on Schedule II hereto is true and correct.

(c) The undersigned signatory for the Holder is duly authorized by the Holder to execute and deliver this Agreement on behalf of the Holder and to bind the Holder hereunder.

(d) The Redemption Resolution has been duly adopted by the board of directors or other governing body of the Holder and is currently in full force and effect and has not been repealed, modified, or amended by the Holder.

ARTICLE III

REDEMPTION OF CLASS B STOCK AND CLASS C STOCK

Section 3.1 ***Delivery of Shares***. The Holder hereby delivers all of its Class B Stock and/or Class C Stock of the Bank, in the amount(s) specified on Schedule II hereto, for redemption and cancellation.

Section 3.2 ***Redemption of Class B Stock***. From funds in the Liquidating Account, the Bank shall redeem at par all of the Holder's Class B Stock, in the amount specified in Schedule II hereto, pursuant to the terms of Section 411 of the Act and Section 2.2 of the Bylaws and shall cancel such Class B Stock.

Section 3.3 ***Redemption of Class C Stock***. Pursuant to Section 411 of the Act and Section 2.2 of the Bylaws, after payment of all of the Bank's liabilities, redemption of all outstanding Class A Stock, and redemption of all outstanding Class B Stock, all of the Holder's Class C Stock shall be redeemed from the remaining funds in the Liquidating Account as follows:

(a) If the funds remaining in the Liquidating Account are sufficient to redeem all outstanding Class C Stock at par, the Class C Stock shall be redeemed at par, as specified in Schedule II hereto; or

(b) If the funds remaining in the Liquidating Account are insufficient to redeem all outstanding Class C Stock at par, the Class C Stock shall be redeemed, as determined by the following formula:

$$\frac{\text{(Cash Remainder in Liquidating Account x Holder's number of Class C Stock)}}{\text{Total outstanding number of Class C Stock}}$$

The Bank shall thereafter cancel such Class C Stock.

Section 3.4 ***Payment***. All amounts to be paid to the Holder of Class B Stock and Class C Stock shall be paid as follows:

(a) Via wire transfer to the banking institution and account specified by the Holder on Schedule II hereto;

(b) No payments shall be made hereunder until one hundred and twenty (120) days from the date hereof; the Bank shall use reasonable best efforts to make payments on properly documented and undisputed claims received by such date within sixty (60) days thereafter; and

(c) Notwithstanding Paragraph 3.4(b), the Holder shall have no claim, with respect to the redemption of Class B or C Stock, to any amount other than that provided in Sections 3.2 and 3.3 hereof, and shall not be entitled to any interest or claims for payment delays.

Section 3.5 ***Release of Claims***. By executing this Agreement, the Holder hereby acknowledges and agrees that the redemption and cancellation by the Bank of the Class B Stock and Class C Stock held by the Holder as contemplated by this Agreement constitutes the full and complete satisfaction by the Bank of all of its obligations with respect to the redemption, payment and cancellation of the Class B Stock and Class C Stock owned by the Holder.

ARTICLE IV

NO FURTHER ADVANCES

Section 4.1 ***Liquidating Account.*** The Holder acknowledges and agrees that the Government, upon acquisition of the Bank's loan portfolio, shall make no further advances on the Liquidating Account Loan(s) and that unadvanced Liquidating Account Loan funds are hereby rescinded.

Section 4.2 ***Unadvanced Financing Account Loan Funds for Stock Purchases.*** The Holder acknowledges and agrees that the Government, upon liquidation or dissolution of the Bank, shall make no further advances on the portion of the Financing Account Loan(s) for purchases of Class B Stock and that such funds may be rescinded at the discretion of the Government.

ARTICLE V

MISCELLANEOUS

Section 5.1 ***Entire Agreement.*** This Agreement, together with the attached documents, which are incorporated herein, embodies the entire agreement of the parties hereto in relation to the subject matter herein and supersedes all prior understandings or agreements, oral or written, between the parties.

Section 5.2 ***Headings.*** The headings and subheadings contained in this Agreement, except the terms identified for definition in Article I and elsewhere in this Agreement, are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

Section 5.3 ***Counterparts.*** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Agreement.

Section 5.4 ***Governing Law.*** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE FEDERAL LAW OF THE UNITED STATES OF AMERICA, AND IN THE ABSENCE OF CONTROLLING FEDERAL LAW, IN ACCORDANCE WITH THE LAWS OF THE DISTRICT OF COLUMBIA.

Section 5.5 ***Successors.*** All terms and conditions of this Agreement shall be binding on the successors and assigns of the Bank and the Holder. Except as otherwise specifically provided in this Agreement, nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the Bank or the Holder, any legal or equitable right, remedy or claim under or with respect to this Agreement or any provisions contained herein, it being the intention of the parties hereto that this Agreement, the obligations and statements of responsibilities hereunder, and all other conditions and provisions hereof are for the sole and exclusive benefit of the Bank and the Holder.

Section 5.6 ***Modification; Assignment.*** No amendment or other modification, or assignment of any part of this Agreement shall be effective except pursuant to a written agreement subscribed by the duly authorized representatives of the parties hereto.

Section 5.7 ***Remedies***. The Bank may pursue all rights and remedies available to the Bank in connection with this Agreement, including, but not limited to, a suit for specific performance, injunctive relief or damages in connection with any fraud, misrepresentation, misstatement made by the Holder in this Agreement (including Schedule II hereto).

Section 5.8 ***Notice***. All notices and other communications hereunder to be made to the parties shall be in writing and shall be addressed as specified below as appropriate. The address, telephone number, or facsimile number for either party may be changed at any time and from time to time upon written notice given by such changing party to the other party. A properly addressed notice or other communication shall be deemed to have been delivered at the time it is sent by facsimile (fax) transmission, provided that the original of such faxed notice or other communication shall have been received within five (5) business days.

The Bank
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250-1500
Attention: Governor
Fax: (202) 720-0810

The Holder
As listed on Schedule II

Section 5.9 ***Severability***. If any provision of this Agreement is declared invalid or unenforceable, then, to the extent possible, all of the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

[HOLDER]

By: _____

Name:

Title:

RURAL TELEPHONE BANK

By: _____
as Chairman of the Rural Telephone Bank

SCHEDULE I

LIQUIDATING ACCOUNT LOANS OF THE HOLDER

Loan Designation — Balance as of October 1, 2005

SCHEDULE II

Name and Address of Holder:

_____
_____
_____
_____

Telephone Number of Holder:
Fax Number of Holder:

Wiring Instructions:

Name of Depository Bank: _____
Depository Bank's Routing Number: _____
Holder's Account Number with Depository Bank: _____

Class B Stock:

Number of Shares of Class B Stock Owned by the Holder: _____
Par Price of Class B Stock (Per Share): $1
Total Redemption Payment on Class B Stock: $_____

Class C Stock:

Number of Shares of Class C Stock Owned by the Holder: _____
Par Price of Class C Stock (Per Share): $1000
Total Redemption Payment on Class C Stock will be determined pursuant to Section 3.3.

Additional information regarding the progress of the liquidation and dissolution of the Bank can be found at the Bank's Web site at *http://www.usda.gov/rus/telecom/rtb/index_rtb.htm.*

Dated: August 12, 2005.

Jonathan P. Claffey,

Assistant Secretary, Rural Telephone Bank.

[FR Doc. 05–16338 Filed 8–17–05; 8:45 am]

BILLING CODE 3410–15–C

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 39–2005]

Foreign–Trade Zone 89 - Las Vegas, Nevada, Request to Remove Zone–Restricted Status Merchandise to U.S. Customs Territory

A request has been made to the Foreign–Trade Zones Board (the Board) by the Nevada Development Authority, grantee of FTZ 89, to remove certain zone–restricted merchandise (carpets from Iran - HTS 5701.10) from the zone to U.S. Customs territory. It was filed on August 5, 2005.

The Foreign–Trade Zones Board regulations provide that merchandise which has been given zone–restricted status (export only status) may be returned to the Customs territory of the United States if the FTZ Board

determines that the return would be in the public interest. (See 15 CFR '400.44.) Such returns are considered imports to the United States and are subject to the payment of duties and taxes, to the Customs laws and to other U.S. laws regarding such merchandise.

Public comment on the request is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses below:

1. *Submissions via Express/Package Delivery Services*: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or
2. *Submissions via U.S. Postal Service*: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW, Washington, DC 20230.

The closing period for their receipt is October 17, 2005.

Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 1, 2005.

A copy of the request will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at address No.1 listed above and at Nevada Development Authority, 3733 Howard Hughes Pkwy., Suite 140 South, Las Vegas, Nevada 89109.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–16397 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 41–2005]

Foreign–Trade Zone 49 -- Newark, New Jersey, Area, Application for Expansion

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board), by the Port Authority of New York and New Jersey, grantee of Foreign–Trade Zone 49, requesting authority to expand its zone to include a site in Kearny, New Jersey, within the Newark/New York Customs port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 9, 2005.

FTZ 49 was approved on April 6, 1979 (Board Order 146, 44 FR 22502, 4/16/79) and expanded on May 26, 1983 (Board Order 211, 48 FR 24958, 6/3/83); on October 23, 1987 (Board Order 365, 52 FR 41599, 10/29/87); on April 19, 1990 (Board Order 470, 55 FR 17478, 4/25/90); and, on December 15, 1999 (Board Order 1067, 64 FR 72642, 12/28/99).

The general–purpose zone project currently consists of five sites: *Site 1* (2,077 acres) -- Port Newark/Elizabeth Port Authority Marine Terminal; *Site 2* (64 acres) -- Global Terminal and Container Services and adjacent Jersey Distribution Services facility in Jersey City and Bayonne; *Site 3* (124 acres) -- Port Authority Industrial Park, adjacent to the Port Newark/Elizabeth Port Authority Marine terminal; *Site 4* (198 acres) -- Port Authority Auto Marine Terminal and adjacent Greenville Industrial Park in Bayonne and Jersey City, and *Site 5* (40 acres) -- the jet fuel storage and distribution system at Newark International Airport in Newark and Elizabeth.

The applicant is now requesting authority to expand the general–purpose zone to include a site (407 acres, Proposed Site 6) within a 441–acre industrial area located at 100 Central Avenue in Kearny (Hudson County). The site is partially developed and is comprised of buildings totaling 5,500,000 square feet, and is used primarily for manufacturing, warehousing and distribution activities. The majority of the site is owned by River Terminal Properties, Inc. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services*: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW, Washington, DC 20005; or,
2. *Submissions via the U.S. Postal Services*: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW, Washington, DC 20230.

The closing period for the receipt is October 17, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 1, 2005).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 744 Broad Street, Suite 1505, Newark, NJ 07102.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–16398 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 38–2005]

Foreign–Trade Zone 206 Jackson County, Oregon, Application For Subzone, Eastman Kodak Company, (X–ray film, Color Paper, Digital Media, Inkjet Paper, and Entertainment Imaging), White City and Medford, Oregon

An application has been submitted to the Foreign–Trade Zones Board (the Board) by Jackson County, Oregon, grantee of FTZ 206, requesting special–purpose subzone status with manufacturing authority (X–ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging) for the facilities of the Eastman Kodak Company (Kodak), located in White City and Medford, Oregon. The application was submitted pursuant to the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 5, 2005.

The facilities for which subzone status is proposed are on three sites (83.4 acres total; 359,901 sq. ft. of enclosed space) at the following locations: Site # 1 — 8124 Pacific Avenue in White City; Site # 2 — 2065 Lars Way in Medford; and Site # 3 — 2190 Joseph Street in Medford. The facilities (approximately 430 full- and part–time employees) would be used initially under FTZ procedures for manufacturing, processing, warehousing, and distributing "Dryview Laser Imaging Film" in bulk rolls and in packaged form (HTSUS categories 3921.90 and 9018.90, respectively, with duty rates ranging from duty–free to 4.2% *ad valorem*). For those finished products, foreign–sourced materials

account for approximately 20 percent of finished–product value. The application lists the following as the primary material inputs which may be sourced from abroad initially: film base (HTSUS category 3920.62), lids (3921.90), polyvinylbutyral (3907.10), "Deox 115" (2907.10), ethyl 2–cyano–3–hydroxy–butanoate (2926.90), "TBMSP" (2933.39), pyridinium hydrobromide perbromide (2933.31), and "HSR–2031 Masking" (2926.90). The application indicates that duty rates on those input materials range from duty–free to 6.5%.

The application also requests authority to include a broad range of inputs and final products that the plant may produce under FTZ procedures in the future within the categories of X–ray film, color paper, digital media, inkjet paper, entertainment imaging (i.e., motion picture film, consumer film and related chemicals), and health imaging (*i.e.*, other health imaging film, equipment and related chemicals). (New major activity in these inputs/products could require review by the FTZ Board.) General HTSUS categories of inputs include: 2620, 2710, 2803, 2804, 2806, 2811, 2812, 2815, 2825, 2827, 2832, 2833, 2836, 2838, 2842, 2843, 2846, 2851, 2901, 2902, 2903, 2904, 2906, 2907, 2908, 2909, 2911, 2914, 2915, 2916, 2917, 2918, 2920, 2921, 2922, 2924, 2925, 2926, 2928, 2930, 2931, 2933, 2934, 2935, 2942, 3004, 3402, 3503, 3507, 3701, 3702, 3703, 3704, 3705, 3706, 3707, 3824, 3901, 3903, 3905, 3906, 3907, 3910, 3912, 3917, 3919, 3920, 3921, 3923, 3924, 3926, 4008, 4009, 4010, 4016, 4017, 4202 (4202.12.6000, 4202.12.8030, 4202.91.0090, 4202.92.9026, 4202.92.9036, 4202.92.9060), 4203, 4415, 4504, 4703, 4802, 4805, 4808, 4811, 4818, 4819, 4820, 4821, 4823, 4901, 4902, 4905, 4906, 4908, 4909, 4910, 4911, 5906, 6804, 6909, 7003, 7004, 7005, 7006, 7007, 7008, 7013, 7014, 7020, 7106, 7108, 7112, 7412, 7419, 7606, 7607, 7609, 7616, 8101, 8108, 8302, 8306, 8308, 8309, 8405, 8412, 8413, 8414, 8415, 8418, 8419, 8420, 8421, 8422, 8423, 8428, 8431, 8439, 8441, 8443, 8466, 8467, 8470, 8471, 8472, 8473, 8476, 8477, 8479, 8480, 8481, 8485, 8501, 8503, 8504, 8505, 8506, 8507, 8511, 8512, 8513, 8514, 8515, 8516, 8518, 8521, 8523, 8524, 8525, 8528, 8529, 8531, 8532, 8533, 8534, 8535, 8536, 8537, 8538, 8539, 8540, 8541, 8542, 8543, 8544, 8545, 8546, 8547, 9001, 9002, 9005, 9006, 9007, 9008, 9009, 9010, 9011, 9013, 9015, 9016, 9017, 9018, 9022, 9023, 9024, 9025, 9026, 9027, 9028, 9029, 9030, 9031, 9032, 9033, 9106, 9402, 9405, 9612, and 9705. The duty rates on these products range from duty–free to 38%. Final products that may be produced from the inputs listed above include these general HTSUS categories: 2710, 2803, 2804, 2806, 2811, 2812, 2815, 2825, 2827, 2832, 2833, 2836, 2838, 2842, 2843, 2846, 2851, 2901, 2902, 2903, 2904, 2906, 2907, 2908, 2909, 2911, 2914, 2915, 2916, 2917, 2918, 2920, 2921, 2922, 2924, 2925, 2926, 2928, 2930, 2931, 2933, 2934, 2935, 2942, 3004, 3402, 3503, 3507, 3701, 3702, 3703, 3704, 3705, 3706, 3707, 3824, 3901, 3903, 3905, 3906, 3907, 3910, 3912, 3917, 3919, 3920, 3921, 3923, 3924, 3926, 4008, 4009, 4010, 4016, 4017, 4202 (4202.12.6000, 4202.12.8030, 4202.91.0090, 4202.92.9026, 4202.92.9036, 4202.92.9060), 4203, 4415, 4504, 4703, 4802, 4805, 4808, 4811, 4818, 4819, 4820, 4821, 4823, 4901, 4902, 4905, 4906, 4908, 4909, 4910, 4911, 5906, 6804, 6909, 7003, 7004, 7005, 7006, 7007, 7008, 7013, 7014, 7020, 7106, 7108, 7112, 7412, 7419, 7606, 7607, 7609, 7616, 8101, 8108, 8302, 8306, 8308, 8309, 8405, 8412, 8413, 8414, 8415, 8418, 8419, 8420, 8421, 8422, 8423, 8428, 8431, 8439, 8441, 8443, 8466, 8467, 8470, 8471, 8472, 8473, 8476, 8477, 8479, 8480, 8481, 8485, 8501, 8503, 8504, 8505, 8506, 8507, 8511, 8512, 8513, 8514, 8515, 8516, 8518, 8521, 8523, 8524, 8525, 8528, 8529, 8531, 8532, 8533, 8534, 8535, 8536, 8537, 8538, 8539, 8540, 8541, 8542, 8543, 8544, 8545, 8546, 8547, 9001, 9002, 9005, 9006, 9007, 9008, 9009, 9010, 9011, 9013, 9015, 9016, 9017, 9018, 9022, 9023, 9024, 9025, 9026, 9027, 9028, 9029, 9030, 9031, 9032, 9033, 9106, 9402, 9405, 9612, and 9705. The duty rates on these products range from duty–free to 38%.

Zone procedures would exempt Kodak from Customs duty payments on foreign components used in export production. On its domestic sales, Kodak would be able to choose the lower duty rate that applies to the finished products for foreign components, when applicable. Kodak would also be able to avoid duty on foreign inputs which become scrap/waste, estimated at five percent of FTZ–related savings. Kodak may also realize logistical/procedural and other benefits from subzone status. All of the above–cited savings from zone procedures could help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade–Zones Board, U.S. Department of Commerce, Franklin Court Building--Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or
2. Submissions Via the U.S. Postal Service: Foreign–Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is October 17, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 1, 2005.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at address Number 1 listed above and at Jackson County, Office of the County Administrator, Room 214, 10 South Oakdale, Medford, Oregon 97501.

Dated: August 11, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–16395 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 40–2005]

Foreign–Trade Zone 163 - Ponce, Puerto Rico Area, Application for Expansion

An application has been submitted to the Foreign–Trade Zones Board (the Board) by CODEZOL, C.D., grantee of FTZ 163, requesting authority to expand FTZ 163, in the Ponce, Puerto Rico area, adjacent to the Ponce Customs port of entry. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 8, 2005.

FTZ 163 was approved on October 18, 1989 (Board Order 443, 54 FR 46097, 11/01/89) and expanded on April 18, 2000 (Board Order 1091, 65 FR 24676, 4/27/00) and June 9, 2005 (Board Order 1397, 70 FR 36117, 6/22/05). The zone project currently consists of the following sites in the Ponce, Puerto Rico, area: *Site 1* (106 acres)-within the Port of Ponce area, including a site (11

acres) located at 3309 Avenida Santiago de los Caballeros, Ponce; *Site 2* (191 acres, 5 parcels)-Peerless Oil & Chemicals. Inc., petroleum terminal facilities located at Rt. 127, Km. 17.1, Penuelas; *Site 3* (13 acres, 2 parcels)-Rio Piedras Distribution Center located within the central portion of the Quebrada Arena Industrial Park, and the Hato Rey Distribution Center located within the northeastern portion of the Tres Monjitas Industrial Park, San Juan; *Site 4* (14 acres)-warehouse facility located at State Road No. 3, Km. 1401, Guayama (expires 10/1/04); *Site 5* (256 acres, 34 parcels)-Mercedita Industrial Park located at the intersection of Route PR–9 and Las Americas Highway, Ponce; and, *Site 6* (86 acres)-Coto Laurel Industrial Park located at the southwest corner of the intersection of Highways PR–56 and PR–52, Ponce. The sites are principally owned by the Port of Ponce, Vassallo Industries, Inc., and Desarrollos E Inversiones Del Sur, Inc.

The applicant is requesting authority to expand the zone to include an additional site in Cataño, located 5 miles from San Juan: *Proposed Site 7* (7 acres)-industrial park, State Road 869, at Barrio Las Palmas, Cataño. The site is principally owned by Able Sales, Inc. CODEZOL is requesting FTZ status for this site as part of FTZ 163 because the proposed site is related to existing activity at FTZ 163 (Site 1). No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses below:

1. *Submissions via Express/Package Delivery Services*: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building–Suite 4100W, 1099 14th Street, NW, Washington, DC *20005*; or

2. *Submissions via U.S. Postal Service*: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW, Washington, DC *20230*.

The closing period for their receipt is October 17, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 1, 2005).

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at address No. 1 listed above and CODEZOL, C.D., 3309 Avenida Santiago de los Caballeros, Ponce, Puerto Rico 00734.

Dated: August 9, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–16396 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1405]

Grant Of Authority For Subzone Status, Ortho Biologics, LLC, (Pharmaceutical Intermediates), Manatí, Puerto Rico

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for ". . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Puerto Rico Industrial Development Corporation, grantee of FTZ 7, has made application to the Board for authority to establish special–purpose subzone status at the pharmaceutical intermediate manufacturing plant of Ortho Biologics, LLC (OBI) in Manatí, Puerto Rico (FTZ Docket 53–2004, filed 11–19–04).

Whereas, notice inviting public comment has been given in the **Federal Register** (69 FR 70121, 12/02/04); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to pharmaceutical intermediates at the manufacturing plant of Ortho Biologics, LLC, located in Manatí, Puerto Rico (Subzone 7H), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 4th day of August 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–16401 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1407]

Expansion of Foreign–Trade Zone 167, Green Bay, Wisconsin

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the County of Brown, Wisconsin, grantee of Foreign–Trade Zone 167, submitted an application to the Board for authority to expand FTZ 167–Site 1 to include additional parcels in Brown County and to expand the zone to include a site (1,617 acres, Site 2) in Winnebago County, Wisconsin, within the Green Bay Customs port of entry (FTZ Docket 51–2004; filed 11/12/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 67699, 11/19/04; 69 FR 70122, 12/2/04) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 167 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000–acre activation limit for the overall zone project.

Signed at Washington, DC, this 4th day of August 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–16402 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–866]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 18, 2005.

SUMMARY: We preliminarily determine that imports of superalloy degassed chromium from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended. Interested parties are invited to comment on this preliminary determination. We will make our final determination within 75 days after the date of this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Janis Kalnins or Minoo Hatten, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1392 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2005, the Department of Commerce (the Department) initiated the antidumping investigation of superalloy degassed chromium from Japan. *See Initiation of Antidumping Duty Investigation: Superalloy Degassed Chromium from Japan*, 70 FR 16220 (March 30, 2005) (*Initiation Notice*). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice.* We received comments regarding product coverage from interested parties. For a detailed discussion of the comments regarding the scope of the merchandise under investigation, please see the "Scope Comments" section below.

On March 31, 2005, the Department issued quantity and value (Q&V) questionnaires to nine potential respondents. On April 19, 2005, we issued a memorandum to the file including the responses of eight of the nine companies from which we requested Q&V information. *See* Memorandum from Susan Lehman to the File entitled "Superalloy Degassed Chromium from Japan Mini Quantity and Value Questionnaire Responses." On April 28, 2005, we concluded that the only potential respondent was JFE Material Co., Ltd. (JFE Material). *See* the Memorandum from Thomas Schauer to the File entitled "Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan Respondent Selection" (Respondent Selection Memo). On May 3, 2005, we issued a memorandum to the file including the response of the ninth company (Sojitz Corporation) from which we requested Q&V information. The response we received from Sojitz Corporation to our Q&V questionnaire did not alter out conclusion that JFE Material was the only potential respondent. *See* Memorandum from Susan Lehman to the File entitled "Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan Sojitz Corporation."

On April 21, 2005, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan of superalloy degassed chromium. *See Superalloy Degassed Chromium from Japan*, 70 FR 20771 (April 21, 2005).

On April 29, 2005, we issued Sections A, B, C, D, and E[1] of the antidumping questionnaire to JFE Material. We did not receive a response from JFE Material by the close of business on June 6, 2005, the established deadline. On June 8, 2005, we issued a letter to JFE Material extending the deadline for submission of the antidumping questionnaire response to June 15, 2005, thereby affording it additional time to respond. We received no response from JFE Material to our questionnaire nor any other communication from JFE Material since we issued the questionnaire.

[1] Section A of the antidumping duty questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all of the company's home-market sales of the foreign like product or, if the home market is not viable, of sales of the foreign like product in the most appropriate third-country market. Section C requests a complete listing of the company's U.S. sales of subject merchandise. Section D requests information of the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further-manufacturing activities.

Period of Investigation

The period of investigation is January 1, 2004, through December 31, 2004.

Scope of Investigation

The product covered by this investigation is all forms, sizes, and grades of superalloy degassed chromium from Japan. Superalloy degassed chromium is a high–purity form of chrome metal that generally contains at least 99.5 percent, but less than 99.95 percent, chromium. Superalloy degassed chromium contains very low levels of certain gaseous elements and other impurities (typically no more than 0.005 percent nitrogen, 0.005 percent sulphur, 0.05 percent oxygen, 0.01 percent aluminum, 0.05 percent silicon, and 0.35 percent iron). Superalloy degassed chromium is generally sold in briquetted form, as "pellets" or "compacts," which typically are 1½ inches x 1 inch x 1 inch or smaller in size and have a smooth surface. Superalloy degassed chromium is currently classifiable under subheading 8112.21.00 of the Harmonized Tariff Schedule of the United States (HTSUS). This investigation covers all chromium meeting the above specifications for superalloy degassed chromium regardless of tariff classification.

Certain higher–purity and lower–purity chromium products are excluded from the scope of this investigation. Specifically, the investigation does not cover electronics–grade chromium, which contains a higher percentage of chromium (typically not less than 99.95 percent), a much lower level of iron (less than 0.05 percent), and lower levels of other impurities than superalloy degassed chromium. The investigation also does not cover "vacuum melt grade" (VMG) chromium, which normally contains at least 99.4 percent chromium and contains a higher level of one or more impurities (nitrogen, sulphur, oxygen, aluminum and/or silicon) than specified above for superalloy degassed chromium.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations (*see Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997)), in our *Initiation Notice* we set aside a period of time for

parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. We granted extensions to the time limit for submitting scope comments on May 3, 2005, and May 17, 2005.

On May 24, 2005, Mitsui & Co. (U.S.A.), Inc. (Mitsui), submitted timely scope comments in which it argued that the Department should revise the language of the scope to clarify that chromium metal with a chromium content either below 99.5 percent or equal to or above 99.95 percent is excluded from the scope. On June 3, 2005, Eramet Marietta Inc. and Paper, Allied–Industrial, Chemical and Energy Workers International Union (the petitioners) submitted rebuttal comments to Mitsui's scope comments. The petitioners argue that Mitsui's "proposed changes are contrary to the intent of the petition and would permit wholesale circumvention." On June 10, 2005, Mitsui submitted rebuttal comments arguing that, contrary to the petitioners' assertions, creating a more finite scope definition is necessary to counteract circumvention. On June 24, 2005, the petitioners submitted rebuttal comments to Mitsui's June 10, 2005, submission, arguing against Mitsui's proposed changes to the scope of this investigation.

On May 24, 2005, Tosoh Corporation and Tosoh Specialty Material Corporation (collectively, Tosoh) submitted scope comments in which it argued that the following products produced and/or exported by Tosoh are outside the scope of the proceeding on superalloy degassed chromium: certain chromium sputtering targets and spent sputtering targets without a metal backing plate; certain chromium sputtering targets with a metal backing plate; certain chromium ingots; non–degassed chromium metal flakes. Tosoh claimed that the petitioners agreed with their assertion. In their June 1, 2005, submission, the petitioners agreed with Tosoh that it would be appropriate for the Department to determine that the above–mentioned products are outside the scope of the investigation. On August 4, 2005, the petitioners provided additional clarification with respect to their position on Tosoh's scope–clarification request.

We do not have the technical information at this time to determine whether clear chromium–content parameters exist which define superalloy degassed chromium. As such, we have not made a decision with respect to Mitsui's scope comments. Further, we continue to evaluate the scope comments with respect to Tosoh's scope–clarification request and the petitioners' August 4, 2005, suggested scope language.

The Department invites all interested parties to submit comments with respect to the scope by September 1, 2005, and rebuttal comments by September 7, 2005. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consideration is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the final determination.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to JFE Material.

A. Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (the Act), provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act further states that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, JFE Material did not provide pertinent information we requested that is necessary to calculate an antidumping margin for the preliminary determination. Specifically, JFE Material did not respond to the Department's questionnaire, which is necessary for the Department to complete its calculations. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we have based JFE Material's dumping margin on facts otherwise available.

B. Application of Adverse Inferences for Facts Available

In applying the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination: Certain Circular Welded Carbon–Quality Line Pipe From Mexico*, 69 FR 59892 (October 6, 2004).

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 accompanying the Uruguay Round Agreements Act, H. Doc. No. 103–316, at 870 (1994) (SAA). Further, "affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties*, 62 FR 27355 (May 19, 1997). Although the Department provided the respondent with notice of the consequences of failure to respond adequately to the questionnaire in this case, JFE Material did not respond to the questionnaire. This constitutes a failure on the part of JFE Material to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776 of the Act. Therefore, the Department has preliminarily determined that, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (the Department applied total AFA where the respondent failed to

respond to the antidumping questionnaire).

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent 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 authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. *See* also 19 CFR 351.308(c) and SAA at 829–831. In this case, because we are unable to calculate a margin based on JFE Material's own data and because an adverse inference is warranted, we have assigned to JFE Material the margin alleged in the petition and which we included in the notice of initiation of this investigation. *See Initiation Notice*, 70 FR at 16222.

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition), it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* 19 CFR 351.308(d) and SAA at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the petition during our pre–initiation analysis. *See* the March 24, 2005, Office of AD/CVD Operations Initiation Checklist (*Initiation Checklist*) on file in Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

For this preliminary determination, we examined evidence supporting the calculations in the petition to determine the probative value of the margins in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export–price and normal–value calculations on which the margins in the petition were based. We find that the estimated margin we set forth in the *Initiation Notice* has probative value. *See* Memorandum to the File from Dmitry Vladimirov entitled "Preliminary Determination in the Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan: Corroboration of Total Adverse Facts Available Rate," dated August 11, 2005. Therefore, in selecting AFA with respect to JFE Material, we have applied the margin rate of 129.32 percent, the highest estimated dumping margin set forth in the notice of initiation. *See Initiation Notice.*

All Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted–average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that the Department may weight–average margins other than the zero, *de minimis*, or facts–available margins to establish the all others rate. When the data does not permit weight–averaging such other margins, the SAA provides that the Department may use any other reasonable methods. *See* SAA at 873.

Because the petition contained only one estimated dumping margin and the sole respondent did not provide a questionnaire response, there are no additional estimated margins available with which to create the all others rate. *See Notice of Final Determination of Sales at Less Than Fair Value: Ferrovandium from the Republic of South Africa*, 67 FR 71136 (November 29, 2002). Therefore, we are using the initiation margin of 129.32 percent as the all others rate.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of superalloy degassed chromium from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average margin, as indicated in the chart below. These suspension–of-liquidation instructions will remain in effect until further notice. The weighted–average dumping margins are as follows:

Manufacturer or Exporter	Weighted–Average Margin (percent)
JFE Material Co., Ltd. ..	129.32
All Others	129.32

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination of sales at less than fair value. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for the Commission's determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than 30 days after the publication of this notice. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We will make our final determination within 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: August 11, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4515 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 050808218–5218–01]

Effect of the Propane Education and Research Council's Operation, Market Changes and Federal Programs on Propane Consumers

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Department of Commerce (the Department) is seeking public comment on whether the operation of the Propane Education and Research Council (PERC), in conjunction with the cumulative effects of market changes and Federal programs, has had an effect on residential, agricultural, process and nonfuel users of propane. This notice of inquiry is part of an effort to collect information to fulfill requirements under the Propane Education and Research Act of 1996 that established PERC and requires the Secretary of Commerce to assess the impact of PERC's activities on propane consumers.

DATES: Comments on this notice must be submitted on or before September 19, 2005.

ADDRESSES: You may submit comments by any of the following methods:

E-mail: *Shannon_Fraser@ita.doc.gov.* Include the phrase "Propane Price Impacts on Consumers" in the subject line;

Fax: (202) 482–0170 (Attn: Shannon Fraser);

Mail or Hand Delivery/Courier: Shannon Fraser, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Suite 4053, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For questions on the submission of comments or to request copies of submitted comments, contact Shannon Fraser by telephone at (202) 482–3609, or e-mail at *Shannon_Fraser@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: The Propane Education and Research Act of 1996 (Pub. L. 104–284) established the Propane Education and Research Council to enhance consumer and employee safety and training, to provide for research and development of clean and efficient propane utilization equipment, and to inform and educate the public about safety and other issues associated with the use of propane.

Section 12 of the Act requires the Secretary of Commerce to prepare and submit to Congress and the Secretary of Energy a report examining whether operation of the Council, in conjunction with the cumulative effects of market changes and Federal programs, has had an effect on propane consumers, including residential, agriculture, process, and nonfuel users of propane. The Secretary of Commerce shall consider and, to the extent practicable, shall include in the report submissions by propane consumers, and shall consider whether: (1) There have been long-term and short-term effects on propane prices as a result of the Council's activities and Federal programs; and (2) whether there have been changes in the proportion of propane demand attributable to various market segments. If the Secretary of Commerce concludes that there has been an adverse effect related to the Council's activities, the Secretary of Commerce shall make recommendations for correcting the situation.

In order to assist in the preparation of this study, the Department is seeking public comment on the effect of PERC's operation, market changes and Federal programs on propane consumers. For information on the operation and programs of PERC, you may visit PERC's Web site at *http://www.propanecouncil.org* or call PERC at (202) 452–8975.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on September 19, 2005. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying. All comments must be submitted to the Department through one of the methods listed under **ADDRESSES**.

The office does not maintain a separate public inspection facility. If you would like to view any comments received in response to this solicitation, please contact the individual listed in **FOR FURTHER INFORMATION CONTACT**.

Joseph Bogosian,

Deputy Assistant Secretary for Manufacturing.

[FR Doc. E5–4514 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061405A]

Taking Marine Mammals Incidental to Specified Activities; Port Sutton Navigation Channel, Tampa Bay, FL

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

ACTION: Notice of receipt of application and proposed authorization for an incidental take authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Army Corps of Engineers-Jacksonville District (Corps) for authorizations to take marine mammals, by harassment, incidental to expanding and deepening the Port Sutton Navigation Channel in Tampa Harbor, FL (Port Sutton project). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a 1–year Incidental Harassment Authorization (IHA) to the Corps to incidentally take, by harassment, bottlenose dolphins (*Tursiops truncatus*) as a result of conducting this activity and the Corps' application for regulations.

DATES: Comments and information must be received no later than September 19, 2005.

ADDRESSES: Comments on the application should be addressed to Steve Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Species, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Md 20910. The mailbox address for providing e-mail comments on this action is *PR1.061405A@noaa.gov.* Comments sent via email, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of references used in this document may be obtained by writing to the address

provided or by telephoning the contact listed under the heading **FOR FURTHER INFORMATION CONTACT**. Publications referenced in this document are available for viewing, by appointment during regular business hours, at the address provided here during this comment period.

FOR FURTHER INFORMATION CONTACT: Layne Bolen, NMFS, (301) 713–2289, ext 117.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and provided that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA now defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals.

Summary of Request

On February 26, 2004, NMFS received a request from the Corps for an authorization to take bottlenose dolphins incidental to using blasting during enlargement of the Port Sutton Navigation Channel, a part of the Tampa Harbor Federal Navigation Project, in the northern portion of Tampa Bay, Hillsborough County, Florida. The purpose of the project is to enlarge the navigation channel to accommodate larger vessels and incorporate an additional channel segment into the Federal channel. Completion of the dredging project may employ blasting and/or a clamshell or cutterhead dredge. The dredging will remove approximately 900,000 cubic yards of material from the existing navigation channel and extension. The Corps proposes to widen the 3,930–ft (1,198–m) long navigation channel to 290 feet (88 m) bottom-width, deepen to 42 feet (13 m) at mean low-low water (mllw), and lengthen the channel to 6,195 ft (1,888 m) in length with the previously discussed dimensions. Material removed from the dredging will be placed in the existing upland dredged material management area CMDA–2D. The project is proposed to start in March, 2006 and last approximately 18 months.

The Corps expects the contractor to employ underwater confined blasting and dredging to construct the project. Blasting may have adverse impacts on bottlenose dolphins and manatees (*Trichechus manatus latirostris*) inhabiting the area near or utilizing the northern portion of Tampa Bay. Dolphins and other marine mammals have not been documented to be directly affected by dredging activities other than blasting.

While the Corps does not presently have a blasting plan from the contractor, which will specifically identify the number of holes that will be drilled, the amount of explosives that will be used for each hole, the number of blasts per day (usually no more than 3/day), or the number of days the construction is anticipated to take to complete, the Corps submitted a description of a completed project in San Juan Harbor, Puerto Rico as an example. For that project, the maximum weight of the explosives used for each event was 375 lbs (170 kg) and the contractors detonated explosives once or twice daily from July 16 to September 9, for a total of 38 individual detonations. Normal practice is for each charge to be placed approximately 5 - 10 ft (1.5 - 3 m) deep within the rock substrate, depending on how much rock needs to be broken and how deep a channel depth is authorized. The charges are placed in the holes and tamped with rock. Therefore, if the total explosive weight needed is 375 lbs (170 kg) and they have 10 holes, they would average 37.5 lbs (17.0 kgs)/hole. However, a more likely weight for this project may be only 90 lbs (41 kgs) total and, therefore, 9 lbs (4.1 kg)/hole. Charge weight and other determinations are expected to be made by the Corps and the contractor approximately 30–60 days prior to commencement of the construction project. Because the charge weight and other information is not presently available, NMFS will require the Corps to provide this information to NMFS, including calculations for impact/mitigation zones to protect marine mammals from injury, prior to commencing work. However, as described later in this document, mitigation measures will require the Corps to limit detonations to the minimum level necessary to accomplish the task and the larger the charge weight, the greater the safety zone that will be required to protect marine mammals.

Summary of Request for Regulations

While the Corps was coordinating with NMFS on the application and issuance of an IHA for the Miami Turning Basin in early 2003 (see 68 FR 32016, May 29, 2003), the Corps identified several additional Federal navigation projects that might need similar MMPA authorizations within the next few years, if confined blasting is used as a construction technique. To ensure consistency across MMPA authorizations for these dredging projects, and efficiency for both agencies, NMFS recommended that the Corps apply for these authorizations under section 101(a)(5)(A) of the MMPA, instead of individually under section 101(a)(5)(D) of the MMPA. This request was received on December 1, 2003. At this time the Miami Turning Basin project, the Alafia River project (see 69 FR 29693, May 25, 2004) and this project are proposed to be covered by the section 101(a)(5)(A) rulemaking. This rule, if implemented, and Letters of Authorization (LOA) issued under that rule, would replace the IHA process for these activities in the Jacksonville District. Each application for an LOA for additional projects within the Jacksonville District for confined blasting within the District would require separate public review and comment, prior to issuance of an LOA.

NMFS expects to start this rulemaking shortly.

Description of the Marine Mammals Affected by the Activity

General information on marine mammal species found off the east coast of the United States can be found in Waring et al. (2001, 2002). These reports are available on the Internet at the following location: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*

Bottlenose dolphins and West Indian manatees are the only marine mammal species expected in the activity area. However, take authorizations for manatees are issued by the U.S. Fish and Wildlife Service (USFWS) and are not covered by this proposed IHA or any future rulemaking for LOAs issued by NMFS. Wang *et al.* (2002) provides the following minimum population estimates for the Gulf of Mexico bottlenose dolphin stocks: outer shelf, 43,233; shelf and slope, 4,530; western Gulf, 2,938; northern Gulf, 3,518; eastern Gulf, 8,953; and Bay, Sound & Estuarine waters, 3,933.

The best estimate is that the Tampa Bay bottlenose dolphin population (which includes any dolphins within the Port Sutton project area) consists of 559 individuals (Wang *et al.*, 2002). Previous population estimates for Tampa Bay include Wells *et al.* (1996), Weigle (1990), Scott *et al.* (1989) Wells (1986), Thompson (1981), and O'Dell and Reynolds (1980). A monitoring study of bottlenose dolphins in Tampa Bay was conducted from 1988–1993. The results of that study were published in Wells *et al.* (1996). It is the most recent study of those animals currently available (R. Wells, pers. comm. to T. Jordan, Corps, 2004). The study identified a population size ranging between 437 and 728 individuals utilizing three different survey and population estimation techniques. Some of these animals have been shown to be in the vicinity of the Port Sutton channel. In a subsequent examination of the data, Urian (2002) identified five populations of bottlenose dolphins in Tampa Bay. Neither the Corps nor NMFS has determined if bottlenose dolphins in the Tampa Bay area utilize the Port Sutton channel directly. Wells et al. (1996), shows animals in the vicinity of the project area, but no detailed information is provided regarding area usage. The bottom of the basin is rock and sand, and the walls of the turning basin are vertical rock. The Corps recognizes that while the Port Sutton area may not be suitable habitat for dolphins in Tampa Bay, based on Urian's (2002) findings it is likely that animals may enter the vicinity of the channel.

Potential Effects on Marine Mammals

According to the Corps, bottlenose dolphins and other marine mammals have not been documented to be directly affected by dredging activities and therefore the Corps does not anticipate any incidental harassment of bottlenose dolphins by dredging. However, potential impacts to marine mammals from explosive detonations include both lethal and non-lethal injury, as well as Level B harassment. Marine mammals may be killed or injured as a result of an explosive detonation due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are likely to be most severe in near-surface waters where the reflected shock wave creates a region of negative pressure called "cavitation." This is a region of near total physical trauma within which no animals would be expected to survive. A second possible cause of mortality or lethal injury is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The onset of extensive lung hemorrhage for marine mammals will vary depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range.

NMFS has also established criteria for determining non-lethal injury (Level A harassment)and non-injurious harassment (Level B harassment) from underwater explosions (see 66 FR 22450, May 4, 2001). For non-lethal injury from explosives the criteria are established as the peak pressure that will result in: (1) the onset of slight lung hemorrhage, or (2) a 50–percent probability level for a rupture of the tympanic membrane. These are injuries from which animals would be expected to recover on their own.

Although each of the tamped charges are fairly small (probably less than the 37 lbs (16.8 kg) per drilled hole used in Puerto Rico) and detonation staggered to reduce total pressure, the maximum horizontal extent for mortality/lethal injury and non-lethal injury (Level A harassment), estimated based on the total charge weight (375 lbs in the case of Puerto Rico) would be less than 1875 ft (571 m) and 3750 ft (1143 m) respectively. As these distances are based on an open-water charge calculation, and as stemmed/confined blasts result in a significant decrease in the strength of the pressure wave released as compared to an open water blast, the zones for mortality and non-serious injury would be significantly less than these distances. As a result of these small impact zones, the relatively shallow waters for blasting, and the nature of bottlenose dolphins to remain in surface waters, the biological monitoring (aerial- and vessel-based) is expected to be effective in locating all marine mammals prior to them entering an area where injury or mortality might result and thereby preventing any takes by injury or mortality.

NMFS has also established dual criteria for what constitutes Level B acoustic harassment for all marine mammals by large scale detonations: (1) an energy-based temporary threshold shift (TTS) from received sound levels of 182 dB re 1 microPa^2–sec cumulative energy flux in any 1/3 octave band above 100 Hz for odontocetes (derived from experiments with bottlenose dolphins (Ridgway *et al.*, 1997; Schlundt *et al.*, 2000); and (2) 12 psi peak pressure (cited by Ketten (1995) as associated with a safe outer limit for minimal, recoverable auditory trauma (i.e., TTS)). Recently, Finneran *et al.* (2002) found that TTS can be induced from single impulses at a peak pressure level of 160 kPa (23 psi), pk-pk pressures of 226 dB re 1 microPa, and total energy flux density of 186 dB re 1 mPa^2–s (as tested in belugas). Thresholds returned to within 2 dB of the pre-exposure value approximately 4 minutes post exposure. However, no masked TTS was observed in the single bottlenose dolphin tested at the highest exposure conditions: peak pressure of 207 kPa (30 psi), 228 dB re 1 microPa pk-pk pressure, and 188 dB re 1 mPa^2–s total energy flux. NMFS considers this conservative since a 23–psi pressure level was below the level that induced TTS in bottlenose dolphins. The Level B harassment zone, therefore, is the distance from the mortality/serious injury zone to the radius where neither of these criteria is exceeded.

Mitigation

The Corps proposes to establish and monitor caution- and safety-zone radii to ensure that bottlenose dolphins will not be injured or killed during blasting and that impacts will be at the lowest level practicable. In the absence of acoustic measurements of the shock and pressure waves emanating from the detonations (due to the high cost and complex instrumentation needed), the following equations have been proposed by the Corps for blasting projects to determine zones for injury or mortality from an open water explosion and to

assist the Corps in establishing mitigation to reduce impacts to the lowest level practicable. The equations, based on Young (1991), are:
Caution Zone Radius (R) = 260 (W)⅓
Safety Zone Radius (R) = 520 (W)⅓

with radius (R) = 260 times or 520 times the cube root of the weight (W) of the explosive charge where R = radius of the zone in feet and W = weight of the explosive charge in lbs/delay. The Caution Zone represents the radius in feet from the detonation beyond which mortality would not be expected from an open-water blast. The Safety Zone is the approximate distance in feet beyond which injury (Level A harassment) is unlikely from an open-water explosion. These zones will be used for implementing mitigation measures to protect both marine mammals and sea turtles, although this activity area apparently does not include known sea turtle habitat.

These equations are believed to be conservative because they are based on (1) humans, who are more sensitive to the effects from the pressure wave of the detonation than are dolphins, and (2) unconfined charges while the proposed blasts in the Port Sutton channel will be confined (stemmed) charges (i.e., placed in a hole drilled in rock and tamped with rock). Studies (e.g., Nedwell and Thandavamoorthy, 1992) have shown that stemmed/confined blasts have a greater than 90 percent decrease in the strength of the pressure wave released as compared to an open water blast.

In the area where explosives are required to obtain channel design depth for each explosive charge, the Corps proposes that detonation will not occur if a marine mammal is sighted within the Safety Zone by a member of the marine mammal observer program.

Although the Caution Zone is considered to be an area for potential mortality, the Corps and NMFS believe that because all explosive charges will be stemmed, the true areas for potential mortality and injury will be significantly smaller than this area and, therefore, for reasons mentioned previously, it is unlikely that even non-serious injury will occur. This is particularly true in this case, since bottlenose dolphins are commonly found on the surface of the water and implementation of a mitigation/monitoring program is unlikely to miss bottlenose dolphins in such a small area.

Additional mitigation measures that will significantly lower potential impacts to marine mammals (and sea turtles) include: (1) confining the explosives in a hole with drill patterns restricted to a minimum of 8 ft (2.44 m) separation from any other loaded hole; (2) restricting the hours of detonation from 2 hours after sunrise to 1 hour before sunset to ensure adequate observation of marine mammals in the safety zone; (3) staggering the detonation for each explosive hole in order to spread the explosive's total overpressure over time, which in turn will reduce the radius of the caution zone; (4) capping the hole containing explosives with rock in order to reduce the outward potential of the blast, thereby reducing the chance of injuring a dolphin or manatee; (5) matching, to the extent possible, the energy needed in the "work effort" of the borehole to the rock mass to minimize excess energy vented into the water column; and (6) conducting a marine mammal watch with no less than two qualified observers from a small water craft and/or an elevated platform on the explosives barge, at least 30 minutes before and continuing for 30 minutes after each detonation to ensure that there are no dolphins, manatees or sea turtles in the area at the time of detonation.

Monitoring Program

The Corps proposes to implement aerial and vessel-based observer monitoring programs. The vessel-based observer program will take place in a circular area at least three times the radius of the above described Caution Zone (called the watch zone). Detonation will not occur if a marine mammal or sea turtle is sighted within the safety zone and will be delayed until the animal(s) move(s) out of the safety zone on its own volition. The aerial and vessel-based marine mammal watch is proposed to be conducted for at least a half hour before and after the time of each detonation.

Reporting

NMFS proposes to require the Corps to submit a report of activities 120 days before the expiration of the proposed IHA if the proposed work has started. This report will include the status of the work being undertaken, marine mammals sighted during the monitoring period, any behavioral observations conducted on bottlenose dolphins and any delays in detonation due to marine mammals being within the safety zone.

In the unlikely event a marine mammal or sea turtle is injured or killed during blasting, the Contractor shall immediately notify the NMFS Southeast Regional Office.

Endangered Species Act

Under section 7 of the ESA, the Corps has determined that the Port Sutton blasting activities will have no effect on listed species. This finding is supported by documentation provided in the Corps' Port Sutton Environmental Assessment (EA).

National Environmental Policy Act

The Corps prepared an EA on the Navigation Study for Tampa Harbor-Port Sutton Channel, Florida in September 2000 and made a finding of no significant impact (FONSI)on October 11, 2000. In addition, NMFS completed an EA and made a FONSI on the impacts of blasting activities in Florida waters on marine life, particularly bottlenose dolphins. Therefore, preparation of an EIS on this action is not required by section 102(2) of the NEPA or its implementing regulations. A copy of the NMFS EA and FONSI are available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the Corps' proposed action, including mitigation measures to protect marine mammals, should result, at worst, in the temporary modification in behavior by small numbers of bottlenose dolphins including temporarily vacating the Port Sutton Channel area to avoid the blasting activity and the potential for minor visual and acoustic disturbance from dredging and detonations. This action is expected to have a negligible impact on the affected species or stock of marine mammals. In addition, no take by injury or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

Proposed Authorization

NMFS proposes to issue an IHA to the Corps for the harassment of small numbers of bottlenose dolphins incidental to expanding and deepening the Port Sutton Channel in Tampa Harbor, FL, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of bottlenose dolphins and will have no more than a negligible impact on this marine mammal stock.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed IHA and the application for regulations request (see **ADDRESSES**).

Dated: August 12, 2005.

P. Michael Payne,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–16392 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081105A]

Mid-Atlantic Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee will hold a public meeting.

DATES: Tuesday, August 30, 2005, from 10 a.m. to 4 p.m.

ADDRESSES: Renaissance Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA 19113; telephone 610–521–5900.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to solicit the Scientific and Statistical Committee's advice on technical information and management support tools, as well as, input on methods to acquire public assistance in goal setting for ecosystem based approaches to fisheries management.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jan Saunders (302–674–2331 ext: 18) at the Council Office at least 5 days prior to the meeting date.

Dated: August 15, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–4512 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081105D]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notification of public meeting.

SUMMARY: The Council/BOF Interim Joint Protocol Committee will meet on August 30, 2005, in Anchorage, AK.

DATES: August 30, 2005, 10:30 am to 5:30 pm.

ADDRESSES: Hawthorn Suites, Ltd, 1110 West 8th Avenue, Anchorage, AK 99501

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

(1) Approval of the previous meetings minutes,

(2) Review of the State of Alaska's proposed pollock trawl fishery in the Jude Island area, and

(3) Committee discussion and recommendations for Council and Board of Fisheries action.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: August 15, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–4513 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081105C]

Pacific Fishery Management Council; Ad Hoc Groundfish Habitat Technical Review Committee Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Habitat Technical Review Committee will hold a working meeting on September 8–9. The meeting is open to the public.

DATES: The Ad Hoc Groundfish Habitat Technical Review Committee working meeting will begin Thursday, September 8 at 8 a.m. and may go into the evening or until business for the day is completed. The meeting will reconvene from 8 a.m. to 4 p.m. Friday, September 9.

ADDRESSES: The meetings will be at the following address: DoubleTree Hotel Seattle Airport, Cascade 13, 18740 International Blvd., Seattle, WA 98188; telephone 206–246–8600.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Dahl, NEPA Specialist, 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Ad Hoc Groundfish Habitat Technical Review Committee meeting is to provide a technical review of the habitat suitability data used to support alternatives and analyses in the Pacific Coast Groundfish Fishery Management Plan Essential Fish Habitat Designation and Minimization of Adverse Impacts Final Environmental Impact Statement, currently in preparation by National Marine Fisheries Service. By holding a public meeting, the committee will provide opportunity for public participation in the review process. The committee will only consider technical and scientific questions and will not engage in policy discussions as part of its mission.

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 at least 7 days prior to the meeting date.

Dated: August 15, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–4511 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) 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: United States Patent and Trademark Office (USPTO).

Title: Submissions Regarding Correspondence and Regarding Attorney Representation (Trademarks).

Form Number(s): PTO Forms 2196, 2197, and 2201.

Agency Approval Number: 0651–00xx.

Type of Request: New Collection.

Burden: 4,486 hours annually.

Number of Respondents: 68,666 responses per year.

Avg. Hours Per Response: The USPTO estimates that the public will take approximately 3 to 15 minutes completing the information in this collection, depending on the nature of the information and whether the information is transmitted electronically or is submitted in paper. This includes the time to gather the necessary information, create the documents, and submit the completed request. The time estimates for the electronic forms in this collection are based on the average amount of time needed to complete and electronically file the associated form. There are no paper forms in this collection.

Needs and Uses: This collection of information is required by the Trademark Act, 15 U.S.C. 1051 *et seq.* and is implemented through the Trademark rules set forth in 37 CFR part 2. It provides for the appointment of attorneys of record or domestic representatives to represent applicants in the application process, for the revocation of the appointment of an attorney or domestic representative, for attorneys to request permission to withdraw from representation, and for changes of owners addresses.

This collection has been split from collection 0651–0009 Trademark Processing to reflect the Trademark business processes and to make the collection smaller and more manageable. This collection will contain submissions regarding correspondence and regarding attorney representation.

Affected Public: Business or other for-profit, individuals or households, not-for-profit institutions, farms, Federal government, and State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, 202–395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- E-mail: *Susan.Brown@uspto.gov.* Include "0651–00xx Submissions Regarding Correspondence and Regarding Attorney Representation (Trademarks) copy request" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan Brown.
- *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before September 19, 2005, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: August 11, 2005.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 05–16371 Filed 8–17–05; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, September 2, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–16435 Filed 8–16–05; 10:47 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, September 9, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–16436 Filed 8–16–05; 10:47 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, September 16, 2005.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–16437 Filed 8–16–05; 10:47 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING

Sunshine Act Meetings

Time and Date: 11 a.m., Friday, September 23, 2005.

Place: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

Status: Closed.

Matters To Be Considered: Surveillance Matters.

Contact Person for More Information: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–16438 Filed 8–16–05; 10:47 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

Time and Date: 1 a.m., Friday, September 30, 2005.

Place: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

Status: Closed.

Matters to be Considered: Surveillance Matters.

Contact Person for More Information: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–16439 Filed 8–16–05; 10:47 am]

BILLING CODE 6351–01–M

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Open Meeting

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—open meeting to receive public comment on the possible closure or realignment of Oceana Naval Air Station and various other base closure and realignment recommendations (Washington, DC).

SUMMARY: Notice is hereby given that the Defense Base Closure and Realignment Commission will hold an open meeting on August 20, 2005 from 1:30 p.m. to 4:30 p.m. at Senate Hart Hearing Room 216, Constitution Avenue, Washington DC 20510. The delay of this notice resulted from the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission, recent developments related to the possible closure or realignment of Oceana Naval Air Station, and the necessity of coordinating this meeting with a variety of Federal, State and local government officials. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates.

The Commission will meet to receive comment on the possible closure or realignment of Oceana Naval Air Station, Virginia Beach, Virginia, and various other recommendations for closure or realignment of installations. This meeting will be open to the public, subject to the availability of space.

DATES: August 20, 2005 from 1:30 p.m. to 4:30 p.m.

ADDRESSES: Senate Hart Hearing Room 216, Constitution Avenue, Washington DC 20510.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street, Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990*, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: August 15, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–16416 Filed 8–15–05; 3:25 pm]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Notice of the Defense Acquisition Performance Assessment Project—Open Meeting; Correction

AGENCY: Department of Defense, DOD.

ACTION: Notice; Correction,

SUMMARY: The Defense Acquisition Performance Assessment Project published a notice of meetings in the **Federal Register**/Vol. 70, No. 148/ Wednesday, August 3, 2005. The meeting times for the August 17, 2005 Public Meeting have been changed and the address and phone numbers for LTC Bergeron are no longer current and should be removed.

FOR FURTHER INFORMATION CONTACT: LTC Rene Bergeron, *rene.Bergeron@pentagon.af.mil.*

Correction

In the **Federal Register** of August 3, 2005, in FR Doc 05–15455, on page 44571, left column, bottom of the page, correct the **DATES:** caption to read:

DATES: August 17, 2005–1 p.m. to 6 p.m.

In the **Federal Register** of August 3, 2005, in FR Doc 05–15455, on page 44571, top middle column, correct **FOR FURTHER INFORMATION CONTACT** caption to read:

FOR FURTHER INFORMATION CONTACT: LTC Rene Bergeron, *rene.Bergeron@pentagon.af.mil.*

Dated: August 15, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–16447 Filed 8–16–05; 11:22 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 17, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 15, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Annual Performance Reporting Forms for NIDRR Grantees (RERCs, RRTCs, FIRs, ARRTs, DBTACs, DRRPs, MSs, D&Us).
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 279.
Burden Hours: 4,464.
Abstract: Information collection to obtain annual program and performance data from NIDRR grantees on their project activities. The information collected will be used for monitoring grantees and for NIDRR program planning, budget development and reporting on Government Performance and Results Act (GPRA) indicators.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2836. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–16394 Filed 8–17–05; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 12, 2005.

A. **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 100 percent of the voting shares of Falls Bank, Stow, Ohio, and Falls Interim Savings Bank, Bowling Green, Ohio.

Board of Governors of the Federal Reserve System, August 12, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–16354 Filed 8–17–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. HSH Nordbank AG, Hamburg, Germany and WestLB, AG, Dusseldorf, Germany; to engage de novo through its subsidiary, BoA Nevada Lending LLP, Las Vegas, Nevada, a joint venture investment, in extending credit and servicing loans, pursuant to Section 4(c)(8) of the BHC Act and Sections 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 12, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.05–16355 Filed 8–17–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0260]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

#1 *Type of Information Collection Request:* Extension of Currently Approved Collection;

Title of Information Collection: Protection of Human Subjects: Common Rule (56 FR 28003);

Form/OMB No.: OS–0990–0260;

Use: The Common Rule (56 FR 28003) establishes Federal policy for the protection of human subjects in research that is conducted or supported by Federal departments or agencies that are signatories to the Common Rule. The 1991 Common Rule requires institutions engaged in research which is covered by the Federal policy to establish procedures to report, disclose and maintain required information including information regarding the informed consent of research subjects and an institution's assurance of the establishment of an Institutional Review Board.

Frequency: Recordkeeping, Reporting on occasion;

Affected Public: State, local, or tribal governments, Federal government, business or other for-profit, not-for-profit institutions; and individuals or households;

Annual Number of Respondents: 5,000;

Total Annual Responses: 446,334;

Average Burden Per Response: 2.5 hours;

Total Annual Hours: 1,105,834.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov* , or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–0260), New Executive Office Building, Room 10235, Washington DC 20503.

Dated: August 8, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–16351 Filed 8–17–05; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0624]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC via fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

An Evaluation Survey on the Use and Effectiveness of Internet SAMMEC, (0920–0624)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Since 1987, CDC has used the Smoking-Attributable Mortality, Morbidity, and Economic Costs (SAMMEC) software to estimate the disease impact of smoking for the nation, states, and large populations. The Internet version of the SAMMEC software was released in 2002, and it contains two distinct computational programs, Adult SAMMEC and Maternal and Child Health SAMMEC, which can be used to estimate the adverse health outcomes and disease impact of smoking on adults and infants.

Since the release of Internet SAMMEC, more than 1,230 tobacco control professionals in the State health departments and other tobacco control institutions in the country have used SAMMEC to generate the data they need for their projects. Some of them have provided comments and sent requests for assistance. Of those using SAMMEC, 1,000 will be recruited for each of the 2 surveys planned over a three year period. Therefore, an average of 667 respondents will complete the survey annually.

The purpose of this survey is to evaluate the use and effectiveness of the SAMMEC software and identify ways to improve the system so that it will better meet the needs of the users in tobacco control and prevention. There are no costs to the respondents except for their time in completing the questionnaire. The estimated total annualized burden is 167 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hrs.)
Tobacco Control Professionals/Internet SAMMEC Users	667	1	15/60

Dated: August 11, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–16365 Filed 8–17–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–05–0680]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Model Performance Evaluation Program (MPEP), Severe Acute Respiratory Syndrome (SARS) MPEP OMB No. 0920–0680—Revision—Division of Laboratory Systems, Center for Health Information and Services (CoCHIS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

To support our mission of improving public health and preventing disease through continuously improving laboratory practices, the Model Performance Evaluation Program (MPEP), Division of Public Health Partnerships, Coordinating Center for Health Information and Services, in collaboration with the Coordinating Center for Infectious Diseases, Centers for Disease Control and Prevention, intends to provide a new SARS-associated Coronavirus testing Model Performance Evaluation Program (SARS MPEP). This program will offer external performance evaluation (PE) for SARS antibody (Ab) testing and SARS Ribonucleic Acid (RNA) Reverse Transcriptase—Polymerase Chain Reaction (RT–PCR) testing. A SARS outbreak or epidemic could recur at any time. Therefore, it is imperative that the CDC ensure all state public health department laboratories, Laboratory Response Network laboratories and other laboratories designated by CDC remain proficient in performing SARS testing. For this reason, it is of critical public health importance at this time, that the CDC develop and maintain a performance evaluation program for SARS. Participation in PE programs is expected to lead to improved SARS testing performance because participants have the opportunity to identify areas for improvement which will help to ensure accurate testing as a basis for development of SARS prevention and intervention strategies.

This external quality assessment program will be made available at *no cost* (for receipt of sample panels) to 54 state laboratories. This program will offer laboratories/testing sites opportunities for:

(1) assuring that the laboratories/testing sites are providing accurate tests through external quality assessment,

(2) improving testing quality through self-evaluation in a nonregulatory environment,

(3) testing well characterized samples from a source outside the test kit manufacturer,

(4) discovering potential testing problems so that laboratories/testing sites can adjust procedures to eliminate them,

(5) comparing individual laboratory/testing site results to others at state level, and

(6) consulting with CDC staff to discuss testing issues.

Participants in the MPEP SARS will be required to submit results twice a year after testing mailed performance evaluation samples.

There are no costs to the respondents other than their time. The total estimated annualized burden hours are 18.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	No. of respondents	Frequency of responses	Average burden per response (in hours)
SARS Testing Results Booklet	54	2	10/60

Dated: August 11, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–16368 Filed 8–17–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05–05CS]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Nurse-Delivered Risk Reduction Intervention for HIV–Infected Women-New-National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description: CDC is requesting a 3-year approval from the Office of Management and Budget (OMB) to administer a questionnaire and a one-on-one qualitative interview to HIV-infected women in the southern United States who are at risk for further transmission of the disease. This study is designed to adapt and evaluate an HIV transmission prevention intervention for the growing population of HIV-infected women in the South and to study factors associated with risk among women. The primary outcome will be a reduction in sexual risk behavior as a result of a brief, nurse-delivered prevention intervention adapted for use with HIV-infected women in the South. The project will also conduct in-depth qualitative interviews of young, recently HIV-infected women to assess social and environmental factors that contribute to behavioral risk for HIV infection. The project addresses goals of the *CDC HIV Prevention Strategic Plan,* specifically the goal of increasing the number of HIV-infected persons who are linked to appropriate prevention, care, and treatment services. In addition, information from this research will inform future prevention interventions that encompass individual and contextual factors.

Approximately 550 women will be screened for eligibility to participate in the study, and a minimum of 330 women from one or two sites will be recruited and administered baseline and follow-up behavioral risk assessments in a randomized wait-list comparison design with a 6-month follow-up period. That is, the intervention and comparison group will complete an assessment at the baseline and in 6 months a follow-up assessment will be conducted to compare behavior change. Six months after the intervention group has been provided the intervention and follow-up, women in the comparison group will receive the intervention. The assessments will capture information on demographics, risk behaviors, attitudes, and knowledge related to HIV/STD transmission and prevention. Semi-structured qualitative interviews will be conducted with a subgroup of 25–30 young, recently-diagnosed participants following their participation in the intervention study. These interviews will explore behavioral, social, and contextual conditions that may have contributed to the women's risk for HIV infection and ideas about preventing other women from becoming infected. The two behavioral assessments will take about 1 hour each to complete, the nurse-delivered intervention will take about 1 hour to complete, and the qualitative interviews will take about 2 hours to complete. The screening interview will take about 10 minutes to complete. There is no cost to respondents other than the time it takes them to participate.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Burden per response (in hours)	Total burden (in hours)
Women—screening interview	550	1	10/60	92
Women—assessment interviews	330	2	1	660
Women—intervention	330	1	1	330
Women—qualitative interviews	30	1	2	60
Total				1142

Dated: August 11, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–16369 Filed 8–17–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05–0573]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Adult and Pediatric HIV/AIDS Confidential Case Reports (OMB Control No. 0920–0573)—Revision-National Center for HIV, STD, and TB Prevention (NCHSTP), Divisions of HIV/AIDS Prevention, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is seeking a 3-year approval from the Office of Management and Budget (OMB) to continue data collection of the HIV/AIDS case reports. CDC is proposing to collect additional data on testing history for improved monitoring of HIV incidence (HIV testing history pre-test and post-test data collection forms), on specimen quality and

sequence information for drug resistance and HIV–1 subtype surveillance.

The National Adult and Pediatric HIV/AIDS Confidential Case Reports are collected as part of the HIV/AIDS Surveillance System. CDC in collaboration with health departments in the states, territories, and the District of Columbia, conducts national surveillance for cases of HIV infection and AIDS, the end-stage of disease caused by infection with HIV. HIV/AIDS surveillance data collection by CDC is authorized under Sections 301 and 306 of the Public Health Service Act (42 U.S.C. 241 and 242k).

Currently, 59 areas (states/territories/possessions) mandate and collect AIDS surveillance data. In addition, 43 areas currently mandate and collect confidential name-based surveillance data on HIV cases which have not progressed to AIDS in adults/adolescents and/or children using the HIV case report forms. We anticipate that over the next 3 years additional areas will mandate collection of name-based HIV surveillance data. Therefore, the estimated burden for the next 3 years is based on HIV case reporting in 59 areas. Respondents in this data collection are state, local, and territorial health departments. The purpose of HIV/AIDS surveillance data is to monitor trends in HIV/AIDS and describe the characteristics of infected persons (e.g., demographics, modes of exposure to HIV, clinical and laboratory markers of HIV disease, manifestations of severe HIV disease, and deaths due to AIDS). Because HIV infection results in untimely death and most often infects younger adults in the prime years of life, large amounts of federal, state, and local government funding have been allocated to address all aspects of HIV infection, including prevention and treatment. HIV/AIDS surveillance data are widely used at all government levels to assess the impact of HIV infection on morbidity and mortality, to allocate medical care resources and services, and to guide prevention and disease control activities.

HIV/AIDS reports are sent to state/local health departments by laboratories, physicians, hospitals, clinics, and other health care providers using standard adult and pediatric case report forms. Areas use a microcomputer system developed by CDC (the HIV/AIDS Reporting System, HARS) to store and analyze data, as well as transmit encrypted data to CDC. A Public Health Information Network (PHIN) compliant HIV reporting system is currently in development and is scheduled to replace HARS by 2007.

This request to OMB includes one modification to both the Adult/Adolescent and Pediatric HIV/AIDS confidential case report forms. The forms to be used during this period will include an additional blank space in the top and bottom portions of the forms. Areas could then have the option of using this space to assign a form number. This form number would be for local use only and not be reported to CDC.

The burden estimate for this renewal includes estimated burden for evaluations of HIV/AIDS surveillance based on these forms. In addition, the burden estimate also includes forms that will be used to collect additional data on testing history for the purpose of estimating HIV incidence. The availability of a serologic testing algorithm for recent HIV seroconversion (STARHS) allows surveillance systems to determine how many among a group of new diagnoses are from new infections. In order to derive a population-based estimate of HIV incidence based on data from those individuals who choose to have an HIV antibody test and who test positive (those reported to HIV surveillance systems), additional data are needed to assign statistical weights to individual STARHS results. These additional data include information on individual's reason for testing, the frequency with which he/she tests, place where he/she was tested, when he/she was most recently tested, when he/she was first tested, whether he/she has ever tested negative, and questions regarding use of HIV-related medicines.

The table also includes burden estimates of additional information on specimen quality and genotyping test results for drug resistance and HIV–1 subtypes as part of variant, atypical and resistant HIV surveillance (VARHS). These data will be reported to CDC by participating health departments for the purpose of calculating population-based estimates of prevalence of HIV drug resistance and HIV–1 subtypes among individuals with newly diagnosed HIV. These data are provided routinely by the testing laboratory to health departments requiring no additional data collection form.

No other Federal agency collects this type of national HIV/AIDS data. In addition to providing technical assistance for use of the case report forms, CDC also provides reporting areas with technical support for the HARS software. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Form	Number of respondents	Number of responses	Burden per response (in hours)	Total burden (in hours)
Adult Case Report: AIDS	59	814	10/60	8,004
Adult Case Report: HIV	59	809	10/60	7,955
Peds Case Report: AIDS	59	2	10/60	20
Peds Case Report: HIV	59	9	10/60	89
HIV Testing History Form Pre-test version	6	1,577	2/60	315
HIV Testing History Form Post-test version	24	1,577	2/60	1,262
VARHS	24	1,577	0.5/60	315
Total				17,960

Dated: August 11, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–16370 Filed 8–17–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Technical Assistance to Rwandan Healthy Schools Initiative

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA105.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 12, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. 241 and 242l], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Background: Data from the 2000 Behavioral Surveillance Survey in Rwanda suggests that in-school youth are more likely to engage in early sexual activity than out-of-school youth, which makes secondary schools a natural and important focus for age-appropriate prevention and confidential, voluntary counseling and testing (CT) activities. In addition, behavior change messages or CT services have not yet systematically reached secondary-school students in Rwanda; while science lessons at the secondary level in Rwanda generally cover HIV/AIDS-related subject matter, content and presentation vary from school to school.

At present, confidential CT services in Rwanda are restricted primarily to health facilities, with limited availability in non-clinical settings. Schools have great potential to function as community resource centers for HIV/AIDS, particularly in those cases where, for multiple reasons, individuals are not presenting themselves for HIV testing at hospitals or health centers. When it has been used, mobile, confidential CT has proven to be a very effective approach in Rwanda; single-day testing campaigns have yielded as many as 12,000 persons tested.

With assistance from the World Bank, the United Kingdom, Department for International Development (DFID), the United Nations Children's Fund (UNICEF) and other donors, the Rwandan Ministry of Education (MINEDUC) has recently completed the development of primary- and secondary-school curricula that integrate HIV/AIDS and life-skills lessons at each level of instruction. The Rwandan National Curriculum Development Center has approved the curricula and incorporated them into the training modules at Rwanda's teacher training colleges (TTC). The new textbooks will be distributed to schools in the near future. This is a valuable first step in ensuring that all students in Rwanda have an adequate knowledge base appropriate to their stage of physical, intellectual, and emotional development, with respect to HIV/AIDS prevention.

Purpose: As part of the President's Emergency Plan for AIDS Relief, HHS announces the availability of Fiscal Year (FY) 2005 funds for technical assistance to Rwanda's MINEDUC in launching a pilot initiative to develop secondary schools into community resources for confidential CT and the prevention of HIV/AIDS. The initiative, tentatively named the Healthy Schools Initiative, will take in two main interventions: (1) School-based, community, confidential CT offered via mobile testing units to secondary-school students, their parents and teachers, and surrounding communities; and (2) an innovative, age-appropriate prevention/behavior change campaign to focus on abstinence and parent-child communication. The grantee, to be selected on a competitive basis, will be responsible for collaborating closely with MINEDUC, HHS, the U.S. Agency for International Development (USAID), and other local agencies to ensure the successful planning, coordination, implementation and monitoring of the initiative.

Intervention 1: Counseling and Testing

Under the Healthy Schools Initiative, HHS will introduce free, confidential mobile HIV testing to secondary schools through a culturally appropriate public campaign to target teachers, upper level secondary-school students, their families and community members. Building on the enthusiasm expressed by the Rwandan Minister of Education about a sector-wide confidential CT campaign, the mobile testing intervention will roll out in a top-down fashion, by starting with public HIV tests for the Minister and other MINEDUC officials and then branching out to secondary schools through Free CT days. Free CT days will involve dispatching a mobile CT unit to secondary schools to provide free, confidential testing for teachers, students, their families and community members. Prior to offering confidential CT at secondary schools, community preparation campaigns in school catchment areas will foster acceptance of community- and youth-centered confidential CT, and for people living with HIV/AIDS (PLWHA).

Both a "prevention for negatives" component and linkages to the national care and treatment program for HIV infected persons will facilitate appropriate follow-up for all individuals tested through the initiative. Age-appropriate information, Education, and Communication (IEC) materials that emphasize behavior change will go out to all individuals who test negative in an effort to encourage abstinence and faithfulness as the best means of prevention. The program will forge linkages with the Rwandan national care and treatment program to ensure access to care and treatment for individuals who test positive. Specifically, local referrals to clinics providing care and treatment to HIV infected individuals, and anti-retroviral therapy (ART) to those who are eligible, will be provided to any individual who tests positive for HIV at any testing site. In addition, educational materials on HIV, ARTs, and strategies for reducing transmission of HIV will be provided to individuals testing positive.

Given that Rwandan law and government policy currently require parental consent for the testing of youth under the age of 18, it is crucial that the program develop appropriate linkages between the initiative's prevention and confidential CT interventions to engender parental support for youth CT. Such linkages might include the integration of a module on confidential CT into the parent-child communication curriculum, extracurricular sensitization activities with parents about the importance of knowing one's serostatus at any age, or national advocacy activities coordinated with MINEDUC's HIV/AIDS unit.

Intervention 2: Prevention

As part of the President's Emergency Plan, HHS seeks to build on MINEDUC's achievements in developing primary and secondary HIV curricula by introducing a culturally and age-appropriate competence-based behavior-change curriculum to emphasize abstinence and parent-child communication about HIV/AIDS. The curriculum will be founded on the conviction that the key to behavior change lies in: (1) The delivery of innovative, age- and culturally appropriate messages about HIV/AIDS behavior change; (2) the continual

reinforcement of these messages by teachers, peers and parents to develop a new set of social norms; and (3) the development and regular application of core competencies, in-school and out-of-school, through activities to emphasize accountability to self, peers, parents and teachers. The program will supplement a behavior change curriculum, focusing on parent-child communication, with extra-curricular activities that aim to build a culture of solidarity among students with respect to HIV prevention and behavior change. The program will design, plan and execute extra-curricular activities in collaboration with anti-AIDS clubs,[1] and will maximize student involvement through peer education, school-wide competitions and other activities with broad appeal.

Key actors: The MINEDUC HIV/AIDS Unit is responsible for coordinating all HIV/AIDS-related interventions in the education sector in Rwanda, whether executed by non-governmental organizations (NGOs), international organizations or other partners, in accordance with national HIV/AIDS policy. The Unit is also responsible for supervising and monitoring these interventions. The grantee will work with the HIV/AIDS Unit to plan, coordinate, and monitor the Initiative.

HHS will be directly implementing the confidential CT component of the Healthy Schools Initiative: purchasing a mobile CT unit, test kits and client resource materials; providing fuel and per diem for mobile, confidential CT; and hiring and housing local confidential CT project staff within the HHS-Rwanda office. The grantee's involvement with the CT component will focus primarily on integrating awareness of confidential CT into the behavior-change curriculum through the development of a confidential CT module to target students and parents. The grantee will also work with HHS and USAID to harmonize deployment of the prevention and confidential CT components.

The Treatment and Research AIDS Center (TRAC) is the agency responsible for ensuring the quality of HIV CT services throughout Rwanda. The grantee will work with HHS and TRAC's voluntary counseling and testing (VCT) unit to organize and execute the mobile CT intervention in a manner that complies fully with Rwandan national norms and standards. HHS and the MINEDUC will consult with TRAC's care and treatment unit on the creation of linkages between the CT component and the Rwandan national care and treatment program, as well as on the development of reference materials for individuals who test positive.

Secondary-school teacher-trainers and peer educators will be key actors in the execution and delivery of the prevention and CT interventions. They will be chiefly responsible for communicating and reinforcing the culturally and age-appropriate behavior change messages; assisting students and parents in building core competencies (independent decision-making, abstinence negotiation, effective communication); and soliciting involvement of students and parents in extra-curricular activities relating to prevention and CT. The technical assistance provider will orient and train teacher-trainers in local languages in the delivery of the behavior change curriculum and train peer educators from anti-AIDS clubs to develop their skills as school and community advocates for behavior change and CT.

Geographic coverage: In Year 1, the initiative will target secondary schools in two provinces, Kigali City and Gitarama. In collaboration with TRAC, HHS and the MINEDUC HIV/AIDS unit, the grantee will determine how many and which schools/districts need to be targeted in each province to meet needs and achieve targets. If Year 1 activities are successful during the annual review of country operational plans for the President's Emergency Plan managed by the Office of the Global AIDS Coordinator, based on the achievement of milestones developed jointly by HHS, MINEDUC and the grantee, the initiative will extend to additional provinces over the course of four years, with the ultimate goal of reaching all provinces by the end of FY2009.

Targets: The CT intervention, expected to require more start-up time than the prevention intervention, will rollout at no fewer than ten secondary schools in Year 1. The program has the following targets for CT:

- Number of individuals trained in providing CT: Five
- Number of individuals who receive CT: 2,750
- Number of service outlets (schools) that provide CT: Ten

The prevention intervention will rollout at no fewer than 30 secondary schools in Year 1. The following targets have been set for prevention:

- Number of individuals reached through culturally and age-appropriate (school/community) outreach HIV/AIDS prevention programs that promote abstinence: 20,250.
- Number of individuals (teacher-trainers, teachers or peer educators) trained to deliver culturally and age-appropriate HIV/AIDS prevention programs that promote abstinence: 1,150.

HHS Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for HIV, STD, and TB Prevention (NCHSTP): Reduce the percentage of HIV/AIDS-related risk behaviors among school-aged youth through dissemination of HIV prevention education programs and, by 2010, work with other countries, international organizations, the U.S. Department of State, United States Agency for International Development (USAID), and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among persons 15 to 24 years of age.

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Rwanda are to treat at least 50,000 HIV-infected individuals and care for 250,000 HIV-affected individuals, including orphans.

This announcement is only for non-research activities supported by HHS. If applicant proposes research, we will not review the application. For the definition of research, please see the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Activities: The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Rwanda. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the

[1] Since 1998, anti-AIDS clubs have been established in all secondary schools and institutions of higher learning in Rwanda, but many remain inactive because of lack of materials and proper guidance (official MINEDUC Web site: *www.mineduc.gov.rw*).

oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The awardee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Rwanda will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The awardee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for this program are as follows:

1. Work closely with key partners and stakeholders in Rwanda, including the MINEDUC HIV/AIDS unit, TRAC, and HHS, to develop an implementation plan for the pilot phase of the initiative. This will require:

a. Identifying which schools/districts will participate in the CT and prevention interventions.

b. Determining the scope of work of each of the actors (school inspectors, teacher-trainers, teachers, peer educators) involved in the prevention intervention.

c. Determining the scope of work of each of the actors, TRAC, health educators, anti-AIDS clubs, involved in the promotion and execution of the CT intervention.

d. Developing a detailed work plan complete with interventions, milestones and a timeline for achieving prevention and CT targets.

2. Hire a local unit to manage the initiative. This unit will be responsible for the day-to-day implementation and management of CT and prevention activities at secondary schools and will report to the MINEDUC HIV/AIDS unit on a monthly basis.

Counseling and Testing:

1. Develop materials for distribution by health educators during Free CT days:

a. IEC materials promoting behavior change (individuals who test negative).

b. Reference materials on care and treatment options in Rwanda (individuals who test positive).

2. Collaborate with HHS, MINEDUC HIV/AIDS unit and TRAC to develop a mobile CT plan:

a. Develop a community preparation plan for schools and catchment areas.

b. Schedule and plan Free CT days at MINEDUC and ten target schools.

c. Estimate test kits, fuel and staff needed.

d. Identify and train staff needed for community preparation campaign and provide CT.

3. Initiate school- and community-based CT preparation campaign via anti-AIDS clubs and health educators in catchment areas.

Prevention:

1. Design/adapt a competence-based culturally and age-appropriate behavior change curriculum in local languages for secondary-school students that focuses on abstinence and parent-child communication about HIV, including CT.

2. Identify a cohort of teachers to serve as teacher-trainers, responsible for training all teachers at participating schools in the behavior change curriculum.

3. Train teacher-trainers in the delivery of the behavior change curriculum; ensure periodic supervision of:

a. Training for teachers and peer educators.

b. Delivery of curriculum to students and parents.

4. Assist MINEDUC in awarding small grants to anti-AIDS clubs for extra-curricular activities linked to abstinence and behavior change.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS-Rwanda will be directly managing and implementing the mobile CT component of the Healthy Schools Initiative. Principal activities to be carried out by HHS-Rwanda include the following:

1. Design and printing of resource materials for CT clients (*i.e.*, IEC pamphlets, care and treatment referral guides, prevention for positives guidance).

2. Hiring and placement of a local mobile CT management unit within the HHS-Rwanda office (this unit will consist of two youth counselor/trainers and one community mobilizer/trainer).

3. Design and execution of two-day community preparation campaigns in local languages in ten communities within Kigali City and Gitarama province (to target school administrators and teachers, local government officials and community leaders).

4. Recruitment and training of six volunteer community mobilizers and ten volunteer youth counselors.

5. Procurement of a mobile CT vehicle, test kits, and CT equipment and supplies.

6. Implementation of a pilot mobile CT campaign to target teachers, upper secondary-school students and community members in ten communities within Kigali City and Gitarama province (provision of counseling and testing services to at least 5,000 individuals).

The grantee's involvement with the CT component will focus primarily on integrating awareness of CT into the culturally and age-appropriate behavior change curriculum through the development of a CT module targeting students and parents. The grantee will also work with HHS to harmonize deployment of the prevention and CT components.

Administration: Comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. (See HHS Activities and Reporting sections below for details.) Comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Organize an orientation meeting with the grantee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

3. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

4. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

5. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

6. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

7. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

8. Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

9. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

II. Award Information

Type of Award: Cooperative Agreement. HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $600,000 (This amount is an estimate for the first 12-month budget period, and is subject to availability of funds; it is anticipated to be increased progressively throughout the life of the project.)

Approximate Number of Awards: One.

Approximate Average Award: $600,000 (This amount is for the first 12-month budget period, and includes direct costs.)

Floor of Award Range: $600,000.

Ceiling of Award Range: $600,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible applicants

Domestic or foreign public, private nonprofit, and for profit organizations may submit applications, such as:

- Public, non-profit organizations
- Private, non-profit organizations
- For-profit organizations
- Small, minority, women-owned businesses
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If applying as a bona fide agent of a state or local government, a letter from the state or local government as documentation of the status is required. Place this documentation behind the first page of the application form.

III.2. Cost Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, HHS will consider your application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.
- Applications must demonstrate an overall match between the applicant's vision and experience and the program priorities as described.
- Applications must demonstrate that the applicant is capable of building effective and well-defined working relationships with local governmental and non-governmental entities, which will help ensure successful implementation of the proposed activities.
- Eligibility should be documented through an institutional capacity statement and letters of commitment from key project staff (to be included in an appendix to the application).
- Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission: HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement on *www.Grants.gov*, the official Federal agency wide E-grant Web site. Only applicants who apply on-line are permitted to forego paper

copy submission of all application forms.

Paper Submission: Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 30. If your narrative exceeds the page limit, we will only review the first pages within the page limit. The budget and justification will not count toward the 30-page limit.
- Font size: 12 point unreduced
- Double-spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

1. Goal and Objectives

a. Provide a goal statement relating to the project.

b. Enumerate measurable objectives by which to assess the success of your program.

2. Plan of Action/Methods

a. Detail how your organization will achieve the stated goals and objectives.

3. Timeline

a. Provide a timeline for the implementation of program activities.

4. Staff

a. Provide a list of staff that will be responsible for the implementation of this project.

5. Performance Measures and Methods of Evaluation

6. Summary Budget composed by line item, along with a budget justification. (This will not be counted against the stated page limit).

You may include additional information in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes the following:

- Curriculum Vitas (CVs)/Resumes
- Organizational Charts
- Job descriptions of proposed key positions to be created for the activity
- Quality-Assurance, Monitoring-and-Evaluation, and Strategic-Information Forms
- Applicant's Corporate Capability Statement
- Letters of Support
- Evidence of Legal Organizational Structure

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: September 12, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit you application electronically at *www.grants.gov.* We consider applications completed on-line through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *www.grants.gov.* Electronic applications will be considered as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically through Grants.gov (*http://www.grants.gov*), your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives the submission after the closing date because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as having been received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of the submission. If you have a question about the receipt of the application, first contact the carrier. If you still have a question, contact the PGO–TIM staff at (770) 488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC Rwanda officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international

organizations, with the following exception: With the exception of the American University, Beirut and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations, regardless of their location.

- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/ authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Prostitution and Related Activities: The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any "exempt organizations" (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, "Prostitution and Related Activities," is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All prime recipients that receive U.S. Government funds ("prime recipients") in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, "[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.'") addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, "Prostitution and Related Activities."

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address:

Electronic Submission: HHS/CDC strongly encourages you to submit applications electronically at *www.grants.gov*. You will be able to download a copy of the application package from *www.grants.gov*, complete it off-line, and then upload and submit the application via the Grants.gov Web site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: "BACK-UP FOR ELECTRONIC SUBMISSION."

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit the grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff; or

Paper Submission: Submit the original and two hard copies of your application by mail or express delivery service to the following address:

Technical Information Management–CDC–RFA–AA105, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application and they will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Plan (30 Points)

Does the applicant demonstrate an understanding of the national cultural and political context and the technical and programmatic areas covered by the project? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to reach underserved populations in Rwanda and meet the goals of the Emergency Plan? Is the plan well-articulated and adequate to carry out the proposed objectives? How realistic and appropriate is the plan, given local conditions and challenges? Does the plan include process and outcome indicators? Does the application include an overall design strategy, including measurable time lines, clear monitoring and evaluation procedures, and specific activities for meeting the proposed objectives?

2. Methods (25 Points)

Are the proposed methods feasible? Do they reflect a spirit of cooperation with other key agencies and organizations in Rwanda? Does the applicant describe a plan to progressively build the capacity of local organizations and of target beneficiaries and communities to respond to the epidemic?

3. Experience (25 Points)

Do the staff members have relevant programmatic experience working in resource-limited settings and the ability to work in local languages? Are staff roles clearly articulated? As described, will the staff be sufficient to accomplish the program goals?

4. Administration and Management (20 points)

Does the applicant provide a clear plan for the administration and management of the proposed activities, to manage the resources of the program, prepare reports, monitor and evaluate activities and audit expenditures?

5. Budget (Reviewed, But Not Scored)

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

While U.S.-based organizations are eligible to apply, we will give preference to existing national/Rwandan organizations. It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

Anticipated award date: September 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–6 Patient Care
- AR–8 Public Health System Reporting Requirements
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–21 Small, Minority, and Women-Owned Business
- AR–23 States and Faith-Based Organizations

Applicants can find additional information on the requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS5161–1 application in the Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf.* Once you have has filled out the form, please attach it to the Grants.gov submission as Other Attachments Form.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Rwanda.

f. Additional Requested Information.

2. Annual progress report, due 60 days after the end of the budget period. The progress report will follow the format developed jointly by the U.S. Government and the Government of Rwanda, consisting of interventions, milestones, timelines, status explanations and budget expenditures to date.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Valerie Koscelnik, Project Officer, National Center for HIV, STD, and TB Prevention, Address: HHS/CDC/US Embassy, Kigali, Rwanda, Telephone: +250 08303986, E-mail: *vak7@cdc.gov*.

For financial, grants management, or budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–1515, E-mail: *swynn@cdc.gov*.

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC web site, Internet address: *http://www.cdc.gov* (Click on "Funding," then "Grants and Cooperative Agreements"), and on the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov*.

Dated: August 11, 2005.

William P. Nichols,

Director, Procurement and Grants Office Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16358 Filed 8–17–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request for Application (RFA) AA220]

Partnering With the National Institute of Hygiene and Epidemiology To Enhance Public Health Capacity for HIV Prevention and Care Activities in the Socialist Republic of Viet Nam, as Part of the President's Emergency Plan for AIDS Relief; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to provide improved HIV prevention, care, and treatment in Vietnam through support and development of national laboratory systems, and implementation of surveillance and monitoring and evaluation (M&E) activities. The Catalog of Federal Domestic Assistance number for this program is 93.067.

B. Eligible Applicant

Assistance will be provided only to the Vietnamese National Institute of Hygiene and Epidemiology (NIHE). No other applications are solicited.

The award specifically aims to use existing capacity through NIHE to aid in providing Viet Nam with increased laboratory capability, including developing a national reference laboratory and quality-assurance and quality-control systems (QA/QC); improving national surveillance and M&E through routine and special projects; and developing a national action plan, and other surveillance activities, as necessity dictates. Currently, the NIHE is the single institute in Viet Nam sanctioned by the Vietnamese Government to conduct laboratory activities, and, thus, the only appropriate and qualified organization to conduct this specific set of activities supportive of the President's Emergency Plan for AIDS Relief.

In addition, NIHE is uniquely positioned in terms of legal authority and credibility among Vietnamese health institutions to provide national surveillance and laboratory leadership in the area of HIV/AIDS prevention and control. NIHE has already established mechanisms to provide national laboratory leadership, and national surveillance and M&E activities, which enables it to immediately become engaged in the activities listed in this announcement.

NIHE is organizationally within the Vietnamese MOH, and can effectively coordinate and implement HIV prevention and care activities supported by the MOH and its other agencies. Although other Vietnamese Government Ministries are involved in HIV prevention and care, currently most activities occur through the MOH.

C. Funding

Approximately $500,000 is available in FY 2005 to fund this award September 15, 2005, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For program technical assistance, contact: S. Patrick Chong, Deputy Director, Global AIDS Program [GAP], Vietnam National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention [CDC], U.S. Embassy Hanoi, 7 Lang Ha, Hanoi, Vietnam, Telephone: +84 (4) 831–4580. ext. 215, E-mail: *pchong@cdc.gov*.

For financial, grants management, or budget assistance, contact: Vivian Walker, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Mail stop: E–14, Atlanta, GA 30341, Telephone: 770–488–2724, E-mail: *VWalker@cdc.gov*.

Dated: August 11, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–16361 Filed 8–17–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Enhancing the Community Response to HIV/AIDS and TB Through the Expanded Role of the Community Treatment Supporters in the Republic of Zambia

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA159.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 12, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. 241 and 2421], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS. by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Zambia are to treat at least 120,000 HIV-infected individuals and care for 600,000 HIV-affected individuals, including orphans.

The HIV/AIDS epidemic poses a health and developmental crisis for Zambia. The prevalence of infection in the general population was estimated at 16 percent in the last Demographic and Health Survey, though infection rates vary from more than 23 percent in urban areas to 11 percent in rural areas. It is estimated that more than 900,000 Zambians are currently living with HIV, and more than 200,000 are in need of specific anti-retroviral treatment (ART). The Government of Zambia has instituted an ART program in the public sector, and has set a goal of 100,000 on ART by the end of 2005. There are over 22,000 people currently on ART in Zambia in both the public and private sectors, with support of co-operating partners such as the President's Emergency Plan for AIDS Relief (Emergency Plan), the Global Fund and the World Bank. However, for the majority of Zambians living with HIV, the primary type of HIV/AIDS care and support available is psychosocial support, non-ART health care and home-based care.

Tuberculosis (TB) represents a major public health problem in Zambia, and notification rates in the country have increased more than fivefold in the last 20 years. According to the World Health Organization, the estimated notification rate for TB in Zambia is 668/100,000, which makes it one of the countries with the highest burden of the disease. The increase in cases stems, in the main part, from co-infection with HIV. Based on studies carried out in Lusaka, the capital city, HIV co-infection rates for newly diagnosed pulmonary TB cases are 50–70 percent, with much higher rates of infection in extra-pulmonary cases.

The Government of Zambia has adopted the Directly Observed Treatment Strategy (DOTS) for the management of TB. Direct observation of treatment occurs through health facilities in close collaboration with community members, who function as treatment supporters. Logistical problems, such as shortage of trained health personnel; long distances to health centers, especially in rural areas; poor road and transportation networks; and a high proportion of bed-ridden TB patients from co-infection with HIV make this method of supervising treatment the most practical.

With the more widespread availability of ART, the role of community treatment supporters for TB is a possible mechanism to provide support to patients on ART, to enhance adherence to treatment. The Zambian Central Board of Health, with technical and financial support from HHS, has developed a manual for the training of community treatment supporters. To increase the number of treatment supporters, the winning applicant will implement a training-of-trainers program, with specific emphasis on the mission hospitals that provide over 50 percent of formal health care in rural Zambia. The trainers will, in turn, train community members to support TB/HIV patients. Logistical support will go to the treatment supporters to enable them to carry out their supportive activities, along with support to the mission hospitals to improve the care and treatment provided to people living with HIV/AIDS.

Purpose: The purpose of this funding announcement is to progressively build an indigenous, sustainable response to the national HIV epidemic through the rapid expansion of innovative, culturally appropriate, high-quality HIV/AIDS prevention and care interventions, and improved linkages to HIV counseling and testing and HIV treatment services targeting underserved populations in Zambia.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

The purpose of the program is to enhance the role and involvement of community-level DOTS volunteers in supporting the treatment and management of TB/HIV co-infected patients and people living with HIV/AIDS in rural health facilities.

The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through the President's Emergency Plan. Through this initiative, the HHS Global AIDS Program (GAP) will continue to work with host countries to strengthen capacity and expand activities in the areas of: (1) Primary HIV prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development. Focus countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest and where U.S. Government agencies are already active. Zambia is one of these focus countries.

To carry out its activities in these countries, HHS is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic. As part of the President's Emergency Plan, HHS' mission in Zambia is to work with the Ministry of Health (MOH) and its partners to develop and apply effective interventions to prevent and treat HIV infection and associated illnesses and death from AIDS.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for HIV, Sexually Transmitted Diseases (STD) and Tuberculosis (TB) Prevention (NCHSTP) of the Centers for Disease Control and Prevention (CDC) within HHS: By 2010, work with other countries, international organizations, the U.S. Department of State, U.S. Agency for International Development (USAID), and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among young people 15 to 24 years of age. In addition, the measurable outcomes of the program will be in alignment with the goals of the President's Emergency Plan to prevent seven million new HIV infections, provide care for ten million people including orphans and vulnerable children, and place two million people on anti-retroviral treatment.

This announcement is only for non-research activities supported by HHS, including the CDC. If an applicant proposes research activities, HHS will not review the application. For the definition of research, please see the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Activities: The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Zambia. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The awardee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Zambia will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The awardee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee Activities for this program are as follows:

1. Improve the capacity for rural hospitals and health care centers to provide quality treatment for TB/HIV through promoting the supervision of TB treatment and ART by using trained community volunteers.

2. Train a core of trainers for the community treatment supporters in the districts.

3. Provide on-going supportive supervision in local languages to the community treatment supporters to ensure quality care and adherence to treatment protocols.

4. Provide logistics, such as bicycles and home-based care kits, to support the community treatment supporters in their provision of care in the community.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Organize an orientation meeting with the grantee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

3. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

4. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

5. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

6. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

7. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

8. Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

9. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

II. Award Information

Type of Award: Cooperative Agreement. HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $750,000 (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $150,000 (This amount is for the first 12-month budget period, and includes direct costs).

Floor of Award Range: None.

Ceiling of Award Range: $150,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

To meet the eligibility criteria for this program announcement, applicants must be indigenous to Zambia and have at least 10 years experience providing health care.

Applicants must be umbrella bodies of non-governmental organizations that have the role of representation and advocacy, resource mobilization, technical support as well as administrative and logistical support for affiliated organizations, including faith-based organizations.

Applicants must have demonstrated experience in managing an AIDS care and prevention program in faith-based hospitals and run other related programs such as a TB program, malaria control program as well as a Primary Health Care program that includes the training of community health workers and traditional birth attendants.

Applicants must have a Grant Management Unit that manages sub-grants and capacity building of NGOs that work in remote and under-served districts in partnership with the Zambian District Health Management teams.

Preference will go to applicants that have a demonstrated track record of successfully managing funds from the Global Fund and other multilateral and bilateral donors.

III.2. Cost Sharing or Matching Funds

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, HHS will consider your application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC considers late applications non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.
- Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission: HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement on *www.Grants.gov*, the official Federal agency wide E-grant Web site. Only applicants who apply on-line are permitted to forego paper copy submission of all application forms.

Paper Submission: Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with the application forms. You must submit the narrative in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Application must be written in English.

The narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Goals and Objectives, including Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief.
- Work Plan and Description of Project Components and Activities.
- Timeline.
- Staffing Plan, with Level of Effort.
- Performance Measures and Methods of Evaluation.
- Summary Budget composed by line item, along with a budget justification. (This will not be counted against the stated page limit).

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes:

- Curriculum Vitas (CVs)/Resumes.
- Organizational Charts.
- Job descriptions of proposed key positions to be created for the activity.
- Quality-Assurance, Monitoring-and-Evaluation, and Strategic-Information Forms.
- Applicant's Corporate Capability Statement.
- Letters of Support.
- Evidence of Legal Organizational Structure.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.*

If your application form does not have a DUNS number field, please write the DUNS number at the top of the first page of the application, and/or include the DUNS number in the application cover letter.

Additional requirements that could require you to submit additional documentation with the application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: September 12, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *www.grants.gov.* We consider applications completed on-line through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *www.grants.gov.* We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically through Grants.gov (*http://www.grants.gov*), your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to

guarantee delivery by the closing date and time. If HHS/CDC receives the submission after the closing date because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as having been received by the deadline.

If you submit a hard copy of the application, HHS/CDC will not notify you upon receipt of the submission. If you have a question on the receipt of the application, first contact your courier. If you still have a question, contact the PGO–TIM staff at (770) 488–2700. Before calling, please wait two to three days. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the U.S. or to international organizations, regardless of their location.
- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standards(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception of nevirapine in Prevention of Mother-to-Child Transmission (PMTCT) cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.
- No funds appropriated under this act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any "exempt organizations" (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, "Prostitution and Related Activities," is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All prime recipients that receive U.S. Government funds ("prime recipients") in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, "[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' ") addressed to the agency's grants officer. Such certifications by

prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, "Prostitution and Related Activities."

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Electronic Submission: HHS/CDC strongly encourages you to submit electronically at *www.Grants.gov.* You will be able to download a copy of the application package from *www.Grants.gov,* complete it off-line, and then upload and submit the application via the *Grants.gov* Web site. We will not accept e-mail submissions. If you are having technical difficulties in *Grants.gov,* you may reach them by e-mail at *support@grants.gov* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday.

HHS/CDC recommends that you submit your application to *Grants.gov* early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of the application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. Of the grant announcement.

You must clearly mark the paper submission: "BACK-UP FOR ELECTRONIC SUBMISSION."

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application using Microsoft Office products (*e.g.,* Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, a PDF file may be submitted. You may find directions for creating PDF files on the *Grants.gov* Web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff; or

Paper Submission: Applicants should submit the original and two hard copies of the application by mail or express delivery service to: Technical Information Management—AA159, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road. Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

The application will be evaluated against the following criteria:

1. Understanding the Problem (25 Points)

Does the applicant demonstrate an understanding of the national cultural and political context and the technical and programmatic areas covered by the project? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to reach underserved populations in Zambia and meet the goals of the Emergency Plan? Does the applicant demonstrate a clear and concise understanding of the nature of the problems to be addressed as described in the Purpose section of this announcement? This includes a description of the planned activities to be undertaken and a detailed presentation of the objectives of the proposal.

2. Methodology (25 Points)

Does the application include an overall design strategy, including measurable timelines, clear monitoring and evaluation procedures and specific activities for meeting the proposed objectives? Does the applicant describe a plan to progressively build the capacity of local organizations and of target beneficiaries and communities to respond to the epidemic?

3. Personnel (25 Points)

Is the staff involved in this project qualified to perform the tasks described? CVs provided should include information that they are qualified in the following: management of HIV/AIDS prevention activities in local languages, especially confidential voluntary counseling and testing; and development of capacity-building among and collaboration between governmental and NGO partners. Are the staff roles clearly defined?

4. Administration and Management (25 Points)

Does the applicant provide a clear plan for the administration and management of the proposed activities, to manage the resources of the program, prepare reports, monitor and evaluate activities and audit expenditures?

5. Budget (Reviewed But Not Scored)

Does the applicant present a detailed budget with clear justifications for all line items and consistent with the proposed activities and objectives of the proposal, and with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in Zambia?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4—HIV/AIDS Confidentiality Provisions
- AR–6—Patient Care
- AR–10—Smoke-Free Workplace Requirements

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS5161–1 application needs in the Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf.* Once you have filled out the form, please attach it to the Grants.gov submission as Other Attachments Form.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Zambia.

f. Additional Requested Information.

2. Financial status report no more than 90 days after the end of the budget period.

3. Quarterly progress reports.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

5. Annual progress report, due no more than 60 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Zambia.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Marc Bulterys, Project Officer, 1600 Clifton Road MS E–04, Atlanta, GA 30333, Telephone: 011 260 1 250 955 ext 246, E-mail: *bulterysm@cdczm.org.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770 488–1515, E-mail: *ZBX6@cdc.gov.*

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (click on "Funding" then "Grants and Cooperative Agreements"), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov.*

Dated: August 11, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16357 Filed 8–17–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Building Human Resource Capacity Within the Ministry of Health and Social Services in the Republic of Namibia as Part of the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA108.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 12, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301 and 307(k)(2) of the Public Health Service Act [42 U.S.C. Sections 241 and 2421)], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003)[22 U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Namibia are to treat at least 23,000 HIV-infected individuals; and care for 115,000 HIV-affected individuals, including orphans.

The Namibian Government has publicly acknowledged the HIV/AIDS epidemic, and its human and societal cost. The Namibian Government has elevated the fight against HIV/AIDS to a top priority, including by rolling out anti-retroviral therapy (ART) and the

prevention of mother-to-child transmission (PMTCT) in all 13 regions, including all 35 public hospitals in Namibia. The Namibian Ministry of Health and Social Services (MoHSS) has estimated it will need an additional 143 doctors, nurses, and pharmacists at its hospitals to reach the goal of 23,000 patients on ART by the end of 2007. The anticipated positions to fill in 2005 include 27 doctors, one doctor for quality assurance, 15 nurses, 15 pharmacists, and 15 data-entry clerks.

The United States Government seeks to reduce the impact of HIV/AIDS and related conditions in specific countries within sub-Saharan Africa, Asia, and the Americas to strengthen capacity and expand activities in the areas of (1) HIV primary prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for strategic information, including surveillance. Targeted countries represent those with the most severe epidemics and the highest number of new infections. They also represent countries where the potential for impact is greatest, and where U.S. Government agencies are already active. Namibia is one of these targeted countries.

Purpose

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

This program will enhance and expand nationwide access to and use of services for VCT, PMTCT, and comprehensive HIV/AIDS care, including cotrimoxazole prophylaxis, IPT TB/HIV, and ART in Namibia.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

The HHS cooperative agreement, with technical assistance from HHS/CDC and the MoHSS, will provide assistance to recruit suitably qualified and experienced (preferably Namibian) individuals to meet Emergency Plan objectives. A local human resource provider (HRP) identifies and recruits candidates on behalf of the interview committee, which will consist of personnel from the MoHSS and HHS/CDC.

These collaborative activities could profoundly affect the ability to meet the goals and objectives of the Third National Medium Term Plan (2004–2009) in Namibia, which is the National Strategic Plan on HIV/AIDS, and the President's Emergency Plan. Cooperative efforts could lead to greater use of confidential voluntary counseling and testing (VCT) in all areas of the country; and increase enrollment in comprehensive HIV/AIDS care, including cotrimoxazole prophylaxis, isoniazid preventive therapy (IPT), anti-retroviral therapy (ART) for adults and children, and programs to prevent mother-to-child transmission (PMTCT) throughout the nation.

To carry out its activities in these countries, HHS is working in a collaborative manner with national governments and other agencies to develop programs of assistance to address the HIV/AIDS epidemic. HHS'' program of technical assistance to Namibia focuses on capacity-building in several areas to scale up promising prevention and care strategies, such as VCT, PMTCT, ART, Tuberculosis/HIV, and laboratory services.

The Centers for Disease Control and Prevention(CDC), within the Department of Health and Human Services, announces the availability of Fiscal Year 2005 funds for a cooperative agreement to assist with building human resource capacity within the Ministry of Health and Social Services (MoHSS) in Namibia for roll-out of ART and PMTCT of HIV.

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Emergency Plan for AIDS Relief and one or more of the following performance goals for the CDC National Center for HIV, Sexually Transmitted Diseases and Tuberculosis Prevention (NCHSTP) within HHS: By 2010, work with other countries, international organizations, the U.S. Department of State, the U.S. Agency for International Development (USAID), and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among persons 15 to 24 years of age; reduce HIV transmission; and improve care of persons living with HIV.

This announcement is only for non-research activities supported by HHS, including the CDC. If an applicant proposes research activities, HHS will not review the application. For the definition of "research," please see the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*.

Activities

The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Namibia. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Namibia will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section.

HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an

annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for covering all program areas are as follows:

1. The HRP will advertise and recruit for a short-list of potential candidates for the positions of an estimated 27 physicians, 15 nurses, 15 pharmacists and 15 medical data-entry clerks. Specific activities are as follows:

a. Advertise and recruit for professional staff.

b. Draft advertisements for approval by HHS and the Namibian MoHSS, and advertise in local languages in three Namibian newspapers.

c. Set up interviews with a short list of candidates.

d. Develop a compensation package consistent with the MoHSS employment package.

2. Hiring of Professional Staff.

a. Hire and administer a monthly salary and benefits package for each health professional hired, using a standard employment contract in conformance with Namibian labor legislation and the hiring policies of the MoHSS.

b. Set up a computerized personnel administration file, medical aid, pension plan, and social security payments for Namibian nationals and non-Namibian nationals.

c. In concert with HHS and the Namibian MoHSS, compile the necessary documentation and process residency permits for employment of foreign nationals in Namibia.

d. Register individuals with the Namibian Social Security Commission and the Ministry of Finance for tax purposes.

e. Assist with professional registration, establishment of bank accounts, arrangements for accommodation, moving of personal effects, schooling of dependents and other settling-in activities, as required.

3. Personnel Support and Human Resource Management.

a. Maintain personnel records and addresses, with all personnel-related matters, on a professional and consistent basis.

b. Contact selected candidates and offer employment within the agreed scope of work and in accordance with the relevant Namibian labor legislation, including processing remuneration packages with copies to HHS and the Namibian MoHSS and the individual.

c. Electronic transfer of paycheck in local currency to personal banking accounts.

d. Process tax calculations and make monthly payments to the Social Security Commission.

e. Process medical aid calculations and make monthly payments to an approved medical aid fund (currently, Namibian Health Plan).

f. Process all pension calculations and benefits.

g. Provide monthly HR reports to HHS and MoHSS.

h. Issue annual Pay as You Earn (PAYE) certificates to individuals, and tax returns to the Namibian Ministry of Finance.

i. Under the guidance of the Namibian MoHSS and HHS staff, liaise with targeted health facilities as personnel are assigned to promote smooth introductions of the professionals.

j. Ensure the new recruits participate in appropriate HHS and Namibian MoHSS training, maintaining performance evaluation records, providing assistance in any disciplinary action in concert with MoHSS and reporting results to HHS and the Namibian MoHSS.

k. At the beginning and end of their contract, arrange relocation, and travel assistance for foreign nationals and their dependents with the necessary documentation, if applicable, for repatriation, and arrange transportation for airport pick-up and departures.

Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined in this announcement.

Administration

Awardee must comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement (see HHS Activities and Reporting sections below for details), and comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS activities for this program are as follows:

1. Collaborate with the applicant, the Namibian Ministry of Health and other in-country and international partners to assess, plan, implement and monitor activities under the cooperative agreement, including, but not limited to, providing technical assistance and training in monitoring and evaluation (M&E), based on the country needs, the HHS technical assistance portfolio, strategic-information guidance established by the Office of the U.S. Global AIDS Coordinator, and HIV laboratory activities conducted by other partners.

2. Furnish consultants from HHS headquarters, the Office of the U.S. Global AIDS Coordinator or other U.S. Government institutions to assist with program planning, implementation and monitoring.

3. Make available manuals, guidelines, and other related materials developed by HHS Namibia or other HHS programs for similar projects.

4. Facilitate in-country planning and review meetings for ensuring coordination of country-based program technical assistance activities.

5. Act as liaison and assist in coordinating activities as required, between the applicant and other non-governmental organizations (NGOs), Government of Namibia organizations, and other HHS partners.

6. Develop criteria to evaluate and select hospital sites that require designated health professionals, in collaboration with the Namibian MoHSS.

7. Actively participate in the recruitment process by assessing health professionals' skills and technical requirements.

8. Match health professionals' skills, training, and experience with specific hospitals to facilitate technically viable placements.

9. Provide technical guidelines and instructions to contracted health professionals to build capacity for VCT, PMTCT, and ART.

10. Direct HRP in adapting to the Namibian context, including, but not limited to design; program materials; quality assurance; monitoring and evaluation; and providing recommendations.

11. Direct HRP in adapting to the Namibian context, including, but not limited to design; program materials; quality assurance; monitoring and evaluation; and providing recommendations.

12. Develop performance-evaluation criteria for health professionals, including semi-annual and annual performance evaluations.

13. Monitor project and personnel performance.

14. Monitor budget to ensure cost-effective placement and timely financial reporting.

15. Organize an orientation meeting with the grantee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could

include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

16. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

17. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

18. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

19. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

20. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

21. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

22. Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

23. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

Measurable outcomes of the program will be in alignment with the following performance goals for the Emergency Plan:

A. Prevention

Number of individuals trained to provide HIV prevention interventions, including abstinence, faithfulness, and, for populations engaged in high-risk behaviors,[1] correct and consistent condom use.

1. Abstinence (A) and Be Faithful (B).

- Number of community outreach and/or mass media (radio) programs that are A/B focused.
- Number of individuals reached through community outreach and/or mass media (radio) programs that are A/B focused.

B. Care and Support

1. Confidential counseling and testing.

- Number of patients who accept confidential counseling and testing in a health-care setting.
- Number of clients served, direct.
- Number of people trained in confidential counseling and testing, direct, including health-care workers.

2. Orphans and Vulnerable Children (OVC).

- Number of service outlets/programs, direct and/or indirect.
- Number of clients (OVC) served, direct and/or indirect.
- Number of persons trained to serve OVC, direct.

3. Palliative Care: Basic Health Care and Support.

- Number of service outlets/programs that provide palliative care, direct and/or indirect.
- Number of service outlets/programs that link HIV care with malaria and tuberculosis care and/or referral, direct and/or indirect.
- Number of clients served with palliative care, direct and/or indirect.
- Number of persons trained in providing palliative care, direct.

C. HIV Treatment with ART

- Number of clients enrolled in ART, direct and indirect.
- Number of persons trained in providing ART, direct.

D. Strategic Information

- Number of persons trained in strategic information, direct.

E. Expanded Indigenous Sustainable Response

- Project-specific quantifiable milestones to measure the following:
  a. Indigenous capacity-building.
  b. Progress toward sustainability.

II. Award Information

Type of Award: Cooperative Agreement. HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $15,809,580.

(This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $3,161,916.

(This amount is for the first 12-month budget period and includes direct costs.)

Floor of Award Range: None.

Ceiling of Award Range: $3,161,916.

(This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

As a result of the impact of the Apartheid era, local organizations must possess cultural sensitivity and awareness to work effectively with previously disadvantaged racial and cultural groups. The following type of organizations, which have been operational in Namibia for a minimum of three years, may submit applications:

- Private, non-profit organizations.
- For-profit organizations.
- Faith-based organizations.
- Community-based organizations.

No other applications are solicited.

Eligible applicants must have been operational in Namibia for a minimum of three years.

[1] Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

III.2. Cost Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements

If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

HHS strongly encourages you to submit the application electronically by using the forms and instructions posted for this announcement at *http://www.grants.gov.*

Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 25. If your narrative exceeds the 25 page limit, we will only review the first pages within the page limit.
- Font size: 12 point unreduced.
- Double-spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Must be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Plan.
- Methods.
- Project Goals and Objectives.
- Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief.
- Timeline (e.g., GANNT Chart).
- Staff.
- Project Context and Background (Understanding and Need).
- Performance Measures.
- Budget Justification.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- Curriculum Vitae or Resumes of current staff who will work on the activity.
- Organizational Charts.
- Letters of Support.
- Project Budget and Justification.

The budget justification will not count in the narrative page limit.

Although the narrative addresses activities for the entire project, the applicant should provide a detailed budget only for the first year of activities, while addressing budgetary plans for subsequent years.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: September 12, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *http://www.grants.gov.* We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov.* We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions.

If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.

Antiretroviral Drugs—The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from the GAP headquarters.

- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations, regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any "exempt organizations" (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, "Prostitution and Related Activities," is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All prime recipients that receive U.S. Government funds ("prime recipients") in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, "[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.'") addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, "Prostitution and Related Activities."

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

Application Submission Address: HHS/CDC strongly encourages you to submit electronically at *http://www.grants.gov*. You will be able to download a copy of the application package from *http://www.grants.gov*, complete it off-line, and then upload and submit the application via the Grants.gov Web site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you

may reach them by e-mail at *support@grants.gov* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement.

You must clearly mark the paper submission: "BACK-UP FOR ELECTRONIC SUBMISSION."

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov Web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff.

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management—CDC–RFA–AA108, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

We will evaluate against the following criteria:

1. Technical Approach (20 Points)

Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in Nigeria to achieving the goals of the Emergency Plan? The extent to which the applicant's proposal includes an overall design strategy, including measurable time lines; the extent to which the proposal addresses regular monitoring and evaluation; and the potential effectiveness of the proposed activities in meeting the numerical objectives of the Emergency Plan?

2. Understanding of the Problem (20 Points)

Extent to which the applicant demonstrates a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement. This specifically includes description of the public health importance of the planned activities to be undertaken and realistic presentation of proposed objectives and projects.

3. Ability To Carry Out the Proposal (20 Points)

The extent to which the applicant documents demonstrated capability to achieve the purpose of the project. Does the applicant demonstrate knowledge of the cultural and political realities in Namibia?

4. Personnel (15 Points)

The extent to which professional personnel involved in this project are qualified, including evidence of experience in working with HIV/AIDS, opportunistic infections, and HIV/STD surveillance. Are the staff roles clearly defined?

5. Plans for Administration and Management of Projects (15 Points)

Adequacy of plans for administering the projects.

6. Monitoring, Evaluation and Reporting (10 Points)

Is the plan to measure impact of interventions, and the manner in which they will be provided, adequate? Is the plan to manage the resources of this program and monitor and audit expenditures adequate?

7. Budget (Reviewed, But Not Scored)

The extent to which the itemized budget for conducting the project, along with justification, is reasonable and consistent with stated objectives and planned program activities. Is it consistent with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in Namibia?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office in Namibia. The panel can include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

While U.S.-based organizations are eligible to apply, we will give preference to existing national/Namibian organizations. It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–6 Patient Care.
- AR–8 Public Health System Reporting Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–14 Accounting System Requirements.

Applicants can find additional information on these requirements can be found on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS5161–1 application in your Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf.* Once you have filled out the form, please attach to the Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Namibia.

f. Additional Requested Information.

2. Annual progress report, due no more than 60 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Namibia.

3. Financial status report no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must be mail these reports to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Leonard Floyd, U.S. Department of State, U.S. Department of Health and Human Services, 2540 Windhoek Place, Washington, DC 20521–8320, Telephone: 011 264 61224 149, E-mail: *Floydl@nacop.net.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–1515, E-mail: *swynn@cdc.gov.*

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov.* (Click on "Funding," then "Grants and Cooperative Agreements"), and on the Web site of the HHS Global Health Affairs, Internet address: *http://www.globalhealth.gov.*

Dated: August 11, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–16373 Filed 8–17–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates:

8:30 a.m.–5 p.m., September 7, 2005.
8:30 a.m.–3 p.m., September 8, 2005.

Place: Doubletree Hotel (Atlanta/Buckhead), 3342 Peachtree Rd. NE., Atlanta, Georgia 30326, Telephone: (404) 231–1234.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include updates from the Food and Drug Administration, the Centers for Medicare & Medicaid Services, and the Centers for Disease Control and Prevention; reports on the Institute for Quality in Laboratory Medicine, investigation and recommendations concerning proficiency testing for infectious diseases, status of cytology proficiency testing; and, presentations and discussion regarding appropriate quality control for diverse and evolving test systems and marketing the Good Laboratory Practices for Waived Testing Sites guidelines.

Agenda items are subject to change as priorities dictate.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible. *Oral Comments:* In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, individuals or groups planning to make an oral presentation should, when possible, notify the contact person below at least one week prior to the meeting date. *Written Comments:* For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, the comments should be received at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meeting's Summary Report.

Contact Person For Additional Information: Rhonda Whalen, Chief, Laboratory Practice Standards Branch, Division of Public Health Partnerships—Laboratory Systems, National Center for Health Marketing, Coordinating Center for Health Information and Service, CDC, 4770

Buford Highway, NE., Mailstop F–11, Atlanta, Georgia 30341–3717; telephone (770)488–8042; fax (770)488–8279; or via e-mail at *RWhalen@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 15, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–16432 Filed 8–17–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Epidemiologic Study of Inflammatory Bowel Disease, Request for Applications Number DP–05–130

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Epidemiologic Study of Inflammatory Bowel Disease, Request for Applications Number DP–05–130.

Time and Date: 1 p.m.–3 p.m., September 23, 2005 (Closed).

Place: Teleconference.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Epidemiologic Study of Inflammatory Bowel Disease, Request for Applications Number DP–05–130.

Contact Person For More Information: J. Felix Rogers, PhD, MPH, Scientific Review Administrator, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway, MS–K92, Atlanta, GA 30341, Telephone (404) 639–6101.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 12, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–16359 Filed 8–17–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD05–05–085]

Implementation of Sector Hampton Roads

AGENCY: Coast Guard, DHS.

ACTION: Notice of organizational change.

SUMMARY: The Coast Guard announces the stand-up of Sector Hampton Roads and its subordinate unit, Sector Field Office (SFO) Eastern Shore. Sector Hampton Roads is subordinate to the Fifth Coast Guard District Commander.

The Sector Hampton Roads Commander has the authority, responsibility, and missions of the prior Group Hampton Roads Commander, Commanding Officer Marine Safety Office Hampton Roads, Captain of the Port (COTP), Officer in Charge, Marine Inspection (OCMI), Federal on Scene Coordinator (FOSC), Federal Maritime Security Coordinator (FMSC), and Search and Rescue Mission Coordinator (SMC). The Deputy Sector Commander is designated alternate COTP, FMSC, FOSC, SMC and Acting OCMI. The Deputy Sector Commander also assumes active search suspension (ACTSUS) authority in the absence of the Sector Commander. The Commander of SFO Eastern Shore is subordinate to the Sector Commander and is vested with all the rights, responsibilities, duties, and authority of a Group Commander, which includes SMC. In the absence of the SFO Commander, SMC authority may remain with the Acting Commander. However, active search suspension (ACTSUS) authority will revert to the Commander, Sector Hampton Roads. A continuity of operations order has been issued ensuring that all previous MSO Hampton Roads, Group Hampton Roads, and Group Eastern Shore practices and procedures will remain in effect until superseded by an authorized Coast Guard official and/or document. This continuity of operations order addresses existing COTP regulations, orders, directives and policies.

DATES: This change was effective July 15, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–05–085 and are available for inspection or copying at Fifth District Marine Safety Division, 431 Crawford Street, Portsmouth, VA 23704 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Commander Brian Hall, Fifth District Marine Safety Division at 757–398–6520.

SUPPLEMENTARY INFORMATION: Sector Hampton Roads is located at 4000 Coast Guard Blvd., Portsmouth, VA 23703–2199. A command center supporting Sector Hampton Roads is located at Portsmouth, VA. A second command center operated by SFO Eastern Shore will support the SFO and the SFO's subordinate units along the Delmarva Peninsula in Delaware, Maryland, and Virginia. Sector Hampton Roads is composed of a Response Department, Prevention Department, and Logistics Department. All existing missions and functions performed by Marine Safety Office Hampton Roads, Group Hampton Roads, and Group Eastern Shore have been realigned under this new organizational structure as of July 15, 2005. MSO Hampton Roads, Groups Hampton Roads, and Group Eastern Shore no longer exist as organizational entities. The boundary of the Sector Hampton Roads Marine Inspection, Captain of the Port Zone, and SMC Area of Responsibility (AOR) is as follows: "Beginning at the intersection of the Maryland-Delaware boundary and the coast at Fenwick Island and proceeds along the Maryland-Delaware boundary to a point 75 degrees 30.0 minutes W. longitude; thence southerly to a point 75 degrees 30.0 minutes W. longitude on the Maryland-Virginia boundary, thence westerly along the Maryland-Virginia boundary as it proceeds across the Delmarva Peninsula, Pocomoke River, Tangier and Pocomoke Sounds, and Chesapeake Bay; thence northwesterly along the Maryland-Virginia boundary as those boundaries are formed along the southern bank of the Potomac river to the intersection of Prince William County, Virginia; thence northwestwardly along the Prince William County, Virginia boundary to the intersection of Loudon County, Virginia; thence westward following the Loudon County, Virginia boundary to the intersection with Clarke County, Virginia; thence northeasterly following the Loudon County boundary to the intersection of the Clark County, Virginia-West Virginia boundaries; thence northwestward along the

Virginia-West Virginia boundary and continuing southwestward along the Virginia-West Virginia boundary and the Virginia-Kentucky boundary to the Tennessee boundary; thence eastward along the Virginia-Tennessee boundary to the Virginia-North Carolina boundary; thence eastward to the sea. The offshore boundary starts at Fenwick Island Light and proceeds east to a point 38 degrees 26.41 minutes N. latitude, 74 degrees 26.76 minutes W. longitude; thence southeastwardly to a point 37 degrees 19.23 minutes N. latitude, 72 degrees 13.22 minutes W. longitude; thence east to a point 37 degrees 19.23 minutes N. latitude, 67 degrees 54.11 minutes W. longitude; thence southeastwardly to the outermost extent of the EEZ at a point 36 degrees 59.18 minutes N. latitude, 67 degrees 13.65 minutes W. longitude; thence southwestwardly to a point 36 degrees 33 minutes N. latitude, 67 degrees 44.09 minutes W. longitude; thence west to a point on the Virginia-North Carolina boundary at a point 36 degrees 33 minutes N. latitude, 75 degrees 52.5 minutes W."

The SFO Eastern Shore retains SMC responsibility for an AOR that starts on the Virginia Coast at 37 degrees 20 minutes N. latitude, 75 degrees 57 minutes W. longitude; thence proceeds east to 37 degrees 20 minutes N. latitude, 72 degrees 14 minutes W. longitude; thence northwesterly to 38 degrees 45 minutes N latitude, 75 degrees 04 minutes W. longitude; thence west to the Maryland-Delaware boundary; thence south along the Delaware state line to the southwest corner; thence east along the Delaware state line to a point at 75 degrees 30 minutes W. longitude, thence south to the Virginia-Maryland state line to a point at 75 degrees 30 minutes W. longitude; thence south to 37 degrees 20 minutes N. latitude, 75 degrees 57 minutes W. longitude.

A chart depicting this area can be found on the Fifth District Web page at *http://www.uscg.mil/d5/D5_Units/Sectors.htm.*

The following information is a list of updated command titles, addresses and points of contact to facilitate requests from the public and assist with entry into security or safety zones. Sector Hampton Roads: Commander: CAPT R. R. O'Brien, Jr., Deputy Sector Commander: CDR J. S. Kenyon. Address: Commander, U.S. Coast Guard Sector Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703–2199. Contact: General Number: (757) 668–5555; Chief, Prevention Department: (757) 668–6635; Chief, Response Department: (757) 638–2703; Chief, Logistics Department: (757) 483–8515; Emergency search and rescue: (757) 483–8567. Sector Field Office Eastern Shore: Commander: LCDR D. Reid. Address: Commander, U.S. Coast Guard Sector Field Office Eastern Shore, 3823 Main St., Chincoteague, VA 23336–1809. Contact: General Number: (757) 336–2800; Emergency search and rescue: (757) 336–2889.

Dated: August 4, 2005.

L.L. Hereth,

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

[FR Doc. 05–16412 Filed 8–17–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to title 19 of the Code of Federal Regulations § 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License No.	Port Name
Rufus B. Lee	2825	Mobile.
Walter M. Cline	06284	Tampa.
Peter D. Alberdi	06272	Tampa

Dated: August 12, 2005.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–16374 Filed 8–17–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses are cancelled without prejudice.

Name	License No.	Issuing Port
Open Harbor, Inc.	21902	San Francisco.
Associated Customhouse Brokers, Inc.	9706	Tampa.
World Broker Puerto Rico, Inc.	21326	San Juan.
Sig M. Glukstad, Inc. dba Miami International Forwarders	6090	Miami.

Dated: August 12, 2005.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–16375 Filed 8–17–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c) (2) (A)), this notice seeks comments concerning the Elevation Certificate and the Floodproofing Certificate. The Elevation Certificate is required by the NFIP to certify the elevations of the buildings to determine the proper flood insurance rate. It can also be used by communities to document to what height new buildings and substantial improvements in Special Flood Hazard Areas were elevated so that communities can verify building compliance including the lowest floor determination.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) regulations require the elevation or floodproofing of new or substantially improved structures in designated Special Flood Hazard Areas. As part of the agreement for making flood insurance available in a community, the NFIP requires the community to adopt a floodplain management ordinance containing minimum NFIP requirements intended to reduce future flood losses. One such requirement is that the community require that buildings be elevated to or above the base flood elevation and, obtain the elevation of the lowest floor (including basement) of all new and substantially improved structures, and maintain a record of all such information. These data should be generated and retained as part of the community's permit records. The Elevation Certificate is one convenient way for a community to document building compliance; however, it is not a prescribed form. The Floodproofing Certificate may similarly be used to establish the floodproofed design elevation in those instances when floodproofing of non-residential structures is permitted.

The Elevation Certificate and Floodproofing Certificate are used in conjunction with the application in order to properly rate Post-FIRM structures in Special Flood Hazard Areas (44 CFR 61.7, 61.8) for flood insurance. Post-FIRM are those buildings constructed after publication of the Flood Insurance Rate Map (FIRM). In addition, the Elevation Certificate is needed for Pre-FIRM structures being rated under Post-FIRM flood insurance rules. The standardized format of the Elevation Certificate (FEMA Forms 81–31) and Floodproofing Certificate for Non-Residential Structures (FEMA Forms 81–65) provide community officials with needed data in order to verity building elevation information and determine compliance with the community's floodplain management ordinance.

Collection of Information

Title: Post Construction Elevation Certificate/Floodproofing Certificate.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0008.

Form Numbers: FEMA Form 81–31, Elevation Certificate, and FEMA Form 81–65, Flood Proofing Certificate.

Abstract: The Elevation Certificate and Floodproofing Certificate are used in conjunction with the application for flood insurance. The certificates are required for proper rating of post Flood Insurance Rate Map (FIRM) structures, which are buildings constructed after the publication of the FIRM, for flood insurance in Special Flood Hazard Areas. In addition, the Elevation Certificate is needed for pre-FIRM structures being rated under post-FIRM flood insurance rules. The certificates provide community officials and others standardized documents to readily record needed building elevation information.

The certificates are supplied to insurance agents, community officials, surveyors, engineers, architects, and NFIP policyholders/applicants. Surveyors, engineers, and architects complete the Elevation Certificate. Engineers and architects complete the Floodproofing Certificate. Community officials are provided the building elevation information required to document and determine compliance with the community's floodplain management ordinance. NFIP policyholders/applicants provide the appropriate certificate to insurance agents. The certificate is then used in conjunction with the flood insurance application so that the building can be properly rated for flood insurance.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, farms, and State, local or tribal governments.

Estimated Total Annual Burden Hours:

ANNUAL BURDEN HOURS

Project/Activity (Survey, Form(s), Focus Group, etc.)	No. of Respondents (A)	Frequency of Responses (B)	Burden Hours Per Respondent (C)	Annual Responses (A×B)	Total Annual Burden Hours (A×B×C)
Elevation Certificate, FEMA Form 81–31 and Instructions.	48,300	One per structure	3.50 hours	48,300	169,050
Floodproofing Certificate, FEMA Form 81–65	130	One per structure	3.25 hours	130	423
Web-based Training Module (Surveyors Video, Surveyors Guide for EC, and Bldg. Diagrams and Photo).	48,300	One per structure	0.25 hour	48,300	12,075
Total	48,430	.....	.....	48,430	181,548

Estimated Cost: The cost to the respondent is estimated to be a fee of $200–$500 charged to the applicant by the private sector professional completing the Elevation or Floodproofing Certificate. The annual cost to 48,300 respondents × an average cost of $350 is estimated to be approximately $16,950,500 annually.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to George S. Trotter, Acting Chief, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Jhun de la Cruz, Insurance Examiner, Mitigation Division, (202) 646–2650 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at telephone number (202) 646–2625 or facsimile number (202) 646–3347 or e-mail *muriel.anderson@dhs.gov*.

Dated: August 11, 2005.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–16382 Filed 8–17–05; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Post-Delisting Monitoring Plan for Eggert's Sunflower (*Helianthus eggertii*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (we) announces the availability of the Draft Post-delisting Monitoring Plan for Eggert's Sunflower (*Helianthus eggertii*) (PDM). We propose to monitor the status of Eggert's sunflower over a 5-year period, from the date of final delisting under the Endangered Species Act (Act) in 2005 through 2010. Monitoring will be through (1) annual evaluation of information already routinely being collected by 7 agencies that have entered into long-term management agreements with us covering 27 populations of *H. eggertii*, and (2) a total census of these populations during the 2nd and 5th year of the monitoring period. We solicit review and comment on this Monitoring Plan from local, State and Federal agencies, and the public.

DATES: We will accept and consider all public comments received on or before September 19, 2005.

ADDRESSES: If you wish to comment on this proposed PDM, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501.

2. You may hand-deliver written comments to our Tennessee Field Office at the above address or fax your comments to 931/528–7075.

Comments and materials received, as well as supporting documentation used in preparation of this draft PDM, are available for public inspection, by appointment, during normal business hours at the Tennessee Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Timothy Merritt at the above address (telephone 931/528–6481, extension 211).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that the final PDM for *H. eggertii* will be accurate and effective in helping us assess whether removal of the protections of the Act leads to a deterioration of the status, and potential need for emergency relisting, of *H. eggertii*. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed PDM.

Comments may be submitted as indicated under **ADDRESSES.** Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. A respondent may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses available for public inspection in their entirety.

In making a final decision on the PDM, we will take into consideration the comments and any additional information we receive. Comments and materials received, as well as supporting information used to write the PDM, will be available for public inspection, by appointment, during normal business hours at the address indicated in the **ADDRESSES** section.

Background

The 1988 amendments to the Act require us to implement a system, in cooperation with the States, to monitor all species that have been delisted, or removed from the list of endangered and threatened species listed under the Act, due to recovery efforts for at least 5 years following delisting (section 4(g)(1)). The purpose of this PDM is to verify that a species that is delisted, due to recovery, remains secure from risk of extinction after it no longer has the protections of the Act. If the species does not remain secure, we can use the emergency listing authorities under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs. However, we are responsible for compliance with section 4(g) and must remain actively engaged in all phases of the PDM.

By a separate rulemaking being published elsewhere in today's issue of the **Federal Register**, the Service is delisting Eggert's sunflower, a perennial herb found in Alabama, Kentucky, and Tennessee, due to recovery and new information. The Service has drafted a

PDM for Eggert's sunflower and, by this Notice of Availability, we are making it available for review. Following the end of the comment period, any comments will be incorporated as appropriate into the final PDM.

There are currently 7 populations of Eggert's sunflower in Alabama, 18 populations in Kentucky, and 48 populations in Tennessee, for a total of 73, that have more than 100 flower stems. This encompasses a total of 287 currently known sites, far exceeding the 34 known at the time of the species' listing, and we continue to find more sites. As defined by the recovery plan for this plant, only 20 populations are required for this plant to be considered for delisting.

The Federal, State, and private conservation group landowners involved in recovery activities for this species (see the final delisting rule for *H. eggertii* elsewhere in this issue of the **Federal Register**) are already monitoring the status of this species, either through existing agreements or voluntarily. Kentucky Transportation Cabinet (KTC), The Nature Conservancy (TNC), and Mammoth Cave National Park (MCNP) have signed management agreements with us, covering 5 populations in Kentucky, to protect this species and monitor its status for a period of 7 years for KTC and 10 years for TNC and MCNP. We also have Cooperative Management Agreements with the Tennessee Wildlife Resources Agency (TWRA), A.G. Beaman Park (AGBP), and Arnold Air Force Base (AAFB) covering 21 populations in Tennessee, bringing the total number of populations managed under long-term conservation agreements to 27, considerably more than the 20 populations required for recovery in the *H. eggertii* recovery plan. These landowners will protect these populations and monitor their status for a period of 10 years. We will seek active participation of all the entities that signed Cooperative Management Agreements to assist us with the post-delisting responsibilities for *H. eggertii*.

Given the protection afforded by landowners, the current range of this sunflower, and the number of newly discovered populations, we believe what is needed for recovery of this plant has been achieved and that the landowners involved will continue to assist us and likely extend their management agreements to protect this plant past 7 to 10 years.

Our Tennessee Field Office will coordinate with AAFB, TWRA, AGBP, MCNP, KTC, TNC, and State resource agencies to implement an effective 5-year monitoring program to track the population status of *H. eggertii*. We will annually evaluate the effectiveness of the Cooperative Management Agreements in protecting *H. eggertii* populations. To detect any changes in the status of *H. eggertii*, we will use, to the fullest extent possible, information routinely collected by these agencies on a yearly basis. In addition, we will ensure that a total population census that includes both flowering stems and total stems will be conducted during the second and fifth years of the monitoring period for the 27 populations that are protected on public lands. Based on the recovery criteria of needing 20 geographically distinct, self-sustaining populations that are secure and have stable or increasing populations for 5 years, we believe that monitoring the 27 populations that occur on public lands is sufficient to determine if threats have been reduced or removed to a point at which listing under the Act is no longer required.

Monitoring for *H. eggertii* should ideally be performed between August 15 and September 15, although the season may begin as early as August 1 and end as late as October 15 depending on environmental conditions (*e.g.*, amount of rain during the growing season, etc.). The following protocol will be used to monitor the 27 populations that are protected on public lands.

(1) Find the monitoring location using a combination of directions and a GPS unit.

(2) Evaluate the location for the presence/absence of Eggert's sunflower.

(3) Count to determine if there are ±100 flowering stems.

(4) Count the total stems.

(5) Search for evidence of any recruitment or juvenile plants and note the relative abundance.

(6) Take a GPS reading at the center of each colony and estimate its width and length.

(7) Draw the general shape of the colony and other land features.

(8) Take digital pictures of the colony from a single point such as one corner looking across the colony.

(9) Perform a visual threats assessment of each occurrence using the five following criteria: Invasive pest plants, habitat modification, succession of woody species, disease, and herbivory/insect damage. Assign ranks for each threat on the following scale: 1 = no current threat, 2 = low current threat, 3 = moderate threat, 4 = high threat, 5 = extreme immediate threat. A rank of "1" indicates that the particular threat poses no impact at the time of observation (*e.g.*, there are no invasive pest plants present in the area). A low threat rank (2) would indicate that the site may be impacted in the future, but is not presently (*e.g.*, occasional stems of an invasive pest plant are present). A moderate threat rank (3) would indicate that the threat is established at the occurrence, but does not appear to be negatively impacting the occurrence at the time of observation. A high threat rank (4) should be given when the threat is established at the site and appears to be negatively impacting the occurrence. The extreme rank (5) would be given when the threat is immediate and likely to severely negatively impact the occurrence within the present or next year's growing season.

(10) Make qualitative notes on the general habitat conditions and any land management. Describe the status of the occurrence in general.

If we determine at the end of the 5-year post-delisting monitoring period that "recovered" status is still appropriate and factors that led to the listing of *H. eggertii*, or any new factors, remain sufficiently reduced or eliminated, monitoring may be reduced or terminated. If data show that the species is declining or if one or more factors that have the potential to cause a decline are identified, we will continue monitoring beyond the 5-year period and may modify the PDM based on an evaluation of the results of the initial PDM, or reinitiate listing if necessary.

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

Office of Management and Budget (OMB) regulations at 5 CFR 1320 implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB regulations at 5 CFR 1320.3 (c) define a "collection of information" as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3 (c)(4) specifies that "10 or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For purposes of this definition, employees of the Federal Government are not included. A Federal 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 proposed PDM for Eggert's sunflower requests that cooperating land owners/managers annually provide the Service with population information they routinely collect. These information requirements do not, however, require OMB approval under the Paperwork Reduction Act, because

there are fewer than 10 non-Federal respondents.

Author

The primary author of this proposed rule is Timothy Merritt (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 5, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–16275 Filed 8–17–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Recovery Plan for the Endangered *Catesbaea melanocarpa*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the final recovery plan for *Catesbaea melanocarpa* (no common name). This endangered plant species is a small spiny shrub of the family Rubiacea. It is extremely rare and is known from Puerto Rico, St. Croix in the U.S. Virgin Islands, Barbuda, Antigua, and Guadeloupe. The recovery plan includes specific recovery goal/objectives and criteria to be met to delist *Catesbaea melanocarpa* under the Endangered Species Act of 1973, as amended.

ADDRESSES: Copies of this recovery plan are available on the Internet at *http://endangered.fws.gov/recovery/index.html#plans* or by request from the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (telephone 787/851–7297).

FOR FURTHER INFORMATION CONTACT: Marelisa Rivera at the above address (telephone 787/851–7297, ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Catesbaea melanocarpa belongs to a genus that consists of ten or more species of spiny shrubs. *Catesbaea melanocarpa* is extremely rare and is known from Puerto Rico, St. Croix in the U.S. Virgin Islands (USVI), Barbuda, Antigua, and Guadeloupe. In the U.S. Caribbean, it is known from only one individual in Cabo Rojo, Puerto Rico, and approximately 100 individuals in one location in St. Croix, USVI. Little information is available regarding the status of the species in Barbuda, Antigua, and Guadalupe. The two currently known locations in Puerto Rico and the USVI are privately-owned, and are subject to development pressure for residential and tourism projects. The risk of extinction is high because so few individuals of *Catesbaea melanocarpa* are known to occur in limited areas. Additionally, the species is threatened by catastrophic natural events, such as hurricanes, as well as human induced fires. *Catesbaea melanocarpa* was listed as endangered under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act) on March 17, 1999 (64 FR 13116).

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of our endangered species program. To help guide the recovery effort, we prepare recovery plans for most listed species. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting them, and estimate time and cost for implementing recovery measures.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide public notice and an opportunity for public review and comment during recovery plan development. A notice of availability of the technical agency draft recovery plan for *Catesbaea melanocarpa* was published in the **Federal Register** on September 27, 2004 (69 FR 57712). A 60-day comment period was opened with the notice, closing on November 26, 2004. We received comments from two interested parties and from two experts on *Catesbaea melanocarpa* who served as peer reviewers of the recovery plan. On April 19, 2005, we published in the **Federal Register** a notice of reopening the comment period for the agency draft recovery plan to solicit comments on revised "Recovery Goal" and "Recovery Criteria" sections (70 FR 20396). A 30-day comment period was opened with the notice, closing on May 19, 2005. We received comments from two interested parties. Comments and information submitted were considered in the preparation of this final plan and, where appropriate, incorporated.

Recovery Plan

The objective of this recovery plan is to provide a framework for the recovery of *Catesbaea melanocarpa* so that protection under the Act is no longer necessary. As recovery criteria are met, the status of the species will be reviewed, and it will be considered for reclassification to threatened status or for removal from the Federal List of Endangered and Threatened Wildlife and Plants (50 CFR part 17).

The information on the current number of individuals throughout the species' range, and the knowledge of biology, habitat requirements, and genetic information is limited. However, the Service has developed downlisting and delisting criteria for *Catesbaea melanocarpa*. These criteria are intended to provide long-term sustainability of the endangered *Catesbaea melanocarpa*. Long term sustainability requires adequate reproduction for replacement of losses due to natural mortality factors (including disease and stochastic events), sufficient genetic robustness to avoid inbreeding depression and allow adaptation, sufficient habitat for long term population maintenance, and elimination or control of threats.

Downlisting of the species from endangered to threatened status will be considered when: (1) The habitat known to support the two extant populations (St. Croix and Peñones de Melones) is enhanced and protected through landowner conservation agreements or easements; (2) extant populations are enhanced through the planting of additional propagated individuals to augment the number of adult individuals to at least 250; (3) at least one population within each of the following previously occupied habitat is found and/or established: Guánica Commonwealth Forest (PR), Susúa Commonwealth Forest (PR), Barbuda, Antigua, and Guadalupe; and (4) research is conducted on key biological and genetic issues, including effective propagation techniques, and number of individuals within a population and number of populations needed for the establishment of self-sustaining populations and a viable overall population.

Catesbaea melanocarpa will be considered for delisting when: (1) A number of viable populations (to be determined following the appropriate studies) are protected by long term conservation strategies; (2) viable populations (the number of which should be determined following the appropriate studies) are established in previously unoccupied but suitable habitat at Sandy Point National Wildlife Refuge (USVI), Cabo Rojo National Wildlife Refuge (PR), La Tinaja in Sierra Bermeja (Laguna Cartagena National Wildlife Refuge, PR), and any other

identified suitable conservation area within the dry forest zone; and (3) the numbers of populations, their sizes, genetic makeup and distribution needed to ensure self-sustainability are determined and achieved.

In an effort to meet the recovery criteria, the following recovery actions were identified. The Recovery Plan breaks these actions down further into specific tasks.

1. Protect existing populations (St. Croix and Cabo Rojo) from current and future threats and/or limiting factors through landowner agreements and other conservation mechanisms.

2. Determine the distribution and population status of *Catesbaea melanocarpa* throughout its present and historic range, including Barbuda, Antigua, and Guadalupe.

3. Evaluate techniques and develop a plant propagation program for *Catesbaea melanocarpa*.

4. Enhance existing populations and establish new self-sustaining populations (number of which should be determined by viability analysis) within protected areas by introducing additional individuals developed through propagation. Introduction sites may include, but are not limited to, the Guánica Commonwealth Forest, Susúa Commonwealth Forest, Sandy Point National Wildlife Refuge, and Cabo Rojo National Wildlife Refuge.

5. Conduct additional scientific research on *Catesbaea melanocarpa*.

6. Facilitate the recovery of *Catesbaea melanocarpa* through public awareness and education.

7. Provide technical assistance to Barbuda, Antigua, and Guadalupe for the development of conservation measures for the species.

8. Refine recovery criteria.

Authority

The authority for this action is section 4(f) of the Act, 16 U.S.C. 1533(f).

Dated: July 11, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–16372 Filed 8–17–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. CO–01–134–1220–241A]

McInnis Canyons National Conservation Area Advisory Council Meeting

AGENCY: Bureau of Land Management Interior.

ACTION: Notice of meetings.

SUMMARY: The McInnis Canyons National Conservation Area (MCNCA) Advisory Council will hold its next meeting of 2005 on September 7, 2005. The meeting will begin at 3 p.m. and will be held at the Fruita City Office Building, 325 East Aspen Avenue, Fruita, CO. An additional meeting will be held on December 7, 2005 at the Mesa County Administration Building; 544 Rood Avenue, Grand Junction, CO.

DATES: The meeting will be held on September 7, 2005.

ADDRESSES: For further information or to provide written comments, please contact the Bureau of Land Management (BLM), 2815 H Road, Grand Junction, Colorado 81506; (970) 244-3000.

SUPPLEMENTARY INFORMATION: The McInnis Canyons National Conservation Area was established on October 24, 2000 when the Colorado Canyons National Conservation Area was established on October 24, 2000 when the Colorado Canyons National Conservation Area and Black Ridge Wilderness Act of 2000 (the Act) was signed by the President. The Act required that the Advisory Council be established to provide advice in the preparation and implementation of the CCNCA Resource Management Plan. The name was congressionally changed at the end of 2004 from Colorado Canyons National Conservation Area to McInnis Canyons National Conservation Area (MCNCA).

The MCNCA Advisory Council will meet on Wednesday, September 7, 2005 at the Fruita City Office Building, 325 East Aspen Avenue, Fruita, CO. The agenda topics for this meeting are:

(1) Status of pending Advisory Council nominations.

(2) Update on Friends of McInnis Canyons NCA.

(3) Update on NCA Implementation Plan.

(4) Cooperative management of Loma Boat Launch. (Field trip to site included.)

(5) Public comment period

(6) Agenda for next meeting

Beginning September of 2005, the MCNCA Advisory Council meetings will be held quarterly on the first Wednesday of every third month. The dates for these meetings are September 7, 2005; and December 7, 2005. Meetings for 2006 will be determined at the December meeting. Topics of discussion for future meetings will include completion of an implementation/business plan, refinement of a monitoring strategy, partnerships, interpretation, adaptive management, socioeconomic, and other issues as appropriate.

All meeting will be open to the public and will include a time set aside for public comment. Interested persons may make oral statements at the meetings or submit written statements at any meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of all Council meetings will be maintained at the Bureau of Land Management Office in Grand Junction, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: August 5, 2005.

Paul H. Peck,

Manager, McInnis Canyons National Conservation Area.

[FR Doc. 05–16356 Filed 8–17–05; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–5853–EU]

Notice of Realty Action: Competitive Sale of Public Lands in Clark County, NV; Termination of Recreation and Public Purposes Classification and Segregation; Withdrawal of the Formerly Classified Lands by the Southern Nevada Public Land Management Act

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell by public auction 86 parcels of Federal public land, aggregating approximately 3,197.00 acres, more or less, in the Las Vegas Valley, Nevada. The sale will be under the authority of the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343), as amended by Title IV of the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 1994) (SNPLMA). The SNPLMA sale will be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1713 and 1719), and BLM land sale and mineral conveyance regulations at 43 CFR parts 2710 and 2720. The sale will be conducted in Las Vegas, Nevada, on November 16, 2005, using competitive bidding procedures under the regulations, at not less than the

appraised fair market value (FMV) of each parcel.

BLM may also continue the auction of up to five additional parcels near Laughlin, Nevada (hereinafter, "the Laughlin parcels"), which remain unsold from a BLM competitive oral auction held in Laughlin, Nevada, on June 15, 2005. These five parcels aggregate approximately 1,796.65 acres and have been for sale on the Internet since the June 15, 2005, sale. If not sold on the Internet by November 16, 2005, BLM will take oral bids on these parcels at not less than the appraised fair market value of each parcel, at the proposed November 16, 2005, sale. Sealed bids may also be submitted for these parcels. These parcels are not within the SNPLMA disposal boundary and are sold solely under the authority of FLPMA. They were originally noticed for sale in the **Federal Register** on March 30, 2005, at 70 FR 16301. That notice provides that, "If not sold, any parcel described above in this Notice may be identified for sale at a later date without further legal notice." 70 FR at 16303. More information on these parcels, as well as all parcels involved with the November 16 sale, is available at *http://propertydisposal.gsa.gov*. If sold on the Internet or at the November 16, 2005, sale, these parcels will be sold under the terms of conditions of the original notice at 70 FR 16301. BLM's decision to sell the Laughlin parcels has already undergone notice and comment procedures pursuant to the sale regulations at 43 CFR part 2700. Environmental documentation prepared pursuant to the National Environmental Policy Act for sale of the Laughlin parcels has also undergone a public comment period. Therefore, BLM will not be accepting any new comments regarding the continued auction of the Laughlin parcels.

DATES: Comments regarding the proposed SNPLMA sale of the 3,197.00 acres in the Las Vegas Valley must be received by BLM on or before October 3, 2005. Sealed bids, if applicable, must be received by BLM not later than 4:30 p.m., PST, November 9, 2005. The sale by auction will begin at 10 a.m., PST, November 16, 2005. Registration for oral bidding for those who have not pre-registered will begin at 8 a.m., PST, November 16, 2005 and will end at 10 a.m., PST. Other deadline dates for the receipt of payments, and arranging for certain payments to be made by electronic transfer, are specified in the proposed terms and conditions of sale, as stated herein.

ADDRESSES: Comments regarding the proposed sale or any sealed bid may be submitted to BLM at the following address:

Field Manager, Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130.

More detailed information regarding the proposed sale and the SNPLMA lands and the Laughlin parcels may be reviewed during normal business hours (7:30 a.m. to 4:30 p.m.) at the BLM Las Vegas Field Office (LVFO).

The address for oral bidding registration, and the location of the public auction, is:

Cashman Center, 850 Las Vegas Boulevard North, Las Vegas, NV 89101.

The auction will take place inside the Cashman Theater located in the southwest corner of the Cashman Center with entrance to the Theater between Parking Lots "B" and "C". Registration will take place in the Theater Lobby. Cashman Center charges a $3 per vehicle parking fee. Parking Passes will be provided to those individuals who pre-register and pick-up a Sale Packet at the LVFO prior to the day of the sale. They will be sent with the sale packet to everyone on the sale mailing list. Give the Pass to the attendant when you enter the parking area. If you don't have a Pass you will be required to pay the fee. There will be no exceptions.

Directions to the Cashman Center from Boulder City, Henderson, or the Southeast Area of Las Vegas: Take U.S. 95 North. Exit on Las Vegas Blvd. North. Turn right on Washington Ave. Turn right on Washington to Cashman Center (850 Las Vegas Blvd. North).

Directions to the Cashman Center from Reno or the Northwest Area of Las Vegas: Take U.S. 95 South. Exit on Las Vegas Blvd. North (Las Vegas Blvd/ Cashman Center). Turn left to Cashman Center (850 Las Vegas Blvd. North).

FOR FURTHER INFORMATION CONTACT: You may contact Judy Fry, Program Lead, SALES at (702) 515–5081 or by e-mail at *jfry@nv.blm.gov*. You may also call (702) 515–5000 and ask to have your call directed to a member of the SALES Team.

SUPPLEMENTARY INFORMATION: The following described lands in the Las Vegas Valley, Nevada, are proposed for sale and have been authorized and designated for disposal under SNPLMA. The lands will be put up for sale competitively on November 16, 2005, at an oral auction for not less than the appraised fair market value (FMV) of each parcel. These SNPLMA parcels described below will be auctioned under the terms and conditions of this Notice of Realty Action (NORA).

Mount Diablo Meridian, Nevada

T. 19 S., R. 59 E.,
Sec. 02, Lots 27 and 28;
Sec. 13, NE¼NE¼NE¼NE¼;
Sec. 25, NE¼SW¼SW¼.
T. 19 S., R. 60 E.,
Sec. 19, Lot 23, E½NE¼NE¼SW¼;
Sec. 29, E½NE¼SW¼NW¼;
Sec. 30, E½NE¼NE¼NE¼,
SE¼NW¼SE¼NE¼.
T. 20 S., R. 60 E.,
Sec. 06, NE¼NW¼SE¼SW¼,
SE¼NW¼SE¼SW¼;
Sec. 22, S½NE¼NW¼SE¼.
T. 21 S., R. 60 E.,
Sec. 09, W½SE¼SE¼NW¼,
SE¼SW¼NW¼.
T. 22 S., R. 60 E.,
Sec. 10, W½NE¼NE¼NE¼;
Sec. 13, S½NW¼NW¼NE¼,
W½NE¼NW¼NE¼,
NE¼SE¼NW¼NE¼,
NE¼SW¼NW¼NE¼,
SW¼SW¼NW¼NE¼,
SE¼SW¼NW¼NE¼,
SW¼SE¼NW¼NE¼,
SE¼SE¼NW¼NE¼;
Sec. 14, SW¼NE¼SE¼;
Sec. 15, N½SE¼SE¼SE¼,
SW¼SE¼SE¼SE¼;
Sec. 16, NE¼NE¼SE¼NE¼,
SE¼NE¼SE¼NE¼,
NE¼NW¼SE¼NE¼,
SE¼NW¼SE¼NE¼;
Sec. 17, NE¼NE¼SE¼;
Sec. 19, Lots 22, 23–26, 32, 38, 40–44, 46, 48, 49, 51–54, 56–58,
NW¼NW¼NE¼NE¼,
SW¼NW¼NE¼NE¼,
SE¼NW¼NE¼NE¼,
NE¼SW¼NE¼NE¼,
NW¼SE¼NE¼NE¼,
NE¼NE¼NW¼NE¼,
SE¼NE¼NW¼NE¼,
SE¼SW¼SE¼NE¼,
SW¼NE¼NE¼NW¼,
SE¼NE¼NE¼NW¼,
NW¼NW¼NE¼NW¼,
SW¼NW¼NE¼NW¼,
SE¼NW¼NE¼NW¼,
N½SW¼NE¼NW¼,
N½SE¼NE¼NW¼,
SE¼SE¼NE¼NW¼,
N½NE¼NE¼SE¼NW¼,
SE¼NE¼NE¼SE¼NW¼,
S½NW¼NE¼SE¼NW¼,
SW¼NE¼SE¼NW¼,
N½SW¼SE¼NW¼,
SW¼SW¼SE¼NW¼,
W½SE¼SE¼NW¼,
E½NE¼NE¼SW¼,
NW¼NW¼NE¼SW¼,
NW¼NE¼NE¼SE¼,
W½NW¼NE¼SE¼,
SE¼NW¼NE¼SE¼,
N½SW¼NE¼SE¼,
NE¼NE¼NW¼SE¼,
W½NE¼NW¼SE¼,
NE¼NW¼NW¼SE¼,
SW¼NW¼NW¼SE¼,
SE¼NE¼SW¼SE¼,
SE¼NW¼SW¼SE¼,
SE¼SW¼SW¼SE¼,
SW¼SE¼SW¼SE¼,
NE¼SE¼SW¼SE¼,
S½SW¼SE¼SE¼, N½SE¼SE¼SE¼,
SE¼SE¼SE¼SE¼.

Sec. 20, NW¼NW¼NW¼NE¼;
Sec. 21, NW¼SW¼NW¼NE¼,
SW¼SW¼NW¼NE¼,
SE¼SW¼NW¼NE¼,
NE¼NE¼NE¼NW¼,
NW¼NE¼NE¼NW¼,
SW¼NE¼NE¼NW¼,
SE¼NE¼NE¼NW¼,
SE¼NW¼NE¼NW¼,
NE¼SW¼NE¼NW¼,
SE¼SW¼NE¼NW¼,
NE¼SE¼NE¼NW¼,
SE¼SE¼NE¼NW¼,
NE¼NE¼NW¼NW¼,
NW¼NE¼NW¼NW¼,
SW¼NE¼NW¼NW¼,
NE¼NW¼NW¼NW¼,
N½SW¼NW¼NW¼;
Sec. 22, SE¼SE¼NE¼NW¼,
SW¼SE¼NE¼NW¼,
NE¼NE¼NW¼NW¼,
NE¼NE¼SW¼NW¼,
S½NE¼SW¼NW¼,
NW¼NE¼SE¼NW¼,
SE¼NW¼SE¼NW¼,
SW¼NE¼SE¼NW¼,
NW¼SE¼SE¼NW¼,
E½SE¼NE¼SW¼SW¼;
Sec. 30, SE¼SW¼NE¼NE¼,
SW¼SE¼NE¼NE¼,
SW¼NE¼NW¼NE¼,
S½NW¼NW¼NE¼, SW¼NW¼NE¼,
W½SE¼NW¼NE¼, N½SW¼NE¼,
SW¼SW¼NE¼, N½SE¼SW¼NE¼,
SW¼SE¼SW¼NE¼,
NE¼NE¼SE¼NE¼,
W½NE¼SE¼NE¼, NW¼SE¼NE¼,
S½SE¼NE¼.
T. 19 S., R. 61 E.,
Sec. 14, Lots 1–16;
Sec. 15, portions of Lots 1–10, 12, 16;
Sec. 15, Lots 13–15, 17, 18;
Sec. 16, portions of Lots 1–4, 6, 8, 17, 18, 20;
Sec. 16, Lots 5, 9–12, 14–16, 19, 21, 22;
Sec. 18, Lots 5, 7, 10, 12, 14, 18, 19, 21, 24, 25, 28–37;
Sec. 19, Lot 7;
Sec. 21, Lots 1, 2, 3, 6, 7, 8;
Sec. 23, Lots 1–4, 6–10.
T. 22 S., R. 61 E.,
Sec. 32, S½SW¼NE¼NW¼,
S½NW¼SE¼NW¼.
Sec. 33, Lots 38 and 77.
T. 21 S., R. 62 E.,
Sec. 28, N½NE¼SW¼SE¼SW¼,
NW¼SE¼SE¼SW¼.

Consisting of 86 parcels containing 3,197.00 acres, more or less, including the North Las Vegas parcel.

A map and complete legal description of the North Las Vegas parcel (N–75980) will be available at the BLM LVFO upon finalization and recordation of the cadastral survey by the BLM prior to the auction date.

In addition to the lands described herein, the Laughlin parcels, and, possibly, other parcels that have been published in a previous NORA, and that have been previously noticed for sale, but did not sell, may be sold at this sale. The legal description of the Laughlin parcels and the terms and conditions of sale can be reviewed at 70 FR 16301.

The following SNPLMA parcels will have all mineral interests reserved to the United States; therefore, no $50 filing fee will be required as no mineral interests will be conveyed: N–79498 through N–79506, N–79511 through N–79529, N–79534 through N–79553, N–77348, N–79579 and N–79580. A legal description of the parcels associated with these BLM Serial Numbers is available at the BLM Las Vegas Field Office, or online at *http://propertydisposal.gsa.gov*.

For the other SNPLMA parcels, the locatable mineral interests therein will be sold simultaneously with the surface interests. Those lands have no known locatable mineral value. An offer to purchase those parcels will constitute an application for conveyance of the locatable mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the locatable mineral interests.

The mineral interests for the Laughlin parcels will be reserved or sold as detailed in the original NORA for those parcels at 70 FR 16301.

Terms and Conditions of Sale

The terms and conditions applicable to the SNPLMA sale parcels are as follows:

1. All discretionary leaseable and saleable mineral deposits on the lands in Clark County are reserved to the United States; but, permittees, licensees, and lessees of the United States retain the right to prospect for, mine, and remove such minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, together with all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All parcels are subject to valid existing rights. Parcels may also be subject to applications received prior to publication of this Notice if processing the application would have no adverse affect on the marketability or the federally approved Fair Market Value (FMV) of a parcel. Encumbrances of record, appearing in the BLM public files for the parcels proposed for sale, are available for review during business hours, 7:30 a.m. PST to 4:30 p.m. PST, Monday through Friday, at the BLM LVFO.

4. All parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. No warranty of any kind, express or implied, is given by the United States as to title, whether or to what extent the land may be developed, physical condition, future uses, or any other circumstance or condition. The conveyance of any parcel will not be on a contingency basis. However, to the extent required by law, all parcels are subject to the requirements of section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA) (42 U.S.C. 9620(h)).

6. All purchasers/patentees, by accepting a patent, covenant and agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentees or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentees' use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentees and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, State, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solid waste or hazardous substances or waste, as defined by Federal and State environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may

be enforced by the United States in a court of competent jurisdiction.

7. Maps delineating the individual proposed sale parcels and current appraisals for each parcel are available for public review at the BLM LVFO.

8. (a) Parcel N–79580 will be put up for purchase and sale at the oral auction. A sealed bid for this parcel will not be accepted. If this parcel is not sold at the oral auction, it will *not* be offered later on an online Internet auction.

8. (b) Sealed bids may be presented for all other parcels. Sealed bids must be received at the BLM LVFO, no later than 4:30 p.m., PST, November 9, 2005. Sealed bid envelopes must be marked on the lower front left corner with the BLM Serial Number for the parcel and the sale date. Bids must be for not less than the federally approved FMV and a separate bid must be submitted for each parcel.

8. (c) Each sealed bid shall be accompanied by a deposit in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the order of the Bureau of Land Management, for not less than 10 percent or more than 30 percent of the amount bid. The highest qualified sealed bid for each parcel will become the starting bid at the oral auction. If no sealed bids are received, oral bidding will begin at the FMV, as determined by the authorized officer. All sealed bids will be opened and recorded at 12 noon PST on November 10, 2005 at the BLM office on 4701 N. Torrey Pines Drive in Las Vegas. The high sealed bid amount will be posted on the auction order list and will be the starting bid amount at the oral auction.

9. All parcels will be offered for competitive sale by oral auction beginning at 10 a.m., PST, November 16, 2005, at Cashman Theater located inside Cashman Center at 850 Las Vegas Boulevard North, Las Vegas, NV. Interested parties who will not be bidding are not required to register and may proceed directly to the Cashman Theater. If you are at the auction to conduct business with the high bidders or are there to observe the process, should seating become limited, you may be asked to relocate to the balcony or another area in order to provide seating in the theater for all bidders before the auction begins. We will try to provide an audio/visual transmission outside the theater for your convenience.

10. All oral bidders are required to register. Registration for oral bidding will begin at 8 a.m. PST on the day of the sale and will end at 10 a.m. PST. You are encouraged to pre-register by mail or fax by completing the form located in the Sale Packet. The form is also available at the BLM LVFO.

11. Prior to receiving a bidder number on the day of the sale, all registered bidders must submit a certified check, bank draft, or cashier's check in the amount of $10,000. The check must be made payable in U.S. dollars to the order of the Bureau of Land Management. On the day of the sale, pre-registered bidders may go to the Express Registration Desk, present their Photo Identification, the required $10,000 check, and receive a bidder number. All other bidders must go to the standard Registration Line where additional information will be requested along with your Photo Identification and the required $10,000 check. Upon completion of registration you will be given a bidder number. If you are a successful bidder, the $10,000 will be applied to your required deposit. For parcel N–79580 arrangements may be made for Electronic Fund Transfer (EFT) of the required 20 percent deposit by notifying BLM no later than October 31, 2005 of your intent to use EFT.

12. If you purchase one or more parcels and default on any single parcel, the default may be against all of your parcels. BLM may retain your $10,000 and the sale of *all* parcels to you may be cancelled. Following the auction, checks will be returned to the unsuccessful bidders upon presentation of their Photo Identification at the designated area.

13. The highest qualifying bid for any parcel, whether sealed or oral, will be declared the high bid. The apparent high bidder, if an oral bidder, must submit a deposit of not less than 20 percent of the successful bid by 3 p.m. PST on the day of the sale in the form of cash, personal check, bank draft, cashiers check, money order or any combination thereof, made payable in U.S. dollars to the Bureau of Land Management. Funds must be delivered no later than 3 p.m. PST the day of the sale to the BLM Collection Officers at the Cashman Theater. Funds will NOT be accepted at the LVFO.

14. Oral bids will be considered only if received at the place of sale and made at least for the FMV as determined by the BLM authorized officer. For parcel N–79580 each prospective bidder will be required to present a certified check, postal money order, bank draft or cashier's check made payable in U.S. dollars to the Bureau of Land Management for an amount of money which shall be no less than 20 percent of the federally approved FMV of the designated parcel, in order to be eligible to bid on it.

15. The remainder of the full bid price for each parcel, whether sealed or oral bid, must be paid within 180 calendar days of the competitive sale date in the form of a certified check, money order, bank draft, or cashier's check made payable in U.S. dollars to the Bureau of Land Management. *Personal checks will not be accepted.* Arrangements for Electronic Fund Transfer (EFT) to BLM for the balance which is due on or before May 15, 2006, should be made a minimum of two weeks prior to the date you wish to make payment. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM.

16. All sales are made in accordance with and subject to the governing provisions of law and applicable regulations. In general, the BLM may accept or reject any or all offers, or withdraw any parcel of land or interest therein from sale, if, in the opinion of the BLM authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined not to be in the public interest.

17. Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality or political subdivision authorized to hold property or an entity legally capable of conveying lands or interests therein under the laws of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit and is subject to verification by the BLM prior to consummation of the sale.

Additional Information

If not sold, any parcel described above in this Notice may be identified for sale at a later date without further legal notice. Unsold parcels, with the exception of parcel N–79580, may be offered for sale in a future online Internet auction. Internet auction procedures will be available at *http://www.auctionrp.com*. If unsold on the Internet, parcels may be put up for sale at future oral and online Internet auctions without additional legal notice. Upon publication of this Notice and until the completion of the sale, the BLM is no longer accepting land use applications affecting any parcel identified for sale, including parcels that have been published in a previous NORA. However, land use applications may be considered after completion of the sale for parcels that are not sold through sealed, oral, or online Internet auction procedures provided the

authorization will not adversely affect the marketability or value of the parcel.

In order to determine the value, through appraisal, of the parcels of land proposed to be sold, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware of those laws regulations, and policies, and to seek any required local approvals pursuant to them. Buyers should also make themselves aware of any Federal or State law or regulations that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Parcel N–75980. Potential bidders for parcel N–75980 should be aware of the content of a document entitled, "A Conservation Agreement for the Management of Special Resources on the Bureau of Land Management Parcels Nominated for Disposal by the City of Las Vegas" entered into by BLM, the U.S. Fish and Wildlife Service, the Nevada Division of Forestry and the City of North Las Vegas (the "Conservation Agreement"). Under the Conservation Agreement, BLM retains ownership of approximately 300 acres partially surrounded by parcel N–75980 for protection and preservation of certain special plant and paleontological resources. BLM makes no warranty or representation that this Conservation Agreement is the full extent of Federal or State requirements that may impact parcel N–75980.

Environmental Assessment. The SNPLMA parcels proposed for sale were analyzed in an Environmental Impact Statement (EIS), entitled "Las Vegas Land Disposal Boundary EIS", approved December 23, 2004. This EIS is available for public review at the BLM LVFO. An Environmental Assessment (EA) for this sale, which tiers to the EIS, has also been prepared. The EA is available for public review and comment at the BLM LVFO. BLM will be accepting public comment on the EA during the time for comment on the proposed sale up to October 3, 2005.

Other information concerning the sale, including the appraisals, reservations, sale procedures and conditions, CERCLA and other environmental documents will be available for review at the BLM LVFO, or by calling (702) 515–5114. Most of this information also will be available on the Internet at *http://propertydisposal.gsa.gov.*

Public Comments: The general public and interested parties may submit comments regarding the proposed sale to the Field Manager, BLM LVFO, up to 45 days after publication of this Notice in the **Federal Register**. Any adverse comments regarding the proposed sale will be reviewed by the Nevada BLM State Director, or other authorized official of the Department, who may sustain, vacate, or modify this realty action in whole or in part. Any comments received during this process, as well as the name and address of the commenter, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A request from a commenter to have their name and/or address withheld from public release will be honored to the extent permissible by law.

(Authority: 43 CFR 2711.1–2(a) and (c))

Termination of R&PP Classification—SNPLMA Withdrawal

Additionally, the following leases granted under the Recreation and Public Purposes (R&PP) Act, 43 U.S.C. 869 *et seq.*) have been relinquished: N–51824 (55FR39746), and N–51400 (55FR39746). The Notice officially terminates the R&PP classification and segregation of the parcels, but does not serve as an opening order because those parcels are within the disposal boundary set by Congress in SNPLMA. Pursuant to Section 4(c) of SNPLMA, these parcels are withdrawn, subject to valid existing rights, from entry and appropriation under the public land laws, location and entry under the mining laws and from operation under the mineral leasing and geothermal leasing laws, until such time as the Secretary of Interior terminates the withdrawal or the lands are patented.

Dated: August 10, 2005.

Juan Palma,

Field Manager.

[FR Doc. 05–16492 Filed 8–17–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–930–1220–PA; HAG–04–0236]

Final Supplementary Rules on Public Land in Oregon and Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) Oregon State Office is implementing supplementary rules for public lands within the states of Oregon and Washington. The rules are needed in order to protect the area's natural resources and provide for public health and safety. The rules are based on existing regulations and address camping and residency, vehicles and off-road vehicles, fire, conduct, firearms, sanitation and refuse and permits. The supplementary rules promote consistency between BLM rules on these topics and similar rules of other natural resource agencies including the U.S. Forest Service, National Park Service, Oregon Parks and Recreation, and the Washington Department of Natural Resources.

DATES: The rules are effective August 18, 2005.

ADDRESSES: You may submit suggestions or inquiries to Recreation Program, Bureau of Land Management, Oregon State Office, P.O. Box 2965, Portland, Oregon, 97204, or via Internet e-mail to: *http://www.or_Final_rule@blm.gov* (Include Attn: Margaret Wolf).

FOR FURTHER INFORMATION CONTACT: Margaret Wolf, Oregon State Office, P.O. Box 2965, Portland, Oregon, telephone (503) 808–6061. Persons who use a telecommunications device for the deaf (TDD) may contact this individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

III. Procedural Matters

I. Background

BLM proposed these supplementary rules in order to promote consistency between BLM (on issues of camping and occupancy, vehicles and off-road vehicles, fire, conduct, firearms, sanitation and refuse) and other land management agencies including the U.S. Forest Service, National Park Service, Oregon State Parks and Recreation, and the Washington Department of Natural Resources. These supplementary rules will apply to the public lands within the states of Oregon and Washington. These rules are necessary to protect the area's natural resources and to provide for the public's health and safety, provide needed guidance in the areas of camping, occupancy, and recreation, and allow for the assessment of penalties that are more commensurate with the level of the prohibited acts.

The State of Oregon recently revised its requirement for ORV registration, placing the burden of requiring registration on each land owner. Supplementary rule b.5 (below) makes ORV registration a requirement on public lands, as endorsed by the Oregon Parks and Recreation Department.

II. Discussion of Comments

These rules were published as proposed supplementary rules on February 25, 2005 in the **Federal Register**, (70 FR 9380–9384). Comments were solicited in that publication and could be submitted by mail, electronic means, or by telephone.

No comments were received by e-mail, TDD, written submissions, or by telephone. Therefore, we are publishing the final supplementary rules as proposed, with the exception of editorial changes made for purposes of clarity.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These final supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These final supplementary rules will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

These final supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. They merely impose rules of conduct and impose other limitations on certain recreational activities on certain public lands to protect natural resources and human health and safety.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the final supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These final supplementary rules should have no effect on business entities of whatever size. They merely would impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety. Therefore, BLM has determined under the RFA that these final supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These final supplementary rules are not a "major rule" as defined at 5 U.S.C. 804(2). They would not result in an effect on the economy of $100 million or more, in an increase in costs or prices, or in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety.

Unfunded Mandates Reform Act

These final supplementary rules do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these Final supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. They would merely impose reasonable restrictions on certain recreational activities on certain public lands to protect natural resources and the environment, and human health and safety. They also specifically call for compliance with State laws and regulations. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

The final supplementary rules do not represent a government action capable of interfering with Constitutionally protected property rights. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

These final supplementary rules would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. These final supplementary rules in several instances call for compliance with State law. Therefore, in accordance with Executive Order 13132, BLM has determined that these final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this final rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal

In accordance with Executive Order 13175, we have found that these final supplementary rules do not include policies that have tribal implications.

Paperwork Reduction Act

These final rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these supplementary rules is Margaret Wolf, Oregon State Office, P.O. Box 2965, Portland, Oregon.

For the reasons stated in the preamble and under the authorities for supplementary rules found under 43 CFR 8365.1–6, 43 CFR 8364.1, 43 U.S.C. 1740, 16 U.S.C. 670h(c)(5), and 43 U.S.C. 315a, the Oregon/Washington State Director, Bureau of Land Management proposes to issue supplementary rules for public lands managed by the BLM in Oregon and Washington, to read as follows:

Definitions

Camping: The erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, parking of a motor vehicle, motor home or trailer, or mooring of a vessel for the apparent purpose of overnight occupancy.

Occupancy: Full or part-time residence on public lands. It also means activities that involve residence; the construction, presence, or maintenance of temporary or permanent structures that may be used for such purposes; or the use of a watchman or caretaker for the purpose of monitoring activities. Residence or structures include, but are not limited to, barriers to access, fences, tents, motor homes, trailers, cabins, houses, buildings, and storage of equipment or supplies.

Campground/Designated Recreation Area/Developed Site/Special Recreation Management Area: Sites and areas that contain structures or capital improvements primarily used by the public for recreation purposes.

Off Road Vehicle (ORV): Any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain, excluding: (1) Any non-amphibious registered motorboat; (2) any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes; (3) any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved; (4) vehicles in official use; and (5) any combat or combat support vehicle when used in times of national defense emergencies.

Supplementary Rules for Oregon and Washington

a. Camping and Occupancy

1. You must not camp longer than 14 days in a 28 day period at any one site on public land.
2. After the 14 days have been reached, you must move at least 25 air miles away from the previously occupied site.
3. You must not leave any personal property or refuse after vacating the campsite or site.
4. You must not leave personal property unattended in a day use area, campground, designated recreation area or on public lands for more than 24 hours.
5. You must not establish occupancy, take possession of, or otherwise use public lands for residential purposes except as allowed under 43 CFR 3715.2, 3715.2–1, 3715.5, 3715.6, or with prior written authorization from the BLM.
6. You must not block, restrict, place signs, or otherwise interfere with the use of a road, trail, gate or other legal access to and through public lands without prior written authorization from the BLM.
7. You must not camp in any area posted as closed to camping. Closure must be attained through a final land use planning decision, Federal Register notification, temporary closure order, or posting or positioning of a hazardous condition notice or barrier.
8. If a campsite charges fees, you must register or pay camping fees within 30 minutes of occupying the camp site.
9. Whenever camping in a developed campground or designated recreation area with established campsites, you must camp in a designated site.
10. You must crate, cage, restrain on a leash which shall not exceed six feet in length, or otherwise physically control a pet or animal at all times while in a developed recreation site.
11. You must pick up and properly dispose of pet excrement.

b. Vehicles and ORV

1. You must not park or leave a vehicle or ORV in violation of posted instructions as established through a final land use planning decision, Federal Register notification, or other planning process.
2. You must not stop or park a vehicle or ORV in a manner that obstructs or interferes with the normal flow of traffic, or creates a hazardous condition.
3. You must not exceed posted speed limits.
4. You must possess and properly display the current Oregon ORV registration sticker as required by BLM on public land in Oregon in accordance with Oregon Revised Statutes (ORS).
5. You must not operate a motorized vehicle or ORV in violation of state laws and regulations relating to use, standards, registration, operation, and inspection.
6. You must not operate an ORV on those areas, routes, and trails closed to off-road vehicle use as established through a final land use planning decision, Federal Register notification, or other planning process.
7. You must not operate your ORV without a safety flag, where required by State law.
8. You must not operate an ORV with a muffler that exceeds legal decibel levels as required by State law.
9. You must not operate an ORV without required equipment as found in 43 CFR 8343.1 and State law.
10. You must not operate an ORV carelessly, recklessly, or without regard for the safety of any person, or in a manner that endangers, or is likely to endanger, a person or property.
11. You must not operate an ORV in a manner which damages or unreasonably disturbs the land, wildlife, improvements, property, or vegetative resources.

c. Fire

1. You must not fail to observe state fire restrictions or regulations.
2. You must not violate fire prevention orders.
3. You must not leave a campfire unattended without fully extinguishing it.
4. You must not use or possess fireworks in violation of State or Federal fire prevention order, law, or regulation.
5. You must not allow a fire to escape from your control.
6. You must not carelessly or negligently throw or place any ignited substance that may cause a fire.
7. You must not fire any tracer bullet or incendiary ammunition.
8. You must not throw any accelerant into a fire.
9. You must not build a fire outside of fire rings or other fire structures provided by BLM, where these are present and required by fire restrictions.

d. Conduct

1. You must not fail to disperse at the direction of an authorized officer.
2. You must not engage in fighting, threatening, abusive, indecent, obscene, or offensive behavior.

3. You must not make unreasonable noise based on location, time of day, proximity of neighbors, or in violation of posted regulations or direction from an authorized officer, or other factors that would govern the conduct of a reasonably prudent person.

4. You must not create or maintain a hazardous or physically offensive condition.

e. Firearms

1. You must not discharge a firearm or device that is designed for and capable of expelling a projectile by use of spring, air, gas or other explosive at any time into or from any area posted as a no-shooting or a safety zone, or into or from any developed camp or recreation site. No-shooting zones are established through a final land use planning decision, Federal Register notification, or other planning process.

2. You must not discharge or possess a firearm or explosive device in violation of State law.

f. Sanitation and Refuse

1. You must not dispose of any cans, bottles or other refuse except in designated places or receptacles.

2. You must not dump household, commercial, or industrial refuse onto public lands.

3. You must not possess glass containers where prohibited as established through a final land use planning decision, Federal Register notification, or other planning process.

4. You must not litter.

g. Other Acts

1. You must not violate state laws relating to the use, possession, or consumption of alcohol or controlled substances.

Penalties

a. On public lands in grazing districts (see 43 U.S.C. 315a) and on public lands leased for grazing under 43 U.S.C. 315m, any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $500.00. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

b. On public lands subject to a conservation and rehabilitation program implemented by the Secretary under 16 U.S.C. 670g *et seq.* (Sikes Act), any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $500.00 or imprisoned for no more than six months, or both. 16 U.S.C. 670(a)(2). Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

c. On public lands subject to the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.* , any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. 43 U.S.C. 1733(a); 43 CFR 8360.0–7. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Elaine M. Brong,

Oregon State Director, Bureau of Land Management.

[FR Doc. 05–16162 Filed 8–17–05; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–227]

Caribbean Basin Economic Recovery Act: Impact on U.S. Industries and Consumers and on Beneficiary Countries

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with the seventeenth report covering 2003 and 2004; change in title of investigation.

EFFECTIVE DATE: August 12, 2005.

FOR FURTHER INFORMATION CONTACT: Walker Pollard (202–205–3228; *walker.pollard@usitc.gov*), Country and Regional Analysis Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436. The media should contact Peg O'Laughlin, Public Affairs Officer (202–205–1819; *margaret.olaughlin@usitc.gov*).

Background: Section 215(a)(1) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)(1)), as amended, requires that the Commission submit biennial reports to the Congress and the President regarding the economic impact of the Act on U.S. industries and consumers, and on beneficiary countries. Section 215(b)(1) requires that the reports include, but not be limited to, an assessment regarding—

(1) The actual effect of CBERA on the U.S. economy generally as well as on specific domestic industries which produce articles that are like, or directly competitive with, articles being imported from beneficiary countries under the Act; and

(2) The probable future effect of CBERA on the U.S. economy generally and on such domestic industries.

Notice of institution of the investigation was published in the **Federal Register** of May 14, 1986 (51 FR 17678). The seventeenth report, covering calendar years 2003 and 2004, is to be submitted by September 30, 2005.

The Commission has also changed the title of this investigation to delete the reference to "annual report," since the reports are now provided biennially.

Written Submissions: The Commission does not plan to hold a public hearing in connection with the preparation of this seventeenth report. However, interested persons are invited to submit written submissions concerning the matters to be addressed in the report. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. To be assured of consideration by the Commission, written submissions relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on September 6, 2005. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information (CBI) must be deleted (see the following paragraph for further information regarding CBI). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://hotdocs.usitc.gov/pubs/electronic_filing_handbook.pdf*. Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions that contain CBI must also conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages clearly be marked as to whether they are the "confidential" or "nonconfidential" version, and that the CBI be clearly identified by means of

brackets. All written submissions, except for CBI, will be made available for inspection by interested parties.

The Commission intends to publish only a public report in this investigation. Accordingly, any CBI received by the Commission in this investigation will not be published in a manner that would reveal the operations of the firm supplying the information. The report will be made available to the public on the Commission's Web site.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: August 12, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–16342 Filed 8–17–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–469]

Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market

AGENCY: United States International Trade Commission.

ACTION: Correction of notice of investigation.

SUMMARY: The Commission's notice published in the **Federal Register** on August 8, 2005 (70 FR 45746) contained a typographical error that incorrectly identified "February 21, 2005" as the final date for receipt of any written submissions to the United States International Trade Commission regarding investigation No. 332–469 *Conditions of Competition for Certain Oranges and Lemons in the U.S. Fresh Market,* under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The correct date for written submissions on this investigation is February 21, 2006.

By order of the Commission.

Issued: August 11, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–16341 Filed 8–17–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–318 and 731–TA–538 and 561 (Second Review)]

Sulfanilic Acid From China and India

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the countervailing duty order on sulfanilic acid from India and the antidumping duty orders on sulfanilic acid from China and India.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty order on sulfanilic acid from India and the antidumping duty orders on sulfanilic acid from China and India would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* August 5, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On August 5, 2005, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act.[1] The Commission found that the domestic interested party group response to its notice of institution (70 FR 22698, May 2, 2005) was adequate, and that the respondent interested party group response with respect to India was adequate, but found that the respondent interested party group response with respect to China was inadequate. However, the Commission determined to conduct a full review concerning subject imports from China to promote administrative efficiency in light of its decision to conduct a full review with respect to subject imports from India. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 11, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–16340 Filed 8–17–05; 8:45 am]

BILLING CODE 7020–02–P

[1] Commissioner Marcia E. Miller did not participate in these determinations.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–851 (Review)]

Synthetic Indigo From China

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on synthetic indigo from China.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on synthetic indigo from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* August 5, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On August 5, 2005, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act.[1] The Commission found that both the domestic and respondent interested party group responses to its notice of institution (70 FR 22701, May 2, 2005) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 11, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–16339 Filed 8–17–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

Under the policy set out at 28 CFR 50.7, notice is hereby given that on August 2, 2005, the United States lodged with the United States District Court for the District of Montana a proposed consent decree ("Consent Decree") in the case of *United States* v. *Atlantic Richfield Company et al.*, Civil Action No. CV–89–39–BU–SEH. The Consent Decree pertains to the Milltown Reservoir Sediments Operable Unit (the "Milltown Site") in southwestern Montana. The settlement would resolve the claims brought by the United States against the Atlantic Richfield Company and NorthWestern Corporation under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9607, for the recovery of costs incurred and to be incurred in responding to releases and threatened releases of hazardous substances at the Milltown Site. Under the terms of the proposed Consent Decree, Atlantic Richfield and NorthWestern will implement EPA's cleanup plan for the Milltown Site, reimburse certain EPA response costs related to the Milltown Site, and contribute toward the State of Montana's natural resource restoration plan for the Milltown site. The United States, on behalf of certain federal agencies against which Atlantic Richfield asserted counterclaims, will also be contributing toward the reimbursement of EPA's response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Deputy Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *ARCO,* DOJ Case Number 90–11–2–430.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Montana, 2929 Third Avenue North, Suite 400, Billings, Montana 59101, and at U.S. EPA Region VIII Montana Office, Federal Building, 10 West 15th Street, Suite 3200, Helena, Montana 59624. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Consent Decree, please reference *United States* v. *ARCO,* DOJ Case Number 90–11–2–430, and enclose a check in the amount of $10.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–16348 Filed 8–17–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Consistent with 28 CFR 50.7, notice is hereby given that on August 3, 2005, a proposed consent decree ("decree") in *United States* v. *Degussa Initiators, LLC.*, Civil Action No. 1:05CV1915, was lodged with the United States District Court for the Northern District of Ohio.

In this action, the United States seeks civil penalties against Degussa for violations of section 307(d) and 308 of the Clean Water Act, 33 U.S.C. 1317(d) and 1318, including violation of categorical and local effluent limits contained in industrial user permits issued by the Elyria, Ohio publicly owned treatment works. The proposed decree provides that Degussa will pay a civil penalty of $345,203.50 and will perform a supplemental environmental project valued at $27,514. Degussa also certifies in the proposed decree that it has implemented corrective measures necessary to ensure continuous compliance with applicable effluent limits and other permit terms.

The Department of Justice will receive comments relating to the decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, Ben Franklin Station, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Degussa LLC*, D.J. Ref. 90–5–1–1–07956.

The decree may be examined at the Office of the United States Attorney, 1800 One Bank Center, 600 Superior Avenue, Cleveland, Ohio 44114–2654 and at the U.S. Environmental Protection Agency Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. During the public comment period, the decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Ben Franklin Station, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood

[1] Commissioner Marcia E. Miller did not participate in this determination.

(*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost), payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–16346 Filed 8–17–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that a proposed Consent Decree embodying a settlement in *United States* v. *Del Monte Fresh Produce (Hawaii), Inc.*, Civil Action No. 05–0049 5, was lodged on August 4, 2005, with the United States District Court for the District of Hawaii.

In a Complaint filed concurrently with the lodging of the Consent Decree, the United States seeks reimbursement of costs incurred by the United States and injunctive relief relating to the Del Monte Fresh Produce (Hawaii), Inc., site located in Oahu, Hawaii ("Site"). The United States alleges in the Complaint that the defendant, Del Monte Fresh Produce (Hawaii), Inc. ("DMFP"), operated the Site and disposed or arranged to dispose of hazardous substances at the Site within the meaning of Sections 107(a)(1), (2), and (3) of CERCLA, 42 U.S.C. 9607(a)(1), (2), and (3).

Under the proposed Consent Decree, DMFP has agreed to fund and perform response actions at the Site. The Consent Decree requires DMFP to, among other things, install monitoring wells to characterize the extent of contaminated groundwater; pump and treat contaminated groundwater; implement phytoremediation; place a vegetated soil covering or cap over the contaminated soil area; install a soil vapor extraction system; and restrict land use. The Consent Decree also requires DMFP to reimburse the Untied States for its costs.

The United States Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the U.S. Department of Justice, Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Del Monte Fresh Produce (Hawaii), Inc.*, DOJ Ref. 90–11–3–08277.

The proposed Consent Decree may be examined during the public comment period on the following United States Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, or by faxing or E-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check, payable to the U.S. Treasury, in the amount of $24.25 ($.25 per page reproduction cost).

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–16345 Filed 8–17–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed consent Decree in *United States of America* v. *Wellsford*, Civ. Action No. 05–4158 was lodged on August 4, 2005, with the United States District Court for the Eastern District of Pennsylvania.

In the Complaint filed in this matter, the United States alleges that Wellsford, Inc. ("Wellsford") is liable for response costs pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607 for its involvement with the Recticon/Allied Steel ("Site") in Parkerford, Pennsylvania. The proposed Consent Decree would resolve the United States' claims set forth in the Complaint through the payment of $20,000, an agreement by Wellsford to exercise due care and not exacerbate existing contamination, and the filing of deed restrictions that provide EPA and its representative access to property and protect the remedy.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044 and should refer to *United States et al.* v. *Wellsford, Inc.*, DJ No. 90–11–2–902/2.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106–4476, and at the Region 3 Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.00 (25 cents per page reproduction cost) payable to the U.S. Treasury. The check should refer to *United States et al.* v. *Wellsford, Inc.*, DJ No. 90–11–2–902/2.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–16347 Filed 8–17–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Waste Industries USA, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given, pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Stipulation, and Competitive Impact Statement were filed with the United States District Court for the Eastern District of Virginia in *United States* v. *Waste Industries USA, Inc.*, Civ. Action No. 2:05CV468. On August 8, 2005, the United States filed a Complaint, which sought to compel Waste Industries USA, Inc., to divest certain small container

commercial hauling assets in the Norfolk, Virginia area acquired from Allied Waste Industries, Inc., and to enjoin Waste Industries from continuing certain anticompetitive contracting practices. The Complaint alleges that Waste Industries' acquisition of these assets from Allied has substantially lessened competition in the market for small container commercial hauling services in the Norfolk, Virginia area, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18. The proposed Final Judgment, also filed on August 8, 2005, requires the defendant to divest contracts and accounts on selected Waste Industries small container commercial hauling routes in the Norfolk, Virginia area, and to alter its existing or future small container commercial waste hauling contracts in that area. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, Stipulation, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 215, Washington, DC 20530 (telephone: 202–514–2481), on the Internet at *http://www.usdoj.gov/atr,* and at the Clerk's Office of the United States District Court for the Eastern District of Virginia (Norfolk Division). Copies of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

United States District Court for the Eastern District of Virginia—Norfolk Division

United States of America, Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington, DC 20530, v. Waste Industries USA, Inc., 3301 Benson Drive, Suite 601, Raleigh, NC 27609, Defendant,

Civil No. 2:05cv468 Filed:

Complaint

Plaintiff United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable and other appropriate relief against defendant Waste Industries USA, Inc., ("Waste Industries"), including compelling Waste Industries to divest certain waste hauling assets and enjoining Waste Industries from continuing certain anticompetititve contracting practices. The United States complains and alleges as follows:

I. Nature of Action

1. On August 1, 2003, Waste Industries purchased from Allied Waste Industries, Inc., ("Allied") certain waste-hauling assets. Waste Industries and Allied were two of only a few providers of waste collection services in the independent cities of Norfolk, Chesapeake, Virginia Beach, Portsmouth, Suffolk, and Franklin, Virginia and the country of Southampton, Virginia (hereinafter the "Southside"). The transaction has lessened substantially competition in Southside small container commercial waste collection services.

2. This action seeks to undo the anticompetitive effects of the acquisition of Allied's waste hauling assets by Waste Industries. The divestitures and contracting practice relief sought herein will restore the benefits of the competition that was lost as a result of the transaction.

II. Jurisdiction and Venue

3. This action is filed by the United States of America under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain the violation by Waste Industries of Section 7 of the Clayton Act, 15 U.S.C. 18.

4. Waste Industries is located in and transacts business in the Eastern District of Virginia, and Waste Industries submits to the personal jurisdiction of the Eastern District of Virginia in this proceeding. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22 and 28 U.S.C. 1391(c).

5. Waste Industries collects municipal solid waste from residential, commercial, and industrial customers, and owns and operates landfills, which process and dispose of municipal solid waste. In its waste collection and waste disposal businesses, Waste Industries makes sales and purchases in interstate commerce, ships waste in the flow of interstate commerce, and engages in activities substantially affecting interstate commerce. The Court has jurisdiction over this action and over Waste Industries pursuant to 15 U.S.C. 22 and 28 U.S.C. 1331 and 1337.

III. Waste Industries and the Transaction

6. Waste Industries is a North Carolina corporation with its principal office in Raleigh, North Carolina. It is engaged in providing waste collection and disposal services throughout the Southeastern United States. In 2004, Waste Industries reported total revenues of approximately $291 million.

7. Effective August 1, 2003, Waste Industries and Allied completed a purchase and sale of assets in Charlotte, North Carolina; Sumter, South Carolina; Mobile, Alabama; Biloxi, Mississippi; Clarksville, Tennessee; and the Southside. No premerger notification was required under Section 7A of the Clayton Act, 15 U.S.C. 18a(c).

IV. Trade and Commerce

A. The Relevant Service Market: Small Container Commercial Waste Collection

8. Municipal solid waste ("MSW") is solid putrescible waste generated by households and commercial establishments such as retail stores, offices, restaurants, warehouses, and nonmanufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.,* waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

9. Waste collection firms, or "haulers," collect MSW from residential, commercial and industrial establishments and transport the waste to a disposal site, such as a transfer station, sanitary landfill, or incinerator, for processing and disposal. Private waste haulers typically contract directly with individual customers for the collection of waste generated by

commercial accounts. MSW generated by residential customers, on the other hand, is often collected by either local governments or by private haulers pursuant to contracts bid by, or franchises granted by, municipal authorities.

10. Small container commercial waste collection service is the business of collecting MSW from commercial and industrial accounts, usually in "dumpsters" (*i.e.*, a small container with one to ten cubic yards of storage capacity), and transporting or "hauling" such waste to a disposal site by use of a front- or rear-end loader truck. Typical commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.*, stores and restaurants).

11. Small container commercial waste collection differs in many important respects from the collection of residential or other types of waste. An individual commercial customer typically generates substantially more MSW than a residential customer. To handle this high volume of MSW efficiently, haulers provide commercial customers with small dumpsters for storing the waste. Haulers organize their commercial accounts into routes and collect and transport the MSW generated by these accounts in vehicles uniquely well suited for small container waste collection, primarily front-end loader ("FEL") trucks. Less frequently, haulers may use more maneuverable, but less efficient, rear-end loader ("REL") trucks, especially in those areas in which a collection route includes narrow alleyways or streets. FEL trucks are unable to navigate narrow passageways easily and cannot efficiently collect waste located in them.

12. On a typical small container commercial waste collection route, an operator drives a FEL vehicle to the customer's container, engages a mechanism that grasps and lifts the container over the front of the truck, and empties the container into the vehicle's storage section, where the waste is compacted and stored. The operator continues along the route, collecting MSW from each of the commercial accounts, until the vehicle is full. The operator then drives the FEL truck to a disposal facility, such as a transfer station, landfill, or incinerator, and empties the contents of the vehicle. Often, the operator returns to the route and repeats the process.

13. In contrast to a commercial collection route, a residential waste collection route is significantly more labor intensive. The customer's MSW is stored in much smaller containers (*e.g.*, garbage bags or trash cans) and instead of FEL trucks, waste collection firms routinely use REL or side-load trucks, manned by larger crews (usually, two- or three-person teams). On residential routes, the crews generally hand-load the customer's MSW, typically by tossing garbage bags and emptying trash cans into the vehicle's storage section. Because of the differences in collection processes, residential customers and commercial customers usually are organized into separate routes. For a variety of reason, other types of collection activities, such as roll-off containers (typically used for construction debris) and collection of liquid or hazardous waste, are rarely combined with commercial waste collection activities. This separation of routes is due to differences in the hauling equipment required, the volume of waste collected, health and safety concerns, and the ultimate disposal option used.

14. The differences in the types and volume of MSW collected and in the equipment used in collection distinguish small container commercial waste collection from all other types of waste collection activities. These differences mean that small container commercial waste collection firms can profitably increase their charges for small container commercial waste collection services without losing significant sales or revenues to firms engaged in the provision of other types of waste collection services. Thus, small container commercial waste collection service is a line of commerce, or relevant service, for purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

B. The Relevant Geographic Market: The Southside

15. Small container commercial waste collection service is generally provided in highly localized areas because, to operate efficiently and profitably, a hauler must have sufficient density in its commercial waste collection operations (*i.e.*, a large number of commercial accounts that are reasonably close together). In addition, a FEL or REL vehicle cannot be efficiently driven long distances without collecting significant amounts of MSW, which makes it economically impractical for a small container commercial waste collection firm to serve metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served.

16. Local small container commercial waste collection firms on the Southside can profitably increase charges to local customers without losing significant sales to more distant competitors. The Southside is the relevant geographic market, for purposes of analyzing the effects of the acquisition under Section 7 of the Clayton Act.

C. Reduction in Competition As a Consequence of the Acquisition

17. Allied and Waste Industries directly competed in small container commercial waste collection service on the Southside. In this market, Allied and Waste Industries each accounted for a substantial share of total revenues from commercial waste collection services.

18. On the Southside, the acquisition reduced from four to three the number of significant firms competing in the collection of small container commercial waste. Because of the acquisition, Waste Industries now controls about 43%—and the two largest firms about 82%—of the small container commercial waste hauling market. The total Southside market generates annual revenues of about $25 million.

D. Entry into Small Container Commercial Waste Collection of MSW

19. Significant new entry into small container commercial waste collection service is difficult and time consuming on the Southside. A new entrant into small container commercial waste collection service cannot provide a significant competitive constraint on the prices charged by market incumbents until it achieves minimum efficient scale and operating efficiencies comparable to existing firms. In order to obtain comparable operating efficiency, a new firm must achieve route density comparable to existing firms. However, the incumbents' use of price discrimination and long-term contracts prevents new entrants from winning a large enough base of customers to achieve efficient routes in sufficient time to constrain the post-acquisition firm from significantly raising prices after the transaction. Differences in the service provided by an incumbent hauler to customers permit the incumbent to meet competition easily from new entrants by pricing its services lower to any customer that wants to switch to the new entrant. An incumbent's use of long-term contracts, which contain large liquidated damage provisions for contract termination and automatically renew, make it more difficult for the customer to switch to a new hauler and obtain lower prices. Long-term contracts increase the cost and time required by an entrant to form an efficient route, reducing the likelihood that the entrant will be successful.

E. Harm to Competition

20. The acquisition by Waste Industries of Allied's Southside assets has removed a significant competitor in an already highly concentrated and difficult-to-enter Southside small container commercial waste collection market. In the Southside market, the resulting substantial increase in concentration, loss of competition, and absence of reasonable prospect of significant new entry, has denied small container commercial waste customers the benefits of competition—lower prices and better service.

V. Violation Alleged

21. On or about August 1, 2003, Waste Industries acquired Allied's Southside small container commercial waste collection assets. The effect of this acquisition has been to substantially lessen competition in interstate trade and commerce in violation of Section 7 of the Clayton Act.

22. The transaction has had the following effects, among others:

a. Competition generally in small container commercial waste collection service in the Southside market has been lessened substantially;

b. Actual and potential competition between Allied and Waste Industries in small container commercial waste collection service was eliminated on the Southside; and

c. Small container commercial waste customers in the Southside market have been denied the benefits of competition, including competition based on price and service.

VI. Requested Relief

The United States requests that this Court:

1. Adjudge and decree the acquisition of Allied's Southside small container commercial waste assets by defendant Waste Industries to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18;

2. Compel Waste Industries to divest waste hauling assets sufficient to restore the competition that was lost as a result of the transaction;

3. Enjoin Waste Industries from continuing certain anticompetitive contracting practices;

4. Award the United States the cost of this action; and

5. Award the United States such other and further relief as the case requires and the Court deems proper.

Respectfully submitted,

August 8, 2005.

For Plaintiff United States

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Acting Attorney General.

Dorothy B. Fountain,
Deputy Director of Operations.

Maribeth Petrizzi,
Chief, Litigation II Section,
James J. Tierney,
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U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530. *leslie.peritz@usdoj.gov.* (202) 307–0924.

United States District Court for the Eastern District of Virginia—Norfolk Division

United States of America, Plaintiff, v. Waste Industries USA, Inc., Defendant

Final Judgment

Whereas, the plaintiff United States of America, having filed its Complaint in this action on August 8, 2005 and the plaintiff and the defendant Waste Industries USA, Inc., by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact;

And Whereas, the defendant agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of the Relevant Hauling Assets by the defendant to ensure that competition is substantially restored;

And Whereas, the United States requires the defendant to amend certain provisions of its waste hauling contracts and to make certain divestitures in order to remedy the loss of competition alleged in the Complaint;

And Whereas, the defendant has represented to the United States that the divestiture required below can and will be made and that the defendant will late raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture or other injunctive provisions contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over each of the parties and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against the defendant under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Definitions

As used in this Final Judgment:

A. "Acquirer"means the entity to whom the defendant divests the Relevant Hauling Assets.

B. "Hauling" means the collection of waste from customers and the shipment of the collected waste to disposal sites. Hauling does not include collection of roll-off containers.

C. "MSW"means municipal solid waste, a term of art used to describe solid putrescible waste generated by household and commercial establishment such as retail stores, offices, restaurants, warehouses, and nonmanufacturing activities in industrial facilities. MSW does not include special handling waste (*e.g.*, waste from manufacturing processes, regulated medical waste, sewage, and sludge), hazardous waste, or waste generated by construction or demolition sites.

D. "Relevant Hauling Assets" means $780,000 in annual Southside small container commercial waste collection revenue comprised of customers from Waste Industries' waste collection routes 22 and 914 that operate in Norfolk and Virginia Beach, respectively, and all intangible assets and records related to such customers, including contracts, hauling-related customer lists, account files, and credit records. (The divested customers from Routes 22 and 914 are identified in Exhibit A to this Final Judgment.) If the defendant Acquirer mutually agree, Acquirer may: (1) Purchase any other hauling-related assets used in connection with providing service to the customers identified in Exhibit A, including trucks and other vehicles, containers, materials, and supplies; and (2) negotiate with, and make offers of employment to, personnel involved in the operation and management of the Relevant Hauling Assets.

E. "Small container commercial waste collection services" means the business of collecting MSW from commercial and industrial accounts, usually in "dumpsters" (*i.e.*, a small container with one to ten cubic yards of storage capacity), and transporting or hauling

such waste to a disposal site by use of a front-or rear-end loader truck. Typical commercial waste collection customers include office and apartment buildings and retail establishments (*e.g.*, stores and restaurants).

F. "Southside" means the independent cities of Norfolk, Chesapeake, Virginia Beach, Portsmouth, Suffolk and Franklin, Virginia, and the county of Southampton, Virginia.

G. "Waste Industries" means the defendant Waste Industries USA, Inc., a North Carolina corporation with its headquarters in Raleigh, North Carolina, and includes its successors and assigns, and its subsidiaries, division, groups, affiliates, partnerships, joint ventures, and their directors, officers, managers, agents, and employees.

III. Applicability

A. This Final Judgment applies to Waste Industries, as defined above, and all other persons in active concert or participation with Waste Industries who receive actual notice of this Final Judgment by personal service or otherwise.

B. The defendant shall require, as a condition of the sale or other disposition of all or substantially all of its assets, that the purchaser agree to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. The defendant is hereby ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Relevant Hauling Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to an extension of this time period of up to thirty (30) calendar days, and shall notify the Court in such circumstances. The defendant agrees to use its best efforts to divest the Relevant Hauling Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, the defendant promptly shall make known, by usual and customary means, the availability of the Relevant Hauling Assets. The defendant shall inform any person making inquiry regarding a possible purchase of the Relevant Hauling Assets that they are being divested pursuant to this Final Judgment and provide that person a copy of this Final Judgment. The defendant shall offer to furnish to each prospective Acquirer, subject to customary confidentiality assurances, all information and documents relating to the Relevant Hauling Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work-product privileges. The defendant shall make available such information to the United States at the same time that such information is made available to any other person.

C. The defendant shall permit each prospective Acquirer of the Relevant Hauling Assets to have reasonable access to personnel and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process. If agreed to by the defendant and the prospective Acquirer, the defendant shall provide information relating to the personnel involved in the operation and management of the Relevant Hauling Assets to enable the Acquirer to make offers of employment. The defendant will not interfere with any negotiations by the Acquirer to employ any defendant employee.

D. The defendant shall warrant to the Acquirer of the Relevant Hauling Assets that each asset will be operational on the date of sale.

E. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Relevant Hauling Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Relevant Hauling Assets can and will be used by the Acquirer as part of a viable, ongoing MSW hauling business. Divestiture of the Relevant Hauling Assets may be made to an Acquirer, provided that it is demonstrated to the sole satisfaction of the United States that the Relevant Hauling Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment:

1. Shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability, including managerial, operational, and financial capability, to compete effectively in the waste hauling business; and

2. Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Waste Industries gives Waste Industries the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If the defendant has not divested the Relevant Hauling Assets within the time period specified in Section IV.A, the defendant shall notify the United States of that fact in writing. Upon application of the United States, in its sole discretion, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Relevant Hauling Assets.

B. After the appointment of the trustee becomes effective, only the trustee shall have the right to sell the Relevant Hauling Assets. the trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at such price, and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have other powers as this Court deems appropriate. Subject to Section V.D of this Final Judgment, the trustee may have at the cost and expense of the defendant any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. The defendant shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by the defendant must be conveyed in writing in the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of the defendant, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the Relevant Hauling Assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to the defendant and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Relevant Hauling Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. The defendant shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and the defendant shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to customary confidentiality protection for trade secret or other confidential research, development, or commercial information. The defendant shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court settling forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the proceeding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Hauling Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Relevant Hauling Assets.

G. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent that such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, including extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, the defendant or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify the defendant. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Relevant Hauling Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from the defendant, the proposed Acquirer, any other third part, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. The defendant and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the Unites States has been provided the additional information requested from the defendant, the proposed Acquirer, any third party, or the trustee, whichever is later, the United States, in its sole discretion, shall provide written notice to the defendant and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to the defendant's limited right to object to the sale under Section V.C of this Final Judgment. Absent written notice that the United states does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by the defendant under Section V.C, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

The defendant shall not finance all or any part of any purchase made pursuant to Section IV or V of this Judgment.

VIII. Preservation of Relevant Hauling Assets

A. Until the divestiture required by this Final Judgment has been accomplished, the defendant shall: (1) Preserve and maintain the value and goodwill of the Relevant Hauling Assets; (2) operate the Relevant Hauling Assets in the ordinary course of business, including reasonable efforts to maintain and increase sales and revenues; and (3) take no action that would jeopardize, delay, or impede the sale of the Relevant Hauling Assets.

B. The divested customers on Routes 22 and 914 identified in Exhibit A collectively generate approximately $65,000 in monthly small container commercial waste collection revenue ($780,000 annual revenue), as of May 2005. If, prior to divestiture, any customer identified in Exhibit A let their contracts expire, terminate their contracts, or reduce small container commercial waste collection services such that small container commercial waste collection revenue to be divested declines by five (5) percent or more, the defendant shall divest additional small container commercial waste collection customers to replace these revenues up to $780,000. The defendant shall provide monthly customer reports that update Exhibit A and identify any lost customers, customer price increases or service changes, and overall revenue changes. Any change in the Relevant Hauling Assets must be reviewed by and approved by the United States. All revenue calculations under Section VIII.B of this Final Judgment shall be based on monthly revenues for May 2005.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, the defendant shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Hauling Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts the defendant has taken to solicit buyers for the Relevant Hauling

Assets, and to provide required information to each prospective Acquirer, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provide by the defendant, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, the defendant shall deliver to the United States an affidavit that describes in reasonable detail all actions the defendant has taken and all steps the defendant has implemented on an ongoing basis to comply with Section VIII of this Final Judgment. The defendant shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in the defendant's earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. The defendant shall keep all records of all efforts made to preserve the Relevant Hauling Assets and to divest the Relevant Hauling Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant and counsel of record, be permitted:

1. access during the defendant's office hours to inspect and copy, or at the United States' option, to require the defendant to provide copies of all books, ledgers, accounts, records, and documents in the possession or control of the defendant, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, the defendant's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the defendant.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, the defendant shall submit such written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendant to the United States, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give the defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

The defendant may not reacquire all or substantially all of the Relevant Hauling Assets listed in Exhibit A during the term of this Final Judgment. Nothing herein shall preclude the defendant from competing for the hauling business of any individual customer listed in Exhibit A, so long as the defendant's conduct is consistent with a commercially reasonable sales agreement negotiated with the Acquirer of the Relevant Hauling Assets.

XII. Southside Contract Relief

A. The defendant shall alter the standard contract form ("the Standard Contract") it uses with small container commercial waste collection customers in the Southside and the Standard Contract shall contain the following terms:

1. an initial term no longer than two (2) years;

2. a renewal term no longer than one (1) year;

3. a notice of termination no9 more than thirty (30) days prior to the end of any initial term or renewal term;

4. liquidated damages of no more than three (3) times the contract's average monthly charge during the first year the customer has had service with the defendant; and

5. liquidated damages of no more than two (2) times the contract's average monthly charge after the first year the customer has had service with the defendant.

B. Within thirty (30) calendar days of the filing of the Complaint in this matter, the defendant, by means of a letter approved by the United States, shall inform its existing Southside small container commercial waste collection customers about the terms, conditions and rights set forth in Sections XII.A and XII.B of this Final Judgment and shall offer in writing to the customers the option to enter into the Standard Contract. Should an existing customer request the Standard Contract, the defendant shall execute the Standard Contract with that customer. The defendant shall not initiate negotiations with existing customers to modify the Standard Contract; however, upon the request of the customer, the defendant may modify the Standard Contract subject to the procedures set forth in Section XII.C of this Final Judgment. Should an existing customer continue with its current contract, the defendant shall not enforce any term or condition that is inconsistent with Section XII.A of this Final Judgment. For example, if an existing customer contract has a five-year initial term, the defendant may only enforce this provision for a two-year period from the date the contract was executed.

C. From the date of filing the Compliant in this action, the defendant shall use the Standard Contract with all new customers and any existing customer that may request the Standard Contract. The defendant may negotiate terms and conditions different from those set forth in Section XII.A of this Final Judgment, provided that the Standard Contract form is utilized, the customer is notified in writing that it can accept the Standard Contract without modification, the modification(s) are made in the physical presence of the customer, the modification(s) are made in writing on the Standard Contract, and the customer initials each modification. If the defendant complies with the requirements set forth in this subsection C, this Final Judgment shall not prevent the enforcement by either the defendant or customer of any such negotiated modifications that are different from those set forth in Section XII.A.

D. The provisions of Section XII of this Final Judgment will expire on August 8, 2010.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension or as otherwise noted in Section XII.D, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

EXHIBIT A

Route Code	Customer No.	Route Code	Customer No.
0022	136	914	237
0022	367	914	244
0022	604	914	375
0022	763	914	572
0022	781	914	979
0022	921	914	1176
0022	3143	914	1560
0022	1154	914	1791
0022	5014	914	2770
0022	5456	914	5041
0022	28287	914	6167
0022	100079	914	6692
0022	100097	914	9679
0022	100541	914	100034
0022	100684	914	100172
0022	100699	914	100178
0022	103169	914	100497
0022	103228	914	101187
0022	103940	914	101375
0022	103941	914	101531
0022	104024	914	102162
0022	104089	914	102374
0022	608	914	102458
0022	545	914	103088
0022	546	914	103939
0022	547	914	104579
0022	550	914	104834
0022	626	914	100017
0022	3486	914	104455
0022	101015	914	104601
0022	1334	914	104649
0022	3513	914	4564
0022	100957	914	5020
0022	103536	914	199
0022	104867	914	261
0022	100045	914	285
0022	101295	914	316
0022	101486	914	422
0022	103102	914	476
0022	103978	914	693
0022	103040	914	710
0022	3102	914	725
0022	100681	914	774
0022	102270	914	775
0022	104583	914	788
0022	104868	914	811
0022	246	914	856
0022	257	914	924
0022	305	914	1065
0022	354	914	1070
0022	368	914	1122
0022	495	914	1835
0022	500	914	2995
0022	515	914	3880
0022	625	914	3902
0022	630	914	3952
0022	638	914	4518
0022	639	914	4836

EXHIBIT A—Continued

Route Code	Customer No.	Route Code	Customer No.
0022	653	914	5236
0022	654	914	6010
0022	667	914	6486
0022	668	914	6605
0022	687	914	6956
0022	691	914	6969
0022	728	914	7110
0022	852	914	7924
0022	863	914	8374
0022	897	914	9515
0022	922	914	9551
0022	966	914	9578
0022	991	914	9638
0022	1022	914	9778
0022	1146	914	9802
0022	1151	914	9831
0022	1165	914	14897
0022	1167	914	26813
0022	1169	914	27632
0022	1876	914	27794
0022	2311	914	28203
0022	2371	914	28206
0022	2404	914	28285
0022	2570	914	28296
0022	2845	914	28556
0022	3371	914	28670
0022	3439	914	28909
0022	4022	914	28970
0022	4086	914	100003
0022	4096	914	100016
0022	4220	914	100028
0022	4638	914	100029
0022	4952	914	100032
0022	4987	914	100039
0022	5030	914	100041
0022	5197	914	100059
0022	5725	914	100065
0022	6908	914	100066
0022	7103	914	100080
0022	7437	914	100091
0022	7438	914	100095
0022	7971	914	100107
0022	8171	914	100111
0022	28239	914	100119
0022	28250	914	100147
0022	28288	914	100170
0022	28694	914	100272
0022	100013	914	100322
0022	100098	914	100358
0022	100133	914	100373
0022	100169	914	100417
0022	100276	914	100421
0022	100295	914	100476
0022	100300	914	100485
0022	100310	914	100508
0022	100315	914	100544
0022	100316	914	100575
0022	100337	914	100582
0022	100478	914	100593
0022	100521	914	100634
0022	100620	914	100647
0022	100663	914	100702
0022	100676	914	100713
0022	100709	914	100722
0022	100764	914	100742
0022	100816	914	100782
0022	100893	914	100796
0022	100995	914	100930
0022	101030	914	100931
0022	101044	914	100953
0022	101112	914	100967

EXHIBIT A—Continued

Route Code	Customer No.
0022	101148
0022	101247
0022	101335
0022	101541
0022	101657
0022	101788
0022	101812
0022	102431
0022	102643
0022	102645
0022	102814
0022	102823
0022	102931
0022	102943
0022	103070
0022	103157
0022	103250
0022	103278
0022	103279
0022	103485
0022	103627
0022	103640
0022	103777
0022	103834
0022	103835
0022	103879
0022	103949
0022	103979
0022	104005
0022	104038
0022	104062
0022	104334
0022	104460
0022	104475
0022	104491
0022	104518
0022	104536
0022	104542
0022	104560
0022	104600
0022	104700
0022	104704
0022	104707
0022	104732
0022	104819
0022	104870
0022	104905
0022	104942
Total Customers	177

Route Code	Customer No.
914	100990
914	100991
914	101011
914	101097
914	101166
914	101283
914	101293
914	101323
914	101341
914	101359
914	101421
914	101433
914	101451
914	101453
914	101464
914	101474
914	101524
914	101568
914	101603
914	101604
914	101610
914	101612
914	102140
914	102338
914	102355
914	102366
914	102604
914	102698
914	102707
914	102708
914	102926
914	102959
914	102965
914	102981
914	103014
914	103015
914	103087
914	103099
914	103119
914	103120
914	103161
914	103170
914	103180
914	103231
914	103249
914	103519
914	103577
914	103772
914	103780
914	103814
914	103822
914	103889
914	103930
914	103965
914	103990
914	104036
914	104067
914	104077
914	104162
914	104231
914	104449
914	104470
914	104511
914	104521
914	104525
914	104526
914	104578
914	104590
914	104606
914	104619
914	104635

EXHIBIT A—Continued

Route Code	Customer No.	Route Code	Customer No.
		914	104651
		914	104656
		914	104659
		914	104831
		914	104850
		914	104887
		914	104916
		914	105001
		Total Customers	208

United States District Court for the Eastern District of Virginia—Norfolk Division

United States of America, Plaintiff, v. Waste Industries USA, Inc., Defendant

Civil No.
Filed:

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendant Waste Industries USA, Inc. ("Waste Industries") purchased from Allied Waste Industries, Inc. ("Allied"), effective August 1, 2003, certain waste-hauling assets located in the independent cities of Norfolk, Chesapeake, Virginia Beach, Portsmouth, Suffolk, and Franklin, Virginia and the county of Southampton, Virginia (hereinafter the "Southside"). The United States filed a civil antitrust Complaint on August 8, 2005, seeking a declaration that Waste Industries' purchase from Allied violated Section 7 of the Clayton Act and requesting equitable relief. The Complaint alleges that the transaction substantially lessened competition for small container commercial waste collection services in the Southside. This loss of competition has denied Southside customers the benefits of competition—lower prices and better service.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment, which is designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Waste Industries is required within ninety (90) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest, as a viable business operation, specified waste-hauling assets. In addition to the divestiture, the proposed Final Judgment also requires Waste Industries to comply with certain conditions regarding its customer contracts in the Southside.

The United States and Waste Industries have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Acquisition

On August 1, 2003, Waste Industries acquired Allied's hauling assets in the Southside. The transaction has lessened competition in the Southside small container commercial waste collection services market. Waste Industries, with revenues in 2004 of approximately $291 million, is engaged in providing waste collection and disposal services throughout the southeastern United States. Allied, with revenues in 2004 of approximately $5.4 billion, is the nation's second-largest waste collection and disposal company.

B. Southside Small Container Commercial Waste Collection Services Market

Municipal solid waste ("MSW") is solid, putrescible waste generated by households and commercial establishments. Waste collection firms, or haulers, contract to collect MSW from residential and commercial customers and transport the waste to private and public disposal facilities (*e.g.*, transfer stations, incinerators and landfills), which, for a fee, process and legally dispose of the waste. Small container commercial waste collection is one component of MSW collection, which also includes residential and other waste collection.

Small container commercial waste collection service is the collection of MSW from commercial businesses such as office and apartment buildings and retail establishments (*e.g.*, stores and restaurants) for shipment to, and disposal at, an approved disposal facility. Because of the type and volume of waste generated by commercial accounts and the frequency of service required, haulers organize commercial accounts into special routes, and generally use specialized equipment to store, collect, and transport waste from these accounts to approved disposal sites. This equipment (*i.e.*, one- to ten-cubic-yard containers for waste storage, and front-end load vehicles commonly used for collection and transportation) is uniquely well suited for providing small container commercial waste collection service.

Providers of other types of waste collection services (*e.g.*, residential and roll-off services) are not good substitutes for small container commercial waste collection firms. In their waste collection efforts, these firms use different waste storage equipment (*e.g.*, garbage cans or semi-stationary roll-off containers) and different vehicles (*e.g.*, rear-load, side-load, or roll-off trucks), which, for a variety of reasons, cannot be conveniently or efficiently used to store, collect, or transport waste generated by commercial accounts, and hence, are generally not used on small container commercial waste collection routes. The Complaint alleges that, in the event of a small but significant increase in price for small container commercial waste collection services, customers would not switch to any other alternative and that, therefore, the provision of small container commercial waste collection services constitutes a line of commerce, or relevant service, for purposes of analyzing the effects of the transaction.

The Complaint alleges that the provision of small container commercial waste collection service takes place in compact, highly localized geographic markets. It is expensive to ship waste long distances in waste collection operations. To minimize transportation costs and maximize the scale, density, and efficiently of their waste collection operations, small container commercial waste collection firms concentrate their customers and collection routes in small areas. Firms with operations concentrated in a distant area cannot easily compete against firms whose routes and customers are locally based. Distance may significantly limit a remote firm's ability to provide commercial waste collection service as frequently or conveniently as that offered by local firms with nearby routes. Also, local commercial waste collection firms have significant cost advantages over other firms and can profitably increase their charges to local commercial customers without losing significant sales to firms outside the area. Based on these circumstances, the Complaint alleges that the Southside constitutes a section of the country, or relevant geographic market, for the purpose of assessing the competitive effects of Waste Industries' purchase of Allied's Southside hauling assets in the provision of small container commercial waste collection services.

There are significant entry barriers in small container commercial waste collection services. A new entrant in small container commercial waste collection services must achieve a minimum efficient scale and operating efficiencies comparable to those of existing firms to provide a significant competitive constraint on the prices charged by market incumbents. In order to obtain comparable operating efficiencies, a new firm must achieve route density similar to existing firms. Because most customers have their waste collected once or twice a week, a new entrant generally requires several hundred customers in close proximity to construct an efficient route. However, the common use of price discrimination and long-term contracts by existing commercial waste collection firms can leave too few customers available to the entrant in a sufficiently confined geographic area to create an efficient route. The incumbent firm can selectively and temporarily charge an extraordinarily low price to specified customers targeted by new entrants. Long-term contracts often run for three to five years and may automatically renew or contain large liquidated damage provisions for contract termination. Such terms make it more costly or difficult for a customer to switch to a new hauler and obtain lower prices for its collection service. Because of these factors, a new entrant may find it difficult to compete by offering its services at price levels comparable to the incumbents' pre-entry prices. Such difficulties may cause an increase in the cost and time required to form an efficient route, thereby limiting a new entrant's ability to build an efficient route and reducing the likelihood that the entrant will ultimately be successful.

The need for route density, the use of long-term contracts with restrictive terms, and the ability of existing firms to price discriminate raise significant barriers to entry by new firms, which will likely be forced to complete at lower than pre-entry price levels.

C. Anticompetitive Effects of the Transaction

Waste Industries' acquisition of Allied's hauling assets reduced from four to three the number of significant firms that compete in the collection of small container commercial waste in the Southside. Waste Industries now controls about 43% of the Southside small container commercial waste hauling market. The total Southside market generates annual revenues of approximately $25 million. Two firms, Waste Industries and Waste Management, Inc., control about 82% of the market.

The Complaint alleges that Waste Industries' acquisition of Allied's hauling assets in the Southside has removed a significant competitor in small container commercial waste collection services. The resulting increase in concentration, loss of competition, and absence of any reasonable prospect of significant new entry or expansion by market incumbents has denied Southside customers the benefits of competition—lower prices and better service.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is designed to return the Southside small container commercial waste collection services market to its pre-acquisition competitive state while recognizing changes to other haulers since the acquisition. At the time of the acquisition, there were four significant competitors in the Southside market. Allied and Waste Management, Inc. dominated the market with substantial market shares. Waste Industries and another local hauler were small but significant players. Thus, post-acquisition, there is one less competitor in a market with two dominant participants and one small participant whose operations have expanded slightly since the acquisition.

The divestiture and contract relief provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition by establishing a new, independent, and economically viable competitor or by strengthening an existing, in-market hauler, and by also reducing the barriers to entry created by the contracts currently used by Waste Industries.

A. Divestiture

The proposed Final Judgment requires Waste Industries, within ninety (90) days after the filing of the Complaint, or five (5) days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest as a viable ongoing business specified small container commercial waste collection assets in the Southside. Under the proposed Final Judgment, Waste Industries is required to divest the specified assets to a new, independent, and economically viable competitor or to an existing, independent, and economically viable small hauler. The proposed Final Judgment requires divestiture of certain small container commercial waste collection customers that produce annual revenues of $780,000. A divestiture of this size will reduce Waste Industries' market share to approximately Allied' July 2003 premerger market share. The divested customers come from two existing Waste Industries routes, one in Virginia Beach and the other in Norfolk. These two areas account for the majority of Waste Industries' Southside small container commercial waste revenues. Waste Industries will retain certain customers on the designated routes, including customers that would be difficult to divest because, for example, the customer is serviced as part of a national account or the customer has multiple locations that are serviced on Waste Industries routes not subject to divestiture.

The assets must be divested in such a way as to satisfy the United States that the operations can and will be operated by the purchaser as a viable, ongoing business that can compete effectively in the Southside. Waste Industries must take all reasonable steps necessary to accomplish the divestiture quickly and shall cooperate with prospective purchasers.

Under the proposed Final Judgment, Waste Industries will be required to preserve and maintain the divested

assets and to operate the assets in the ordinary course of business, including reasonable efforts to maintain and increase sales and revenues. To ensure that Waste Industries takes no action to jeopardize the divested assets, in the event revenues generated by the divested customers decline by 5% or more, the proposed Final Judgment will require that Waste Industries divest additional customers to replace the lost revenues.

In the event that Waste Industries does not accomplish the divestiture within the period prescribed by the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by the United States to effect the divestiture. If a trustee is appointed, the proposed Final Judgment provides that Waste Industries will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States as appropriate, setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the United States as appropriate, will make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

While the proposed Final Judgment prohibits Waste Industries from reacquiring all or substantially all of the small container commercial waste customers to be divested, it encourages ongoing Southside competition by permitting Waste Industries to continue to compete for the hauling business of any individual customer to be divested. Waste Industries' conduct in this regard must be consistent with a commercially reasonable sales agreement negotiated with the acquirer of the divested assets.

B. Contract Relief

Because the divestiture alone will not fully eliminate the anticompetitive effects of the acquisition, the proposed Final Judgment also requires contract relief. The Final Judgment obligates Waste Industries, for a period of five (5) years from August 8, 2005, to offer all new customers and all existing customers who initiate negotiations, a contract with at least the following conditions ("the Standard Contract"): (1) No initial term longer than two years; (2) no renewal term longer than one year; (3) no requirement that the customer give Waste Industries notice of termination more than thirty days prior to the end of any initial term or renewal term; (4) no requirement that the customer pay liquidated damages more than three times its average monthly charge during the first year the customer has had service with Waste Industries; and (5) no requirement that the customer pay liquidated damages more than two times it average monthly charge after the first year the customer has had service with Waste Industries. Waste Industries will be required to send a letter to its current customers advising them of the new contract terms and that Waste Industries may not enforce more restrictive terms even if the customer does not enter into a new contract. The proposed Final Judgment provides that as to Waste Industries' current customers, only the customer can initiate negotiations to replace its existing contract. Waste Industries shall offer in writing the Standard Contract to all new customers and any existing customers who choose to initiate contract negotiations. Waste Industries and these customers are then free to negotiate modifications to the Standard Contract terms, provided that the modifications are made in the presence of the customer, in writing, and initiated by the customer. The proposed Final Judgment shall not prevent the enforcement by either the defendant or customer of any such negotiated modification.

This contract relief is significant because it lowers barriers to entry by giving new and existing customers greater leverage in contract negotiations with Waste Industries and allowing existing customers to consider competitive alternatives by providing for the termination of existing contracts through the payment of reasonable liquidated damages. Implementation of the proposed contract relief will make it easier for customers to switch haulers and should enable the purchaser of the divested assets and other competitors to gain customers if Waste Industries raises prices. The combined divestiture and contract relief sought in the Southside will ensure that consumers of small container commercial waste collection services will continue to receive the benefits of competition.

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgement will neither impair nor assist the bring of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Waste Industries.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Waste Industries have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Divsion, U.S. Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Waste Industries. The United States could have continued the litigation and requested that the Southside transaction be adjudged and decreed to be unlawful and in violation

of Section 7 of the Clayton Act. The United States is satisfied, however, that the divestiture of assets and the contract relief described in the proposed Final Judgment will preserve competition for small container commercial waste collection services in the Southside.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject ot a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(2) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

"Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney).[1] Rather:

[a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-Am. Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 R.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Courts have held that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *Gillette*, 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 8, 2005.

Respectfully submitted,

Leslie Peritz,
PA Bar No. 87539.

Lowell Stern,
VA Bar No. 33460,
U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW., Suite 3000, Washington, DC 20530. *leslie.peritz@usdoj.gov*. (202) 307–0925.

[FR Doc. 05–16232 Filed 8–17–05; 8:45 am]

BILLING CODE 4410–11–M

[1] *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer "whether the settlement achieved [was] within the reaches of the public interest"). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No. 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), *reprinted* in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *Cf. BNS*, 858 F.2d at 463 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *Gillette*, 406 F. Supp. at 716 (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'".

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,609]

Brunswick, Muskegon, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 22, 2005 in response to a petition filed by a state agent representative on behalf of workers at Brunswick, Muskegon, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of July, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4501 Filed 8–17–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,578]

Datacolor, Lawrenceville, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 19, 2005, in response to a petition filed by a State agent representative on behalf of workers at Datacolor, Lawrenceville, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 26th day of July, 2005.

Richard Church.

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4499 Filed 8–17–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,394]

Edscha Roof Systems, LLC, Formerly Known as Premier Roof Systems, LLC, Greer, SC; 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 on July 22, 2005, applicable to workers of Edscha Roof Systems, LLC, Greer, South Carolina. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of convertible tops. The subject firm originally named Premier Roof Systems, LLC as the name of the company, however, new information shows that the company was renamed Edscha Roof Systems, LLC on January 28, 2005. The State agency reports that some workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Premier Roof Systems, LLC, Greer, South Carolina.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Edscha Roof Systems, LLC who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–57,394 is hereby issued as follows:

All workers of Edscha Roof Systems, LLC, formerly known as Premier Roof Systems, LLC, Greer, South Carolina, who became totally or partially separated from employment on or after June 9, 2004, through July 22, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 10th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4496 Filed 8–17–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,378]

Emerson Network Power, Energy Systems, Formerly Known as Marconi Communication, Toccoa, GA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Emerson Network Power, Energy Systems, formerly known as Marconi Communication, Toccoa, Georgia. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,378; Emerson Network Power, Energy Systems, formerly known as Marconi Communication, Toccoa, Georgia (August 8, 2005)

Signed in Washington, DC this 10th day of August 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–4495 Filed 8–17–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,065]

Galileo International, Division of Cendant Corporation, Centennial, CO; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter postmarked July 11, 2005, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on May 16, 2005, and published in the **Federal Register** on June 13, 2005 (70 FR 34154).

The investigation revealed that the petitioning workers of this firm or subdivision do not produce an article within the meaning of section 222 of the Act.

The Department reviewed the request for reconsideration and has determined that the petitioner has provided

additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC, this 9th day of August, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4494 Filed 8–17–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,447]

LC Special Markets Company, Inc., a Subsidiary of Liz Claiborne, Inc., North Bergen, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 24, 2005, in response to a petition filed by a State workforce representative on behalf of workers at LC Special Markets Company, Inc., a subsidiary of Liz Claiborne, Inc., North Bergen, New Jersey.

The petitioning group of workers is covered by an active certification, (TA–W–55,748) which expires on March 25, 2007. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 27th day of July, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4497 Filed 8–17–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,604]

Gilbert Martin Woodworking Company, Inc., d/b/a Martin Furniture, San Diego, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 22, 2005 in response to a petition filed on behalf of workers of Gilbert Martin Woodworking Company, Inc., d/b/a Martin Furniture, San Diego, California.

The petitioning group of workers is covered by an active certification issued on July 5, 2005 which remains in effect (TA–W–57,387). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 27th day of July, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4500 Filed 8–17–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,607]

NCO Financial Systems, Inc., Hampton, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 5, 2005, in response to a petition filed by a company official on behalf of workers at NCO Financial Systems, Inc., Hampton, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 27th day of July 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4503 Filed 8–17–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,513]

Tower Automotive Milwaukee, LLC, Milwaukee Business Unit, Milwaukee, WI; 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) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 3, 2005, applicable to workers of Tower Automotive Milwaukee, LLC, Milwaukee Business Unit, Milwaukee, Wisconsin. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of automotive frames and stampings.

New findings show that there was a previous certification, TA–W–50,339, issued on January 23, 2003, for workers of Tower Automotive, Inc., Milwaukee, Wisconsin who were engaged in employment related to the production of structural component parts and assemblies for light truck bodies. That certification expired January 23, 2005. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from June 30, 2004, to January 24, 2005, for workers of the subject firm.

The amended notice applicable to TA–W–57,513 is hereby issued as follows:

All workers of Tower Automotive Milwaukee, LLC, Milwaukee Business Unit, Milwaukee, Wisconsin who became totally or partially separated from employment on or after January 24, 2005, through August 3, 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 in Washington, DC this 9th day of August, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4498 Filed 8–17–05; 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 August 29, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 29, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 11th day of August 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 07/25/2005 and 07/29/2005]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,612	Warvel Products, Inc. (Comp)	Linwood, NC	07/25/2005	07/19/2005
57,613	Advantek, Inc. (State)	Minnetonka, MN	07/25/2005	07/22/2005
57,614	EMP (AFLCIO)	Escanaba, MI	07/25/2005	07/13/2005
57,615	Alfred Paquette (Wkrs)	Los Angeles, CA	07/25/2005	07/13/2005
57,616	Bubblegum USA–DBA Komex (State)	Los Angeles, CA	07/26/2005	07/13/2005
57,617	Gemtron Corporation (Comp)	Holland, MI	07/26/2005	07/20/2005
57,618	Albemarle Knitting Corporation (Comp)	Albemarle, NC	07/26/2005	07/20/2005
57,619	National Spinning Co., LLC (Comp)	Whiteville, NC	07/26/2005	07/15/2005
57,620	International Manufacturing (Wkrs)	El Paso, TX	07/26/2005	07/20/2005
57,621	Abbott Laboratories (State)	North Chicago, IL	07/26/2005	07/26/2005
57,622	K and K (Comp)	Booneville, MS	07/27/2005	07/23/2005
57,623	Lambert of Arkansas (State)	Hughes, AR	07/27/2005	07/25/2005
57,624	Northwest Manufacturing Corp. (Wkrs)	Corry, PA	07/27/2005	07/26/2005
57,625	GST AutoLeather (Comp)	Williamsport, MD	07/27/2005	07/26/2005
57,626	Willowbrook Hoisery (Wkrs)	Burlington, NC	07/27/2005	07/26/2005
57,627	Clearwater Loader, Inc. (Wkrs)	Kinston, NC	07/27/2005	07/19/2005
57,628	Black Hawk Products Group (Comp)	Hayesville, NC	07/27/2005	07/22/2005
57,629	Vivitone, Inc. (State)	Paterson, NJ	07/27/2005	07/27/2005
57,630	Regal Ware, Inc. (PACE)	Kewaskum, WI	07/27/2005	07/27/2005
57,631	Brodnax Mills, Inc. (Comp)	Brodnax, VA	07/27/2005	06/29/2005
57,632	Guilford Mills, Inc. (Wkrs)	Pine Grove, PA	07/27/2005	07/18/2005
57,633	Corona Clipper, Inc. (Comp)	Corona, CA	07/28/2005	07/19/2005
57,634	General Henry Biscuit (State)	DuQuoin, IL	07/28/2005	07/25/2005
57,635	St. John Knits (State)	Alhambra, CA	07/28/2005	07/01/2005
57,636	Delafoil Ohio, Inc. (Comp)	Perrysburg, OH	07/28/2005	07/25/2005
57,637	Merck and Company (Wkrs)	Danville, PA	07/28/2005	07/28/2005
57,638	Selma Oak Flooring (State)	Tillar, AR	07/28/2005	07/28/2005
57,639	Bernhardt Furniture Company (Comp)	Shelby, NC	07/28/2005	07/28/2005
57,640	Molex, Inc. (State)	Lisle, IL	07/28/2005	07/28/2005
57,641	Ryobi Technologies (State)	Anderson, SC	07/28/2005	07/28/2005
57,642	Andrews Center (Wkrs)	Tyler, TX	07/29/2005	07/29/2005
57,643	Madeleine Manufacturing, Inc. (Comp)	Union, SC	07/29/2005	07/28/2005
57,644	Eastman Kodak Company (Comp)	Rochester, NY	07/29/2005	07/27/2005
57,645	Meridian Beartrack Company (Comp)	Salmon, ID	07/29/2005	07/25/2005
57,646	Mason Shoe Companies (NPU)	Chippewa Falls, WI	07/29/2005	07/28/2005
57,647	PPG Fiber Glass Products (Comp)	Shelby, NC	07/29/2005	07/28/2005
57,648	U.S. Textiles (Comp)	Newland, NC	07/29/2005	07/22/2005
57,649	Hoover Company (The) (IBEW)	North Canton, OH	07/29/2005	07/29/2005
57,650	Meromex USA, Inc. (Comp)	El Paso, TX	07/29/2005	07/21/2005

[FR Doc. E5–4502 Filed 8–17–05; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Renewal

The Secretary of Labor has determined that re-establishment of the charter of the Business Research Advisory Council (BRAC) is necessary and in the public interest in connection with the performance of duties imposed upon the Commissioner of Labor Statistics by 29 U.S.C. 1, 2, 3, 4, 5, 6, 7, 8, and 9. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Business Research Advisory Council.

Purpose and Objective: The Council presents advice and makes recommendations to the Department of Labor's Bureau of Labor Statistics from the perspective of the business community. The Council reviews Bureau programs, presents priorities for business users, suggests the addition of new programs, suggests changes in the emphasis of existing programs, and suggests dropping old programs. It also suggests alternative approaches for data collection and reporting.

Balanced Membership Plan: The BRAC membership is comprised of representatives from a broad perspective of the U.S. economy, with large and small companies represented as well as goods- and non-goods-producing industries. In order to maintain the independence and credibility of the advice, members of BRAC are designated by the Commissioner of Labor Statistics, under authorization from the Secretary of Labor, from nominations by the BRAC Membership Committee.

Duration: Continuing.

Agency Contact: Tracy Jack, 202–691–5869.

Signed in Washington, DC this 12th day of August, 2005.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 05–16352 Filed 8–17–05; 8:45 am]
BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–263; ASLBP No. 05–841–02–LR]

In the Matter of Nuclear Management Company, LLC; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Nuclear Management Company, LLC (Monticello Nuclear Generating Plant)

This proceeding concerns a July 9, 2005 request for hearing submitted by petitioner North American Water Office, in response to a May 5, 2005 notice of opportunity for hearing, 70 FR 25,117 (May 12, 2005), regarding the March 16, 2005 application of Nuclear Management Company, LLC, (NMC) for renewal of the operating license for its Monticello Nuclear Generating Plant. In its application, NMC requests that the operating license for its Monticello facility be extended for an additional twenty years beyond the period specified in the current license, which expires on September 8, 2010.

The Board is comprised of the following administrative judges: Lawrence G. McDade, Chair, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Dr. Anthony J. Baratta, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Dr. Richard E. Wardwell, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 12th day of August 2005.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E5–4506 Filed 8–17–05; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52244; File No. SR–Amex–2005–026]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to Quotes in Nasdaq UTP Stocks To Be Disseminated by Amex Specialists before 9:30 a.m.

August 11, 2005.

On February 24, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify its existing practice of allowing indicative quotes in Nasdaq UTP stocks to be disseminated by specialists between 9:25 and 9:30 a.m. for testing purposes. On April 14, 2005, the Amex amended the proposed rule change.[3] On May 26, 2005, the Amex amended the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 20, 2005.[5] The Commission received no comments on the proposed rule change, as amended. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of Section 6 of the Act[7] and the rules and regulations thereunder. Specifically, the Commission believes the proposal to be consistent with Section 6(b)(5) of the Act,[8] in that is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made minor, non-substantive changes to the text of the proposed rule change and filing.

[4] In Amendment No. 2, the Exchange made minor, non-substantive changes to the text of the proposed rule change and filing.

[5] *See* Securities Exchange Act Release No. 51834 (June 13, 2005), 70 FR 35466 (June 20, 2005) (SR–Amex–2005–026).

[6] In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

amending the Amex rules to allow specialists in Nasdaq securities to send quotations to the SIP between 9:25 and 9:30 a.m. for test purposes only[9] more accurately reflects an existing practice.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–2005–026), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4508 Filed 8–17–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52242; File No. SR–CHX–2005–16]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Amend Exchange Article VI, Rule 9 Relating to Continuing Education for Registered Persons

August 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2005, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On July 18, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On August 5, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The CHX has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder,[6] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to eliminate the current exemptions from the Exchange's continuing education requirements that apply to persons who have been continuously registered for more than 10 years. Below is the text of the proposed rule change. Proposed new language is in *italics*. Deletions are in [brackets].

ARTICLE VI

Restrictions and Requirements

* * * * *

Continuing Education for Registered Persons

RULE 9. (a) Regulatory Element—No member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of Section (a) of this Rule.

Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. On each of the occasions, the Regulatory Element must be completed within one hundred twenty days after the person's registration anniversary date. A person's initial registration date, *also known as the "base date,"* shall establish the cycle of anniversary dates for purposes of this rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the rule.

[(1) Registered persons who have been continuously registered for more than ten years as of March 1, 2000 shall be exempt from participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten years as enumerated in subsection (a)(3)(i)–(ii) of this Rule. However, persons delegated supervisory responsibility or authority and are registered in such capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than ten years as of March 1, 2000 and provided that such supervisory person has not been subject to any disciplinary action under subsection (a)(3)(i)–(ii) of this Rule.]

[Persons who have been currently registered for ten years or less as of March 1, 2000 shall participate in the Regulatory Element of the continuing education program within one hundred twenty days after the occurrence of their next registration anniversary date and every three years thereafter.]

([2]*1*) Failure to complete—Unless otherwise determined by the Exchange, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration.

The Exchange may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

([3]*2*) [Re-entry into program] *Disciplinary Actions*—Unless otherwise determined by the Exchange, a registered person will be required to [re-enter] *re-take* the Regulatory Element and satisfy all of its requirements if such person:

(i) Becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934;

(ii) becomes subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(iii) is ordered as a sanction in a disciplinary proceeding to [re-enter] *re-take* the continuing education program by any securities governmental agency or any securities self-regulatory organization.

The re-taking of the Regulatory Element [Re-entry] shall commence with [initial] participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (i) above, or the disciplinary action becoming final, in the case of (ii) or (iii) above.

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[9] Any such pre-opening quotations are not available to create a binding contract.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange amended the proposed rule change to incorporate the new "base date" term used by other self-regulatory organizations and to make other minor changes to the rule text.

[4] In Amendment No. 2, the Exchange withdrew its request for accelerated effectiveness and made minor edits to the rule text.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

* * * Interpretations and Policies

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.03 A registered person, [who has been continuously registered for more than ten years as of March 1, 2000]who becomes subject to a disciplinary action as enumerated in subsections (a)(3)(i)–(ii) of the Rule, will be required to satisfy the requirements of the Regulatory Element of the continuing education program *with* [as if]the date the disciplinary action becomes final *as* [is] the person's [initial registration anniversary] *new base date.*

* * * * *

.06 A registered person who is a member of the Exchange and of another self-regulatory organization ("SRO") shall be subject to the other SRO's implementation date for the elimination of exceptions to the Regulatory Element section of the continuing education program, if that date is earlier than October 1, 2005.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's continuing education rules generally require registered persons to complete the regulatory element of the continuing education program on their second registration anniversary dates and every three years thereafter, or as otherwise prescribed by the Exchange.[7] The rules currently provide an exception for two groups of persons: (1) Registered persons who have been continuously registered for more than ten years as of March 1, 2000 and (2) persons who have been continuously registered in a supervisory capacity for more than ten years as of March 1, 2000.[8] These exceptions are available so long as the registered persons have not been subject to specific types of disciplinary actions within the last ten years.[9]

At its December 2003 meeting, the Securities Industry/Regulatory Council on Continuing Education (the "Council") agreed to recommend that self-regulatory organizations ("SROs") eliminate, from their continuing education rules, the two exceptions described above. The Council made that recommendation to ensure that all registered market participants receive the full benefits of continuing education programs, including a new module that focuses on ethical issues.

After considering the issue, the Exchange believes that it is appropriate to eliminate the two exceptions, so that all of its registered participants—regardless of the length of time of their registrations—will participate in the regulatory element of the required continuing education programs. The Exchange proposes that this rule change take effect on October 1, 2005.[10]

2. Statutory Basis

The CHX believes the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[11] In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act[12] in that it is designed to facilitate transactions in securities, promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of. a free and open market and a national market system, and, in general, to protect investors and the public interest by requiring all registered Exchange participants to participate in the regulatory element of continuing education programs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any 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

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with

[7] *See* CHX Article VI, Rule 9(a).

[8] *See* CHX Article VI, Rule 9(a)(1).

[9] *See* CHX Article VI, Rule 9(a)(1). A registered person does not qualify for the exception if he or she (i) becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934; (ii) becomes subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or (ii) is ordered as a sanction in a disciplinary proceeding to re-enter (or as proposed, to re-take) the continuing education program by any securities governmental agency or any securities self-regulatory organization. *See* CHX Article VI, Rule 9(a)(3), which is being redesignated as CHX Article VI, Rule 9(a)(2) in this proposed rule change.

[10] To eliminate any confusion, the Exchange has confirmed in the proposed rule that an Exchange participant who is also a member of another SRO must comply with the rules of the other SRO which eliminated these exceptions as of an earlier date. *See* Securities Exchange Act Release Nos. 50404 (September 16, 2004), 69 FR 57126 (September 23, 2004); 50456 (September 27, 2004), 69 FR 59285 (October 4, 2004); 50630 (November 3, 2004), 69 FR 65232 (November 10, 2004); 50651 (November 10, 2004) 69 FR 67374 (November 17, 2004).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6) also 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 propose rule change, at least five business days prior to the date of filing of the proposed rule change. The Commission notes that the Exchange satisfied the pre-filing five-day notice requirement.

[15] For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on August 5, 2005, the date the Exchange filed Amendment No. 2.

the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2005–16 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–CHX–2005–16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of the filing also will be available for inspection and copying at the principal offices of the 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–CHX–2005–16 and should be submitted on or before September 8, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4507 Filed 8–17–05; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52248; File No. SR-CHX–2004–25]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Amendment No. 3 to a Proposed Rule Change Relating to a Prohibition on Using a Layoff Service Unless the Service Provides Required Information to the Exchange

August 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 2005, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") Amendment No. 3 to a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The proposed rule change was originally filed on August 31, 2004 and was amended by Amendment No. 1, filed on June 7, 2005, and Amendment No. 2, filed on June 27, 2005. The proposed rule change, as amended by Amendment Nos. 1 and 2, was published for notice and comment in the **Federal Register** on July 12, 2005.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended by Amendment No. 3, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is amending its proposal to prohibit Exchange Participants from using any communications means to send orders to another market for execution (a "layoff service") unless that layoff service has established a process for providing the Exchange with specific information about the orders and the executions that participants receive. This amendment changes the proposed effective date contained in the proposed rule text from August 1, 2005 to September 30, 2005.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

As noted in the original filing, the Exchange is proposing to amend its rule relating to communications from the trading floor to provide the Exchange with the layoff service information that it needs to enhance its surveillance programs. Through this Amendment No. 3, the Exchange is seeking to revise the proposed effective date of its proposed rule to September 30, 2005. The Exchange believes that this later effective date will better allow all of its Participants and their layoff vendors to be able to comply with the proposed rule in a timely manner on its effective date.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest by permitting the Exchange to require its participants (or their layoff service providers) to provide the Exchange with data necessary to conduct appropriate surveillance of its participants' trading activities.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51967 (July 1, 2005), 70 FR 40086 (July 12, 2005) ("First Notice").

[4] 15 U.S.C. 78f(f)(b).

[5] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended by Amendment No. 3, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2004–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–CHX–2004–25. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2004–25 and should be submitted on or before September 8, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4509 Filed 8–17–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52249; File No. SR–PCX–2005–90]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Certificate of Incorporation of PCX Holdings, Inc., PCX Rules and Bylaws of Archipelago Holdings, Inc.

August 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2005, the Pacific Exchange, Inc. ("PCX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.[3] On August 10, 2005, the Exchange filed Amendment No. 1 ("Amendment No. 1") 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

PCX submitted to the Commission (i) a proposed amendment to the certificate of incorporation of PCX Holdings, Inc. ("PCXH"), the parent company of the Exchange and its other operating subsidiaries, (ii) proposed new PCX Rules 1.1(cc) through (gg), Rule 3.4 and Rule 13.2(a)(2)(E),[5] which are intended to govern the ownership and voting of the stock of Archipelago Holdings, Inc. ("Archipelago"), a Delaware corporation that operates the equities trading facility of PCX and PCX Equities, Inc. ("PCXE"), by OTP Holders and OTP Firms,[6] and (iii) a proposed amendment to the bylaws of Archipelago ((i), (ii) and (iii) together, the "Proposed Rule Changes"). The text of the Proposed Rule Changes is available on PCX's Web site, *http://www.pacificex.com/*, at PCX's Office of the Secretary, at the Commission's Public Reference Room, and on the Commission's Web site, *http://www.sec.gov/rules/sro.shtml*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] At the request of PCX, the Commission made clarifications to the description in Item II, as noted herein. Telephone conversations between Kathryn Beck, Deputy General Counsel, PCX and Jennifer Dodd, Special Counsel, Commission, Division of Market Regulation on August 4, 2005 ("August 4, 2005 Telephone Conversation") and August 12, 2005 ("August 12, 2005 Telephone Conversation").

[4] In Amendment No. 1, the Exchange made certain corrections to the descriptions in Items I, II and III and the proposed rule text.

[5] *See* Amendment No. 1.

[6] PCX rules define an "OTP Holder" to mean any natural person, in good standing, who has been issued an Options Trading Permit ("OTP") by the Exchange for effecting approved securities transactions on the Exchange's trading facilities, or has been named as a Nominee. PCX Rule 1.1(q). The term "Nominee" means an individual who is authorized by an "OTP Firm" (a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's trading facilities) to conduct business on the Exchange's trading facilities and to represent such OTP Firm in all matters relating to the Exchange. PCX Rule 1.1(n).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is submitting to the Commission the Proposed Rule Changes in connection with Archipelago's proposed acquisition of PCXH. On January 3, 2005, PCXH, Archipelago and New Apple Acquisitions Corporation (the "Merger Sub"), a newly formed wholly-owned subsidiary of Archipelago, entered into an Agreement and Plan of Merger (the "Original Merger Agreement"), pursuant to which Archipelago has agreed to acquire PCXH and all of its wholly owned subsidiaries, including PCX and PCXE, by way of a merger under Delaware law (the "Merger") of the Merger Sub with and into PCXH, with PCXH as the surviving corporation. On July 22, 2005, PCXH, Archipelago and Merger Sub amended and restated the Original Merger Agreement to, among other things, provide that the consideration payable to PCXH stockholders would be made wholly in cash, and that, as contemplated by the Original Merger Agreement, the measurement dates for purposes of valuing the Archipelago stock held by PCXH would now be the ten consecutive trading days ending on the last trading day prior to the closing date of the Merger (as so amended, the "Amended Merger Agreement").

Pursuant to the Amended Merger Agreement, subject to appraisal rights under Delaware law and other than with respect to treasury stock of PCXH and PCXH common stock beneficially owned by Archipelago for Archipelago's own account, each share of PCXH common stock issued and outstanding immediately prior to the effective time of the Merger (the "Effective Time") will be converted into, and become exchangeable for, an amount in cash equal to the quotient of the aggregate merger consideration divided by the sum of the number of outstanding shares of PCXH common stock and the number of shares to be issued upon the exercise of all options at the consummation of the merger. The aggregate merger consideration equals the sum of the value of the shares of Archipelago common stock owned by PCX and its subsidiaries and $17 million, subject to market fluctuations in the Archipelago stock price and certain other adjustments pursuant to the Amended Merger Agreement. The value of Archipelago common stock shall be determined using the average of the per share closing prices for Archipelago common stock for the ten consecutive trading days ending on the last trading day prior to the closing date of the Merger. At the Effective Time, all PCXH common stock will be cancelled or retired and cease to exist.

As a result of the Merger, PCXH, as the surviving corporation in the Merger, will become a direct, wholly-owned subsidiary of Archipelago (the post-Merger PCXH will hereinafter be referred to as the "New PCXH"). The certificate of incorporation of PCXH as in effect immediately prior to the Effective Time will, subject to approval of the Commission, be amended pursuant to the Amended Merger Agreement and as so amended, will be the certificate of incorporation of the New PCXH. The bylaws of PCXH as in effect immediately prior to the Effective Time will be the bylaws of the New PCXH, until thereafter amended as provided therein or by applicable law. The directors of the Merger Sub at the Effective Time will become directors of the New PCXH and the officers of PCXH at the Effective Time will continue to be officers of the New PCXH.

Except as described in the preceding paragraph or otherwise approved by the Commission, the Merger will not affect the internal corporate structure of PCXH or the regulatory relationship of PCX and PCXE to Archipelago Exchange, L.L.C. ("ArcaEx"), the exclusive equities trading facility of PCX and PCXE. PCX will remain a wholly-owned subsidiary of the New PCXH, will continue operating the options business of the Exchange and will retain the self-regulatory organization function for the options business as well as for PCX's equities business subsidiary, PCXE. After the Merger, except as otherwise approved by the Commission, the board of directors of PCX will continue to comply with the compositional requirements set forth in the certificate of incorporation and bylaws of PCX. Except as otherwise approved by the Commission, PCXE's operations, governance structure, or rules will not be affected by the Merger. After the Merger, except as otherwise approved by the Commission, the board of directors of PCXE will continue to comply with the compositional requirements set forth in the certificate of incorporation and bylaws of PCXE. ArcaEx will remain the exclusive equities trading facility of PCX and PCXE and the Amended and Restated Facility Services Agreement among Archipelago, PCX and PCXE, dated as of March 22, 2002, which currently governs the regulatory relationship of PCX and PCXE to ArcaEx (the "Facility Services Agreement"), will remain in full force and effect in its current form.

a. Certificate of Incorporation of PCXH

(i) Proposed Amendments

In order to safeguard the independence of the self-regulatory functions of PCX and protect the Commission's oversight responsibilities, the certificate of incorporation of PCXH, which was approved by the Commission on May 17, 2004 in connection with the demutualization of the Exchange,[7] imposes limitations on direct and indirect changes in control of PCXH through various ownership and voting restrictions placed on PCXH's capital stock. Specifically, the certificate of incorporation of PCXH provides that no person,[8] either alone or together with its related persons,[9] may own, directly or indirectly, shares constituting more than 40% of the outstanding shares of any class of PCXH capital stock,[10] and that no person, either alone or together with its related persons who is a trading permit holder of PCX or an equities trading permit holder of PCXE, may own, directly or indirectly, shares

[7] Securities Exchange Act Release No. 49718 (May 17, 2005), 69 FR 29611 (May 24, 2005) (order approving proposed rule change and notice of filing and order granting accelerated approval of Amendment No. 1 thereto relating to the demutualization of PCX).

[8] "Person" is defined to mean an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof. Restated Certificate of Incorporation of PCXH, Article Nine, Section 1(b)(iv).

[9] The term "related person," as defined in the Restated Certificate of Incorporation of PCXH, means (i) with respect to any person, all "affiliates" and "associates" of such person (as such terms are defined in Rule 12b–2 under the Act); (ii) with respect to any person constituting a trading permit holder of PCX or an equities trading permit holder of PCXE, any broker dealer with which such holder is associated; and (iii) any two or more persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of PCXH. Restated Certificate of Incorporation of PCXH, Article Nine, Section 1(b)(iv).

[10] Restated Certificate of Incorporation of PCXH, Article Nine, Section 1(b)(i). However, such restriction may be waived by the Board of Directors of PCXH pursuant to an amendment to the Bylaws of PCXH adopted by the Board of Directors, if, in connection with the adoption of such amendment, the Board of Directors adopts a resolution stating that it is the determination of such Board that such amendment will not impair the ability of PCX to carry out its functions and responsibilities as an "exchange" under the Act and is otherwise in the best interests of PCXH and its stockholders and PCX, and will not impair the ability of the Commission to enforce said Act, and such amendment shall not be effective until approved by said Commission; *provided* that the Board of Directors of PCXH shall have determined that such Person and its Related Persons are not subject to any applicable "statutory disqualification" (within the meaning of Section 3(a)(39) of the Act). Restated Certificate of Incorporation of PCXH, Article Nine, Sections 1(b)(i)(B) and 1(b)(i)(C).

constituting more than 20% of any class of PCXH capital stock.[11] Furthermore, the certificate of incorporation of PCXH provides that, for so long as PCXH controls, directly or indirectly, PCX, no person, either alone or with its related persons, may directly or indirectly vote or cause the voting of shares of PCXH capital stock or give any proxy or consent with respect to shares representing more than 20% of the voting power of the issued and outstanding PCXH capital stock, and it also places limitations on the right of any person, either alone or with its related persons, to enter into any agreement with respect to the withholding of any vote or proxy.[12] In order to permit Archipelago to own 100% of the capital stock of the New PCXH upon consummation of the Merger, PCX proposes to amend the certificate of incorporation of PCXH to create an exception, with certain limitations, for Archipelago and certain related persons of Archipelago from the voting and ownership restrictions described above.

Specifically, PCX proposes to add a new paragraph at the end of Article Nine of the certificate of incorporation of PCXH, providing that for so long as Archipelago directly owns all of the outstanding capital stock of PCXH, the provisions of Article Nine, including the ownership and voting limitations with respect to shares of PCXH capital stock, shall not be applicable to the voting and ownership of shares of PCXH capital stock by (i) except for prohibited persons (as defined below), Archipelago, (ii) except for prohibited persons, any person which is a related person (as such term is defined in the certificate of incorporation of PCXH) of Archipelago, either alone or together with its related persons, and (iii) except for prohibited persons, any other person to which Archipelago is a related person, either alone or together with its related persons.[13]

"Prohibited persons" is defined to mean any person which is, or which has a related person which is (A) an OTP Holder or an OTP Firm (as such terms are defined in the rules of PCX, as such rules may be in effect from time to time) or (B) an ETP Holder,[14] except for (1) any broker or dealer approved by the Commission after June 20, 2005 to be a facility (as defined in Section 3(a)(2) of the Act) of PCX; (2) any person which has been approved by the Commission prior to it becoming subject to the provisions of Article Nine of the certificate of incorporation of PCXH with respect to the voting and ownership of shares of PCXH capital stock by such person; and (3) any person which is a related person of Archipelago solely by reason of beneficially owning, either alone or together with its related persons, less than 20% of the outstanding shares of Archipelago capital stock (any person covered by (1) through (3) is referred to as a "permitted person" in the proposed amendment).[15] The proposed Section 4 to Article Nine of the certificate of incorporation of PCXH further provides that any other prohibited person not covered by the definition of a permitted person who would be subject to and exceed the voting and ownership limitations imposed by Article Nine as of the date of the closing of the Merger shall be permitted to exceed the voting and ownership limitations imposed by Article Nine only to the extent and for the time period approved by the Commission.[16]

PCX believes that by creating a limited exemption from the voting and ownership restrictions in the certificate of incorporation of PCXH, the proposed amendment will permit the consummation of the Merger and the continued ownership of PCXH by Archipelago after the Merger while preserving the general applicability of such restrictions as they currently exist, so that these restrictions may continue safeguarding the independence of PCX's self-regulatory function and the Commission's oversight responsibilities. In addition, PCX believes that by eliminating prohibited persons from the exemption, other than those approved by the Commission, it will prevent OTP Holders, OTP Firms and ETP Holders (as such terms are defined in the rules of PCX, as such rules may be amended from time to time) from acquiring, directly or indirectly, a substantial number of outstanding shares of PCXH and exercising undue influence over the operation of PCX, including its self-regulatory functions, without proper oversight by the Commission.

(ii) Archipelago Securities, L.L.C.

In connection with the proposed amendment to the certificate of incorporation of PCXH described above, the Exchange requests that the Commission approve Archipelago Securities, L.L.C. ("Archipelago Securities") to be a facility (as defined in Section 3(a)(2) of the Act) of PCX.

Archipelago Securities, a wholly-owned subsidiary of Archipelago, is a registered broker-dealer, a member of the National Association of Securities Dealers, Inc. ("NASD") and an ETP Holder. Archipelago Securities provides an optional routing service for ArcaEx, and, as necessary, routes orders to other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks or other brokers or dealers (collectively, "Market Centers") from ArcaEx (such function of Archipelago Securities is referred to as the "Outbound Router"). In its capacity as an Outbound Router, Archipelago Securities has operated as a facility (as defined in Section 3(a)(2) of the Act) of PCX. It was approved by the Commission as a facility (as defined in Section 3(a)(2) of the Act) of PCXE on October 25, 2001 in connection with the Commission's approval of the rules of PCX establishing ArcaEx as a facility of PCXE.[17]

Archipelago intends to continue to own and operate Archipelago Securities following the closing of the Merger. The proposed operation of Archipelago Securities as an Outbound Router after the closing of the Merger will not change from the way it is administered and operated today.[18] As an Outbound Router, Archipelago Securities will continue to receive instructions from ArcaEx, route orders to other Market Centers in accordance with those instructions and be responsible for reporting resulting executions back to ArcaEx.[19] In addition, all orders routed through Archipelago Securities would

[11] *Id.*, Article Nine, Section 1(b)(ii).

[12] *Id.*, Article Nine, Section 1(c).

[13] Amended and Restated Certificate of Incorporation of PCXH, Article Nine, Section 4.

[14] PCXE rules define an "ETP Holder" to mean any sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an Equity Trading Permit, a permit issued by the PCXE for effecting approved securities transactions on the trading facilities of PCXE. PCXE Rule 1.1(n).

[15] Amended and Restated Certificate of Incorporation and PCXH, Article Nine, Section 4.

[16] *Id.*

[17] *See* Self Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc., as Amended, and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 4 and 5 Concerning the Establishment of Archipelago Exchange as the Equities Trading Facility of PCX Equities, Inc., Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (the "Original Outbound Router Release"). The name of the order routing broker-dealer was originally Wave Securities, L.L.C. as approved by the Commission in the Original Outbound Router Release.

[18] *See, e.g.*, Original Outbound Router Release, at 55233–55235 (describing the operation of the order routing broker-dealer approved by the Commission).

[19] *See* Original Outbound Router Release, at 55234.

remain subject to the terms and conditions of PCXE rules.[20]

PCX and PCXE currently regulate the Outbound Router function of Archipelago Securities as a facility (as defined in Section 3(a)(2) of the Act) subject to Section 6 of the Act. As such, the Outbound Router function of Archipelago Securities is subject to the Commission's continuing oversight. In particular, and without limitation, under the Act, PCX is responsible for filing with the Commission rule changes and fees relating to the Archipelago Securities Outbound Router function, and Archipelago Securities is subject to exchange non-discrimination requirements.[21]

Pursuant to Rule 17d–1 under the Act, where a member of the Securities Investor Protection Corporation is a member of more than one self-regulatory organization ("SRO"), the Commission shall designate to one of such organizations the responsibility for examining such member for compliance with the applicable financial responsibility rules.[22] The SRO so designated by the Commission is referred to as a "Designated Examining Authority." Archipelago Securities is a member of two SROs, PCX and the NASD. The NASD is an SRO not affiliated with Archipelago or any of its affiliates (including, without limitation, PCX and PCXE) and it has been designated by the Commission as the Designated Examining Authority for Archipelago Securities pursuant to Rule 17d–1 of the Act with the responsibility for examining Archipelago Securities for compliance with the applicable financial responsibility rules. Furthermore, under an agreement between NASD and PCX originally entered into on May 27, 1977 pursuant to Rule 17d–2[23] under the Act (the agreement was amended on February 1, 1980, and as so amended, the "NASD PCX Agreement"), there is currently a plan in place allocating to the NASD the responsibility to receive regulatory reports from Archipelago Securities, to examine Archipelago Securities for compliance and to enforce compliance by Archipelago Securities with the Act, the rules and regulations thereunder and the rules of the NASD, and to carry out other specified regulatory functions with respect to Archipelago Securities.

ETP Holders' use of Archipelago Securities to route orders to another Market Center is currently optional, and will remain optional after the closing of the Merger. Those ETP Holders who choose to use the Outbound Routing service of Archipelago Securities must sign an Archipelago Securities Routing Agreement. Importantly, among other things, the Archipelago Securities Routing Agreement provides that all orders routed through Archipelago Securities are subject to the terms and conditions of PCXE rules.[24]

PCX and Archipelago recognize that after the closing of the Merger such continued ownership and operation by Archipelago of Archipelago Securities—by virtue of Archipelago Securities being an ETP Holder and a related person of Archipelago[25]—would be in violation of the current and proposed limitations[26] to be set forth in the certificate of incorporation of PCXH described above, unless Archipelago Securities is approved by the Commission after June 20, 2005 to be a facility of PCXE[27] in accordance with the terms of the proposed amendment to the certificate of incorporation of PCXH described above.

PCX and Archipelago further recognize that the ownership of both PCX and Archipelago Securities by Archipelago may pose a conflict of interest between the regulatory responsibilities of PCX and PCXE and the broker or dealer activities of Archipelago Securities. This is because the financial interests of Archipelago may conflict with the responsibilities of PCX and PCXE as an SRO regarding Archipelago Securities.

PCX and Archipelago believe, however, that such conflict may be mitigated with the following proposed undertakings of Archipelago, PCX and Archipelago Securities.[28]

(x) Proposed Undertakings

Each of Archipelago, PCX and Archipelago Securities undertakes as follows:

(1) PCX will regulate the Outbound Router function of Archipelago Securities as a facility (as defined in Section 3(a)(2) of the Act), subject to Section 6 of the Act. In particular, and without limitation, under the Act, PCX will be responsible for filing with the Commission rule changes and fees relating to the Archipelago Securities Outbound Router function and Archipelago Securities will be subject to exchange non-discrimination requirements.

(2) Currently, NASD, an SRO unaffiliated with Archipelago or any of tis affiliates (including, without limitation, PCX or PCXE), carries out oversight and enforcement responsibilities as the Designated Examining Authority designated by the Commission pursuant to Rule 17d–1 of the Act with the responsibility for examining Archipelago Securities for compliance with the applicable financial responsibility rules.[29]

(3) The NASD PCX Agreement will stay in full force and effect and PCX will continue to abide by the terms of such agreement.[30] Furthermore, PCX undertakes to amend the agreement to expand the scope of NASD's regulatory functions so as to encompass all of the regulatory oversight and enforcement responsibilities with respect to Archipelago Securities pursuant to applicable laws, except for real-time market surveillance.

(4) An ETP Holder's or OTP Holder's use of Archipelago Securities to route orders to another Market Center will continue to be optional. Any ETP Holder or OTP Holder that does not want to use Archipelago Securities may use other routers to route orders[31] to other Market Centers.[32]

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[20] *See* Archipelago Securities Routing Agreement, *http://www.tradearca.com/exchange/pdfs/ETPApplication.pdf* (last visited July 21, 2005).

[21] *See, e.g.*, Section 6(b)(5) of the Act, 15 U.S.C. 78f(b)(5).

[22] 17 CFR 240.17d–1. Pursuant to Rule 17d–1 under the Act, in making such designation the Commission shall take into consideration the regulatory capabilities and procedures of the SROs, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, the cooperation and coordination among self-regulatory organizations, and the development of a national market system for the clearance and settlement of securities transactions.

[23] Rule 17d–2 provides that any two or more SROs may file with the Commission a plan for allocating among such SROs the responsibility to receive regulatory reports from persons who are members or participants of more than one of such SROs to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Act, the rules and regulations thereunder, and the rules of such SROs, or to carry out other specified regulatory functions with respect to such persons. 17 CFR 240.17d–2.

[24] *See* Archipelago Securities Routing Agreement, *http://www.tradearca.com/exchange/pdfs/ETPApplication.pdf* (last visited July 21, 2005).

[25] At the request of the Exchange the Commission deleted the phrase "as an Outbound Router." *See* August 4, 2005 Telephone Conversation.

[26] The Exchange clarified that the ownership and operation by Archipelago of Archipelago Securities would violate the current, as well as the proposed, limitations in the certificate of incorporation of PCXH, unless approved by the Commission after June 20, 2005 to be a facility of PCXE. *See* August 12, 2005 Telephone Conversation.

[27] *See* Amendment No. 1.

[28] The Exchange clarified that the undertakings of PCX should also be included. *See* August 12, 2005 Telephone Conversation.

[29] *See* Amendment No. 1.

[30] *Id.*

[31] *Id.*

[32] An ETP Holder may chose to route an order to ArcaEx that, if not executable on ArcaEx, will be cancelled and returned to the ETP Holder, at which time the ETP Holder could chose to route the order to another market. *See* August 4, 2005 Telephone Conversation.

(5) Archipelago Securities will not engage in any business other than its Outbound Router function (including, in that function, the self-clearing functions that it currently performs for trades with respect to orders routed to other Market Centers and the clearing functions that it may perform for trades with respect to orders for securities not trades on any securities exchange)[33] and any other activities it may engage in as approved by the Commission.

The above undertakings of Archipelago, PCX and Archipelago Securities would become effective at the effective time of the Merger.

(y) Request for Approval

In sum, PCX and Archipelago believe that the proposed undertakings of Archipelago, PCX and Archipelago Securities set forth above would address the potential conflict of interest with the regulatory responsibilities of PCX and PCXE and the continued ownership and operation of Archipelago Securities by Archipelago after the closing of the Merger.[34] Consequently, subject to the proposed undertakings of Archipelago, PCX and Archipelago Securities set forth above, PCX and Archipelago request that the Commission approve Archipelago Securities to be a facility (as defined in Section 3(a)(2) of the Act)[35] of PCX.

b. Proposed PCX Rules

Archipelago is a public company whose common stock is listed on PCX for trading on ArcaEx. The certificate of incorporation of Archipelago, which was approved by the Commission on August 9, 2004 prior to the initial public offering of Archipelago common stock,[36] currently contains certain provisions intended to ensure that the ownership of Archipelago by the public will not unduly interfere with or restrict the ability of the Commission or PCX to effectively carry out their regulatory oversight responsibilities under the Act, with respect to ArcaEx, and generally to enable ArcaEx to operate in a manner that complies with the federal securities laws, including furthering the objectives of Section 6(b)(5) of the Act.[37] Some of these provisions impose ownership and voting limitations on Archipelago's stockholders and their related persons,[38] including persons who are ETP Holders and the broker-dealers with whom such ETP Holders are associated.[39] In order to ensure that upon consummation of the Merger, the public company nature of Archipelago will not unduly interfere with or restrict the regulatory oversight responsibilities of the Commission or PCX with respect to the options business and the general compliance of the operations of the options business with federal securities laws, PCX proposes to impose on any OTP Holder or OTP Firm, that is not an ETP Holder, voting and ownership limitations that are analogous to those imposed on ETP Holders by the certificate of incorporation of Archipelago. In addition, PCX proposes to require such OTP Holder and OTP Firm, as well as "associated persons" (as such term is defined in Section 3(a)(18) of the Act)[40] of such OTP Holder or OTP Firm, to enter into an agreement with PCX and Archipelago within certain specific time periods set forth in the proposed PCX rules, pursuant to which such OTP Holder, OTP Firm and any person who is deemed an "associated person" (as such term is defined in Section 3(a)(18) of the Act) of such OTP Holder or OTP Firm (such persons are referred to in this filing as "OTP Associates") would agree to comply with the ownership and voting limitations imposed by the proposed PCX rules, to authorize Archipelago to vote their shares of Archipelago stock in favor of amendments to the certificate of incorporation of Archipelago that incorporate such ownership and voting limitations, and to be subject to the disciplinary action in the proposed PCX rules if they violate any of the ownership or voting limitations or fail to enter into such ownership and voting agreement (such agreement, the "Ownership and Voting Agreement"). Under the proposed PCX rules, failure to comply with the ownership and voting limitations or failure to enter into the Ownership and Voting Agreement will subject the responsible OTP Holder or OTP Firm to the possible suspension of all trading rights and privileges. The proposed PCX Rules 1.1(cc) through (gg), Rule 3.4 and Rule 13.2(a)(2)(E) are summarized below.

(i) Ownership and Voting Limitations

The proposed PCX rules provide that for as long as Archipelago shall control, directly or indirectly, PCX, no OTP Holder or OTP Firm, either alone or with its related persons, shall own beneficially shares of Archipelago stock representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the "Ownership Limitation").[41] "Related persons" is defined to mean, with respect to any OTP Holder or OTP Firm: (a) Any broker or dealer with which such OTP Holder or OTP Firm is associated; (b) any natural person who is an associated person of such OTP Firm; (c) any other person(s)[42] whose beneficial ownership of shares of stock of Archipelago with the power to vote on any matter would be aggregated with the OTP Holder's or OTP Firm's beneficial ownership of such stock or deemed to be beneficially owned by such OTP Holder or OTP Firm pursuant to Rules 13d–3 and 13d–5 under the Act;[43] (d) any other person(s) with

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[33] *See* Amendment No. 1.

[34] *Id.*

[35] 15 U.S.C. 78c(a)(2).

[36] Securities Exchange Act Release No. 50170 (August 9, 2004), 69 FR 50419 (August 16, 2004) (SR–PCX–2004–56) (order granting approval of proposed rule change and notice of filing and order granting accelerated approval to Amendment No. 1 to the proposed rule change by the Pacific Exchange, Inc. relating to the Certificate of Incorporation and Bylaws of Archipelago).

[37] *Id.*

[38] The term "related persons," as defined in the Certificate of Incorporation of Archipelago, means with respect to any person: (a) Any other person(s) whose beneficial ownership of shares of stock of Archipelago with the power to vote on any matter would be aggregated with such first person's beneficial ownership of such stock or deemed to be beneficially owned by such first person pursuant to Rules 13d–3 and 13d–5 under the Act; (b) in the case of a person that is a natural person, for so long as ArcaEx remains a facility of PCX and PCXE and the Facility Services Agreement is in full force and effect, any broker or dealer that is an ETP Holder with which such natural person is associated; (c) in the case of a person that is an ETP Holder, for so long as ArcaEx remains a facility of PCX and PCXE and the Facility Services Agreement is in full force and effect, any broker or dealer with which such ETP Holder is associated; (d) any other person(s) with which such person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of Archipelago; and (e) in the case of a person that is a natural person, any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of Archipelago or any of its parents or subsidiaries. Certificate of Incorporation of Archipelago, Article FOURTH, paragraph H(3).

[39] Certificate of Incorporation of Archipelago, Article FOURTH, paragraphs (C) and (D).

[40] Pursuant to Section 3(a)(18) of the Act, the term "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by or under common control with such broker or dealer, or any employee of such broker or dealer, except that such term does not include any person associated with a broker or dealer whose functions are solely clerical or ministerial. 15 U.S.C. 78c(a)(18).

[41] Proposed PCX Rule 3.4(a).

[42] PCX Rule 1.1(v) defines "Person" to mean a natural person, corporation, partnership, limited liability company, association, joint stock company, trustee of a trust fund, or any organized group of persons whether incorporated or not. PCX Rule 1.1(v).

[43] PCX believes that this definition, by incorporating a "beneficial ownership" concept, will help PCX to monitor ownership of the common stock of Archipelago by monitoring filings on Schedules 13D and 13G by stockholders of Archipelago. PCX further believes that the

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which such OTP Holder or OTP Firm has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of Archipelago; and (e) with respect to any OTP Holder and any person described in (a) to (d) above who is a natural person, any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of Archipelago or any of its parents or subsidiaries.[44] PCX and Archipelago believe that stockholders of Archipelago, including OTP Holders, OTP Firms and their related persons who own Archipelago stock, will be able to effectively monitor their shareholdings in Archipelago using systems they already have in place.

For purposes of the Ownership Limitation, no OTP Holder or OTP Firm shall be deemed to have any agreement, arrangement or understanding to act together with respect to voting shares of stock of Archipelago solely because such OTP Holder, OTP Firm or any of their related persons, has or shares the power to vote or direct the voting of such shares of stock pursuant to a revocable proxy given in response to a public proxy or consent solicitation conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Act, except if such power (or the arrangements relating thereto) is then reportable under Item 6 of Schedule 13D under the Act (or any similar provision of a comparable or successor report).[45]

In addition to the Ownership Limitation, the proposed PCX rules provide that for as long as Archipelago shall control, directly or indirectly, PCX, no OTP Holder or OTP Firm, either alone or together with its related persons, shall (1) have the right to vote, vote or cause the voting of shares of stock of Archipelago to the extent such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the "Voting Limitation") or (2) enter into any agreement, plan or arrangement not to vote shares, the effect of which agreement, plan or arrangement would be to enable any person, either alone or with its related persons, to vote or cause the voting of shares that would represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (the "Nonvoting Agreement Prohibition").[46]

The Voting Limitation and Nonvoting Agreement Prohibition shall not apply to (1) any solicitation of any revocable proxy from any stockholder of Archipelago by or on behalf of Archipelago or by an officer or director of Archipelago acting on behalf of Archipelago or (2) any solicitation of any revocable proxy from any stockholder of Archipelago by any other stockholder that is conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Act.[47]

(ii) Ownership and Voting Agreement

The proposed PCX Rule 3.4 also requires certain OTP Holders and OTP Firms that are not ETP Holders, and certain OTP Associates,[48] to enter into an Ownership and Voting Agreement with PCX and Archipelago, which Ownership and Voting Agreement shall provide that for as long as Archipelago shall control, directly or indirectly, PCX: (i) No OTP Holder or OTP Firm, either alone or with its related persons, shall, at any time, own beneficially shares of Archipelago stock in excess of the Ownership Limitation; (ii) no OTP Holder or OTP Firm, either alone or together with its related persons, shall have the right to vote, vote or cause the voting of shares of Archipelago stock, in person or by proxy or through any voting agreement or other arrangement, in excess of the Voting Limitation; and (iii) no OTP Holder or OTP Firm, either alone or together with its related persons, shall enter into any agreement, plan or other arrangement relating to shares of Archipelago stock entitled to vote on any matter with any other person, either alone or with its related persons, in contravention of the Nonvoting Agreement Prohibition.[49] In addition, the Ownership and Voting Agreement provides that each OTP Holder, OTP Firm and OTP Associate who is party to such agreement shall agree to be subject to the implementation provisions imposed by the proposed PCX Rule 3.4(d), which are also going to be set forth in the Ownership and Voting Agreement;[50] these provisions are described in more detail below.

Finally, the Ownership and Voting Agreement provides that each OTP Holder, OTP Firm and OTP Associate who is party to such agreement shall vote, or authorize Archipelago to vote on their behalf, shares of Archipelago stock owned by such OTP Holder, OTP Firm or OTP Associate, as appropriate, in favor of amendments to the certificate of incorporation of Archipelago that incorporate ownership and voting limitations that are substantially similar to the Ownership Limitation, Voting Limitation and Nonvoting Agreement Prohibition set forth in the proposed Rules 3.4(a) and 3.4(b), as well as implementation provisions imposed by the proposed PCX Rule 3.4(d).[51] The Ownership and Voting Agreement shall be governed by Delaware law.[52]

Under the proposed PCX rules, the OTP Holders, OTP Firms and OTP Associates who are required to enter into the Ownership and Voting Agreement have to do so within certain specified time periods set forth in the proposed rules. Specifically, in the case of an OTP Holder, OTP Firm or OTP Associate which is not an ETP Holder and which (x) owns beneficially any shares of Archipelago stock or (y) has entered into any agreement, plan or other arrangement relating to the voting or ownership of any shares of Archipelago stock, at the time of the closing of the Merger, such person will be required to enter into the Ownership and Voting Agreement no later than 30 calendar days following the date of closing of the Merger; in the case of any OTP Holder, OTP Firm or OTP Associate which is not required to enter into an Ownership and Voting Agreement pursuant to the above clause, the Ownership and Voting Agreement has to be entered into no later than the fifth calendar day following the date on which: (x) such OTP Holder, OTP Firm or OTP Associate ceases being an ETP

definition of "beneficial ownership" used will cover persons which control, are controlled by or are under common control with an OTP Holder or an OTP firm.

[44] Proposed PCX Rule 1.1(gg). The proposed Rule 1.1(gg) further provides that "related persons" includes, with respect to any OTP Holder or OTP Firm: (1) any other person beneficially owning pursuant to Rules 13d–3 and 13d–5 under the Act shares of Archipelago stock with the power to vote on any matter that also are deemed to be beneficially owned by such OTP Holder or OTP Firm pursuant to Rules 13d–3 and 13d–5 under the Act; (2) any other person that would be deemed to own beneficially pursuant to Rules 13d–3 and 13d–5 under the Act shares of Archipelago stock with the power to vote on any matter that are beneficially owned directly or indirectly by such OTP Holder or OTP Firm pursuant to Rules 13d–3 and 13d–5 under the Act; and (3) any additional person through which such other person would be deemed to directly or indirectly own beneficially pursuant to Rules 13d–3 and 13d–5 under the Act shares of Archipelago stock with the power to vote on any matter.

[45] Proposed PCX Rule 3.4(a).

[46] Proposed PCX Rule 3.4(b).

[47] *Id.*

[48] PCX clarified that only certain OTP Holders, OTP Firms and OTP Associates would be required to enter into the Ownership and Voting Agreement. *See* August 4, 2005 Telephone Conversation and text accompanying note 51, *infra*, for a discussion of which OTP Holders, OTP Firms, and OTP Associates would be required to enter into an Ownership and Voting Agreement.

[49] Proposed PCX Rule 3.4(c).

[50] *Id.*

[51] Proposed PCX Rule 3.4(c)(3).

[52] Proposed PCX Rule 3.4(c)(5).

Holder and (A) owns or acquires beneficial ownership of any shares of Archipelago stock or (B) is a party to or enters into any agreement, plan or other arrangement relating to the voting or ownership of any shares of Archipelago stock; or (y) such OTP Holder, OTP Firm or OTP Associate which is not an ETP Holder (A) acquires beneficial ownership of any shares of Archipelago stock or (B) enters into any agreement, plan or other arrangement relating to the voting or ownership of any shares of Archipelago stock.[53]

The ownership and voting limitations contained in the proposed PCX Rule 3.4 and the Ownership and Voting Agreement required by the proposed PCX Rule 3.4 are designed to impose on OTP Holders, OTP Firms and their related persons restrictions that are similar to those that are currently contained in the certificate of incorporation of Archipelago with respect to ETP Holders and their related persons. The corresponding provisions in the certificate of incorporation of Archipelago are designed to prevent any ETP Holder or any ETP Holders acting together, from exercising undue control over the operation of Archipelago and, therefore, ArcaEx. PCX believes that by extending the same restrictions to OTP Holders and OTP Firms as well as their related persons, the proposed rule would accomplish the same objectives with respect to the options business of PCX. Specifically, PCX believes that the proposed rules would deter any OTP Holder or OTP Firm, either alone or together with its related persons, from accumulating a substantial number of outstanding votes entitled to be cast on any matter without Commission review. PCX believes that the imposition of such 20% ownership and voting limitations would help ensure that Archipelago, and therefore PCX, would not be subject to undue influence from an OTP Holder or OTP Firm, or a group of OTP Holders or OTP Firms that control a substantial number of outstanding votes entitled to be cast on any matter that may be adverse to PCX's or the Commission's regulatory oversight responsibilities. The proposed voting limitations, along with the related ownership limitation, would serve to protect the integrity of PCX's and the Commission's regulatory oversight responsibilities and would allow PCX to review the acquisition of substantial voting power of Archipelago, and therefore PCX and PCXE, by any OTP Holder, OTP Firm and their related persons.

[53] Proposed PCX Rule 3.4(c).

(iii) Certain Matters Related to the Implementation of the Ownership and Voting Limitations

The proposed PCX Rule 3.4(d) provides that in the event that any OTP Holder or OTP Firm, either alone or with its related persons (including any related persons who are OTP Associates of such OTP Holder or OTP Firm), at any time owns beneficially shares of Archipelago stock in excess of the Ownership Limitation, Archipelago shall promptly call from such OTP Holder or OTP Firm, or an OTP Associate of such OTP Holder or OTP Firm, at a price per share equal to the par value thereof, shares of Archipelago stock owned by such OTP Holder, OTP Firm or OTP Associate that are necessary to decrease the beneficial ownership of such OTP Holder or OTP Firm, either alone or with its related persons, to 20% of the then outstanding votes entitled to be cast on any matter after giving effect to the redemption of the shares of Archipelago stock.[54]

In addition, if any OTP Holder or OTP Firm, either alone or with its related persons (including any related persons who are OTP Associates of such OTP Holder or OTP Firm), acquires the right to vote more than 20% of the then outstanding votes entitled to be cast by stockholders of Archipelago on any matter, Archipelago shall have the right to vote and shall vote such shares of Archipelago stock owned by such OTP Holder, OTP Firm, or an OTP Associate of such OTP Holder or OTP Firm, in excess of the 20% voting limitation in proportion with the results of voting (excluding such excess shares) for such matter at a meeting of Archipelago stockholders.[55]

Furthermore, the proposed PCX rules provide that in the event of any violation by any OTP Holder or OTP Firm of the Ownership Limitation, Voting Limitation or Nonvoting Agreement Prohibition (including, without limitation, any failure of an OTP Holder, OTP Firm or OTP Associate to enter into the Ownership and Voting Agreement as required by the proposed Rule 3.4(c) within the applicable time periods specified therein or any breach of the Ownership and Voting Agreement by an OTP Holder, OTP Firm or OTP Associate which is a party thereto), the Exchange shall suspend all trading rights and privileges of such OTP Holder or OTP Firm in accordance with proposed PCX Rule 13.2(a)(2)(E), subject to the procedures provided therein.[56]

The proposed PCX Rule 13.2(a)(2)(E) provides that in the event of any such failure to comply with Rule 3.4, the Exchange shall: (1) Provide notice to the

[54] Proposed PCX Rule 3.4(d)(1). For purposes of illustration, if there are 1,000,000 votes entitled to be cast in total and an OTP Holder acquires beneficial ownership of shares of Archipelago stock representing in the aggregate 300,000 votes, then Archipelago has to call such number of shares from such OTP Holder so that the number of votes that the OTP Holder beneficially owns after giving effect to the reduction in such OTP Holder's stake *and* the consequent reduction in the total number of votes entitled to be cast, is not more than 20% of the new total number of votes entitled to be cast. Thus, using the number provided in this example, Archipelago would have to call shares of Archipelago stock representing in the aggregate 125,000 votes, leaving the OTP Holder with shares of Archipelago stock representing in the aggregate 175,000 votes, or 20% of the new 875,000 votes entitled to be cast in total.

In addition, assuming there is a second OTP Holder who beneficially owns shares of Archipelago stock representing 190,000 votes, the calling of the shares of the first OTP Holder described above would result in an increase of the second OTP Holder's ownership from 19% to 21.7%. In this scenario, Archipelago would have to call shares of Archipelago stock representing 20,000 votes from the second OTP Holder and additional shares representing 5,000 votes from the first OTP Holder (for a total of 130,000 shares called from the first OTP Holder) such that upon completion of these calls, each of these two OTP Holders owns shares of Archipelago stock representing 170,000 votes, or 20% of the new 850,000 votes entitled to be cast in total.

The proposed PCX Rule 3.4(d)(1) further provides that in the event Archipelago shall call shares of Archipelago stock pursuant to the proposed PCX Rule 3.4(d)(1), notice of such call shall be given promptly by first-class mail, postage prepaid to the holders of the shares of Archipelago stock to be so called (such holders shall include holders whose ownership of Archipelago stock exceeded the 20% ownership limitation solely as a result of the reduction in the total number of outstanding votes due to calls of shares of Archipelago stock from other stockholders), at such holders' addresses as the same appears on the stock register of Archipelago. Each such notice shall state: (a) The call date; (b) the number of shares to be called; (c) the aggregate call price; and (d) the place or places where shares are to be surrendered for payment of the call price. Failure to give notice as aforesaid, or any defect therein, shall not affect the validity of the call of the shares. From and after the call date (unless default shall be made by Archipelago in providing funds for the payment of the call price), shares which have been called as aforesaid shall be cancelled, shall no longer be deemed to be outstanding, and all rights of the holder of such shares as a stockholder of Archipelago (except the right to receive from Archipelago the call price against delivery to Archipelago of evidence of ownership of such shares) shall cease. Upon surrender in accordance with said notice of evidence of ownership of the shares of Archipelago stock so called (properly assigned for transfer, if the board of directors of Archipelago shall so require and the notice shall so state), such shares shall be called by Archipelago at par value.

[55] Proposed PCX Rule 3.4(d)(2). For example, if, with respect to a particular proposal submitted to stockholder vote, 60% of the vote cast by Archipelago stockholders (excluding the excess shares) was in favor of the proposal and 40% of the vote cast by Archipelago stockholders (excluding the excess shares) was against the proposal, Archipelago would vote 60% of the excess shares in favor of the proposal and 40% of the excess shares against the proposal. *See* Amendment No. 1.

[56] Proposed PCX Rule 3.4(d)(3).

applicable OTP Holder or OTP Firm within five business days of learning of the failure to comply; (2) allow the applicable OTP Holder, OTP Firm or OTP Associate of such OTP Holder or OTP Firm fifteen calendar days to cure any such failure to comply; (3) in the event that the applicable OTP Holder, OTP Firm or OTP Associate of such OTP Holder or OTP Firm does not cure such failure to comply within such fifteen calendar day cure period, schedule a hearing to occur within thirty calendar days following the expiration of such fifteen calendar day cure period; and (4) render its decision as to the suspension of all trading rights and privileges of the applicable OTP Holder or OTP Firm no later than ten calendar days following the date of such hearing.[57]

Finally, the proposed PCX rules provide that in the event any OTP Holder or OTP Firm, either alone or with its related persons (including any related person that is an OTP Associate of such OTP Holder or OTP Firm), has cast votes, in person or by proxy or through any voting agreement or other arrangement, in excess of the Voting Limitation, Archipelago may bring suit in a court of competent jurisdiction against such OTP Holder. OTP Firm or OTP Associates seeking enforcement of the Voting Limitation.[58]

c. Bylaws of Archipelago

(i) Duration of Certain Bylaw Provisions

With respect to the ownership and voting limitations in the certificate of incorporation of Archipelago that apply specifically to ETP Holders and their related persons (as opposed to stockholders of Archipelago in general) and certain other provisions of the certificate of incorporation of Archipelago (such provisions, collectively, the "ArcaEx Limitations"),[59] the certificate of incorporation of Archipelago provides that such provisions shall remain applicable for so long as ArcaEx remains a facility (as defined in Section 3(a)(2) of the Act)[60] of PCX and PCXE and the Facility Services Agreement remains in full force and effect.[61] As described previously in Item II.A.1, following completion of the Merger, ArcaEx will remain the exclusive equities trading facility of PCX and PCXE, and the Facility Services Agreement will remain in full force and effect in its current form. In order to ensure the continued force and effect of the ArcaEx Limitations in the event of any change in the relationship of PCX and PCXE to ArcaEx or the effectiveness of the Facility Services Agreement, PCX proposes to amend the bylaws of Archipelago to provide that Archipelago will not take any action, and will not permit any of its subsidiaries, which will include PCXH, PCX, PCXE and ArcaEx, to take any action, that will cause (i) ArcaEx to cease to be a facility of PCX and PCXE, or (ii) the Facility Services Agreement to cease to be in full force and effect, unless each of the provisions in the certificate of incorporation of Archipelago relating to the ArcaEx Limitations is amended pursuant to the terms thereof, the bylaws and applicable law, to provide that such provisions shall remain in full force and effect whether or not ArcaEx remains a facility of PCX and PCXE or the Facility Services Agreement is in full force and effect.[62] The foregoing bylaw provisions may not be amended, modified or repealed unless such amendment, modification or repeal is (i) filed with and approved by the Commission[63] or (ii) approved by Archipelago stockholders voting not less than 80% of the then outstanding votes entitled to be cast in favor of any such amendment, modification or repeal.[64]

PCX believes that, because Archipelago will own 100% of the ownership interest in PCX, these proposed Archipelago bylaw provisions, in conjunction with voting and ownership limitations currently in place, and the ownership and voting limitations that will be imposed by the Proposed Rule Changes on OTP Holders, OTP Firms and their related persons, will ensure that, regardless of whether ArcaEx remains a facility of PCX and PCXE or whether the Facility Services Agreement remains in full force and effect, the regulatory oversight responsibilities of PCX and PCXE will not be subject to any undue influences from a PCX member or a group of PCX members that control a substantial number of outstanding votes.

(ii) No Waiver by the Board of Directors of Archipelago

The certificate of incorporation of Archipelago currently contains provisions that allow the board of directors of Archipelago to, subject to certain conditions,[65] waive the voting and ownership limitations with respect to a specific Archipelago stockholder and its related persons, provided that neither the stockholder subject to such waiver nor any of its related persons is an ETP Holder.[66] These provisions reflect the heightened scrutiny with respect to ETP Holders and their related persons relative to other Archipelago stockholders due to the fact that ETP Holders are members of the Exchange

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[57] 57 Proposed PCX Rule 13.2(a)(2)(E).

[58] Proposed PCX Rule 3.4(d)(4).

[59] Certificate of Incorporation of Archipelago, paragraphs (C)(3)(y), (D)(2), (D)(2)(a) and (H)(3) of Article FOURTH, the third paragraph of Article EIGHTH, the penultimate paragraph of Article TENTH, Article THIRTEENTH, Article FOURTEENTH, Article FIFTEENTH, Article SIXTEENTH, Article SEVENTEENTH and Article NINETEENTH.

[60] Section 3(a)(2) defines the term "facility," when used with respect to an exchange, to include its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service. 15 U.S.C. 78c(a)(2).

[61] The Exchange clarified that the provisions discussed in this section, the ArcaEx Limitations, include both the ownership and voting limitations and other provisions. *See* August 12, 2005 Telephone Conversation.

[62] Amended Bylaws of Archipelago, Section 6.8(c).

[63] The current Bylaws of Archipelago provide that before any amendment to the bylaws shall be effective, such amendment shall be submitted to the Board of Directors of PCX and if such Board shall determine that the same is required, under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Commission before such amendment may be effective under Section 19 of the Act and the rules promulgated thereunder, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. Amended Bylaws of Archipelago, Section 6.8(b).

[64] Amended Bylaws of Archipelago Section 6.8(g). Under Section 216 of the Delaware General Corporation Law, a bylaw amendment by shareholders generally requires the affirmative vote of a majority of the shares present in person or represented by proxy at a stockholders' meeting and entitled to vote on such bylaw amendment, unless specified otherwise in the corporation's certificate of incorporation or bylaws. Del. Code Ann. tit. 8 sec. 216(2) (1998).

[65] Before adopting any waiver with respect to (i) the exercise of any voting rights in excess of the voting limitation set forth in the certificate of incorporation of Archipelago, (ii) the entering into of any agreement, plan or other arrangement in violation of the non-voting agreement prohibition set forth in the certificate of incorporation of Archipelago, or (iii) the ownership of Archipelago stock in excess of the concentration limitation set forth in the certificate of incorporation of Archipelago, the board of directors of Archipelago has to determine that: (x) the undertaking of any of the actions described in (i), (ii) or (iii) above by any person, either alone or with its related persons, will not impair any of Archipelago's, PCX or PCXE's ability to discharge its responsibilities under the Act and the rules and regulations thereunder and is otherwise in the best interests of Archipelago and its stockholders; (y) the undertaking of any of the actions described in (i), (ii) or (iii) above by any person, either alone or with its related persons, will not impair the Commission's ability to enforce the Act; and (z) neither such person nor any of its related persons is subject to any statutory disqualification (as defined in Section 3(a)(39) of the Act). Certificate of Incorporation of Archipelago, Article FOURTH, paragraphs C(3) and D(1)(b).

[66] Certificate of Incorporation of Archipelago, Article FOURTH, paragraph C(3).

and present more of a concern for undue influence than other stockholders of Archipelago. In connection with the Merger and the expansion of the voting and ownership limitations to OTP Holders, OTP Firms and their related persons through the new proposed PCX rules described in Item 3.1(b), PCX proposes to amend the bylaws of Archipelago to provide that the board of directors of Archipelago will not adopt any resolution waiving the Voting Limitation, the Nonvoting Agreement Prohibition and the "Concentration Limitation" (as such term is defined in the certificate of incorporation of Archipelago) [67] with respect to any OTP Holder, OTP Firm or any of their related persons.[68] The foregoing bylaw provisions may not be amended, modified or repealed unless such amendment, modification or repeal is filed and approved by the Commission or approved by Archipelago stockholders voting not less than 80% of the then outstanding votes entitled to be cast in favor of any such amendment, modification, or repeal.[69] These proposed bylaw provisions, in conjunction with the ownership and voting limitations that would be imposed by the Proposed Rule Changes on OTP Holders, OTP Firms and their related persons, are designed to apply a comparable level of scrutiny that has been in place for ETP Holders and their related persons to OTP Holders, OTP Firms and their related persons after completion of the Merger. By proscribing any discretion by the board of directors of Archipelago with respect to granting waivers of the ownership and voting limitations to the OTP Holders and OTP Firms [70] and their related persons, the proposed bylaw provisions further ensure that these limitations will be strictly enforced to fulfill their intended purpose of protecting the integrity of the regulatory oversight of PCX and the Commission.

(iii) Extension of Certain Provisions Related to ArcaEx

Among other things, the certificate of incorporation of Archipelago provides for the inspection and copying by PCX and PCXE of Archipelago's books and records, requires that Archipelago take reasonable steps necessary to cause its agents to cooperate with PCX and PCXE in connection with certain of such agents' activities and requires that Archipelago cause its officers, directors and employees to consent to the applicability to them of certain provisions of Archipelago's certificate of incorporation in connection with certain of such persons' activities.[71] These provisions, however, apply only to the extent that such books and records or activities, as the case may be, relate to ArcaEx. As described previously in Item II.A.1, following completion of the Merger, PCX and PCXE will become wholly-owned subsidiaries of Archipelago. In order to ensure that these provisions apply also to the operations of PCX and PCXE, PCX proposes to amend the bylaws of Archipelago to provide that, in addition to the current requirements of the certificate of incorporation of Archipelago, (i) Archipelago's books and records shall be subject at all times to inspection and copying by PCX and PCXE to the extent such books and records are related to the operation and administration of PCX or PCXE, (ii) Archipelago shall take reasonable steps necessary to cause its agents to cooperate with PCX and PCXE pursuant to their regulatory authority with respect to such agents' activities related to PCX or PCXE, (iii) Archipelago shall take reasonable steps necessary to cause its officers, directors and employees prior to accepting a position as an officer, director or employee, as applicable, of the Corporation to consent in writing to the applicability to them of certain specified provisions of the certificate of incorporation of Archipelago with respect to their activities related to PCX or PCXE, and (iv) Archipelago, its directors and officers, and those of its employees whose principal place of business and residence is outside the United States shall be deemed to irrevocably submit to the exclusive jurisdiction of the United States federal courts, the Commission and PCX for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of PCX or PCXE, and Archipelago and each such director, officer or employee, in the case of any such director, officer or employee by virtue of his acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the Commission, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency.[72] The foregoing proposed bylaw provisions may not be amended, modified or repealed unless such amendment, modification or repeal is (i) filed with and approved by the Commission or (ii) approved by Archipelago stockholders voting not less than 80% of the then outstanding votes entitled to be cast in favor of any such amendment, modification or repeal.[73] PCX believes that, because Archipelago will own 100% of the ownership interest in PCX (and, through PCX, in PCXE as well), these proposed Archipelago bylaw provisions will ensure that the regulatory oversight responsibilities of PCX and PCXE will also extend to such books and records, agents, officers, directors and employees of Archipelago as may relate to, or be involved in, the operations of PCX and PCXE (as well as ArcaEx).

(iv) Calling of Shares by Archipelago

The certificate of incorporation of Archipelago also contains provisions that govern the process that Archipelago will follow in order to call shares from certain of its stockholders in the event of breaches of certain ownership limitations.[74] The proposed Archipelago bylaw amendment clarifies that, in order to effect the purposes of these provisions of Archipelago's certificate of incorporation, Archipelago recognizes that the call must be undertaken and completed promptly. To that end, under the proposed bylaw amendment, the Board of Directors of Archipelago will cause Archipelago to call promptly shares of stock of Archipelago and also to give notice of such call promptly.[75] The foregoing proposed bylaw provisions may not be amended, modified or repealed unless such amendment, modification or repeal is (i) filed with and approved by the

[67] The "Concentration Limitation," as defined in the certificate of incorporation of Archipelago, provides that no person, either alone or with its related persons, shall be permitted at any time to own beneficially shares of Archipelago stock representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter. Certificate of Incorporation of Archipelago, Article FOURTH, Paragraph D(1).

[68] Amended Bylaws of Archipelago, Section 6.8(d.). *See* Amendment No. 1.

[69] Amended Bylaws of Archipelago, Section 6.8(g).

[70] *See* Amendment No. 1.

[71] Certificate of Incorporation of Archipelago, Article THIRTEENTH, Article FOURTEENTH, Article SEVENTEENTH and Article EIGHTEENTH.

The Exchange clarified that Article THIRTEENTH of the Certificate of Archipelago should be included in the preceding list. *See* August 12, 2005 Telephone Conversation.

[72] Amended Bylaws of Archipelago, Section 6.8(e).

[73] Amended Bylaws of Archipelago, Section 6.8(g).

[74] Certificate of Incorporation of Archipelago, Article FOURTH, paragraph F.

[75] Amended Bylaws of Archipelago, Section 6.8(f).

Commission or (ii) approved by Archipelago stockholders voting not less than 80% of the then outstanding votes entitled to be cast in favor of any such amendment, modification or repeal.[76]

d. Undertakings by Archipelago

In connection with the submission of the Proposed Rule Changes, Archipelago undertakes that, prior to the earlier of (1) the 2006 annual general meeting of Archipelago stockholders and (2) the first meeting of Archipelago stockholders to occur after the closing of the Merger (other than any meeting or meetings of Archipelago stockholders convened for the purpose of considering and approving the merger of Archipelago and New York Stock Exchange, Inc.), the board of directors of Archipelago shall: (a) Propose amendments to the certificate of incorporation of Archipelago to (x) extend the application of voting and ownership limitations imposed on ETP Holders currently contained in the certificate of incorporation of Archipelago to OTP Holders and OTP Firms, (y) delete the phrase "[f]or so long as ArcaEx remains a Facility of PCX and PCX Equities and the FSA remains in full force and effect" from each paragraph that contains such language, which paragraphs shall include paragraphs (C)(3)(y), (D)(2), (D)(2)(a) and (H)(3) of Article FOURTH, the third paragraph of Article EIGHTH, the penultimate paragraph of Article TENTH, Article THIRTEENTH, Article FOURTEENTH, Article FIFTEENTH, Article SIXTEENTH, Article SEVENTEENTH and Article NINETEENTH, and (z) incorporate into Articles THIRTEENTH, FOURTEENTH, SEVENTEENTH AND EIGHTEENTH, as appropriate, the requirements set forth in Section 6.8(e) of the proposed Archipelago bylaw amendment; (b) declare the advisability of such amendments; and (c) direct such amendments be submitted for stockholder approval at the earlier of (1) the 2006 annual meeting of Archipelago stockholders and (2) the first meeting of Archipelago stockholders to occur after the closing of the Merger (other than any meeting or meetings of Archipelago stockholders convened for the purpose of considering and approving the merger of Archipelago and New York Stock Exchange, Inc.). The Ownership and Voting Agreement will provide that any OTP Holder, OTP Firm or OTP Associate that is subject to the Ownership and Voting Agreement shall vote, or authorize Archipelago to vote on its behalf, shares of Archipelago stock owned by such OTP Holder, OTP Firm or OTP Associate in favor of the amendments to the certificate of incorporation of Archipelago described in (x) above.[77]

In addition, Archipelago undertakes to take reasonable steps necessary to cause Archipelago's directors and officers and those Archipelago employees whose principal place of business and residence is outside the United States prior to accepting a position as an officer, director or employee, as applicable, of Archipelago to consent in writing to the applicability to them of the proposed Section 6.8(e)(iv) of the proposed Archipelago bylaw amendment. Furthermore, Archipelago undertakes that it will take reasonable steps necessary to cause Archipelago's current directors and officers and those current Archipelago employees whose principal place of business and residence is outside the United States to consent in writing prior to the consummation of the Merger to the applicability to them of Section 6.8(e)(iv) of the proposed Archipelago bylaw amendment.

e. Certain Additional Matters [78]

(i) The Exchange is also requesting the Commission's approval for the following temporary exceptions for the following persons, each of whom would be subject to and exceed the voting and ownership limitations imposed by Article Nine of the certificate of incorporation of PCXH (as proposed to be amended as described in this filing) as of the date of the closing of the Merger, so that such persons be permitted to exceed such limitations imposed by Article Nine to the following extent and for the following time periods:

(x) Archipelago may, until December 31, 2005, continue to own all of its ownership interest in Wave Securities, L.L.C., a broker-dealer and wholly-owned subsidiary of Archipelago, following the closing of its acquisition of PCXH notwithstanding the terms of the certificate of incorporation of PCXH, as proposed to be amended as described in this filing.

(y) Gerald D. Putnam, Chairman and Chief Executive Officer of Archipelago, may, until December 31, 2005, continue to own in excess of 5% of Terra Nova Trading, L.L.C. and continue to serve as a director of TAL Financial Services, LLC following the closing of the Archipelago's acquisition of PCXH notwithstanding the terms of the certificate of incorporation of PCXH, as proposed to be amended as described in this filing.

(ii) In order to abide by the terms of the certificate of incorporation of PCXH, as proposed to be amended as described in this filing, each of Kevin J.P. O'Hara, Chief Administrative Officer and General Counsel of Archipelago, and Paul Adcock, Managing Director, Trading, of Archipelago, shall resign from the board of directors of White Cap Trading LLC prior to the effective time of the Merger.

2. Basis

The Exchange believes that this filing is consistent with Section 6(b)[79] of the Act, in general, and furthers the objectives of Section 6(b)(1),[80] in particular, in that it enables the Exchange to be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d) or 19(g)(2) of the Act) to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that this filing furthers the objectives of Section 6(b)(5),[81] in particular, because the rules summarized herein would create a governance and regulatory structure with respect to the operation of the options business of PCX that is designed to help prevent fraudulent and manipulative acts and practices; to promote just and equitable principals of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

[76] Amended Bylaws of Archipelago, Section 6.8(g).

[77] Proposed PCX Rule 3.4(c)(3).

PCX clarified that the Ownership and Voting Agreement also would apply to OTP Associates, and that such agreement would only require a vote in favor of the amendments described in (x) above. *See* August 4, 2005 Telephone Conversation.

[78] *See* Amendment No. 1.

[79] 15 U.S.C. 78f(b).

[80] 15 U.S.C. 78f(b)(1).

[81] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) 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 (2) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The board of directors of PCXH and the board of directors of PCX approved the proposed amendment to the certificate of incorporation of PCXH at their respective meetings on June 1, 2005. The board of directors of PCX approved this filing, including the Proposed Rule Changes contained therein, at its meeting on August 2, 2005. The board of directors of Archipelago approved the proposed amendment to the bylaws of Archipelago at its meeting on July 18, 2005. In addition, PCXH will be submitting the Amended Merger Agreement to its stockholders for approval. This vote is expected to occur at a special meeting of PCXH ' stockholders in September 2005. To the extent necessary, the Exchange hereby consents to an extension of the time period specified in Section 19(b)(2) of the Act until at least 35 days after the Exchange has filed an appropriate amendment to this filing setting forth the completion of all such necessary corporate actions.[82]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–90 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–PCX–2005–90. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–90 and should be submitted on or before September 8, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[83]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4510 Filed 8–17–05; 8:45 am]

BILLING CODE 8010–01–P

[82] *See* Amendment No. 1.

[83] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Telesoft Partners II SBIC, L.P., License No. 09/79–0432; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Telesoft Partners II SBIC, L.P., 1450 Fashion Island Blvd., Suite 610, San Mateo, CA 94404, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Telesoft Partners II SBIC, L.P. proposes to provide equity/debt security financing to CreekPath Systems, Inc. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Telesoft Partners II QP, L.P., Telesoft Partners II, L.P. and Telesoft NP Employee Fund, LLC, all Associates of Telesoft Partners II SBIC, L.P., own more than ten percent of CreekPath Systems, Inc.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Jaime Guzman-Fournier,

Associate Administrator for Investment.

[FR Doc. 05–16350 Filed 8–17–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10142]

Mississippi Disaster Number MS–00002

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Mississippi (FEMA–1594–DR), dated 07/10/2005.

Incident: Hurricane Dennis.

Incident Period: 07/10/2005 through 07/15/2005.

Effective Date: 07/15/2005.

Physical Loan Application Deadline Date: 09/08/2005.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster

declaration for Private Non-Profit organizations in the State of Mississippi, dated 07/10/2005, is hereby amended to establish the incident period for this disaster as beginning 07/10/2005 and continuing through 07/15/2005.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–16349 Filed 8–17–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5158]

Culturally Significant Objects Imported for Exhibition Determinations: "Hatshepsut: From Queen to Pharaoh"

ACTION: Notice, correction.

SUMMARY: On June 20, 2005, notice was published on page 35493 of the **Federal Register** (volume 70, number 117) of determinations made by the Department of State pertaining to the exhibit, "Daughter of Re: Hatshepsut, King of Egypt." The referenced notice is corrected to reflect that the title of the exhibition, formerly titled, "Daughter of Re: Hatshepsut, King of Egypt," has been changed to "Hatshepsut: From Queen to Pharaoh." The referenced notice is also corrected as to an additional object to be included in the exhibition. Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I determine that an additional object to be included in the exhibition, "Hatshepsut: From Queen to Pharaoh," imported from abroad for temporary exhibition within the United States, is of cultural significance. The additional object is imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit object at the Fine Arts Museums of San Francisco, California, from on or about October 15, 2005 to on or about February 5, 2006, and at The Metropolitan Museum of Art, New York, New York, from on or about March 21, 2006 to on or about July 9, 2006, and at the Kimbell Art Museum, Fort Worth, Texas, from on or about August 26, 2006 to on or about December 31, 2006, and at possible additional venues yet to be determined, is in the national interest. Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: 202/453–8050). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 11, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–16399 Filed 8–17–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5157]

Culturally Significant Objects Imported for Exhibition—Determinations: "Pieter Claesz: Master of Haarlem Still Life"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Pieter Claesz: Master of Haarlem Still Life," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about September 18, 2005, to on or about December 31, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/453–8049). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–16400 Filed 8–17–05; 8:45 am]

BILLING CODE 4710–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA); Notice Regarding the 2005 Annual Review

AGENCY: Office of the United States Trade Representative

ACTION: Notice.

SUMMARY: This notice announces the 2005 Annual Review of the Andean Trade Preference Act (ATPA). The deadline for the submission of petitions for the 2005 Annual ATPA Review is September 19, 2005. USTR will publish a list of petitions filed in response to this announcement in the **Federal Register**.

ADDRESSES: Submit petitions by electronic mail (e-mail) to *FR0523@ustr.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, Office of the Americas, Office of the United States Trade Representative, 600 17th St., NW., Washington, DC 20508. The telephone number is (202) 395–9446 and the facsimile number is (202) 395–9675.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201–06), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210), provides for trade benefits for eligible Andean countries. Consistent with Section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of articles and countries for the benefits of the ATPA, as amended. The 2005 Annual ATPA Review is the third such review to be conducted pursuant to the ATPA review regulations. To qualify for the benefits of the ATPA and ATPDEA, each country must meet several eligibility criteria, as

set forth in sections 203(c) and (d), and section 204(b)(6)(B) of the ATPA, as amended (19 U.S.C. 3202(c), (d); 19 U.S.C. 3203(b)(6)(B)), and as outlined in the **Federal Register** notice USTR published to request public comments regarding the designation of eligible countries as ATPDEA beneficiary countries (67 FR 53379). Under section 203(e) of the ATPA, as amended (19 U.S.C. 3202(e)), the President may withdraw or suspend the designation of any country as an ATPA or ATPDEA beneficiary country, and may also withdraw, suspend, or limit preferential treatment for any product of any such beneficiary country, if the President determines that, as a result of changed circumstances, the country is not meeting the eligibility criteria.

The ATPA regulations provide the schedule of dates for conducting an annual review, unless otherwise specified by **Federal Register** notice. Notice is hereby given that, in order to be considered in the 2005 Annual ATPA Review, all petitions to withdraw or suspend the designation of a country as an ATPA or ATPDEA beneficiary country, or to withdraw, suspend, or limit application of preferential treatment to any article of any ATPA beneficiary country under the ATPA, or to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3), (4)) of the ATPA, must be received by the Andean Subcommittee of the Trade Policy Staff Committee no later than 5 p.m. EDT on September 19, 2005. Petitioners should consult 15 CFR 2016.0 regarding the content of such petitions.

E-mail submissions should be single copy transmissions in English, and the total submission including attachments should not exceed 50 pages. Submissions should use the following subject line: "2005 Annual ATPA Review—Petition." Documents must be submitted as either WordPerfect (".WPD"), MSWord (".DOC"), or text (".TXT") file. Documents should not be submitted as electronic image files or contain imbedded images (for example, ".JPG", "PDF", ".BMP", or "GIF"), as these type of files are generally excessively large. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel, pre-formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Petitions will be available for public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked "BUSINESS CONFIDENTIAL" in large, bold letters at the top and bottom of every page of the document. The public version that does not contain business confidential information must be clearly marked either "PUBLIC VERSION" or "NON-CONFIDENTIAL" in large, bold letters at the top and bottom of every page. The file name of any document containing business confidential information attached to an e-mail transmission should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the person or party submitting the petition. Submissions by e-mail should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the submission. The e-mail address for submissions is *FR0523@ustr.eop.gov*. Public versions of all documents relating to this review will be available for review shortly after the due date by appointment in the USTR Public Reading Room, 1724 F Street NW., Washington, DC. Availability of documents may be ascertained, and appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 05–16337 Filed 8–17–05; 8:45 am]

BILLING CODE 3190–W5–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the 2005 Annual Review for Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in connection with the 2005 annual review to modify the list of products that are eligible for duty-free treatment under the GSP program and to modify the GSP status of certain GSP beneficiary developing countries because of country practices. The list of country practice petitions accepted for review will be announced in the **Federal Register** at a later date. This notice announces the product petitions that are accepted for further review in the 2005 GSP Annual Review, and sets forth the schedule for comment and public hearing on these petitions, for requesting participation in the hearing, and for submitting pre-hearing and post-hearing briefs.

FOR FURTHER INFORMATION CONTACT: The GSP Subcommittee of the Trade Policy Staff Committee, Office of the United States Trade Representative, 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971.

DATES: The GSP regulations (15 CFR Part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified in a **Federal Register** notice. The current revised schedule follows. Notification of any other changes will be given in the **Federal Register**.

September 12, 2005: Due date for requests to appear at the USTR Public Hearing and submission of pre-hearing briefs.

September 12, 2005: Due date for providing the name, address, telephone, fax, e-mail address and organization of witnesses.

(September 29, 2005: U.S. International Trade Commission (USITC) scheduled hearings on economic effect on U.S. industries.)

September 30, 2005: USTR's Public Hearing to be held at U.S. International Trade Commission, Main Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 10 a.m. Hearing will focus on all products.

October 21, 2005: Due date for submission of post-hearing and rebuttal briefs.

November 2005: USITC scheduled to publish report on products of case nos. 2005–01, and 2005–09 through 2005–13. Comments on USITC report on these products due 10 days after USITC date of publication.

February 2006: USITC will issue a second report on watch case nos. 2005–02 through 2005–08. Comments on this USITC report due 10 days after USITC date of publication.

June 30, 2006: Modifications to the list of articles eligible for duty-free treatment under the GSP resulting from the 2005 Annual Review will be announced on or about June 30, 2006, in the **Federal Register**, and any changes will take effect on the effective date announced.

SUPPLEMENTARY INFORMATION: The GSP provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the "1974 Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In a **Federal Register** notice dated May 9, 2005, USTR announced the deadline for the filing of product and country practice petitions for the 2005 GSP Annual Review to be June 15, 2005 (70 FR 24460). The product petitions received requested changes in the list of eligible products by adding or by waiving the "competitive need limitations" (CNLs) for a country for an eligible article.

The interagency GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has reviewed the product petitions, and the TPSC has decided to initiate a full review of the product petitions listed in Annex I. Annex I to this notice sets forth, for each type of change requested: the case number, the Harmonized Tariff Schedule of the United States (HTS) subheading number, a brief description of the product (see the HTS for an authoritative description available on the U.S. International Trade Commission (USITC) Web site (*http://www.usitc.gov/taffairs*)), and the petitioner for each petition included in this review. Acceptance of a petition for review does not indicate any opinion with respect to the disposition on the merits of the petition. Acceptance indicates only that the listed petitions have been found eligible for review by the TPSC and that such review will take place.

Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee of the TPSC invites comments in support of or in opposition to any petition which is included in this Annual Review (Annex I). Submissions should comply with 15 CFR part 2007, except as modified below. All submissions should identify the subject article(s) in terms of the case number and HTS subheading number as shown in Annex I.

Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic e-mail submissions in response to this notice. Hand-delivered submissions will not be accepted. These submissions should be single-copy transmissions in English with the total submission not to exceed 50 single-spaced standard letter-size pages. E-mail submissions should use the following subject line: "2005 GSP Annual Review" followed by the Case Number and HTS subheading number found in the Annex I (for example, 2005–07 9102.19.40) and, as appropriate "Written Comments", "Notice of Intent to Testify", "Pre-hearing brief", "Post-hearing brief" or "Comments on USITC Advice". (For example, an e-mail subject line might read "2005–07 9102.19.40 Written Comments".) Documents must be submitted in English in one of the following formats: WordPerfect (.WPD), MSWord (.DOC), or text (TXT) files. Documents may not be submitted as electronic image files or contain imbedded images (for example, ".JPG", ".TIF", ".PDF", ".BMP", or ".GIF"). Supporting documentation submitted as spreadsheets are acceptable as Excel files, formatted for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of each page of the document. The non-confidential version must also be clearly marked at the top and bottom of each page (either "PUBLIC VERSION" or "NON-CONFIDENTIAL"). Documents that are submitted without any marking might not be accepted or will be considered public documents.

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the party (government, company, union, association, etc.) which is making the submission.

E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself, including the sender's e-mail address and other identifying information. The e-mail address for these submissions is *FR0441@USTR.GOV*. Documents not submitted in accordance with these instructions might not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee to arrange for an alternative method of transmission.

Public versions of all documents relating to this review will be available for review approximately two weeks after the relevant due date by appointment in the USTR public reading room, 1724 F Street, NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Notice of Public Hearing

A hearing will be held by the GSP Subcommittee of the TPSC on September 30, 2005, beginning at 10 a.m. at the U.S. International Trade Commission, Main Hearing Room, 500 E Street, SW., Washington, DC 20436. The hearing will be open to the public and a transcript of the hearing will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearing must submit, following the above "Requirements for Submissions", the name, address, telephone number, and facsimile number and e-mail address, if available, of the witness(es) representing their organization to Marideth Sandler, the Executive Director of the GSP Program by 5 p.m., September 12, 2005. Requests to present oral testimony in connection with the public hearing must be accompanied by a written brief or statement, in English, and also must be received by 5 p.m., September 12, 2005. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the regulations cited above and are submitted, in English, by 5 p.m., October 21, 2005. Parties not wishing to appear at the public hearing may submit post-hearing written briefs or statements, in English, by 5 p.m., October 21, 2005.

In accordance with sections 503(a)(1)(A) and 503(e) of the 1974 Act and the authority delegated by the President, pursuant to section 332(g) of the Tariff Act of 1930, the U.S. Trade Representative has requested that the USITC provide its advice on the

probable economic effect of the following actions on U.S. industries producing like or directly competitive articles and on consumers, as appropriate: (1) The elimination of U.S. import duties for all beneficiary developing countries; (2) the restoration of a country for eligibility for duty-free treatment under the GSP for such article; (3) whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(d)(1) of the 1974 Act for the country specified; and (4) whether designation of certain watches will cause material injury to certain manufacturing and assembly operations in the United States or U.S. insular possessions.

Comments by interested persons on the USITC Report regarding Products of Case Nos. 2005–01, and 2005–09 through 2005–13, prepared as part of the product review, should be submitted by 5 p.m., 10 days after the date of USITC publication of its report in November.

Comments by interested persons on the second USITC Report on Watch Case Nos. 2005–02 through 2005–08, also prepared as part of the product review, should be submitted by 5 p.m., 10 days after date of its publication in February 2006.

Marideth Sandler,

Executive Director, Generalized System of Preferences (GSP) Program, Office of the U.S. Trade Representative.

BILLING CODE 3190–W5–P

Annex I

The Harmonized Tariff Schedule of the United States (HTS) subheadings listed below have been accepted as product petitions for the 2005 Generalized System of Preferences (GSP) Annual Review for modification of the (GSP). The tariff nomenclature in the HTS for the subheadings listed below are definitive; the product descriptions in this list are *for informational purposes only* (except in those cases where only part of a subheading is the subject of a petition). The descriptions below are not intended to delimit in any way the scope of the subheading. The HTS may be viewed on http://www.usitc.gov/tata/index.htm.

Case No.	HTS Subheading	Brief Description	Petitioner
A. Petitions to add products to the list of eligible articles for the Generalized System of Preferences.			
2005-01	1302.39.0010	Carrageenan	Government of the Philippines Seaweed Industry Assocation of the Philippines
2005-02	9102.11.10	Wrist watches not elsewhere specified or included, electrically operated, mechanical display only, 0-1 jewel, gold- or silver-plated case, band of textile material or base metal	Government of the Philippines Timex Corp., Middlebury, CT
2005-03	9102.11.25	Wrist watches not elsewhere specified or included, electrically operated, mechanical display only, 0-1 jewel, case other than gold- or silver-plated, with band of textile material or base metal	do.
2005-04	9102.11.30	Wrist watches not elsewhere specified or included, electrically operated, mechanical display only, 0-1 jewel, gold- or silver-plated case, with band of material not elsewhere specified or included	do.
2005-05	9102.11.45	Wrist watches not elsewhere specified or included, electrically operated, mechanical display only, 0-1 jewel, case other than gold- or silver-plated, with band of material not elsewhere specified or include	do.
2005-06	9102.19.20	Wrist watches not elsewhere specified or included, electrically operated, with both optoelectronic and mechanical displays, 0-1 jewel, band of textile material or base metal	do.
2005-07	9102.19.40	Wrist watches not elsewhere specified or included electrically operated, with both optoelectronic and mechanical displays, 0-1 jewel, band of material not elsewhere specified or included	do.
2005-08	9102.91.40	Watches (excluding wrist watches) not elsewhere specified or included, electrically operated, with 0-1 jewel in the movement	do.
B. Petition to restore duty-free status from a beneficiary developing country/countries for a product on the list of eligible articles for Generalized System of Preferences.			
2005-09	2916.39.15 (India)	Ibuprofen	Shasun Chemicals and Drugs, Ltd. India Shasun USA, Inc. South Plainfield, NJ
C. Petitions for waiver of competitive need limits for a product on the list of eligible products for the Generalized System of Preferences.			
2005-10	0804.50.80 (Philippines)	Guavas, mangoes, and mangosteens, dried	Government of the Philippines; Philippines Dried Mangoes Industry
2005-11	4412.19.40 (Brazil)	Plywood of wood sheets, not over 6 mm thick each, with outer plies of coniferous wood, with a face play not elsewhere specified or included, not surface covered or surface covered with clear material does not obscure grain	Industria de Compansados Guararapes Ltda. Brazil
2005-12	6802.21.10 (Turkey)	Monumental or building stone and articles thereof, of travertine, simply cut or sawn, with flat or even surface	Istanbul Mineral and Metals Exporters' Association, Turkey
2005-13	6802.91.20 (Turkey)	Monumental or building stone and articles thereof, of travertine, dressed or polished but not further worked, not elsewhere specified or included	do.

[FR Doc. 05–16405 Filed 8–17–05; 8:45 am]
BILLING CODE 3190–W5–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–115–05–005]

Policy Statement on Acceptance of a Component Test Method To Demonstrate

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy on a component method for demonstrating that a seat with a replacement bottom cushion complies with § 25.562(c)(2). This policy addresses non-flotation monolithic (single layer) cushions.

DATES: This final policy was issued by the Transport Airplane Directorate on August 9, 2005.

FOR FURTHER INFORMATION CONTACT: Michael T. Thompson, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Standardization Branch, ANM–113, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–1157; fax (425) 227–1232; e-mail: *Michael.t.thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Disposition of Comments

A notice of proposed policy; request for comments, was published in the **Federal Register** on April 11, 2005 (70 FR 18453). Three commenters responded to the request for comments.

Background

Historically, substantiating changes to the bottom cushion of a seat certificated to § 25.562 that could affect the lumbar load typically required a full-scale 14g downward dynamic test using the actual seat. Industry desired a quicker and less expensive method in lieu of full scale testing. As a result, the FAA funded a research project to develop a component test methodology for demonstrating that a replacement bottom cushion would not produce a higher lumbar load than a certificated bottom cushion for a seat certificated to § 25.562. This research resulted in an acceptable methodology that is documented in DOT/FAA/AR–05/5,I "Development and Validation of an Aircraft Seat Cushion Component Test—Volume I," dated March 2005. This method provides a simplified means of demonstrating compliance with § 25.562 and will streamline the seat certification process by reducing the costs and time associated with seat certification.

Seat bottom cushion changes must be evaluated to determine that compliance with § 25.562 is maintained when considering both the 14g downward test and the 16g longitudinal test specified in the regulation. This policy addresses demonstrating compliance with the lumbar load criteria of § 25.562(c)(2) that is determined in a 14g downward test.

The final policy memorandum as well as the disposition of public comments received 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 final policy memorandum by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on August 9, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16410 Filed 8–17–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–115–05–10]

Replacing Restraint Systems on Forward and Aft Facing 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 Replacing Restraint Systems on Forward and Aft Facing Seats.

DATES: The final policy was issued by the Transport Airplane Directorate on August 10, 2005.

FOR FURTHER INFORMATION CONTACT: Mike Thompson, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1157; fax (425) 227–1232; e-mail: *Michael.t.thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Disposition of Comments

A notice of proposed policy was published in the **Federal Register** on April 11, 2005. Five (5) commenters responded to the request for comments.

Background

The FAA has issued Amendment 25–64 to provide an increased level of safety to seated occupants. Seat performance, including the restraint system, under dynamic conditions as defined in § 25.562, is an important consideration of this amendment. Replacing a restraint system on a seat certified under § 25.562 requires new dynamic test(s) to be conduct using the actual seat. These dynamic tests can be costly and time-consuming. The FAA conducted research and found an acceptable new method of certifying restraint systems using a rigid seat fixture instead of the actual seat during dynamic tests. This method will significantly reduce the cost and time associated with certifying replacement restraint systems. This policy memorandum presents this new means of compliance.

The final policy as well as the disposition of public comments received are 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.**

Issued in Renton, Washington, on August 10, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16409 Filed 8–17–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration Office of Hazardous Materials Safety

Notice of Applications for Modification of Exemption

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for modification of exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Request of modifications of exemptions (*e.g.* to

provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" demote a modification request. There applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before September 2, 2005.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 12, 2005.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of exemption	Nature of exemption thereof
MODIFICATION EXEMPTIONS					
4661–M		Chemtell Foote Corporation, Kings Mountain, NC.	49 CFR 180.205	4661	To modify the exemption to authorize an additional proper shipping name for a Division 4.2 and Division 4.3 material transported in 4BA240 and 4BW240 cylinders.
10048–M		Epichem, Inc., Haverhill, MA.	49 CFR 173.181; 173.187; 173.201, 202, 211, 212, 226, 227.	10048	To modify the exemption to authorize the transportation of additional Division 6.1 materials transported in a UN1A2 drum inside a non-DOT specification metal container.
10695–M		3M Company, St. Paul, MN.	49 CFR 172.101; 172.504; 172.505(a); 173.323; 174.81; 176.84; 177.848.	10695	To modify the exemption to authorize a revision to the 3M Steri-Gas Cartridge Return Procedures containing a Division 2.3 material transported in UN4G fiberboard boxes.
10798–M		Chemetall Foote Corporation, Kings Mountain, NC.	49 CFR 174.67(i),(j)	10798	To modify the exemption to authorize an additional proper shipping name for the Division 4.2 material transported in DOT Specification tank cars
10962–		ICC The Compliance Center, Niagara Falls, NY.	49 CFR Part 172, Subparts E, F; Part 177, Subpart C.	10962	To modify the exemption to authorize the use of an alternative specially designed combination packaging for the transportation of numerous hazardous materials by various modes.
11318–M		Akzo Mobel Chemicals, Inc., Chicago, IL.	49 CFR 172.101 Special Provision B14.	11318	To modify the exemption to authorize the transportation of an additional Division 6.1 material in uninsulated DOT Specification 51 portable tanks.
11670–M		Oilphase Schlumberger Dyce, Aberdeen Scotland.	49 CFR 178.36	11670	To modify the exemption to authorize the alternative use of a nickel-based precipitation hardenable alloy for the non-DOT specification cylinder used for oil well sampling.
11924–M	RSPA–97–2744	Wrangler Corporation, Auburn, ME.	49 CFR 173.12(B)(2)(i).	11924	To modify the exemption to authorize an additional design type of the composite intermediate bulk container (IBC) and a change to the additional IBC drop test requirements.
12475–M	RSPA–00–7484	Chemetall Foote Corporation, Kings Mountain, NC.	49 CFR 173.181; 173.28(b)(2).	12475	To modify the exemption to authorize an additional proper shipping name for the Division 4.2 and Division 4.3 material transported in UN1A1 drums.
12630–M	RSPA–01–8550	Chemetall GmbH, Gesellschaft 59500 Douai, France.	49 CFR 172.102(a)(2) and (c)(7)(ii).	12630	To modify the exemption to authorize an addiitional proper shipping name for the Division 4.2 material transported in DOT Specification IM 101 portable tanks.
13179–M	RSPA–02–14020.	Clean Harbors Environmental Services, Inc., Columbia, SC.	49 CFR 173.21; 173.308.	13179	To modify the exemption to authorize the use of an alternative shipping description and hazard class for the Division 2.1 materials which are being transported to a disposal facility.

[FR Doc. 05–16406 Filed 8–17–05; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Exemptions

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for exemption

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 19, 2005.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 12, 2005.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
			NEW EXEMPTION	
14227–N	PHMSA–2005–2206	Aluminum Tank Industries, Inc., Winter Haven, FL.	49 CFR 177.834(h), 178.799.	To authorize the manufacture, mark, sale, and use of 50 gallon to 105 gallon refueling tanks containing certain Class 3 liquids which will be discharged without removal from the motor vehicle. (mode 1)
14428–N	PHMSA–2005–2206	Goodrich Corporation, Colorado Springs, CO.	49 CFR 173.301(f).	To authorize the transportation in commerce of certain DOT Specification 3A and 3AA cylinders containing compressed oxygen without a pressure relief device. (modes 1, 4, 5)
14229–N	PHMSA–2005–2206	Senex Explosives, Inc., Cuddy, PA.	49 CFR 17.835, 177.823, and 177.848.	To authorize the transportation in commerce of certain 1.4 and 1.5 explosives with Class 3 and Division 5.1 materials without meeting certain segregation requirements.
14230–N	PHMSA–2005–2211	Epichem, Inc., Haverhill, MA.	49 CFR 173.302a	To authorize the one-time transportation in commerce of non-DOT specification cylinders containing Dichlorosilane to an ocean shipment consolidation facility and/or port. (modes 1, 3)

[FR Doc. 05–16407 Filed 8–17–05; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 11, 2005.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 19, 2005, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0090.

Form Number: IRS Form 1040–SS, 1040–PR and Anejo H–PR.

Type of Review: Extension.

Title: Form 1044–SS and 1040–PR is used by self-employed individuals to figure and report self-employment tax and is also used by bona-fide residents of Puerto Rico to claim the additional child tax credit.

Description: Form 1040–SS (Virgin Islands, Guam, American Samoa, and the Northern Marina Islands) and 1040–PR (Puerto Rico) are used by self-employed individuals to figure and report self-employment tax under IRC chapter 2 of Subtitle A and provide credit to the taxpayer's social security account. Anejo H–PR is used to compute household employment taxes. Form 1040–SS and Form 1040–PR are also used by bona-fide residents of Puerto Rico to claim the additional child tax credit.

Respondents: Business and other for-profit, individuals or households and farms.

Estimated Total Burden Hours: 2,762,588 hours.

OMB Number: 1545–1398.

Form Number: IRS Form 9620.

Type of Review: Extension.

Title: Race and National Origin Identification.

Description: Form 9620 is used to collect race and national origin data on all IRS employees and new hires. The information is used to insure that agency personnel practices meet the requirements of Federal law.

Respondents: Individuals or households and Federal government.

Estimated Total Burden Hours: 2,500.

OMB Number: 1545–1798.

Form Number: IRS Form 8718.

Type of Review: Extension.

Title: Use Fee for Exempt Organization Determination Letter Request.

Description: Form 8718 is used with each application for a determination letter. This form provides filers the means to enclosed their payment and indicate the type of request they are making.

Respondents: Business or other for profit and not for profit institutions.

Estimated Total Burden Hours: 16,667.

OMB Number: 1545–1937.

Type of Review: Extension.

Title: Notice 2005–41–Guidance Regarding Qualified Intellectual Property Contributions.

Description: Section 170 provides that a taxpayer's initial charitable contribution deduction for a contribution of intellectual property is limited to the lesser of the fair market value of property or the taxpayer's adjusted basis of the property.

Respondents: Business or other for profit.

Estimated Total Burden Hours: 30.

OMB Number: 1545–1940.

Type of Review: Extension.

Title: RP–101177–05 Revenue Procedure Regarding Extended Period of Limitations for Listed Transaction Situations.

Description: The revenue procedures provide procedures that taxpayers and material advisors may use to disclose a listed transaction that the taxpayer previously failed to disclose.

Respondents: Individuals or households and business or other for profit.

Estimated Total Burden Hours: 430.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 05–16378 Filed 8–17–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8850

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to 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 IRS is soliciting comments concerning Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.

DATES: Written comments should be received on or before October 17, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.

OMB Number: 1545–1500.

Form Number: 8850.

Abstract: Employers use Form 8850 as part of a written request to a state employment security agency to certify an employee as a member of a targeted group for purposes of qualifying for the work opportunity credit or the welfare-to-work credit. The work opportunity credit and the welfare-to-work credit cover individuals who began work for the employer before July 1, 1999.

Current Actions: There are no changes being made to Form 8850 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 400,000.

Estimated Time Per Respondent: 3 hr., 59 min.

Estimated Total Annual Burden Hours: 1,596,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 10, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–4504 Filed 8–17–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8898

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to 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 IRS is soliciting comments concerning Form 8898, Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.

DATES: Written comments should be received on or before October 17, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.

OMB Number: 1545–XXXX.

Form Number: Form 8898.

Abstract: Form 8898 is required by new code section 937, which was added by the American Jobs Creation Act of 2004. Under section 937, individuals must notify the IRS when they begin or end bona fide residence in a U.S. possession. The purpose of the information collection is to prevent abusive tax avoidance.

Current Actions: There are no changes being made to the form at this time.

Type of Review: This is a new collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time per Respondent: 7 hr., 47 min.

Estimated Total Annual Burden Hours: 389,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 11, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–4505 Filed 8–17–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–05: OTS Nos. H–4234 and 05639]

American Bancorp of New Jersey and American Bank of New Jersey, Bloomfield, New Jersey; Approval of Conversion Application

Notice is hereby given that on August 12, 2005, the Assistant Managing Director, Examinations and Supervision—Operations, Office of Thrift Supervision ("OTS"), or her designee, acting pursuant to delegated authority, approved the application of American Bank of New Jersey, Bloomfield, New Jersey, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and OTS Northeast Regional Office, Harborside Financial Center Plaza Five, Suite 1600, Jersey City, New Jersey 07311.

Dated: August 12, 2005.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 05–16343 Filed 8–17–05; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Chiropractic Care Implementation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Chiropractic Care Implementation will meet Tuesday, September 13, 2005, from 8:15 a.m. until 5:00 p.m. and Wednesday, September 14, 2005 from 8:15 a.m. until 3:30 p.m. in Room C–7A at 810 Vermont Avenue NW., Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on the implementation and evaluation of the chiropractic care program. The Committee will focus on monitoring the nationwide program implementation, reviewing and evaluating policy and program issues that affect implementation, recommending actions to improve the chiropractic health program, assisting in long-range planning and development, and such other matters as the Secretary determines to be appropriate.

On September 13, the Committee will receive an update on the status of VA's implementation of the chiropractic care program and briefings on related topics. On September 14, the Committee will discuss and develop a survey to collect information on implementation.

Any member of the public wishing to attend the meeting is requested to contact Ms. Sara McVicker, RN, MN, Designated Federal Officer, at (202) 273–8559 not later than 12 noon, Eastern time, on Thursday, September 8, 2005, in order to facilitate entry to the building.

Oral comments from the public will not be accepted at the meeting. Any comments from interested parties on issues related to chiropractic care may be transmitted electronically to *sara.mcvicker@mail.va.gov* or mailed to: Chiropractic Advisory Committee, Medical Surgical Services (111), U.S. Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: August 11, 2005.

By Direction of the Secretary.

E. Philip Riggin

Committee Management Officer.

[FR Doc. 05–16344 Filed 8–17–05; 8:45 am]

BILLING CODE 8320–01–M

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- McDonnell Douglas; published 7-14-05

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Apricots grown in—
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- Florida; comments due by 8-23-05; published 6-24-05 [FR 05-12616]

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- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

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- Colorado; comments due by 8-26-05; published 6-27-05 [FR 05-12619]

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  - Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

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- New Jersey; comments due by 8-22-05; published 7-21-05 [FR 05-14406]
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Generalized System of Preferences:

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Safe harbor for valuation under section 475; comments due by 8-22-05; published 5-24-05 [FR 05-10167]

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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 "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

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H.R. 3423/P.L. 109–43

Medical Device User Fee Stabilization Act of 2005 (Aug. 1, 2005; 119 Stat. 439)

H.R. 38/P.L. 109–44

Upper White Salmon Wild and Scenic Rivers Act (Aug. 2, 2005; 119 Stat. 443)

H.R. 481/P.L. 109–45

Sand Creek Massacre National Historic Site Trust Act of 2005 (Aug. 2, 2005; 119 Stat. 445)

H.R. 541/P.L. 109–46

To direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries. (Aug. 2, 2005; 119 Stat. 448)

H.R. 794/P.L. 109–47

Colorado River Indian Reservation Boundary Correction Act (Aug. 2, 2005; 119 Stat. 451)

H.R. 1046/P.L. 109–48

To authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming. (Aug. 2, 2005; 119 Stat. 455)

H.J. Res. 59/P.L. 109–49

Expressing the sense of Congress with respect to the women suffragists who fought for and won the right of women to vote in the United States. (Aug. 2, 2005; 119 Stat. 457)

S. 571/P.L. 109–50

To designate the facility of the United States Postal Service located at 1915 Fulton Street in Brooklyn, New York, as the "Congresswoman Shirley A. Chisholm Post Office Building". (Aug. 2, 2005; 119 Stat. 459)

S. 775/P.L. 109–51

To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the "Boone Pickens Post Office". (Aug. 2, 2005; 119 Stat. 460)

S. 904/P.L. 109–52

To designate the facility of the United States Postal Service located at 1560 Union Valley Road in West Milford, New Jersey, as the "Brian P. Parrello Post Office Building". (Aug. 2, 2005; 119 Stat. 461)

H.R. 3045/P.L. 109–53

Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Aug. 2, 2005; 119 Stat. 462)

H.R. 2361/P.L. 109–54

Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 499)

H.R. 2985/P.L. 109–55

Legislative Branch Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 565)

S. 45/P.L. 109–56

To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes. (Aug. 2, 2005; 119 Stat. 591)

S. 1395/P.L. 109–57

Controlled Substances Export Reform Act of 2005 (Aug. 2, 2005; 119 Stat. 592)

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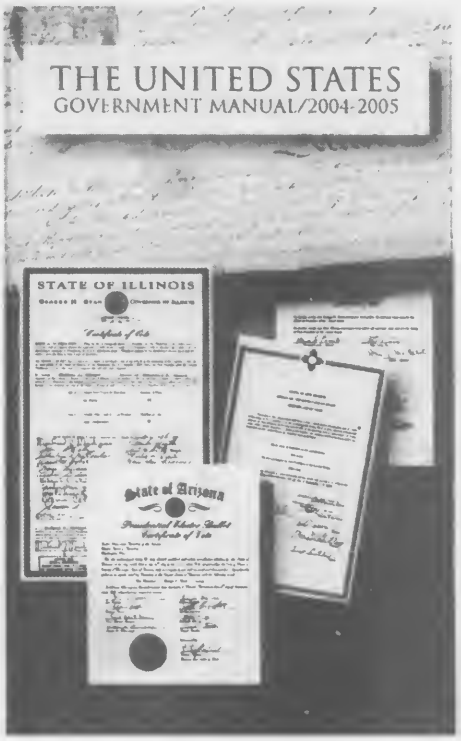

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