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8–9–05 Tuesday
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, August 16, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 576

RIN 3206–AJ76

Voluntary Separation Incentive Payments

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: The Office of Personnel Management (OPM) published in the **Federal Register** of January 27, 2005, a final rule providing guidance on the requirements for submission of requests for Voluntary Separation Incentive Payments (VSIP) and waiver of repayment of incentive payments upon reemployment with the Federal Government. Inadvertently, an error occurred in referencing the Government Accountability Office. This document corrects the error.

DATES: Effective on August 9, 2005.

FOR FURTHER INFORMATION CONTACT: Sharon K. Ginley at (202) 606–0960, FAX at (202) 606–2329, TDD at (202) 418–3134, or e-mail at *sharon.ginley@opm.gov*.

SUPPLEMENTARY INFORMATION: OPM published a document in the **Federal Register** of January 27, 2005 (70 FR 3858), providing guidance on the submission of requests for voluntary separation incentive payment and waiver of repayment of incentive payments upon reemployment with the Federal Government. Inadvertently, an error occurred in referring to the Government Accountability Office (GAO) as the General Accountability Office. This document is being issued to correct the reference.

List of Subjects in 5 CFR Part 576

Government employees, Wages.

■ Accordingly, 5 CFR part 576 is corrected as follows:

PART 576—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

■ 1. The authority citation for part 576 continues to read as follows:

Authority: Section 3521, 3522, 3523, 3524, and 3535 of title 5, United States Code.

§ 576.203 [Amended]

■ 2. Amend § 576.203 paragraph (a)(1) by removing the word "General" and adding in its place the word "Government."

Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05–15748 Filed 8–8–05; 8:45 am]

BILLING CODE 6325–39–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 05–011–2]

Asian Longhorned Beetle; Removal of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Asian longhorned beetle regulations by removing portions of Cook and DuPage Counties, IL, from the list of quarantined areas and removing restrictions on the interstate movement of regulated articles from those areas. The interim rule was based on our determination that the Asian longhorned beetle no longer presents a risk of spread from those areas and that the quarantine and restrictions are no longer necessary.

DATES: The interim rule became effective on April 21, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Director, Pest Detection and Management Programs, Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–7338.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB) regulations in 7 CFR 301.51–1 through 301.51–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States. Portions of Illinois, New Jersey, and New York are designated as quarantined areas. Quarantined areas are listed in § 301.51–3 of the regulations.

In an interim rule effective April 21, 2005, and published in the **Federal Register** on April 26, 2005 (70 FR 21326–21328, Docket No. 05–011–1), we amended the regulations by removing portions of Cook and DuPage Counties, IL, from the list of quarantined areas. That action, which was based on our determination that the ALB no longer presents a risk of spread from those areas, removed restrictions on the interstate movement of regulated articles from those areas.

Comments on the interim rule were required to be received on or before June 27, 2005. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by removing portions of Cook and DuPage Counties, IL, from the list of areas quarantined for ALB. We took that action based on our determination that ALB no longer presents a risk of spread from those areas. The interim rule relieved restrictions on the interstate movement of regulated articles from those areas.

The following analysis addresses the economic effects of the interim rule on small entities, as required by the Regulatory Flexibility Act. The small businesses potentially affected by the interim rule are nurseries, arborists, tree removal services, and firewood dealers located within the areas removed from the list of quarantined areas. The actual number of such businesses in those

areas is unknown. However, given that the areas removed from quarantine are urban and suburban communities that include residential areas, a cemetery, a forest preserve, and a portion of O'Hare International Airport, we anticipate that the number of such businesses would be small.

Any affected entities located within the areas removed from quarantine stand to benefit from the interim rule, since they are no longer subject to the restrictions in the regulations. However, our experience with the ALB program in Illinois, New York, and New Jersey has shown that the number and value of regulated articles that are, upon inspection, determined to be infested, and therefore denied a certificate or a limited permit for movement, is small. Thus, any benefit for affected entities in the areas removed from quarantine is likely to be minimal, given that the costs associated with the restrictions that have been relieved were themselves minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 70 FR 21326–21328 on April 26, 2005.

Done in Washington, DC, this 3rd day of August 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–15709 Filed 8–8–05; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AH44

Export and Import of Radioactive Materials: Security Policies; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on July 1, 2005 (70 FR 37985) amending the NRC's regulations pertaining to the export and import of radioactive materials. This action is necessary to correct typographical errors and to revise four amendatory changes.

DATES: Effective December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Suzanne Schuyler-Hayes, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2333, e-mail: *ssh@nrc.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 05–12985 published July 1, 2005 (70 FR 37985), make the following corrections:

PART 110—[AMENDED]

■ 1. Amendatory instruction 3 is corrected to read as follows:

§ 110.21 [Amended]

■ 3. In § 110.21, paragraph (a)(4) is amended by removing "100 millicuries" and adding in its place "3.7×10^{-3} TBq (100 millicuries)."

■ 2. Amendatory instruction 4 is corrected to read as follows:

§ 110.22 [Amended]

■ 4. In § 110.22, paragraph (a)(3) is amended by removing "100 millicuries" and adding in its place "3.7×10^{-3} TBq (100 millicuries)."

■ 3. In § 110.23, paragraph (a)(2) is corrected to read as follows:

§ 110.23 General license for the export of byproduct material.

(a) * * *

(2) Actinium-225 and -227, americium-241 and -242m, californium-248, -249, -250, -251, -252, -253, and -254, curium-240, -241, -242, -243, -244, -245, -246 and -247, einsteinium-252, -253, -254 and -255, fermium-257, gadolinium-148, mendelevium-258, neptunium-235 and -237, polonium-210, and radium-223 must be contained in a device, or a source for use in a device, in quantities of less than 3.7×10^{-3} TBq (100 millicuries) of alpha activity per device or source, unless the export is to a country listed in Sec. 110.30. Individual shipments must be less than the TBq values specified in Category 2 of Table 1 of Appendix P to this Part. Exports of americium and neptunium are subject to the reporting requirements listed in paragraph (b) of this section.

* * * * *

■ 4. Amendatory instruction 8 is corrected to read as follows:

§ 110.40 [Amended]

■ 8. In § 110.40, paragraph (b)(7)(iv) is amended by removing "1,000 curies of tritium" and adding in its place "37 TBq (1,000 curies) of tritium."

■ 5. Amendatory instruction 9 is corrected to read as follows:

§ 110.41 [Amended]

■ 9. In § 110.41, paragraph (a)(4) is amended by removing "100 curies of tritium" and adding in its place "3.7 TBq (100 curies) of tritium."

■ 6. In § 110.42, paragraph (e)(1) is corrected to read as follows:

§ 110.42 Export licensing criteria.

* * * * *

(e) * * *

(1) Whether the foreign recipient is authorized based on the authorization or confirmation required by § 110.32(h) to receive and possess the material under the laws and regulations of the importing country;

* * * * *

Dated at Rockville, Maryland, this 3rd day of August, 2005.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Federal Register Liaison Officer.

[FR Doc. 05–15688 Filed 8–8–05; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1231]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation Z (Truth in Lending). The Board is required to adjust annually the dollar amount that triggers requirements for certain home mortgage loans bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 (HOEPA) sets forth rules for home–secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. In keeping with the statute, the Board has annually adjusted the $400 amount based on the annual percentage change reflected in the Consumer Price Index that is in effect on June 1. The adjusted dollar amount for 2006 is $528.

DATES: January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Minh–Duc T. Le, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background:

The Truth in Lending Act (TILA; 15 U.S.C. 1601 – 1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions.

In 1995, the Board published amendments to Regulation Z implementing HOEPA, contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, contained in §§ 226.32 and 226.34 of the regulation, impose substantive limitations and additional disclosure requirements on certain closed–end home mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the HOEPA rules if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. (15 U.S.C. 1602(aa)(3) and 12 CFR 226.32(a)(1)(ii)). The Board adjusted the $400 amount to $510 for the year 2005.

The Bureau of Labor Statistics publishes consumer–based indices monthly, but does not "report" a CPI change on June 1; adjustments are reported in the middle of each month. The Board uses the CPI–U index, which is based on all urban consumers and represents approximately 87 percent of the U.S. population, as the index for adjusting the $400 dollar figure. The adjustment to the CPI–U index reported by the Bureau of Labor Statistics on May 15, 2005, was the CPI–U index "in effect" on June 1, and reflects the percentage increase from April 2004 to April 2005. The adjustment to the $400 figure below reflects a 3.51 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

II. Adjustment and Commentary Revision

Effective January 1, 2006, for purposes of determining whether a home mortgage transaction is covered by 12 CFR 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of $528 or 8 percent of the total loan amount. Comment 32(a)(1)(ii)–2, which lists the adjustments for each year, is amended to reflect the dollar adjustment for 2006. Because the timing and method of the adjustment is set by statute, the Board finds that notice and public comment on the change are unnecessary.

III. Regulatory Flexibility Analysis

The Board certifies that this amendment will not have a substantial effect on regulated entities because the only change is to raise the threshold for transactions requiring HOEPA disclosures.

List of Subjects

12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR PART 226, as set forth below:

Part 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority:12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

■ 2. In Supplement I to Part 226, under Section 226.32—Requirements for Certain Closed–End Home Mortgages, under Paragraph 32(a)(1)(ii), paragraph 2. xi. is added.

SUPPLEMENT I TO PART 226–OFFICIAL STAFF INTERPRETATIONS

* * * * *

SUBPART E–SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

* * * * *

Section 226.32–Requirements for Certain Closed–End Home Mortgages

32(a) Coverage

* * * *

Paragraph 32(a)(1)(ii)

* * * * *

2. Annual adjustment of $400 amount.

* * * * *

xi. For 2006, $528, reflecting a 3.51 percent increase in the CPI–U from June 2004 to June 2005, rounded to the nearest whole dollar.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, August 04, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–15723 Filed 8–8–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21184; Directorate Identifier 2004–NM–111–AD; Amendment 39–14211; AD 2005–16–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747 airplanes. This AD requires modifying the inflation systems of the upper deck escape slides; single-piece off-wing escape ramps/slides; two-piece off-wing escape slides; and door 1, 2, 4, and 5 escape slides/rafts. This AD results from a report of 30- to 60-second delays in the inflation of escape slides/rafts. We are issuing this AD to prevent actuation delays in the inflation systems of the escape slides/rafts, which could result in delayed or failed deployment of escape slides/rafts during emergency evacuation of an airplane.

DATES: Effective September 13, 2005.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the AD as of September 13, 2005.

ADDRESSES: You may examine the 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., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Donald Wren, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6451; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747 airplanes. That NPRM was published in the **Federal Register** on May 12, 2005 (70 FR 24994). That NPRM proposed to require modifying the inflation systems of the upper deck escape slides; single-piece off-wing escape ramps/slides; two-piece off-wing escape slides; and door 1, 2, 4, and 5 escape slides/rafts.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been received on the NPRM. The commenter supports the NPRM.

Conclusion

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

Costs of Compliance

There are about 958 airplanes of the affected design in the worldwide fleet. This AD affects about 169 airplanes of U.S. registry. The actions in this AD take about 1 work hour per door, at an average labor rate of $65 per work hour.

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

ESTIMATED COSTS

Model	Work hours	Parts costs	Cost per airplane	Number of U.S. registered planes	Fleet hours
747–100, –100B, –100B SUD, –200B, and –200C series airplanes, identified as Group 1 in Boeing Service Bulletin 747–25–3279.	12	$34,832 (2 each: doors 1, 2, 4, 5, upper deck, and two-piece off-wing).	$35,612	53	$1,887,436
747–200B and –300 series airplanes, identified as Group 2 in Boeing Service Bulletin 747–25–3279.	8	$26,368 (2 each: doors 1, 2, 4, and 5).	26,888	4	107,552
747–200B series airplanes, identified as Group 3 in Boeing Service 747–25–3279.	10	$30,600 (2 each: doors 1, 2, 4, 5, and two-piece off-wing).	31,250	1	31,250
747–100, –100B, –100B SUD, –200B, 747SP, and 747SR series airplanes, identifed as Group 4 in Boeing Service Bulletin 747–25–3279.	10	$30,600 (2 each: doors 1, 2, 4, and 5, and upper deck).	31,250	17	531,250
747–200F and and –400F series airplanes, identified as Group 5 in Boeing Service Bulletin 747–25–3279.	2	$4,232 (2 upper deck doors).	4,362	32	139,584
747–200B series airplanes, identified as Group 6 in Boeing Service Bulletin 747–25–3279.	2	$4,232 (2 two-piece off-wing doors).	4,362	0	
747–400 and –400D series airplanes, identified in Boeing Service Bulletin Bulletin 747–25–3232.	2	$8,250 (2 single-piece off-wing doors).	8,380	59	494,420
747–200B series airplanes, identified as Group 4 in Boeing Service Bulletin 747–25–3279 and also identified in Boeing Service Bulletin 747–25–3232.	10	$30,600 (2 each: doors 1, 2, 4, 5, upper deck and single-piece off-wing).	31,250	3	93,750

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–16–06 Boeing: Amendment 39–14211. Docket No. FAA–2005–21184; Directorate Identifier 2004–NM–111–AD.

Effective Date

(a) This AD becomes effective September 13, 2005.

Affected ADs

(b) None.

Applicability: (c) This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Boeing—	As identified in—
Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400F, 747SP, and 747SR series airplanes.	Boeing Service Bulletin 747–25–3279, Revision 1, dated July 11, 2002.
Model 747–200B, –200C, –300, –400, and –400D series airplanes	Boeing Service Bulletin 747–25–3232, dated July 6, 2000.

Unsafe Condition

(d) This AD was prompted by a report of 30- to 60-second delays in the inflation of escape slides/rafts. We are issuing this AD to prevent actuation delays in the inflation systems of the escape slides/rafts, which could result in delayed or failed deployment of escape slides/rafts during emergency evacuation of an 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 for Upper Deck, Two-Piece Off-Wing, and Door 1, 2, 4, and 5 Slides and Slide/Rafts

(f) For Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, –400F, 747SP, and 747SR series airplanes identified in Boeing Service Bulletin 747–25–3279, Revision 1, dated July 11, 2002: Within 36 months after the effective date of this AD, do the actions specified in paragraphs (f)(1) and (f)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 747–25–3279, Revision 1, dated July 11, 2002.

(1) Modify the inflation systems of the upper deck and two-piece off-wing escape slides.

(2) Modify the inflation systems of the door 1, 2, 4, and 5 escape slides/rafts, as applicable.

Note 1: Boeing Service Bulletin 747–25–3279 refers to Goodrich Service Bulletin 4A3037–25–327, dated November 30, 2001; Goodrich Service Bulletin 4A3056–25–331, dated December 21, 2001; and Goodrich Service Bulletin 4A3221–25–332, dated December 21, 2001; as additional sources of service information for doing the modifications.

Modification for Single-Piece Off-Wing Ramp/Slides

(g) For Model 747–200B, –200C, –300, –400, and –400D series airplanes identified in Boeing Service Bulletin 747–25–3232, dated July 6, 2000: Within 36 months after the effective date of this AD, modify the inflation system of the single-piece off-wing escape ramps/slides, in accordance with Boeing Service Bulletin 747–25–3232, dated July 6, 2000.

Note 2: Boeing Service Bulletin 747–25–3232 refers to Goodrich Service Bulletin 4A3416–25–305, Revision 2, dated October 15, 2001, as an additional source of service information for doing the modification.

Parts Installation

(h) As of the effective date of this AD, unless the regulator assembly of the inflation system has been modified in accordance with paragraph (f) or (g) of this AD, as applicable, no person may install on any airplane a regulator assembly with any of the following part numbers (P/Ns): P/N 4A3047, –2, –3, –4, –5, –8, –9, or –10; P/N 4A3194–1, –2, –3, or –4; or P/N 4A3474–3.

Credit for Previous Service Bulletin

(i) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 747–25–3279, dated May 16, 2002, are acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(k) You must use Boeing Service Bulletin 747–25–3279, Revision 1, dated July 11, 2002; and Boeing Service Bulletin 747–25–3232, dated July 6, 2000; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on July 29, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15584 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20798; Directorate Identifier 2004–NM–257–AD; Amendment 39–14214; AD 2005–16–09]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 23, 24, 25, 35, and 36 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Learjet Model 23, 24, 25, 35, and 36 airplanes. That AD currently requires repetitive inspections to detect deterioration of both flappers of the tip tank in each wing of the airplane, and various follow-on actions. The existing AD also requires replacing the flappers with new flappers, and repetitively performing certain other follow-on actions. This new AD requires an inspection of the flappers and flapper assemblies of the tip tank in each wing or a review of the

airplane maintenance records to determine the part numbers, and replacement of certain flappers or flapper assemblies if necessary, which ends the existing repetitive inspections. This AD results from numerous continual inspections and the approval of a new, improved flapper and flapper assembly. We are issuing this AD to prevent significant reduction in the lateral control of the airplane due to imbalance of the fuel loads in the wings of the airplane.

DATES: Effective September 13, 2005.

The Director of the **Federal Register** approved the incorporation by reference of Bombardier Service Bulletin SB 23/24/25–28–7, Revision 2, dated May 9, 2001; and Bombardier Service Bulletin SB 35/36–28–14, Revision 2, dated May 9, 2001; as of September 13, 2005.

On December 27, 1995 (60 FR 63617, December 12, 1995), the Director of the **Federal Register** approved the incorporation by reference of Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995; and Learjet Service Bulletin SB 35/36–28–10, dated October 6, 1995.

ADDRESSES: You may examine the 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., Nassif Building, Room PL–401, Washington, DC.

Contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Jeffrey Janusz, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4148; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 95–25–03, amendment 39–9447 (60 FR 63617, December 12, 1995). The existing AD applies to certain Learjet Model 23, 24, 25, 35, and 36 airplanes. That NPRM was published in the **Federal Register** on April 4, 2005 (70 FR 16984). That NPRM proposed to require repetitive inspections to detect deterioration of both flappers of the tip tank in each wing of the airplane, and various follow-on actions. That NPRM also proposed to require replacing the flappers with new flappers, and repetitively performing certain other follow-on actions. In addition, that NPRM proposed to require an inspection of the flappers and flapper assemblies of the tip tank in each wing or a review of the airplane maintenance records to determine the part numbers, and replacement of certain flappers or flapper assemblies if necessary, which ends the existing repetitive inspections.

Comments

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

Change to Certain Service Bulletin References

We have revised the NPRM to correct the airplane manufacturer's name from "Learjet" to "Bombardier" in the title of the following referenced service bulletins: Bombardier Service Bulletin 23/24/25–28–7, Revision 2, dated May 9, 2001; and Bombardier Service Bulletin 35/36–28–14, Revision 2, dated May 9, 2001.

Conclusion

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

Costs of Compliance

There are about 1,459 airplanes of the affected design in the worldwide fleet. This AD will affect about 882 airplanes of U.S. registry.

The actions that are required by AD 95–25–03 and retained in this AD take about 16 work hours per airplane, at an average labor rate of $65 per work hour. Required parts cost about $708 per airplane. Based on these figures, the estimated cost of the currently required actions is $1,541,736, or $1,748 per airplane.

The new actions will take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $327 or $1,262 per airplane (depending on the kit installed). Based on these figures, the estimated cost of the new actions specified in this AD for U.S. operators is $457 or $1,392, per airplane (depending on the kit installed).

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–9447 (60 FR 63617, December 12, 1995) and by adding the following new airworthiness directive (AD):

2005–16–09 Learjet: Amendment 39–14214. Docket No. FAA–2005–20798; Directorate Identifier 2004–NM–257–AD.

Effective Date

(a) This AD becomes effective September 13, 2005.

Affected ADs

(b) This AD supersedes AD 95–25–03, amendment 39–9447.

Applicability

(c) This AD applies to the airplanes in Table 1 of this AD, certificated in any category.

TABLE 1.—APPLICABILITY

Learjet—	Serial numbers—
Model 23 airplanes	23–003 through 23–090 inclusive.
Model 24 airplanes	24–100 through 24–357 inclusive.
Model 25 airplanes	25–002 through 25–373 inclusive.
Model 35 airplanes	35–002 through 35–676 inclusive.
Model 36 airplanes	36–002 through 36–063 inclusive.

Unsafe Condition

(d) This AD results from numerous continual inspections and the approval of a new, improved flapper and flapper assembly. We are issuing this AD to prevent significant reduction in the lateral control of the airplane due to imbalance of the fuel loads in the wings 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.

Requirements of AD 95–25–03

Repetitive Inspections, Related Investigative Actions, and Replacement

(f) Within 50 hours time-in-service after December 27, 1995 (the effective date of AD 95–25–03), or prior to the accumulation of 600 hours time-in-service since installation of the flapper valve, whichever occurs later: Perform an inspection to detect deterioration (such as cracks, cuts, breaks, splits, or warpage) of both flappers of the tip tank in each wing, in accordance with either Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995 (for Model 23, 24, and 25 airplanes); or Learjet Service Bulletin SB 35/36–28–10, dated October 6, 1995 (for Model 35 and 36 airplanes); as applicable. Repeat this inspection thereafter at intervals not to exceed 600 hours time-in-service.

(1) If no deterioration of the flapper valve is detected, prior to further flight, inspect the flapper valve to ensure proper positioning, inspect the condition of the screws that retain the flapper valve to the plate assembly to ensure that the flapper valve is secure, inspect to ensure that the flapper valve completely covers the opening of the tube and is seated against the tube, and inspect the flapper valve to verify that it moves freely; and accomplish the follow-on corrective actions, if any discrepancy is found. These actions shall be accomplished in accordance with the applicable service bulletin.

(2) If any flapper valve is found to be deteriorated, prior to further flight, replace it with a new flapper valve in accordance with the applicable service bulletin.

(g) Except as provided in paragraph (h) of this AD, at the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD: Replace both flappers of the tip tank in each wing with new flappers in accordance with either Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995 (for Model 23, 24, and 25 airplanes); or Learjet Service Bulletin SB 35/36–28–10, dated October 6, 1995 (for Model 35 and 36 airplanes); as applicable.

(1) Within 5 years since date of installation of the flapper valve, or prior to the accumulation of 2,400 total hours time-in-service on the flapper valve, whichever occurs earlier.

(2) Within 50 hours time-in-service after December 27, 1995.

(h) For airplanes on which the age and time-in-service of the flapper valve cannot be determined: Within 50 hours time-in-service after December 27, 1995, replace both flappers of the tip tank in each wing in accordance with either Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995 (for Model 23, 24, and 25 airplanes); or Learjet Service Bulletin SB 35/36–28–10, dated October 6, 1995 (for Model 35 and 36 airplanes); as applicable.

(i) Within 600 hours time-in-service following replacement of any flapper valve in accordance with the requirements of this AD, and thereafter at intervals not to exceed 600 hours time-in-service: Accomplish the requirements of paragraph (f) of this AD.

New Requirements of This AD

Inspection and Replacement

(j) Within 600 hours time-in-service since last replacement of any flapper valve in accordance with the requirements of this AD, or within 90 days after the effective date of this AD, whichever occurs later, inspect the flappers and flapper assemblies of the tip tank in each wing to determine their part numbers (P/N). The raised letter and numbers "S–461" on the convex side of the flappers can identify these parts. Instead of inspecting the flappers and flapper assemblies, a review of airplane maintenance records is acceptable if the P/N of the flappers and flapper assemblies can be conclusively determined from that review.

(1) If four flappers having P/N 2323006–802 and four flapper assemblies having P/N 2323006–801 are found installed, no further action is required by this paragraph, and the repetitive inspections required by paragraphs (f) and (i) of this AD can be stopped.

(2) If any flapper having P/N 2323006–5 or any flapper assembly having P/N 2323006–6 is found installed, within 600 hours time-in-service since last replacement of any flapper valve in accordance with the requirements of this AD, replace the flapper valve with a new flapper valve or replace the flapper assembly with new or modified and reidentified assembly, as applicable. The replacement must be done in accordance with the Accomplishment Instructions of Bombardier Service Bulletin SB 23/24/25–28–7, Revision 2, dated May 9, 2001 (for Model 23, 24, and 25 airplanes); or Bombardier Service Bulletin SB 35/36–28–14, Revision 2, dated May 9, 2001 (for Model 35 and 36 airplanes); as applicable. Accomplishment of the replacement ends the repetitive inspections required by paragraphs (f) and (i) of this AD.

Parts Installation

(k) As of the effective date of this AD, no person may install a flapper having P/N 2323006–5 or a flapper assembly having P/N 2323006–6, on any airplane.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Wichita Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) AMOCs approved previously according to AD 95–25–03 are not approved as AMOCs with this AD.

Material Incorporated by Reference

(m) You must use the applicable service bulletins identified in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin SB 23/24/25–28–7, Revision 2, dated May 9, 2001; and Bombardier Service Bulletin SB 35/36–28–14, Revision 2, dated May 9, 2001; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On December 27, 1995 (60 FR 63617, December 12, 1995), the Director of the Federal Register approved the incorporation by reference of Learjet Service Bulletin SB 23/24/25–28–2, dated October 6, 1995; and Learjet Service Bulletin SB 35/36–28–10, dated October 6, 1995.

(3) Contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Bombardier Service Bulletin SB 23/24/25–28–7	2	May 9, 2001.
Bombardier Service Bulletin SB 35/36–28–14	2	May 9, 2001.
Learjet Service Bulletin SB 23/24/25–28–2	Original	October 6, 1995.
Learjet Service Bulletin SB 35/36–28–10	Original	October 6, 1995.

Issued in Renton, Washington, on July 29, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15585 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21088; Directorate Identifier 2004–NM–267–AD; Amendment 39–14215; AD 2005–16–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and 747–400D Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 747–400 and 747–400D series airplanes. This AD requires an inspection for corrosion and cracks of the station 980 upper deck floor beam, and repair and related investigative actions if necessary. This AD results from reports of corrosion under the cart lift threshold at the station 980 upper deck floor beam. We are issuing this AD to detect and correct such corrosion, which could result in a cracked or broken floor beam, extensive damage to adjacent structure, and possible rapid decompression of the airplane.

DATES: Effective September 13, 2005.

The Director of the **Federal Register** approved the incorporation by reference of a certain publication listed in the AD as of September 13, 2005.

ADDRESSES: You may examine the 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., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 747–400 and 747–400D series airplanes. That NPRM was published in the **Federal Register** on May 3, 2005 (70 FR 22826). That NPRM proposed to require an inspection for corrosion and cracks of the station 980 upper deck floor beam, and repair and related investigative actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been received on the NPRM.

Support for the Proposed AD

The commenter supports the NPRM.

Explanation of Change to Paragraph (f)(2)

We have revised paragraph (f)(2) of this AD to correct a typographical error that resulted in an incorrect paragraph reference.

Clarification of Alternative Methods of Compliance (AMOCs)

We have revised paragraph (h)(2) of this AD to clarify the AMOC requirements.

Clarification of Compliance Time

We have made a minor editorial change to clarify the compliance time in paragraph (f)(1) of this AD.

Conclusion

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

Costs of Compliance

There are about 363 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	3	$65	None required	$195	46	$8,970

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–16–10 Boeing: Amendment 39–14215. Docket No. FAA–2005–21088; Directorate Identifier 2004–NM–267–AD.

Effective Date

(a) This AD becomes effective September 13, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–400 and 747–400D series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 747–53A2503, dated November 11, 2004.

Unsafe Condition

(d) This AD was prompted by reports of corrosion under the cart lift threshold at the station 980 upper deck floor beam. We are issuing this AD to detect and correct such corrosion, which could result in a cracked or broken floor beam, extensive damage to adjacent structure, and possible rapid decompression of the airplane.

Compliance

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

Inspection

(f) At the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD: Do a detailed inspection for corrosion and cracks of the station 980 upper deck floor beam, in accordance with Boeing Alert Service Bulletin 747–53A2503, dated November 11, 2004.

(1) Inspect within 120 months since the date of issuance of the original standard Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness; or

(2) Inspect at the time specified in paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this AD for the applicable airplane group as identified in the service bulletin.

(i) For Group 1 airplanes: Within 18 months after the effective date of this AD.

(ii) For Group 2 airplanes: Within 36 months after the effective date of this AD.

(iii) For Group 3 airplanes: Within 120 months after the airplane has been modified in accordance with Boeing Service Bulletin 747–25–3107, or within 36 months after the effective date of this AD, whichever occurs later.

Repair

(g) If any cracking or corrosion is found during any inspection required by this AD, do all related investigative and corrective actions before further flight, in accordance with Boeing Alert Service Bulletin 747–53A2503, dated November 11, 2004. If the service bulletin specifies to contact Boeing for appropriate action, repair before further flight according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization (DOA) Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it

is approved by an Authorized Representative for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 747–53A2503, dated November 11, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on July 29, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15586 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20799; Directorate Identifier 2004–NM–264–AD; Amendment 39–14212; AD 2005–16–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 727 airplanes. This AD requires determining whether any float switches are installed in the fuel tanks, and corrective actions if necessary. This AD results from reports of contamination of the fueling float switch by moisture or fuel, and chafing of the float switch wiring against the fuel tank conduit. We are issuing this AD to prevent such contamination and chafing, which could present an ignition source inside the fuel tank that could cause a fire or explosion.

DATES: Effective September 13, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 13, 2005.

ADDRESSES: You may examine the 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., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 727 airplanes. That NPRM was published in the **Federal Register** on April 4, 2005 (70 FR 16979). That NPRM proposed to require determining whether any float switches are installed in the fuel tanks, and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Support for Proposed AD

One commenter, the airplane manufacturer, concurs with the content of the proposed AD.

Request To Change Applicability

One commenter asks that the applicability specified in the proposed AD be limited to Boeing Model 727 airplanes that have float switches installed. The commenter states that the effectivity of the proposed AD will encompass all Boeing Model 727–100 airplanes operated by them, even though Model 727–100 airplanes are not included in the effectivity specified in the service bulletin referenced in the proposed AD. The commenter adds that the effectivity in the referenced service bulletin is limited to airplanes with factory installed auxiliary fuel tanks; the design for Model 727–100 airplanes does not include float switches in the main fuel tanks because those airplanes utilize the Volumetric Top-Off system instead. The commenter realizes that we are concerned that the effectivity of the referenced service bulletin may not encompass all possible scenarios involving the subject float switches, as stated in the Supplementary Information section of the proposed AD. In consideration of this concern, the commenter notes that the effectivity of the proposed AD can be reduced to include only airplanes where the design, as delivered or modified, utilizes float switches in the airplane fuel tanks. The commenter adds that, the requested change has no effect on safety, but does remove the burden of showing compliance to a known non-applicable configuration.

We do not agree with the commenter. The planning information specified in the referenced service bulletin identifies only Boeing Model 727–100 airplanes delivered with two auxiliary fuel tanks installed. However, the effectivity specified in the service bulletin identifies all Boeing Model 727–100 and –200 airplanes with active Boeing fueling float switch shutoff systems installed. We point out that the subject of this AD is the float switch itself—regardless of the airplane model on which it is installed. To help operators determine if a particular airplane is subject to this AD, we have included all airplane models on which the float switch may be installed in the applicability of this AD. However, operators must determine if the float switch is installed on their airplanes. As specified in the AD, this determination can be made by a review of airplane maintenance records, instead of an inspection of the fuel tanks; such a

review would not result in an undue burden to operators. We have made no change to the final rule in this regard.

Explanation of Change to Applicability

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

Conclusion

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

Costs of Compliance

There are about 1,300 airplanes of the affected design in the worldwide fleet. This AD affects about 800 airplanes of U.S. registry.

The inspections (for presence and model of float switch) take about 1 work hour, at an average labor rate of $65 per hour. Based on these figures, the estimated cost of the inspections for U.S. operators is $52,000, or $65 per airplane.

The following table provides the estimated costs for U.S. operators to replace the float switches, if necessary. We estimate that about 162 airplanes may require parts replacement.

ESTIMATED COSTS

Airplane group	Airplane model	Number of auxiliary fuel tanks	Work hours	Average hourly labor rate	Parts	Cost per airplane
1	727–200	0	27	$65	$4,174	$5,929
2	727–200	1	9	65	1,542	2,127
3	727–200	2	14	65	3,108	4,018
4	727–200	3	18	65	4,626	5,796
5	727–200	4	23	65	6,168	7,663
6	727–100	2	14	65	3,079	3,989

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–16–07 Boeing: Amendment 39–14212. Docket No. FAA–2005–20799; Directorate Identifier 2004–NM–264–AD.

Effective Date

(a) This AD becomes effective September 13, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of contamination of the fueling float switch by moisture or fuel, and chafing of the float switch wiring against the fuel tank conduit. We are issuing this AD to prevent such contamination and chafing, which could present an ignition source inside the fuel tank that could cause a fire or explosion.

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.

Inspection for Float Switches

(f) Within 48 months after the effective date of this AD, inspect the wing and auxiliary fuel tanks to determine if any float switches are present. Instead of an inspection of the fuel tanks, a review of airplane maintenance records is acceptable if the presence of any float switch can be conclusively determined from that review.

(1) If no float switches are present: No further work is required by this paragraph.

(2) If any float switch is present: Before further flight, inspect to identify the float switch models. Instead of an inspection of the fuel tanks, a review of airplane maintenance records is acceptable if the

identity of the float switch can be conclusively determined from that review.

(i) If a float switch other than an Ametek Model F8300–146 float switch is installed: Before further flight, install a liner system inside the float switch electrical cable conduit in the fuel tanks by doing all applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 727–28A0127, dated August 26, 2004.

(ii) If any Ametek Model F8300–146 float switch is installed: Before further flight, replace it with a new switch and install a liner system inside the float switch electrical cable conduit in the fuel tanks, by doing all applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 727–28A0127, dated August 26, 2004.

Note 1: Boeing Alert Service Bulletin 727–28A0127 segregates the work into nine work packages for the six fuel tank configurations identified in the service bulletin. The work packages do not have to be completed sequentially. Each work package can be done independently or simultaneously. However, all work packages, as applicable for each fuel tank configuration, must be done to complete the requirements of this AD.

Parts Installation

(g) As of the effective date of this AD, no person may install an Ametek Model F8300–146 float switch in a fuel tank on any airplane.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 727–28A0127, dated August 26, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207 for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on July 29, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15587 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20873; Directorate Identifier 2005–NM–026–AD; Amendment 39–14213; AD 2005–16–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas Model 717–200 airplanes. This AD requires repetitively replacing and testing a certain relay in the passenger oxygen release system in the forward cabin. This AD results from reports of a failed relay in the passenger oxygen release system. We are issuing this AD to prevent failure of the relay, which could result in the oxygen masks failing to deploy and deliver oxygen to the passengers in the event of a rapid decompression or cabin depressurization.

DATES: Effective September 13, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 13, 2005.

ADDRESSES: You may examine the 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., Nassif Building, Room PL–401, Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Albert Lam, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5346; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas Model 717–200 airplanes. That NPRM was published in the **Federal Register** on April 6, 2005 (70 FR 17353). That NPRM proposed to require repetitively replacing and testing a certain relay in the passenger oxygen release system in the forward cabin.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the proposed AD from a single commenter, the airplane manufacturer.

Request To Add Revised Service Information

The commenter states that Revision 1 of Boeing Alert Service Bulletin 717–35A0003 is scheduled to be released in early July. The original issue of the service bulletin was referenced in the proposed AD as the appropriate source of service information for accomplishing the specified actions. The commenter notes that Revision 1 provides additional work instructions.

We infer that the commenter is asking that Revision 1 of the referenced service bulletin be added to the AD for accomplishing the required actions. We agree, and we have reviewed Boeing Alert Service Bulletin 717–35A0003, Revision 1, dated June 7, 2005. The procedures in Revision 1 are essentially the same as those in the original issue of the service bulletin, and merely clarify the work instructions to specify removing electrical power before relay replacement and to change the voltage requirement of the relay test procedures to allow for residual voltage. Accordingly, we have revised the service bulletin citation specified in the applicability in paragraph (c) of this AD, and for accomplishing the actions in

paragraph (f) of this AD, to refer to Revision 1 of the service bulletin as the appropriate source of service information. We have also added a new paragraph (g) (and re-identified subsequent paragraphs accordingly) to state that actions accomplished before the effective date of this AD according to the original issue of the service bulletin are acceptable for compliance with this AD.

Request To Clarify Certain Terminology

The commenter asks for clarification of certain terminology in the Summary, Discussion, and Relevant Service Information sections of the proposed AD, as well as the statement of the unsafe condition. The commenter asks that the terminology "a certain relay of the passenger oxygen" be changed to "a certain relay in the passenger oxygen" to clarify component location.

We acknowledge and agree with the commenter's remarks on the preamble of the proposed AD; however, the Discussion and Relevant Service Information sections referred to are not restated in the final rule. We have changed the terminology identified by the commenter in the **SUMMARY** section and throughout the other relevant sections specified in this AD.

The commenter also asks for the word "reply" to be changed to "relay" in paragraph (a) of the proposed AD, but we found no typographical error in the NPRM that specifies the word "reply."

The commenter also asks that certain terminology specified in the Costs of Compliance section be changed. The commenter asks that the word "initial" be added at the beginning of the sentence "Required parts would be free of charge" and before the word replacement. The commenter also asks that the term "per cycle" be deleted. The commenter states that the operator is responsible for additional replacement relays, should the operator not implement closing action in accordance with paragraph 2.B., "Industry Support Information" of the referenced service bulletin. For clarification, the requirements in this AD do not provide for such closing action.

We partially agree with the commenter. Because the specified actions are repetitive and could require more than one replacement part, we agree that only the initial parts replacement would be free of charge. The parts cost for any additional replacement of the relay is $130. We have changed the Costs of Compliance section in this AD accordingly. We do not agree to remove the term "per cycle" because the actions specified in this AD are repetitive and the cost estimated is for each cycle.

Conclusion

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

Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Costs of Compliance

There are about 122 airplanes of the affected design in the worldwide fleet. This AD affects about 92 airplanes of U.S. registry. The replacement and test take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Required parts for the initial replacement are free of charge. Required parts cost for additional replacements is $130 per relay. Based on these figures, the estimated cost of the initial replacement and test for U.S. operators is $130 per airplane. The estimated cost of any additional replacement and test is $260 per airplane, per cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–16–08 McDonnell Douglas: Amendment 39–14213. Docket No. FAA–2005–20873; Directorate Identifier 2005–NM–026–AD.

Effective Date

(a) This AD becomes effective September 13, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model 717–200 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 717–35A0003, Revision 1, dated June 7, 2005.

Unsafe Condition

(d) This AD was prompted by reports of a failed relay in the passenger oxygen release system. We are issuing this AD to prevent

failure of the relay, which could result in the oxygen masks failing to deploy and deliver oxygen to the passengers in the event of a rapid decompression or cabin depressurization.

Compliance

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

Repetitive Replacement and Test

(f) Replace the relay in the passenger oxygen release system in the forward cabin with a new relay and test for proper operation by doing all the actions as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 717–35A0003, Revision 1, dated June 7, 2005; at the applicable time specified in paragraph (f)(1) or (f)(2) of this AD. Repeat the actions at intervals not to exceed 3,100 flight cycles.

(1) For Group 1 airplanes, as identified in the service bulletin: Within 6 months after the effective date of this AD.

(2) For Group 2 airplanes, as identified in the service bulletin: Before the accumulation of 3,100 total flight cycles, or within 6 months after the effective date of this AD, whichever is later.

Credit for Previously Accomplished Actions

(g) Replacements and tests accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 717–35A0003, dated November 19, 2004, are acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 717–35A0003, Revision 1, dated June 7, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on July 29, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15588 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20895; Airspace Docket No. 05–ASO–6]

Establishment of Class D Airspace; Pascagoula, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Pascagoula, MS. A Federal contract tower with a weather reporting system is being constructed at the Trent Lott International Airport. Therefore, the airport will meet the criteria for establishment of Class D airspace. Class D surface area airspace is required when the control tower is open to contain existing Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action will establish Class D airspace extending upward from the surface, to and including 2,500 feet MSL, within a 4.1-mile radius of the airport.

EFFECTIVE DATES: 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On April 27, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Pascagoula, MS, (70 FR 21694). This action provides adequate Class D airspace for IFR operations at Trent Lott International Airport. Designations for Class D Airspace are published in paragraph 5000 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposals to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class D airspace at Pascagoula, MS.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

ASO MS D Pascagoula, MS [NEW]

Pascagoula, Trent Lott International Airport, MS

(Lat. 30°27′46″ N, long. 88°31′45″ W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.1-mile radius of the Trent Lott International Airport. This Class D airspace area is effective during the specific days and times established in advance by a notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 28, 2005.

Mark D. Ward,

Acting Area Director, Air traffic Division, Southern Region.

[FR Doc. 05–15651 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AD14

NASA Grant and Cooperative Agreement Handbook—Intellectual Property Required Reports and Publications

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule amends the NASA Grant and Cooperative Agreement Handbook (Handbook) to clarify intellectual property provisions. Provision § 1260.28, "Patent rights" is amended to refer to NASA contractors as "Contractors" and not "Recipients". Provision § 1260.30, "Rights in data" is amended to clarify the definition of the word "data". Provision § 1260.75, "Summary of report requirements", is amended to correct the cross-references to the intellectual property provisions of the Handbook. These changes are administrative in nature. No change is being made to the actual reporting requirements.

DATES: Effective August 9, 2005.

FOR FURTHER INFORMATION CONTACT: Monique Sullivan, NASA Headquarters, Code HK, Washington, DC, (703–553–2560) e-mail: *monique.sullivan-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the NASA Grant and Cooperative Agreement Handbook (Handbook) to make three clarifications to intellectual property provisions: (1) Provision § 1260.28, "Patent rights" currently refers to NASA Contractors as "Recipients". This final rule amends § 1260.28 to refer to NASA contractors as "Contractors" and not "Recipients"; (2) Paragraph (a)(1) of Provision § 1260.30, "Rights in data" is amended to correct previous revisions of the definition of the word "data" to include copyrightable work in which the recipient asserts copyright, or for which copyright ownership was purchased. The words "created under the grant or cooperative agreement" are added to the Provision for clarification; and (3) Intellectual Property provisions are reflected in Provisions § 1260.28, § 1260.30, § 1260.50, § 1260.57, and § 1260.59 of the Handbook. Provision § 1260.75 of the Handbook summarizes the reporting responsibilities of the recipient as are stated in the intellectual property provisions. This final rule amends § 1260.75 to correct the cross-references between the intellectual property provisions and the reporting requirements of § 1260.75.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the changes are for clarification only and do not impose additional requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 14 CFR Part 1260

Grant programs, science and technology.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 14 CFR part 1260 is amended as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

■ 1. The authority citation for 14 CFR 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*)

■ 2. Amend § 1260.28 by revising the date of the provision to read "August 2005", and revising paragraph (h) to read as follows:

§ 1260.28 Patent rights.

* * * * *

(h) In the event NASA contractors are tasked to perform work in support of specified activities under a cooperative agreement and inventions are made by Contractor employees, the Contractor will normally retain title to its employee inventions in accordance with 35 U.S.C. 202, 14 CFR Part 1245, and Executive Order 12591. In the event the Contractor decides not to pursue rights to title in any such invention and NASA obtains title to such inventions, NASA will use reasonable efforts to report such inventions and, upon timely request, will use reasonable efforts to grant the Recipient an exclusive, or partially exclusive, revocable, royalty-bearing license, subject to the retention of a royalty-free right of the Government to practice or have practiced the invention by or on behalf of the Government.

■ 3. Amend § 1260.30 by revising the date of the provision to read "August 2005", and revising paragraph (a)(1) to read as follows:

§ 1260.30 Rights in data.

* * * * *

(a) *Fully Funded Efforts.*

(1) "Data" means recorded information, regardless of form, the media on which it may be recorded, or the method of recording, created under the grant or cooperative agreement. The term includes, but is not limited to, data of a scientific or technical nature, and any copyrightable work, including computer software and documentation thereof, in which the recipient asserts copyright, or for which copyright ownership was purchased, under the grant or cooperative agreement.

* * * * *

■ 4. Amend § 1260.75 by—

■ (a) Removing paragraphs (b)(5) and (b)(11);

■ (b) Redesignating paragraphs (b)(6) through (b)(12) as (b)(5) through (b)(10);

■ (c) Revising the newly designated paragraphs (b)(5) through (b)(10); and

■ (d) Revising paragraph (c)(1).

The revised paragraphs are to read as follows:

§ 1260.75 Summary of report requirements.

* * * * *

(b) * * *

(5) A Disclosure of Subject Invention or a Disclosure of Reportable Item is required, as applicable, in accordance with § 1260.28 for all grants and

cooperative agreements (except Education and Training Grants) with educational institutions, nonprofit organizations and small businesses, and § 1260.57 for all grants and cooperative agreements (except Education and Training Grants) with large businesses, respectively. The reporting of a subject invention under § 1260.28 shall be made within two months after the inventor discloses it to the recipient. The reporting of a reportable item under § 1260.57 shall be made within two months after the inventor discloses it to the recipient or, if earlier, within six months after the recipient becomes aware that a reportable item has been made. Disclosures of subject inventions and reportable items will be reported using either the electronic or paper version of NASA Form 1679, "Disclosure of Invention and New Technology (Including Software)". Electronic disclosures may be submitted at the electronic New Technology Reporting web site (eNTRe) at: *http://invention.nasa.gov.*

(6) An Election of Title to a Subject Invention is required for all grants and cooperative agreements (except Education and Training Grants), as applicable, in accordance with § 1260.28. The notice is due within two years of disclosure of a subject invention being elected, except in any case where publication, on sale or public use of the subject invention being elected has initiated the one year statutory period wherein valid patent protection can still be obtained in the United Stated, notice is due at least 60 days prior to the end of the statutory period.

(7) An Interim Summary Report listing all subject inventions or reportable items required to be disclosed during the preceding year is required for all grants and cooperative agreements (except Education and Training Grants), in accordance with § 1260.28 or § 1260.57, respectively. The listing is due annually. Interim Summary Reports may be submitted electronically on the electronic New Technology Reporting web site (eNTRe) at: *http://invention.nasa.gov.*

(8) A Notification of Decision to Forego Patent Protection is required for all grants and cooperative agreements (except Education and Training Grants), as applicable, in accordance with § 1260.28. The notification is due not less than thirty days before the expiration of the response period required by the relevant patent office.

(9) A Utilization of Subject Invention Report is required for all grants and cooperative agreements (except Education and Training Grants) where the recipient has elected title to a subject invention in accordance with § 1260.28. The report is due annually from the election date.

(10) An Annual NASA Form 1018, NASA Property in the Custody of Contractors, is required for all grants and cooperative agreements with commercial organizations. The reports are due October 31st of each year. Negative reports (i.e. no reportable property) are required.

(c) * * *

(1) A Final Summary Report listing all subject inventions or reportable items, or certifying that there are none, is required for all grants and cooperative agreements (except Education and Training Grants), in accordance with § 1260.28 or § 1260.57, respectively. The report is due within 90 days after the expiration of the grant or cooperative agreement. The Final Summary Report may be submitted electronically on the electronic New Technology Reporting web site (eNTRe) at: *http://invention.nasa.gov.*

* * * * *

[FR Doc. 05–15665 Filed 8–8–05; 8:45 am]
BILLING CODE 7510–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229 and 240

[Release Nos. 33–8600; 34–52202; 35–28013; IC–27025; File No. S7–27–04]

RIN 3235–AJ27

Ownership Reports and Trading by Officers, Directors and Principal Security Holders

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to two rules that exempt certain transactions from the private right of action to recover short-swing profit provided by Section 16(b) of the Securities Exchange Act of 1934. The amendments are intended to clarify the exemptive scope of these rules, consistent with statements in previous Commission releases. We also are amending Item 405 of Regulations S–K and S–B to harmonize this item with the two-business day Form 4 due date and mandated electronic filing and Web site posting of Section 16 reports.

DATES: Effective dates: August 9, 2005, except §§ 228.405(a), (a)(2) and (b) and 229.405(a), (a)(2) and (b) are effective September 8, 2005.

Availability dates: § 240.16b–3(d) and (e) are effective August 9, 2005, but because they clarify regulatory conditions that applied to these exemptions since they became effective on August 15, 1996, they are available to any transaction on or after August 15, 1996 that satisfies the regulatory conditions so clarified. § 240.16b–7 is effective August 9, 2005, but because it clarifies regulatory conditions that applied to that exemption since it was amended effective May 1, 1991; it is available to any transaction on or after May 1, 1991 that satisfies the regulatory conditions so clarified.

FOR FURTHER INFORMATION CONTACT: Anne Krauskopf, Senior Special Counsel, or Nina Mojiri-Azad, Special Counsel, at (202) 551–3500, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3010.

SUPPLEMENTARY INFORMATION: We are adopting [1] amendments to Rules 16b–3 [2] and 16b–7 [3] under the Securities Exchange Act of 1934 ("Exchange Act"),[4] and Item 405 of Regulations S–K and S–B.[5]

I. Executive Summary and Background

Section 16 of the Exchange Act [6] applies to every person who is the beneficial owner of more than 10% of any class of equity security registered under Section 12 of the Exchange Act,[7] and each officer and director (collectively, "insiders") of the issuer of such security. Upon becoming an insider, or upon the Section 12 registration of that security, Section 16(a) [8] requires an insider to file an initial report with the Commission disclosing his or her beneficial ownership of all equity securities of the issuer.[9] To keep this information current, Section 16(a) also requires insiders to report changes in such ownership, or the purchase or sale of a

[1] The amendments were proposed in Exchange Act Release No. 49895 (June 21, 2004) [69 FR 35982] ("Proposing Release"). Comment letters are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. We have posted electronically submitted comment letters on our Web site at *http://www.sec.gov/rules/proposed/s72704.shtml.* [Add when posted: A comment summary also is available at *http://www.sec.gov/rules/extra/s72704summary.htm.*]

[2] 17 CFR 240.16b–3.

[3] 17 CFR 240.16b–7.

[4] 15 U.S.C. 78a *et seq.*

[5] 17 CFR 229.405 and 17 CFR 228.405.

[6] 15 U.S.C. 78p.

[7] 15 U.S.C. 78*l.*

[8] 15 U.S.C. 78p(a).

[9] Insiders file these reports on Form 3 [17 CFR 249.103].

security-based swap agreement [10] involving such equity security.[11]

Section 16(b) [12] provides the issuer (or shareholders suing on behalf of the issuer) a private right of action to recover from an insider any profit realized by the insider from any purchase and sale (or sale and purchase) of any equity security of the issuer within any period of less than six months. This statute is designed to curb abuses of inside information by insiders.[13] Unlike insider trading prohibitions under general antifraud provisions,[14] Section 16(b) operates without consideration of whether an insider actually was aware of material non-public information.[15] Section 16(b) operates strictly, providing a private right of action to recover short-swing profits by insiders, on the theory that short-swing transactions (a purchase and sale within six months) present a sufficient likelihood of involving abuse of inside information that a strict liability prophylactic approach is appropriate.

Since the enactment of the Exchange Act, we have adopted a number of exemptive rules, including Rule 16b–3—"Transactions between an issuer and its officers or directors," and Rule 16b–7—"Mergers, reclassifications, and consolidations." [16] These exemptive rules provide that transactions that satisfy their conditions will not be subject to Section 16(b) short-swing profit recovery.

The recent opinion of the U.S. Court of Appeals for the Third Circuit (the "Third Circuit") in *Levy* v. *Sterling Holding Company, LLC.* ("*Levy* v. *Sterling*"),[17] casts doubt as to the nature and scope of transactions exempted from Section 16(b) short-swing profit recovery by Rules 16b–3 and 16b–7. At the outset of its analysis, the Third Circuit noted that Section 16(b) "explicitly authorizes" the Commission to exempt "any transaction * * * as not comprehended within the purpose of" the statute. "This section," the Third Circuit pointed out, "is critical for courts to defer to an agency's interpretation of statutes, particularly where the statute provides the agency with the authority to make the interpretation." The Third Circuit declared, therefore, that its "threshold challenge" was to "ascertain what in fact was [the Commission's] interpretation" when it adopted Rules 16b–3 and 16b–7.[18] Despite explicit interpretations to the contrary,[19] the Third Circuit held that neither rule exempted the directors' acquisitions of issuer securities in a reclassification undertaken by the issuer preparatory to its initial public offering, which would permit the matching of those acquisitions for Section 16(b) profit recovery with the directors' sales within six months in the initial public offering.

In particular, the *Levy* v. *Sterling* opinion read Rules 16b–3 and 16b–7 to require satisfaction of conditions that were neither contained in the text of the rules nor intended by the Commission. The resulting uncertainty regarding the exemptive scope of these rules has made it difficult for issuers and insiders to plan legitimate transactions, and may discourage participation by officers and directors in issuer stock ownership programs or employee incentive plans. With the clarifying amendments to Rules 16b–3 and 16b–7 that we adopt today, we resolve any doubt as to the meaning and interpretation of these rules by reaffirming the views we have consistently expressed previously regarding their appropriate construction.[20] Consistent with our previously expressed views:

- The amendments to Rule 16b-3 clarify the regulatory conditions that have applied to transactions that rely on this exemption since its adoption effective August 15, 1996; and
- The amendments to Rule 16b–7 clarify the regulatory conditions that have applied to transactions that rely on this exemption since it was amended effective May 1, 1991.[21]

These amendments are adopted substantially as proposed, with some language changes as discussed below.[22]

Item 405 of Regulations S–K and S–B requires issuer disclosure of Section 16 reporting delinquencies. This disclosure is required in the issuer's proxy or information statement [23] for the annual meeting at which directors are elected, and its Form 10K,[24] 10–KSB [25] or N–SAR.[26] Item 405(b)(1) permits an issuer to presume that a Section 16 form it receives within three calendar days of the required filing date was filed with the Commission by the required filing date. In light of the two-business-day due date generally applicable to Form 4 and the requirements of mandatory EDGAR filing and Web site posting of Section 16 reports, this presumption no longer is appropriate or necessary and we are amending Item 405 to rescind it, as proposed.

II. Rule 16b–3

Rule 16b–3 exempts from Section 16(b) certain transactions between issuers of securities and their officers and directors. In its *Levy* v. *Sterling* opinion, the Third Circuit construed Rule 16b–3(d), which applies to "grants, awards, or other acquisitions," to limit this exemption to transactions that have some compensation-related aspect. Specifically, since "grants" and "awards" are compensation-related, the Third Circuit reasoned that "other acquisitions" also must be compensation-related in order to be exempted by Rule 16b–3(d). This construction of Rule 16b–3(d) is not in accord with our clearly expressed intent in adopting the rule.

The current version of Rule 16b–3 was adopted in 1996, and implemented substantial revisions designed to simplify the conditions that must be satisfied for the exemption to apply. In

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[10] As defined in Section 206B of the Gramm-Leach-Bliley Financial Modernization Act of 1999, as amended by H.R. 4577, P.L. 106–554, 114 Stat. 2763.

[11] Insiders file transaction reports on Form 4 [17 CFR 249.104] and Form 5 [17 CFR 249.105].

[12] 15 U.S.C. 78p(b).

[13] The first sentence of Section 16(b) begins with "For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer [***]."

[14] *e.g.*, Exchange Act Section 10(b) [15 U.S.C. 78j(b)] and Exchange Act Rule 10b–5 [17 CFR 240.10b–5].

[15] This type of remedy was described by its drafters as a "crude rule of thumb." Hearings on Stock Exchange Practices before the Senate Committee on Banking and Currency, 73d Cong., 1st Sess. Pt. 15,6557 (1934) (testimony of Thomas Corcoran as spokesman for the drafters of the Exchange Act).

[16] Section 16(b) grants the Commission authority to exempt, by rules and regulations, "any transaction or transactions * * * not comprehended within the purpose of this subsection." 15 U.S.C. 78p(b).

[17] 314 F.3d 106 (3d. Cir. 2002), *cert. denied*, *Sterling Holding Co.* v. *Levy*, 124 S. Ct. 389 (U.S., Oct. 14, 2003).

[18] 314 F.3d at 112 (citing *Chevron, U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843–44 (1984)). See also *National Cable & Telecommunications* v. *Brand X Internet Service*, U.S., 125 S.Ct. 2688, 2700 (June 27, 2005) ("A court's prior judicial construction of a statute trumps an agency construction otherwise entitled to Chevron deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion.")

[19] See discussion below.

[20] See the discussions of previous Commission releases in Sections II and III, below, and the Proposing Release. See also Memorandum of the Securities and Exchange Commission, *Amicus Curiae*, in Support of Appellees' Petition for Rehearing or Rehearing *En Banc* (Feb. 27, 2003). This brief is posted at *http://www.sec.gov/litigation/briefs/levy-sterling022703.htm*.

[21] We note in this regard that, consistent with the Administrative Procedure Act, the effective date of Rules 16b–3 and 16b–7 is less than 30 days after publication because the rule recognizes an exemption and contains interpretative rules. See 5 U.S.C. 553(d)(1) and (d)(2).

[22] See Section II below regarding Rule 16b–3 and Section III regarding Rule 16b–7.

[23] 17 CFR 240.14a–101, Item 7.

[24] 17 CFR 249.310.

[25] 17 CFR 249.310b.

[26] 17 CFR 249.330; 17 CFR 274.101.

contrast to prior versions of Rule 16b–3, which had exempted only employee benefit plan transactions, the 1996 revisions broadened the Rule 16b–3 exemption and extended it to other transactions between issuers and their officers and directors. The revisions focused on the distinction between market transactions by officers and directors, which present opportunities for profit based on non-public information that Section 16(b) is intended to discourage, and transactions between an issuer and its officers and directors, which are subject to fiduciary duties under state law.[27] In adopting the revised rule, we explicitly stated that "a transaction need not be pursuant to an employee benefit plan or any compensatory program to be exempt, nor need it specifically have a compensatory element."[28]

Rule 16b–3(a) provides that "A transaction between the issuer (including an employee benefit plan sponsored by the issuer) and an officer or director of the issuer that involves issuer equity securities shall be exempt from section 16(b) of the Act if the transaction satisfies the applicable conditions set forth in this section." As this makes clear, the only limitations on the exemption for transactions between the issuer and its officer or director are the objective conditions set forth in later subsections of the rule, each of which applies to a different category of transactions.

As adopted in 1996, Rule 16b–3(d), entitled "Grants, awards and other acquisitions from the issuer," exempted from Section 16(b) liability "Any transaction involving a grant, award or other acquisition from the issuer (other than a Discretionary Transaction)"[29] if any one of three alternative conditions is satisfied. These conditions require:

- Approval of the transaction by the issuer's board of directors, or board committee composed solely of two or more Non-Employee Directors;[30]
- Approval or ratification of the transaction, in compliance with Exchange Act Section 14,[31] by the issuer's shareholders;[32] or
- The officer or director to hold the acquired securities for a period of six months following the date of acquisition.[33]

Consistent with the terms of Rule 16b–3 and statements in the 1996 Adopting Release and 1995 Proposing Release regarding the meaning of the rule, the Commission staff has interpreted the Rule 16b–3(d) exemption to include a number of transactions outside of the compensatory context, such as:

- The acquisition of acquiror equity securities (including derivative securities) by acquiror officers and directors through the conversion of target equity securities in connection with a corporate merger;[34] and
- An officer's or director's indirect pecuniary interest in transactions between the issuer and certain other persons or entities.[35]

The application of Rule 16b–3(d) to such transactions also has been recognized in Section 16(b) litigation. In its 2002 opinion in *Gryl* v. *Shire Pharmaceuticals Group PLC*,[36] the U.S. Court of Appeals for the Second Circuit construed Rule 16b–3(d) to exempt acquiror directors' acquisition of acquiror options upon conversion of their target options in a corporate merger. Although the securities acquired in *Gryl* were options, the Second Circuit's holding in no way relied upon a compensatory purpose. Instead, *Gryl* construed Rule 16b–3(d)(1) to require only that the transaction involve an acquisition of issuer equity securities from the issuer, the acquirer be a director or officer of the issuer at the time of the transaction, and the transaction be approved in advance by the issuer's board of directors.[37]

To eliminate the uncertainty generated by the *Levy* v. *Sterling* opinion, we proposed to amend Rule 16b–3(d) so that this paragraph would be entitled "Acquisitions from the issuer," and would provide that any transaction involving an acquisition from the issuer (other than a Discretionary Transaction), including without limitation a grant or award, will be exempt if any one of the Rule's three existing alternative conditions is satisfied. Because the exemptive conditions of Rule 16b–3(e), which exempts an officer's or director's disposition to the issuer of issuer equity securities, are identical to the advance approval conditions of Rule 16b–3(d)[38] and were intended to operate the same way, we proposed to clarify both rules consistently by adding a Note to Rule 16b–3.[39]

The majority of commenters addressing the Rule 16b–3 proposals, other than attorneys who represent plaintiffs in Section 16(b) cases, supported them. Most commenters stated that the proposals would accomplish the goal of clarifying the exemptive scope of Rule 16b–3 as the Commission originally intended the rule to apply, and would preclude the restrictive and unintended construction applied in the *Levy* v. *Sterling* opinion. Commenters generally expressed the view that the exemptive conditions of Rule 16b–3(e) should remain identical to the Rule 16b–3(d)(1) or Rule 16b–3(d)(2) advance approval conditions. In response to our questions, most commenters also stated that it would not be appropriate to limit either Rule 16b–3(d) or Rule 16b–3(e) to transactions that have a compensatory purpose or to "extraordinary" transactions, such as the reclassification at issue in *Levy* v. *Sterling*. For example, one commenter stated that "the key

[27] Exchange Act Release No. 36356 (Oct. 11, 1995) [60 FR 53832] ("1995 Proposing Release").

[28] Exchange Act Release No. 37260 (May 31, 1996) [61 FR 30376] ("1996 Adopting Release").

[29] "Discretionary Transaction" is defined in Rule 16b–3(b)(1). Generally, a Discretionary Transaction is an employee benefit plan transaction that is at the volition of a plan participant and results in either an intra-plan transfer involving an issuer equity securities fund, or a cash distribution funded by a volitional disposition of an issuer equity security. However, the definition excludes such transactions that are made in connection with the participant's death, disability, retirement or termination of employment, or are required to be made available to a plan participant pursuant to a provision of the Internal Revenue Code. A Discretionary Transaction is exempted by Rule 16b–3 only if it satisfies the conditions of Rule 16b–3(f).

[30] Rule 16b–3(d)(1). "Non-Employee Director" is defined in Rule 16b–3(b)(3).

[31] 15 U.S.C. 78n.

[32] Rule 16b–3(d)(2). With respect to shareholder, board and Non-Employee Director committee approval, Rule 16b–3(d) requires approval in advance of the transaction. Shareholder approval must be by either: the affirmative votes of the holders of a majority of the securities of the issuer present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the state or other jurisdiction in which the issuer is incorporated; or the written consent of the holders of the majority of the securities of the issuer entitled to vote. Shareholder ratification, consistent with the same procedural conditions, may confer the exemption only if such ratification occurs no later than the date of the next annual meeting of shareholders following the transaction.

[33] Rule 16b–3(d)(3).

[34] Division of Corporation Finance interpretive letter to Skadden, Arps, Slate, Meagher & Flom LLP (Jan. 12, 1999).

[35] Division of Corporation Finance interpretive letter to American Bar Association (Feb. 10, 1999). The other persons or entities are immediate family members, partnerships, corporations and trusts, in each case where rules under Section 16(a) require the officer or director to report an indirect pecuniary interest in the transaction.

[36] 298 F.3d 136 (2d Cir. 2002).

[37] *Id.* at 141. Rule 16b–3(d)(1) also permits approval by "a committee of the board of directors that is composed solely of two or more Non-Employee Directors." *Gryl* noted that "[t]hat aspect of the Board Approval exemption is not at issue in this appeal." *Id.* at n. 2.

[38] Although shareholder ratification after the transaction exempts an acquisition under Rule 16b–3(d), it does *not* exempt a disposition under Rule 16b–3(e).

[39] Proposed Note 4 stated that these exemptions apply to any securities transaction by the issuer with its officer or director that satisfies the specified conditions of Rule 16b–3(d) or Rule 16b–3(e), as applicable, and are not conditioned on the transaction being intended for a compensatory or other particular purpose.

consideration of the statute is the absence of the ability to take advantage of the other party on the basis of inside information."[40]

Some commenters suggested, however, that it would be clearer that the exemptive scope of Rules 16b–3(d) and 16b–3(e) is not limited to transactions with a compensatory or other particular purpose if this were stated in the text of Rules 16b–3(d) and 16b–3(e) instead of a Note to Rule 16b–3.[41] We have decided to apply this suggested approach in the amendments as adopted.[42]

Rule 16b–3(d), as adopted, exempts any transaction, other than a Discretionary Transaction, involving an acquisition by an officer or director[43] from the issuer (including without limitation a grant or award), whether or not intended for a compensatory or other particular purpose, if any one of the Rule's three alternative conditions is satisfied. Rule 16b–3(e), as adopted, exempts any transaction, other than a Discretionary Transaction, involving the disposition by an officer or director to the issuer of issuer equity securities, whether or not intended for a compensatory or other particular purpose, provided that the terms of such disposition are approved in advance in the manner prescribed by either Rule 16b–3(d)(1) or Rule 16b–3(d)(2).

In their comment letters, attorneys who represent plaintiffs in Section 16(b) cases ("the Section 16(b) Lawyers") asserted that the premise that there is no opportunity for speculative abuse in transactions between an issuer and its officers and directors is faulty and without support.[44] This assertion is misplaced, however. As we explained in 1996, "[transactions between an issuer and its officers and directors] do not appear to present the same opportunities for insider profit on the basis of non-public information as do market transactions by officers and directors. Typically, where the issuer, rather than the trading markets, is on the other side of an officer or director's transaction in the issuer's equity securities, any profit obtained is not at the expense of uninformed shareholders and other market participants of the type contemplated by the statute."[45]

Section 16(b) specifically states that it is "for the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer." This statement should be construed in light of the stated purpose of the Exchange Act, *inter alia*, "to insure the maintenance of fair and honest markets in [securities] transactions."[46] As the Second Circuit stated in *Blau* v. *Lamb*, "Section 16(b) helps to implement this overriding purpose by making it unprofitable for 'insiders' to engage in short-swing speculation."[47]

The legislative history of Section 16(b) makes it clear that the "unfair use of information" that concerned Congress was insiders' transactions with investors who were at an informational disadvantage. In a report summarizing the findings of its extensive investigation, the Senate Committee on Banking and Currency, in a section entitled "Market Activities of Directors, Officers, and Principal Shareholders of Corporations," stated:

> Among the most vicious practices unearthed at the hearings before the subcommittee was the flagrant betrayal of their fiduciary duties by directors and officers of corporations who used their positions of trust and the confidential information which came to them in such positions, to aid them in their market activities.[48]

In construing Section 16(b), the Supreme Court has relied on a consistent understanding of Congressional intent:

> Congress recognized that insiders may have access to information about their corporations not available to the rest of the investing public. By trading on this information, those persons could reap profits at the expense of less well informed investors. In Section 16(b) Congress sought to "curb the evils of insider trading [by] * * * taking the profits out of a class of transactions in which the possibility of abuse was believed to be intolerably great."[49]

The purpose expressed in the legislative history and acknowledged in the judicial construction of Section 16(b) thus demonstrates that the exemptions provided by Rules 16b–3(d) and 16b–3(e), as adopted in 1996 and as clarified today, do not conflict with Section 16(b). As a different commenter observed, "Rule 16b–3 is entirely consistent with the intent of Congress in enacting Section 16(b), since it exempts only transactions involving parties on an equal footing from the standpoint of knowledge of inside information."[50]

The Section 16(b) Lawyers also questioned our authority to adopt Rule 16b–3 and these clarifying amendments. Because Section 16(b) can be harsh in imposing liability without fault, "Congress itself limited carefully the liability imposed by Section 16(b),"[51] including by granting the Commission specific exemptive authority. By its terms, Section 16(b) provides that it does not cover "any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection." The legislative history explains that:

> The expressed purpose of this provision is to prevent the unfair use of inside information. The Commission may exempt transactions not falling within this purpose.[52]

Insider trading is rooted in inequality of information between persons who are aware of it and the persons they transact with. The inequality of information contemplated by Section 16(b) generally does not exist when an officer or director acquires securities from, or disposes of them to, the issuer. In both the 1996 adoption of Rule 16b–3 and the clarifications adopted today, we carefully considered Congress's purpose for enacting Section 16(b), and, in light of the strict remedy imposed by Section 16(b), whether the exempted transactions actually pose a significant risk of the abuses the statute was concerned with. We concluded that it is not appropriate to impose Section 16(b) liability on the exempted acquisitions and dispositions because the risk of unfair use of information in these transactions is generally diminished.[53]

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[40] Letter of American Bar Association (Aug. 16, 2004).

[41] Letters of New York State Bar Association (Aug. 9, 2004) and Sullivan & Cromwell LLP (Aug. 9, 2004).

[42] We note, however, that the Notes to our rules are integral parts of our regulations.

[43] Note 4 as proposed referred to transactions by an officer or director satisfying the conditions of the rule. Because that language essentially mirrored language already contained in the text of Rule 16b–3(a) itself, we have not adopted that portion of proposed Note 4.

[44] Letter of Abraham Fruchter & Twersky LLP (Aug. 5, 2004); Letter of Bragar Wexler Eagel & Morgenstern, P.C. (Jul. 30, 2004); and Letter of Sirianni Youtz Meier & Spoonemore (Aug. 9, 2004).

[45] 1996 Adopting Release.

[46] Section 2 of the Exchange Act, 15 U.S.C. 78b.

[47] *Blau* v. *Lamb*, 363 F.2d 507, at 514 (2d Cir. 1966).

[48] Stock Exchange Practices, S. Rep. No. 1455, 73d Cong., 2d Sess. 55 (1934).

[49] *Foremost-McKesson, Inc.* v. *Provident Securities Co.*, 423 U.S. 232 (1976), at 243 (quoting *Reliance Electric Co.* v. *Emerson Electric Co.*, 404 U.S. 418, at 422 (1972). The Supreme Court quoted the same *Reliance Electric Co.* language in *Kern County Land Co.* v. *Occidental Petroleum Corp.*, 411 U.S. 582, at 592 (1972).

[50] Letter of New York State Bar Association (Aug. 9, 2004).

[51] *Foremost-McKesson, Inc.* v. *Provident Securities Co.*, 423 U.S. at 252.

[52] S. Rep. No. 792, 73d Cong., 2d Sess., 21 (1934).

[53] Of course, Section 16(b) is not the sole Exchange Act deterrent to insider trading. Moreover, the strict liability imposed by Section 16(b) is distinguishable from the prohibitions of Section 10(b) and Rule 10b–5 and the remedies that attach to violations of those prohibitions. In light of these distinctions, and the application of Section 10(b) and Rule 10b–5 to the transactions exempted by Rule 16b–3, the Rule 16b–3(d) and 16b–3(e)

Continued

Because the transactions exempted by the rule are not of the type contemplated by the statute, our 1996 adoption of Rule 16b–3 and the clarifications adopted today clearly are within our specific exemptive authority provided by Section 16(b), as well as other statutory authority. We are clarifying our own rule and resolving any ambiguity that might exist. In addition to the specific exemptive authority provided by Section 16(b), the Commission also has authority under our general rulemaking authority in Section 23(a) of the Exchange Act[54] and general exemptive authority in Section 36 of the Exchange Act.[55]

The Section 16(b) Lawyers further asserted that this rulemaking is an unlawful attempt to engage in retroactive rulemaking, rather than a clarification. This assertion also is misplaced. The clarifications adopted today do not deprive issuers and shareholders of short-swing profit recovery to which they were intended to be entitled. The clarifications are consistent with the terms of Rule 16b–3 and our statements in the 1996 Adopting Release regarding the scope of Rules 16b–3(d) and 16b–3(e),[56] and our amicus brief in *Levy* v. *Sterling*.[57] The clarifications also are consistent with the August 2002 construction of Rule 16b–3(d) by the U.S. Court of Appeals for the Second Circuit in *Gryl* v. *Shire Pharmaceuticals Group PLC*.[58] The clarifying nature of the amendments is not a sudden and unexplained change in our regulations (indeed, our interpretation has been consistent since the rule was adopted in 1996) and neither creates nor removes any rights or duties.

III. Rule 16b–7

Rule 16b–7, entitled "Mergers, reclassifications, and consolidations," exempts from Section 16(b) certain transactions that do not involve a significant change in the issuer's business or assets. The rule is typically relied upon in situations where a company reincorporates in a different state or reorganizes its corporate structure. Rule 16b–7(a)(1) provides that the acquisition of a security pursuant to a merger or consolidation is not subject to Section 16(b) if the security relinquished in exchange is of a company that, before the merger or consolidation, owned:

- 85% or more of the equity securities of all other companies party to the merger or consolidation, or
- 85% or more of the combined assets of all companies undergoing merger or consolidation.

Rule 16b–7(a)(2) exempts the corresponding disposition, pursuant to a merger or consolidation, of a security of an issuer that before the merger or consolidation satisfied either of these 85% ownership tests. These transactions do not significantly alter in an economic sense the investment the insider held before the transaction.

While the *Levy* v. *Sterling* opinion acknowledged that Rule 16b–7 could exempt a reclassification, it construed Rule 16b–7 not to exempt an acquisition pursuant to a reclassification that:

- Resulted in the insiders owning equity securities (common stock) with different risk characteristics from the securities (preferred stock) extinguished in the transaction, where the preferred stock previously had not been convertible into common stock; and
- Thus involved an increase in the percentage of insiders' common stock ownership, based on the fact that the insiders owned some common stock before the reclassification extinguished their preferred stock in exchange for common stock.

The opinion thus imposed upon reclassifications exemptive conditions that are not found in the language of Rule 16b–7 and would not apply to a merger or consolidation relying upon the rule. Moreover, these conditions significantly restrict the exemption's availability for reclassifications by narrowing it to the less frequent situation where the original security and the security for which it is exchanged have the same characteristics. Imposing these conditions is inconsistent with the terms of Rule 16b–7, the rule's interpretive history and the Commission's intent.

Although Rule 16b–7 as originally adopted in 1952 only applied to "mergers" and "consolidations,"[59] the Commission staff construed it as also applying to reclassifications. In a 1981 interpretive release, the staff stated that "Rule 16b–7 does not require that the security received in exchange be similar to that surrendered, and the rule can apply to transactions involving reclassifications."[60] In 1991, the Commission amended the title of Rule 16b–7 to include "reclassifications," explaining that this amendment was not intended to effect any "substantive" changes to the rule, and reaffirmed the staff statement in the 1981 Release that Rule 16b–7 applies to reclassifications.[61]

Although the rule as amended in 1991 did not contain specific standards for exempting reclassifications, the staff applied to reclassifications the same standards as for mergers and consolidations. In relevant respects a reclassification is little different from a merger exempted by Rule 16b–7. In a merger exempted by the rule, the transaction satisfies either 85% ownership standard, so that the merger effects no major change in the issuer's business or assets. Similarly, in a reclassification the issuer owns all assets involved in the transaction and remains the same, with no change in its business or assets. The similarities are readily illustrated by the fact that an issuer also could effect a reclassification by forming a wholly-owned "shell" subsidiary, merging the issuer into the subsidiary, and exchanging subsidiary securities for the issuer's securities.

Consistent with the 1981 and 1991 Releases and our amicus brief in *Levy* v. *Sterling*, to eliminate uncertainty regarding Rule 16b–7 generated by the *Levy* v. *Sterling* opinion, we proposed to amend Rule 16b–7 so that, consistent with the rule's title, the text states "merger, reclassification or consolidation" each place it previously stated "merger or consolidation." To

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exemptions do not impair the protection of investors.

[54] In pertinent part, Section 23(a) authorizes the Commission "to make such rules and regulations as may be necessary or appropriate to implement the provisions of this title * * * or for the execution of the functions vested in [the Commission] by this title, and may for such purposes classify persons, securities, transactions, statements, applications, reports, and other matters within [its] jurisdiction[], and prescribe greater, lesser, or different requirements for different classes thereof."

[55] Section 36 generally provides that "the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of this title or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." For the reasons discussed in the Proposing Release and this release, the Commission believes that the Rule 16b–3 exemption (as well as the exemption in Rule 16b–7 discussed below) is necessary or appropriate in the public interest and is consistent with the protection of investors.

[56] For example, the 1996 Adopting Release stated, with respect to Rule 16b–3(e), "In the context of a merger, the new rule will exempt the disposition of issuer equity securities (including derivative securities) solely to the issuer, provided the conditions of the rule are satisfied."

[57] The clarifications also are consistent with staff interpretations of these rules. See text at nn. 34 and 35, above.

[58] See text at n. 37, above.

[59] Exchange Act Release No. 4696 (Apr. 3, 1952) [17 FR 3177] (proposing Rule 16b–7), and Exchange Act Release No. 4717 (Jun. 9, 1952) [17 FR 5501] (adopting Rule 16b–7).

[60] Exchange Act Release No. 18114 (Sept. 24, 1981) [46 FR 48147] ("1981 Release"), at Q. 142.

[61] Exchange Act Release No. 28869 (Feb. 8, 1991) [56 FR 7242] ("1991 Release"). More recently, in a 2002 proposing release we expressly described reclassifications as among the transactions exempted by Rule 16b–7. Exchange Act Release No. 45742 (Apr. 12, 2002) [67 FR 19914], at n. 56.

further clarify the rule's consistent application, we proposed an additional paragraph to specify that the Rule 16b–7 exemption applies to any securities transaction that satisfies the conditions of the rule and is not conditioned on the transaction satisfying any other conditions.[62]

The majority of commenters addressing the Rule 16b–7 proposals, other than the Section 16(b) Lawyers, supported them. Most commenters stated that the proposals would accomplish the goal of clarifying the exemptive scope of Rule 16b–7, and are consistent with our previous statements regarding the scope of this rule. We are adopting the Rule 16b–7 amendments as proposed.

Some commenters suggested that the rule should include a definition of "reclassification." Other commenters suggested that the rule should exempt transactions that are substantively similar to reclassifications, and transactions in foreign jurisdictions that use different names, such as "amalgamations" or "schemes of arrangement," that are substantively equivalent to transactions named in the rule.

In order to preserve flexibility to apply the rule appropriately to evolving forms of transactions, the rule as adopted does not define "reclassification." However, transactions that are exempt as reclassifications generally include transactions in which the terms of the entire class or series are changed, or securities of the entire class or series are replaced with securities of a different class or series of securities of the company,[63] and all holders of the reclassified class or series are entitled to receive the same form and amount of consideration per share. Rule 16b–7 also applies in such transactions where shareholders have the right to receive cash instead of stock by exercising their dissenters' appraisal rights, or the option to surrender their shares for stock or for cash in certain circumstances.[64]

These transactions, which do not involve a substantial change in the business owned, do not involve the holders' payment of consideration in addition to the reclassified class or series of securities, and have the same effect on all holders of the reclassified class or series, do not present insiders the significant opportunities to profit by advance information that Section 16(b) was designed to address. A transaction that has the same characteristics and effect as a reclassification, whether domestic or foreign, is exempt without regard to its formal name, including but not limited to a statutory exchange,[65] conversion to a different form of entity,[66] and redomicile or continuance in a different jurisdiction.[67] Similarly, a transaction that has the same characteristics and effect as a merger or consolidation, whether domestic or foreign, is exempt without regard to its formal name, including but not limited to an amalgamation or scheme of arrangement.[68]

The exercise or conversion of a derivative security, however, is not exempted by Rule 16b–7, but instead must satisfy the conditions of Rule 16b–3 or Rule 16b–6(b). Similarly, a stock split, stock dividend, or the acquisition of shareholder rights is not exempted by Rule 16b–7, but instead must satisfy the conditions of Rule 16a–9.[69] The amendments adopted today do not change this analysis.

The comment letters of the Section 16(b) Lawyers also questioned our authority to apply Rule 16b–7 to reclassifications and to adopt these clarifying amendments, and asserted that this rulemaking is an unlawful attempt to engage in retroactive rulemaking, rather than a clarification. As our previous releases have explained, Rule 16b–7 is based on the premise that the exempted transactions are of relatively minor importance to the shareholders of a particular company and do not present significant opportunities to insiders to profit by advance information concerning the transaction. Indeed, as noted above, by satisfying either of the rule's 85% ownership tests, an exempted transaction does not significantly alter the economic investment held by the insider before the transaction.[70]

Exempting these transactions from Section 16(b) is consistent with Congressional intent that the Commission exempt transactions that do not fall within the statute's purpose of preventing the unfair use of inside information.[71] Because the form of insiders' holdings changes without affecting the substance of their interest in the issuer, it is not in accordance with the purpose of Section 16(b) to treat the transaction as involving a purchase or sale.[72] Further, the clarifications adopted today do not deprive issuers and shareholders of short-swing profit recovery to which they were intended to be entitled. The clarifications are consistent with our statements in adopting Rule 16b–7, and our amicus brief in *Levy* v. *Sterling*.[73] As with the Rule 16b–3 amendments adopted today, the clarifying nature of the Rule 16b–7 amendments is not a sudden and unexplained change in our regulations (indeed our interpretation has been consistent since at least 1991) and neither creates nor removes any rights or duties.

IV. Item 405 of Regulations S–K and S–B

As noted above, issuers must disclose their insiders' Section 16 reporting delinquencies as required by Item 405 of Regulations S–K and S–B. Previously, Item 405(b)(1) provided that "a form received by the registrant within three calendar days of the required filing date may be presumed to have been filed with the Commission by the required filing date." When Item 405 was adopted in 1991,[74] Form 4 was due within ten days after the close of the calendar month in which the reported

[62] Rule 16b–7(c). Former Rule 16b–7(c) is redesignated as Rule 16b–7(d).

[63] For a transaction to be a reclassification exempted by Rule 16b–7, it is not necessary for the class or series of security that is surrendered to have been previously convertible into the class or series of security to be received.

[64] These respective factual circumstances were discussed in Division of Corporation Finance letters to Pan American World Airways, Inc. (May 28, 1984) and Public Service Electric and Gas Co. (Apr. 28, 1986).

[65] The staff has stated that "the acquisition and disposition of stock in a statutory exchange would be exempt under Rule 16b–7, assuming all of the conditions of the rule are satisfied." 1981 Release, at Q. 142.

[66] Some state statutes allow a corporation to convert to a different form of organization, such as a partnership, limited liability company or business trust, and *vice versa*, without merging into a newly-formed entity. See *e.g.*, Del. Code Ann. Title 8 Sections 265 and 266.

[67] Some state statutes allow a corporation incorporated a different jurisdiction to register within the state and become a domestic corporation within the state, or continue as if incorporated in the state, without merging into a newly-formed entity. See *e.g.*, Wyoming Statutes §§ 17–16–1701, 17–16–1702 and 17–16–1710.

[68] For example, Division of Corporation Finance interpretive letter to Manpower PLC (Mar. 14, 1991), expressing the view that Rule 16b–7 would exempt an exchange offer and subsequent compulsory acquisition that were the substantive equivalent of a merger, consolidation or sale of assets, recognized that "English law does not have the equivalent to a merger or consolidation statute." See also Division of Corporation Finance letter to Varity Corporation (Oct. 15, 1981), expressing the staff's view that the acquisition and disposition of securities pursuant to an amalgamation would fall within the operation of Rule 16b–7.

[69] 17 CFR 240.16a–9.

[70] See Exchange Act Release No. 4696, Exchange Act Release No. 4717, and the 1981 Release.

[71] As discussed above, the Commission has exemptive authority under Section 16(b). In addition, the Commission has general rulemaking authority in Section 23(a) of the Exchange Act and general exemptive authority in Section 36 of the Exchange Act. See nn. 54 and 55 and related text, above.

[72] Exchange Act Release No. 4696.

[73] The clarifications also are consistent with staff interpretations of this rule.

[74] Item 405 was adopted in the 1991 Release.

transaction took place. Further, all Section 16 reports were filed on paper, since we did not permit insiders to file Section 16 reports electronically on EDGAR on a voluntary basis until 1995.[75]

However, the Sarbanes-Oxley Act of 2002[76] amended Section 16(a) to require two-business day reporting of changes in beneficial ownership, effective August 29, 2002.[77] The Sarbanes-Oxley Act also amended Section 16(a) to require insiders to file these reports electronically, and the Commission and issuers with corporate Web sites to post these reports on their Web sites not later than the end of the business day following filing.[78] We adopted rules to implement these requirements effective June 30, 2003.[79]

In adopting the Web site posting requirement, we noted that Rule 16a–3(e)[80] requires an insider, not later than the time a Section 16 report is transmitted for filing with the Commission, to send or deliver a duplicate to the person designated by the issuer to receive such statements, or absent such designation, to the issuer's corporate secretary or person performing equivalent functions. We stated that we would expect an issuer, in making this designation, also to designate an electronic transmission medium compatible with the issuer's own systems, so that a form sent by that medium at the time specified by Rule 16a–3(e) would be received by the issuer in time to satisfy the Web site posting deadline.[81]

In light of the Section 16(a) amendments enacted by the Sarbanes-Oxley Act, the presumption of timeliness for a Section 16(a) report received by the issuer within three calendar days of the required filing date no longer is appropriate or necessary. By reviewing Section 16 reports posted on EDGAR, an issuer is readily able to evaluate their timeliness. Moreover, a report that is not received by the issuer in time for the issuer to post that report on its Web site by the end of the business day following filing should not be presumed to have been timely filed. Accordingly, we proposed to amend Item 405 of Regulations S–K and S–B to delete the former three-calendar day presumption, without substituting a different presumption or otherwise modifying the substance of Item 405.

This proposal generated minimal comments, all of which were favorable. We adopt the amendments to Item 405 as proposed.

V. Paperwork Reduction Act

Forms 3 (OMB Control No. 3235–0104), 4 OMB Control No. 3235–0287) and 5 (OMB Control No. 3235–0362) prescribe transaction and beneficial ownership information that an insider must report under Section 16(a). Preparing and filing a report on any of these forms is a collection of information.

The clarifying amendments to Rule 16b–3 and Rule 16b–7 adopted today do not change the transaction and beneficial ownership information that insiders currently are required to report on these forms. We therefore believe that the overall information collection burden remains the same because the same information remains reportable.

The deletion of the Item 405 presumption of timeliness for a Section 16 report received by the issuer within three calendar days of the required filing date may result in some companies reporting more Section 16 reports as delinquent in their Forms 10–K (OMB Control No. 3235–0063), 10–KSB (OMB Control No. 3235–0420) or N–SAR (OMB Control No. 3235–0330), and proxy (OMB Control No. 3235–0059) or information statements (OMB Control No. 3235–0057) for the annual meeting at which directors are elected. However, we believe that any such increased collection burden associated with those filings will be so minimal that it cannot be quantified.

VI. Cost-Benefit Analysis

The Rule 16b–3 and Rule 16b–7 amendments adopted today clarify existing rules. The *Levy* v. *Sterling* opinion created uncertainty whether Rules 16b–3 and 16b–7 exempt transactions that they previously were commonly understood to exempt, making it difficult for issuers to plan legitimate transactions in reliance on these rules. The amendments clarify the exemptive scope of Rules 16b–3 and 16b–7, consistent with statements in our previous releases and our amicus brief in *Levy* v. *Sterling*. Without such clarification, insiders may be exposed unnecessarily to significant potential costs to the extent that a private action under Section 16(b) recovers short-swing profits with respect to a transaction that either of these rules was intended to exempt. These costs also include potential litigation costs, and costs incurred to postpone a legitimate non-exempt transaction, such as an initial public offering, more than six months following a transaction that properly is exempted by Rule 16b–3 or Rule 16b–7. The comments we received also noted increased legal costs to analyze the availability of an exemption,[82] and that the legal uncertainty generated by the *Levy* v. *Sterling* opinion affects a large percentage of U.S. public companies.[83]

Because the amendments clarify the exemptive scope of Rules 16b–3 and 16b–7 consistent with the terms of these rules and our previous statements, issuers and insiders will not incur additional costs to effect legitimate transactions in reliance on the rules as amended. Issuers and shareholders also will not incur additional costs because the amendments do not deprive issuers and shareholders of short-swing profit recovery to which they were intended to be entitled. Likewise, clarification of the rules should reduce litigation risk, and therefore costs, of some actions seeking short-swing profits.

Conversely, the amendments should improve the ability to plan legitimate transactions with a clear understanding whether they will be exempt under Rule 16b–3 or Rule 16b–7, thereby providing significant benefits. These benefits, like the costs, are difficult to quantify. The comments that we received did not quantify costs or benefits.

The amendment to Item 405 of Regulations S–K and S–B to delete the presumption of timeliness for a Section 16 report received by the issuer within three calendar days of the required

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[75] Securities Act Release No. 7241 (Nov. 13, 1995) [60 FR 57682].

[76] Pub. L. 107–204, 116 Stat. 745.

[77] Section 16(a)(2)(C), as amended by Section 403 of the Sarbanes-Oxley Act. Effective on the same date, the Commission adopted rule amendments to implement the accelerated Form 4 due date. Exchange Act Release No. 46421 (Aug. 27, 2002) [67 FR 56462].

[78] Section 16(a)(4), as amended by Section 403 of the Sarbanes-Oxley Act.

[79] Securities Act Release No. 8230 (May 7, 2003) [68 FR 25788, with corrections at 68 FR 37044] ("Mandated EDGAR Release"). Recognizing that insiders may experience temporary difficulties in transitioning to mandated electronic filing, Section II.E of the Mandated EDGAR Release provided Item 405 disclosure relief for a Form 4 that is (i) filed not later than one business day following the regular due date, and (ii) filed during the first 12 months following the effective date of mandated electronic filing. This limited relief applies only to Forms 4 filed between June 30, 2003 and June 30, 2004.

[80] 17 CFR 240.16a–3(e).

[81] Mandated EDGAR Release at Section II.B. To assure that insiders are aware of the designated person and electronic transmission medium, we encouraged issuers to post this information on their Web sites together with the Section 16 filings. We also noted that the concern about timely obtaining an electronic copy of a filing would not arise for issuers that rely on a hyperlink (for example, to EDGAR) to satisfy their Web site posting requirement.

[82] Letter of Goodwin Procter (Aug. 9, 2004).

[83] Letter of New York State Bar Association (Aug. 9, 2004).

filing date may result in some issuers reporting more Section 16 reports as delinquent in their Forms 10–K, 10–KSB or N–SAR, and their proxy or information statements for the annual meeting at which directors are elected. However, Section 16 reports are posted on EDGAR, and thus are readily available to issuers to evaluate their timeliness. Further, because Section 16 requires an issuer to post a Section 16 report on its Web site by the end of the business day following filing, issuers are able to evaluate filing timeliness on an on-going basis. Consequently, deletion of the Item 405 timeliness presumption does not impose significant additional costs on issuers. The benefit of the amendment will be to provide investors with Item 405 disclosure that is fully consistent with accelerated reporting, mandatory electronic filing and Web site posting amendments to Section 16(a) effected by the Sarbanes-Oxley Act.

VII. Effect on Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [84] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b) of the Securities Act,[85] Section 3(f) of the Exchange Act [86] and Section 2(c) of the Investment Company Act of 1940 [87] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.

The *Levy* v. *Sterling* opinion created uncertainty whether Rules 16b–3 and 16b–7 exempt transactions that the Commission intended to exempt, making it difficult for issuers to plan legitimate transactions in reliance on these rules. This uncertainty generated economic inefficiency by introducing potential litigation costs, and costs incurred to postpone a non-exempt transaction more than six months following a transaction that properly is exempted by Rule 16b–3 or Rule 16b–7.

[84] 15 U.S.C. 78w(a)(2).
[85] 15 U.S.C. 77b(b).
[86] 15 U.S.C. 78c(f).
[87] 15 U.S.C. 80a–2(c).

The amendments clarify the exemptive scope of Rules 16b–3 and 16b–7, consistent with the terms of these rules, statements in our previous releases and our amicus brief in *Levy* v. *Sterling*. This will improve issuers' and insiders' ability to plan transactions with a clear understanding whether either rule will provide an exemption. Informed transactional decisions generally promote market efficiency and capital formation. We believe the amendments to Rules 16b–3 and 16b–7 will not impose a burden on competition. The amendment to Item 405 of Regulations S–K and S–B to delete the timeliness presumption also will not impose a burden, since issuers are readily able to evaluate the timeliness of Section 16 reports by examining the reports as filed on EDGAR.

In the proposing release, we requested comments on whether the proposed amendments, if adopted, would impose a burden on competition. We also requested comment on whether the proposed amendments, if adopted would promote efficiency, competition and capital formation. The comments we received suggested that adoption of the proposed amendments would eliminate a burden on competition, and promote efficiency, competition and capital formation by eliminating legal uncertainty that makes it difficult to plan legitimate business transactions.[88] Finally, we requested commenters to provide empirical data and other factual support for their views, if possible. The comments we received noted that the legal uncertainty generated by the *Levy* v. *Sterling* opinion affects a large percentage of U.S. public companies.[89]

VIII. Final Regulatory Flexibility Act Analysis

We have prepared a Final Regulatory Flexibility Analysis, in accordance with 5 U.S.C. 603, concerning the amendments adopted today.

A. Reasons for and Objectives of the Proposed Amendments

The purpose of the amendments is to clarify the exemptive scope of Rules 16b–3 and 16b–7, and, consistent with the Sarbanes-Oxley Act amendments to Section 16(a), to delete the timeliness presumption in Item 405 of Regulations S–K and S–B.

[88] Letter of Allen & Overy (Aug. 27, 2004), Letter of American Society of Corporate Secretaries (Aug. 9, 2004), and Letter of Securities Industry Association (Aug. 10, 2004).
[89] Letter of New York State Bar Association (Aug. 9, 2004).

B. Legal Basis

The amendments to Item 405 of Regulations S–K and S–B and Exchange Act Rules 16b–3 and 16b–7 are adopted pursuant to Section 19(a) of the Securities Act,[90] Sections 3(a)(11),[91] 3(a)(12),[92] 3(b),[93] 10(a),[94] 12(h),[95] 13(a),[96] 14,[97] 16, 23(a) [98] and 36 [99] of the Exchange Act, Sections 17 [100] and 20 [101] of the Public Utility Holding Company Act of 1935, Sections 30 [102] and 38 [103] of the Investment Company Act of 1940, and Section 3(a) [104] of the Sarbanes-Oxley Act of 2002.

C. Significant Issues Raised by Public Comment

The Initial Regulatory Flexibility Act Analysis ("IRFA") appeared in the Proposing Release. We requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposals, the nature of the impact, and how to quantify the impact of the proposals.

One commenter suggested that we extend the requirements of Section 16 to corporate insiders of publicly traded securities that are not registered under Section 12 of the Exchange Act,[105] an action that would affect many small entities. Such an extension of Section 16 was not the purpose of this rulemaking, which merely clarifies existing Rules 16b–3 and 16b–7 and amends Item 405. We did not receive other comments in response to our request.

D. Small Entities Subject to the Amendments

The proposed amendments affect companies that are small entities. Exchange Act Rule 0–10(a) [106] defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 2,500 issuers, other than investment companies, that may be considered small entities. For purposes of the

[90] 15 U.S.C. 77s(a).
[91] 15 U.S.C. 78c(a)(11).
[92] 15 U.S.C. 78c(a)(12).
[93] 15 U.S.C. 78c(b).
[94] 15U.S.C. 78j(a).
[95] 15 U.S.C. 78*l*(h).
[96] 15 U.S.C. 78m(a).
[97] 15 U.S.C. 78n.
[98] 15 U.S.C. 78w(a).
[99] 15 U.S.C. 78jj.
[100] 15 U.S.C. 79q.
[101] 15 U.S.C. 79t.
[102] 15 U.S.C. 80a–29.
[103] 15 U.S.C. 80a–37.
[104] 15 U.S.C. 7202(a).
[105] Letter of Pink Sheets LLC (Sept. 27, 2004).
[106] 17 CFR 240.0–10(a).

Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. As of December 2004, we estimate that there were 28 registered closed-end investment companies, and 68 business development companies that are small entities. The Item 405 amendments apply to all of these small entities.

E. Reporting, Recordkeeping and Other Compliance Requirements

The amendments to Item 405 may impose additional disclosure requirements to the extent that issuers may be required to disclose additional untimely Section 16 filings by their insiders. However, we assume that this burden is very small, if it exists at all, because the changes effected by the Sarbanes-Oxley Act likely made the presumption irrelevant. No other new reporting, recordkeeping or compliance requirements are imposed. Other than the potential additional Item 405 disclosure, the primary impact of these amendments relates to clarifying the exemptive scope of Rules 16b–3 and 16b–7, which should not have any new impact.

F. Overlapping or Conflicting Federal Rules

We do not believe that any current Federal rules duplicate, overlap or conflict with the amendments.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small businesses. We considered the following types of alternatives:

1. The establishment of different compliance or reporting requirements or timetables that take into account the resources available to small entities;

2. The clarification, consolidation or simplification of compliance and reporting requirements under the rule for such small entities;

3. The use of performance rather than design standards; and

4. An exemption from coverage of the rule, or any part thereof, for small entities.

Regarding Alternative 1, we believe that differing compliance or reporting requirements for small entities would be inconsistent with Section 16, the Commission's intent when it adopted these rules, and the Commission's purpose of making the application of these rules more uniform. Regarding Alternative 2, the amendments are concise and clarify the Rule 16b–3 and Rule 16b–7 exemptive conditions and amend the Item 405 reporting requirement for all entities, including small entities. Regarding Alternative 3, we believe that design rather than performance standards are appropriate because use of performance standards for small entities would not be consistent with the statutory purpose of Section 16. Finally, an exemption for small entities is not appropriate because these amendments are designed to harmonize the application of the exemptive rules.

IX. Statutory Basis

The amendments contained in this release are adopted under the authority set forth in Section 19(a) of the Securities Act, Sections 3(a)(11), 3(a)(12), 3(b), 10(a), 12(h), 13, 14, 16, 23(a) and 36 of the Exchange Act, Sections 17 and 20 of the Public Utility Holding Company Act of 1935, Sections 30 and 38 of the Investment Company Act of 1940, and Section 3(a) of the Sarbanes-Oxley Act of 2002.

Text of Rule Amendments

List of Subjects in 17 CFR Parts 228, 229 and 240

Reporting and recordkeeping requirements, Securities.

■ For the reasons set forth above, we amend title 17, chapter II of the Code of Federal Regulations as follows.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The authority citation for part 228 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 2. Amend § 228.405 by revising the introductory text to paragraph (a), paragraph (a)(2) and paragraph (b) to read as follows:

§ 228.405 (Item 405) Compliance with section 16(a) of the Exchange Act.

* * * * *

(a) Based solely upon a review of Forms 3 and 4 (17 CFR 249.103 and 249.104) and amendments thereto furnished to the registrant under 17 CFR 240.16a–3(e) during its most recent fiscal year and Forms 5 and amendments thereto (17 CFR 249.105) furnished to the registrant with respect to its most recent fiscal year, and any written representation referred to in paragraph (b)(1) of this section:

* * * * *

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required Form. A known failure to file would include, but not be limited to, a failure to file a Form 3, which is required of all reporting persons, and a failure to file a Form 5 in the absence of the written representation referred to in paragraph (b)(1) of this section, unless the registrant otherwise knows that no Form 5 is required.

* * * * *

(b) With respect to the disclosure required by paragraph (a) of this section, if the registrant:

(1) Receives a written representation from the reporting person that no Form 5 is required; and

(2) Maintains the representation for two years, making a copy available to the Commission or its staff upon request, the registrant need not identify such reporting person pursuant to paragraph (a) of this section as having failed to file a Form 5 with respect to that fiscal year.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The authority citation for part 229 continues to read, in part, as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Amend § 229.405 by revising the introductory text to paragraph (a), paragraph (a)(2) and paragraph (b) to read as follows:

§ 229.405 (Item 405) Compliance with section 16(a) of the Exchange Act.

* * * * *

(a) Based solely upon a review of Forms 3 and 4 (17 CFR 249.103 and 249.104) and amendments thereto furnished to the registrant under 17 CFR 240.16a–3(e) during its most recent fiscal year and Forms 5 and amendments thereto (17 CFR 249.105) furnished to the registrant with respect to its most recent fiscal year, and any

written representation referred to in paragraph (b)(1) of this section.

* * * * *

(2) For each such person, set forth the number of late reports, the number of transactions that were not reported on a timely basis, and any known failure to file a required Form. A known failure to file would include, but not be limited to, a failure to file a Form 3, which is required of all reporting persons, and a failure to file a Form 5 in the absence of the written representation referred to in paragraph (b)(1) of this section, unless the registrant otherwise knows that no Form 5 is required.

* * * * *

(b) With respect to the disclosure required by paragraph (a) of this section, if the registrant:

(1) Receives a written representation from the reporting person that no Form 5 is required; and

(2) Maintains the representation for two years, making a copy available to the Commission or its staff upon request, the registrant need not identify such reporting person pursuant to paragraph (a) of this section as having failed to file a Form 5 with respect to that fiscal year.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Amend § 240.16b–3 by revising the introductory text of paragraph (d) and paragraph (e) to read as follows:

§ 240.16b–3 Transactions between an issuer and its officers or directors.

* * * * *

(d) *Acquisitions from the issuer.* Any transaction, other than a Discretionary Transaction, involving an acquisition from the issuer (including without limitation a grant or award), whether or not intended for a compensatory or other particular purpose, shall be exempt if:

* * * * *

(e) *Dispositions to the issuer.* Any transaction, other than a Discretionary Transaction, involving the disposition to the issuer of issuer equity securities, whether or not intended for a compensatory or other particular purpose, shall be exempt, provided that the terms of such disposition are approved in advance in the manner prescribed by either paragraph (d)(1) or paragraph (d)(2) of this section.

* * * * *

■ 7. Section 240.16b–7 is revised to read as follows:

§ 240.16b–7 Mergers, reclassifications, and consolidations.

(a) The following transactions shall be exempt from the provisions of section 16(b) of the Act:

(1) The acquisition of a security of a company, pursuant to a merger, reclassification or consolidation, in exchange for a security of a company that before the merger, reclassification or consolidation, owned 85 percent or more of either:

(i) The equity securities of all other companies involved in the merger, reclassification or consolidation, or in the case of a consolidation, the resulting company; or

(ii) The combined assets of all the companies involved in the merger, reclassification or consolidation, computed according to their book values before the merger, reclassification or consolidation as determined by reference to their most recent available financial statements for a 12 month period before the merger, reclassification or consolidation, or such shorter time as the company has been in existence.

(2) The disposition of a security, pursuant to a merger, reclassification or consolidation, of a company that before the merger, reclassification or consolidation, owned 85 percent or more of either:

(i) The equity securities of all other companies involved in the merger, reclassification or consolidation or, in the case of a consolidation, the resulting company; or

(ii) The combined assets of all the companies undergoing merger, reclassification or consolidation, computed according to their book values before the merger, reclassification or consolidation as determined by reference to their most recent available financial statements for a 12 month period before the merger, reclassification or consolidation.

(b) A merger within the meaning of this section shall include the sale or purchase of substantially all the assets of one company by another in exchange for equity securities which are then distributed to the security holders of the company that sold its assets.

(c) The exemption provided by this section applies to any securities transaction that satisfies the conditions specified in this section and is not conditioned on the transaction satisfying any other conditions.

(d) Notwithstanding the foregoing, if a person subject to section 16 of the Act makes any non-exempt purchase of a security in any company involved in the merger, reclassification or consolidation and any non-exempt sale of a security in any company involved in the merger, reclassification or consolidation within any period of less than six months during which the merger, reclassification or consolidation took place, the exemption provided by this section shall be unavailable to the extent of such purchase and sale.

Dated: August 3, 2005.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 05–15682 Filed 8–8–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–51983A; File No. S7–02–04]

RIN 3235–AI02

Amendments to the Penny Stock Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; corrections.

SUMMARY: In Release No. 34–51983, the Securities and Exchange Commission issued amendments concerning the "penny stock rules" under the Securities Exchange Act of 1934, which appeared in the **Federal Register** of July 13, 2005 (70 FR 40614). In Release No. 34–51808, the Commission issued Regulation NMS, which appeared in the **Federal Register** of June 29, 2005 (70 FR 37496), and which, among other things, made technical amendments to the definition of penny stock. Since the effective date of Regulation NMS predates that of the amendments to the penny stock rules, the Commission is making technical corrections to the amendments to the penny stock rules to conform to the changes made in connection with Regulation NMS.

DATES: Effective September 12, 2005.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, Paula R. Jenson, Deputy Chief Counsel, Brian A. Bussey, Assistant Chief Counsel, or Norman M. Reed, Special Counsel, at 202/551–5550, Office of Chief Counsel, Division of Market

Regulation, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In FR Doc 05–13737 appearing on page 40614 in the **Federal Register** of Wednesday, July 13, 2005, the following corrections are made:

§ 240.3a51–1 [Corrected]

■ 1. On page 40631, second column, revise the introductory text of paragraph (a) to read "(a) That is an NMS stock, as defined in § 242.600(b)(47), provided that:".

■ 2. On page 40632, first column, paragraph (e)(1), 5th line, revise "§ 240.11Aa3–1" to read "§ 242.601".

Dated: August 3, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–15681 Filed 8–8–05; 8:45 am]

BILLING CODE 8010–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R09–OAR–2005–CA–0002; FRL –7945–2]

Revision to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that address the opacity standard; PM–10, CO, volatile organic compound (VOC), and SO_2 emissions from industrial processes; and source tests. We are also rescinding local rules that concern exemptions from emission standards; analytical methods; and PM–10, CO, and SO_2 emission standards.

DATES: This rule is effective on October 11, 2005, without further notice, unless EPA receives adverse comments by September 8, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2005–CA–0002, by one of the following methods:

- Agency Web site: *http://docket.epa.gov/rmepub/*. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.
- E-mail: *steckel.andrew@epa.gov*.
- Mail or deliver: Andrew Steckel (AIR–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal, or e-mail. The agency Web site and eRulemaking portal are "anonymous access" systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://docket.epa.gov/rmepub* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed below.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving or rescinding with the date that they were revised or rescinded by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted, revised, or rescinded	Submimtted
VCAPCD	50	Opacity	04/13/04 Revised	07/19/04
VCAPCD	52	Particulate Matter—Concentration (Grain Loading)	04/13/04 Revised	07/19/04
VCAPCD	53	Particulate Matter—Process Weight	04/13/04 Revised	07/19/04
VCAPCD	55	Exemptions from Emission Standards	04/13/04 Rescinded	07/19/04
VCAPCD	60	New Non-Mobile Equipment—Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter.	04/13/04 Rescinded	07/19/04
VCAPCD	68	Carbon Monoxide	04/13/04 Revised	07/19/04
VCAPCD	74.25	Restaurant Cooking Operations	10/12/04 Adopted	01/13/05
VCAPCD	100	Analytical Methods	04/13/04 Rescinded	07/19/04
VCAPCD	102	Source Tests	04/13/04 Revised	07/19/04

On August 10, 2004, the submittal of the rules and rescissions in Table 1, except for Rule 74.25, was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On February 16, 2005, the submittal of Rule 74.25 was found to meet the completeness criteria.

B. Are There Other Versions of These Rules?

We approved a version of VCAPCD Rules 50, 52, 53, and 100 into the SIP on September 22, 1972 (37 FR 19806). We approved a version of VCAPCD Rule 55 into the SIP on August 6, 1990 (55 FR 31832). We approved a version of VCAPCD Rule 60 into the SIP on August 15, 1977 (42 FR 41121). We approved a version of VCAPCD Rule 68 into the SIP on August 6, 2001 (66 FR 40898). We approved a version of VCAPCD Rule 102 into the SIP on June 18, 1982 (47 FR 26389). There is no SIP-approved version of Rule 74.25.

C. What Are the Purposes of the Submitted Rules?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

The purpose of the new rule is as follows:

- Rule 74.25 requires removal of at least 83% of the VOC and PM–10 emissions from restaurant conveyorized charbroilers.

The purposes of revising the rules relative to the SIP rules are to make the following changes:

- Rule 50 adds EPA Method 9 for determining compliance with the rule and adds seven exemptions to the rule for source categories, most of which are already exempted elsewhere.
- Rules 52 and 53 add exemptions for clarity of applicability for boilers, water heaters, process heaters, and space heaters that combust liquid or gaseous fuels or waste gases that emit only combustion products, add exemptions for source categories that are regulated by Rules 56 and 74.1, add exemptions for internal combustion engines and flares, and add test methods and definitions.
- Rule 68 adds exemptions for clarity of applicability for boilers, steam generators, water heaters, process heaters, space heaters, gas turbines, flares, and open outdoor fires and adds test methods and definitions.
- Rule 102 adds the requirement that tests be performed in strict accordance with the test methods specified in the rule and to change the time of reporting to 45 days after the tests are completed.

The purposes of rescinding three rules are as follows:

- Rule 55 rescission removes the exemption rule and transfers the exemptions in the rule to Rules 50 and 51 and deletes the inactive exemption for short-duration experimental or research operations.
- Rule 60 rescission removes a rule containing obsolete non-stringent limits on PM–10, CO, and SO_2 emissions from new non-mobile equipment and transfer regulation of these emissions to Rule 26, New Source Review.
- Rule 100 rescission removes an obsolete rule concerning test methods, which are now contained in relevant individual rules.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rules?

Generally, prohibitory SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major volatile organic compound (VOC) sources in ozone nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The VCAPCD regulates a 1-hour ozone nonattainment area, but there are no major VOC sources regulated by the rules in this action. There are control technology requirements for PM–10 nonattainment areas, but VCAPCD is in attainment for PM–10 and CO (see 40 CFR part 81).

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, EPA, 40 CFR part 51.
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations*, EPA (May 25, 1988) (The Bluebook).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies*, EPA Region 9 (August 21, 2001) (The Little Bluebook).
- *PM–10 Guideline Document*, EPA (April 1993).

B. Do the Rules Meet the Evaluation Criteria?

We believe VCAPCD Rules 50, 52, 53, 68, 74.25, and 102 are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling the requirements of RACT. The rules improve the SIP and should be approved. The rescission of VCAPCD Rules 55, 60, and 100 simplifies and does not relax the SIP. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, we are fully approving the submitted Rules 50, 52, 53, 68, 74.25, and 102 and we are approving the rescission of Rules 55, 60, and 100, because we believe these actions fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 8, 2005, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 11, 2005. This will incorporate Rules 50, 52, 53, 68, 74.25, and 102 into the federally enforceable SIP and rescind Rules 55, 60, and 100 from the SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

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

Dated: July 1, 2005.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(6)(xxiv)(B), (21)(xiii)(B), (177)(i)(A)(*3*), (332)(i)(B)(*2*) and (*3*), and (335)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(6) * * *

(xxiv) * * *

(B) Previously approved on September 22, 1972 in paragraph (c)(6) of this section and now deleted without replacement, Rule 100.

* * * * *

(21) * * *

(xiii) * * *

(B) Previously approved on August 15, 1977 in paragraph (c)(21)(xiii)(A) of this section and now deleted without replacement, Rule 60.

* * * * *

(177) * * *

(i) * * *

(A) * * *

(*3*) Previously approved on August 6, 1990 in paragraph (c)(177)(i)(A) of this section and now deleted without replacement, Rule 55.

* * * * *

(332) * * *

(i) * * *

(B) * * *

(*2*) Rules 50, 52, and 53, adopted on July 2, 1968 and revised on April 13, 2004.

(*3*) Rules 68 and 102, adopted on May 23, 1972 and revised on April 13, 2004.

* * * * *

(335) * * *

(i) * * *

(C) Ventura County Air Pollution Control District.

(*1*) Rule 74.25, adopted on October 12, 2004.

* * * * *

[FR Doc. 05–15741 Filed 8–8–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2005–20278]

RIN 2127–AJ53

Final Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of final theft data.

SUMMARY: This document publishes the final data on thefts of model year (MY) 2003 passenger motor vehicles that occurred in calendar year (CY) 2003. The final 2003 theft data indicate a decrease in the vehicle theft rate experienced in CY/MY 2003. The final theft rate for MY 2003 passenger vehicles stolen in calendar year 2003 (1.84 thefts per thousand vehicles) decreased by 26.1 percent from the theft rate for CY/MY 2002 (2.49 thefts per thousand vehicles) when compared to the theft rate experienced in CY/MY 2002. Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data and publish the information for review and comment.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

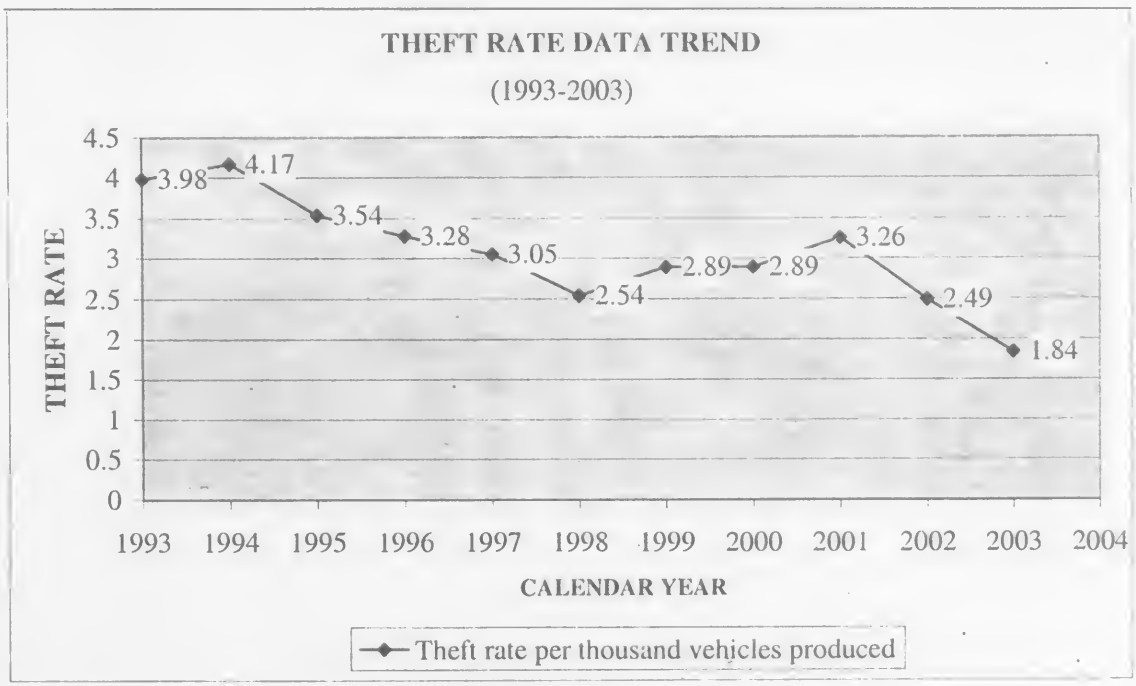
The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually beginning with MYs 1983/84. Continuing to fulfill the § 33104(b)(4) mandate, this document reports the final theft data for CY 2003, the most recent calendar year for which data are available.

In calculating the 2003 theft rates, NHTSA followed the same procedures it used in calculating the MY 2002 theft rates. (For 2002 theft data calculations, see 69 FR 53354, September 1, 2004.) As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 2003 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2003 vehicles of that line stolen during calendar year 2003 by the total number of vehicles in that line manufactured for MY 2003, as reported to the Environmental Protection Agency (EPA).

The final 2003 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2002. The final theft rate for MY 2003 passenger vehicles stolen in calendar year 2003 decreased to 1.84 thefts per thousand vehicles produced, a decrease of 26.1 percent from the rate of 2.49 thefts per thousand vehicles experienced by MY 2002 vehicles in CY 2002. For MY 2003 vehicles, out of a total of 217 vehicle lines, 21 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994.) Of the 21 vehicle lines with a theft rate higher than 3.5826, 18 are passenger car lines, two are multipurpose passenger vehicle lines, and one is a light-duty truck line.

The MY 2003 theft rate reduction is consistent with the general decreasing trend of theft rates over the past ten years as indicated by Figure 1.



The agency believes that the decrease could be the result of several factors including the increased use of standard antitheft devices (*i.e.*, immobilizers), vehicle partsmarking, increased and improved prosecution efforts by law enforcement organizations and, increased public awareness measures have contributed to the overall reduction in vehicle thefts.

On Wednesday, May 2, 2005, NHTSA published the preliminary theft rates for CY 2003 passenger motor vehicles in the **Federal Register** (70 FR 10066). The agency tentatively ranked each of the MY 2003 vehicle lines in descending order of theft rate. The public was requested to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. The agency used written

comments to make the necessary adjustments to its data.

The agency received a written comment from American Honda (Honda). In its comments, Honda informed the agency that there was an error in the published production volume for the Honda S2000 vehicle line. However, upon further review by Honda, it was confirmed that the reported production volume was correct. Therefore, the published production volume as reported to the agency will remain unchanged.

The following list represents NHTSA's final calculation of theft rates for all 2003 passenger motor vehicle lines. This list is intended to inform the public of calendar year 2003 motor vehicle thefts of model year 2003 vehicles and does not have any effect on the obligations of regulated parties under 49 U.S.C. Chapter 331, Theft Prevention.

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2003 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2003

	Manufacturer	Make/model (line)	Thefts 2003	Production (Mfr's) 2003	2003 Theft rate (per 1,000 vehicles produced)
1	DAIMLERCHRYSLER	DODGE STRATUS	682	62,496	10.9127
2	DAIMLERCHRYSLER	DODGE INTREPID	392	40,366	9.7111
3	MITSUBISHI	MONTERO	94	13,604	6.9097
4	MITSUBISHI	DIAMANTE	57	9,981	5.7109
5	TOYOTA	TUNDRA PICKUP	162	28,981	5.5899
6	DAIMLERCHRYSLER	SEBRING	180	35,599	5.0563
7	MITSUBISHI	MONTERO SPORT	174	35,508	4.9003
8	MITSUBISHI	GALANT	468	97,418	4.8040
9	JAGUAR	XJR	4	845	4.7337
10	DAIMLERCHRYSLER	DODGE NEON	590	127,902	4.6129
11	DAIMLERCHRYSLER	CHRYSLER SEBRING CONVERTIBLE	61	13,337	4.5737
12	DAIMLERCHRYSLER	CHRYSLER CONCORDE	61	13,690	4.4558
13	DAIMLERCHRYSLER	CHRYSLER 300M	61	13,719	4.4464
14	SUZUKI	AERIO	150	33,931	4.4207
15	FORD MOTOR CO.	FORD MUSTANG	598	143,823	4.1579
16	NISSAN	SENTRA	293	71,734	4.0845
17	GENERAL MOTORS	OLDSMOBILE ALERO	333	86,229	3.8618
18	MITSUBISHI	LANCER	283	75,585	3.7441
19	JAGUAR	XK8	8	2,151	3.7192
20	VOLVO	S40	11	3,014	3.6496
21	MITSUBISHI	ECLIPSE	333	92,062	3.6171
22	GENERAL MOTORS	PONTIAC GRAND PRIX	249	70,395	3.5372
23	DAIMLERCHRYSLER	CHRYSLER VOYAGER VAN	72	20,642	3.4880
24	NISSAN	MAXIMA	211	62,537	3.3740
25	GENERAL MOTORS	CHEVROLET MONTE CARLO	228	67,610	3.3723
26	BMW	M3	30	8,964	3.3467
27	GENERAL MOTORS	PONTIAC GRAND AM	450	145,150	3.1002
28	FORD MOTOR CO.	LINCOLN LS	72	23,472	3.0675
29	HONDA	S2000	24	7,862	3.0527
30	SUZUKI	VITARA/GRAND	108	35,437	3.0477
31	KIA MOTORS	OPTIMA	70	23,340	2.9991
32	DAIMLERCHRYSLER	DODGE CARAVAN/GRAND CARAVAN	725	248,733	2.9148
33	GENERAL MOTORS	CHEVROLET CAVALIER	633	218,340	2.8991
34	SUBARU	IMPREZA	67	23,333	2.8715
35	TOYOTA	ECHO	101	35,276	2.8631
36	GENERAL MOTORS	CHEVROLET MALIBU	507	179,565	2.8235
37	GENERAL MOTORS	CHEVROLET BLAZER S10/T10	152	54,165	2.8062
38	MERCEDES–BENZ	215 (CL–CLASS)	9	3,214	2.8002
39	BMW	M5	5	1,902	2.6288
40	NISSAN	ALTIMA	591	225,388	2.6221
41	JAGUAR	XJ8	10	3,816	2.6205
42	VOLVO	C70	4	1,540	2.5974
43	GENERAL MOTORS	BUICK REGAL	89	35,374	2.5160
44	KIA MOTORS	SPECTRA	176	71,249	2.4702
45	GENERAL MOTORS	BUICK CENTURY	363	148,506	2.4443
46	JAGUAR	S–TYPE	55	22,608	2.4328
47	TOYOTA	LEXUS SC	26	10,800	2.4074
48	FORD MOTOR CO.	LINCOLN TOWN CAR	180	75,624	2.3802
49	TOYOTA	COROLLA	786	330,244	2.3801
50	FORD MOTOR CO.	FORD FOCUS	610	257,453	2.3694
51	HYUNDAI	ACCENT	120	51,425	2.3335
52	NISSAN	350Z	92	39,448	2.3322
53	TOYOTA	CELICA	42	18,062	2.3253
54	GENERAL MOTORS	SATURN LS	164	71,082	2.3072
55	DAIMLERCHRYSLER	CHRYSLER PT CRUISER	272	118,798	2.2896
56	HONDA	ACURA 3.2 CL	37	16,327	2.2662
57	FORD MOTOR CO.	FORD TAURUS	757	334,329	2.2642
58	GENERAL MOTORS	PONTIAC SUNFIRE	85	37,813	2.2479
59	BMW	7	46	21,387	2.1508

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2003 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2003—Continued

	Manufacturer	Make/model (line)	Thefts 2003	Production (Mfr's) 2003	2003 Theft rate (per 1,000 vehicles produced)
60	HYUNDAI	TIBURON	87	40,830	2.1308
61	TOYOTA	LEXUS IS	30	14,445	2.0768
62	FORD MOTOR CO.	MERCURY MOUNTAINEER	95	45,950	2.0675
63	GENERAL MOTORS	CHEVROLET CORVETTE	68	33,118	2.0533
64	GENERAL MOTORS	CADILLAC DEVILLE	157	77,703	2.0205
65	HYUNDAI	XG	18	8,942	2.0130
66	HONDA	ACURA RSX	51	26,035	1.9589
67	KIA MOTORS	RIO	86	44,120	1.9492
68	MAZDA	PROTÉGÉ	164	84,404	1.9430
69	GENERAL MOTORS	CADILLAC SEVILLE	36	18,627	1.9327
70	GENERAL MOTORS	PONTIAC BONNEVILLE	67	34,675	1.9322
71	MITSUBISHI	OUTLANDER	93	48,273	1.9265
72	FORD MOTOR CO.	MERCURY SABLE	123	64,477	1.9077
73	DAIMLERCHRYSLER	JEEP LIBERTY	331	177,461	1.8652
74	NISSAN	INFINITI QX4	14	7,766	1.8027
75	MERCEDES–BENZ	220 (S–CLASS)	37	20,679	1.7893
76	TOYOTA	MATRIX	153	87,440	1.7498
77	DAIMLERCHRYSLER	CHRYSLER TOWN & COUNTRY	216	123,575	1.7479
78	GENERAL MOTORS	GMC SONOMA PICKUP	71	41,164	1.7248
79	HYUNDAI	SONATA	129	77,468	1.6652
80	DAIMLERCHRYSLER	JEEP GRAND CHEROKEE	190	114,736	1.6560
81	MERCEDES–BENZ	129 (SL–CLASS)	34	20,685	1.6437
82	GENERAL MOTORS	CHEVROLET IMPALA	404	248,078	1.6285
83	FORD MOTOR CO.	FORD EXPLORER	537	332,158	1.6167
84	HYUNDAI	ELANTRA	210	130,031	1.6150
85	VOLVO	S60	31	19,532	1.5871
86	FORD MOTOR CO.	FORD ESCAPE	240	151,770	1.5813
87	AUDI	A8	1	643	1.5552
88	NISSAN	FRONTIER PICKUP	105	68,372	1.5357
89	VOLVO	S80	12	7,927	1.5138
90	TOYOTA	CAMRY/SOLARA	617	408,093	1.5119
91	GENERAL MOTORS	PONTIAC AZTEK	44	29,564	1.4883
92	KIA MOTORS	SORENTO	63	42,837	1.4707
93	FORD MOTOR CO.	FORD RANGER PICKUP	331	226,132	1.4637
94	DAIMLERCHRYSLER	JEEP WRANGLER	94	64,343	1.4609
95	DAIMLERCHRYSLER	DODGE DAKOTA PICKUP	31	21,582	1.4364
96	FORD MOTOR CO.	FORD CROWN VICTORIA	58	41,637	1.3930
97	NISSAN	INFINITI I35	24	17,334	1.3846
98	HONDA	ACURA 3.5 RL	4	2,903	1.3779
99	TOYOTA	LEXUS GS	20	14,555	1.3741
100	GENERAL MOTORS	CHEVROLET S10/T10 PICKUP	218	159,920	1.3632
101	NISSAN	INFINITI G35	111	81,505	1.3619
102	TOYOTA	TACOMA PICKUP	209	157,182	1.3297
103	FORD MOTOR CO.	FORD ESCORT	28	21,162	1.3231
104	TOYOTA	4RUNNER	133	101,254	1.3135
105	MAZDA	6	72	54,829	1.3132
106	GENERAL MOTORS	CHEVROLET TRACKER	54	41,730	1.2940
107	TOYOTA	RAV4	100	77,319	1.2933
108	GENERAL MOTORS	OLDSMOBILE BRAVADA	11	8,642	1.2729
109	PORSCHE	BOXSTER	10	7,880	1.2690
110	GENERAL MOTORS	GMC SAFARI VAN	11	8,738	1.2589
111	GENERAL MOTORS	PONTIAC VIBE	88	69,941	1.2582
112	HONDA	CIVIC	369	300,485	1.2280
113	VOLKSWAGEN	GOLF/GTI	41	34,049	1.2041
114	FORD MOTOR CO.	MERCURY GRAND MARQUIS	127	105,615	1.2025
115	HONDA	ACCORD	499	427,660	1.1668
116	GENERAL MOTORS	CHEVROLET ASTRO VAN	38	32,687	1.1625
117	TOYOTA	PRIUS	16	13,826	1.1572
118	NISSAN	XTERRA	87	75,351	1.1546
119	TOYOTA	MR2 SPYDER	6	5,209	1.1519
120	ISUZU	ASCENDER	4	3,476	1.1507
121	VOLKSWAGEN	JETTA	171	148,729	1.1497
122	NISSAN	PATHFINDER	56	48,772	1.1482
123	JAGUAR	XKR	1	880	1.1364
124	HONDA	ACURA 3.2 TL	105	93,899	1.1182
125	GENERAL MOTORS	CHEVROLET TRAILBLAZER	205	194,427	1.0544
126	AUDI	A6/A6 QUATTRO/S6/AVANT	18	17,116	1.0516
127	ISUZU	AXIOM	4	3,848	1.0395
128	MERCEDES–BENZ	203 (C–CLASS)	65	63,327	1.0264

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2003 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2003—Continued

	Manufacturer	Make/model (line)	Thefts 2003	Production (Mfr's) 2003	2003 Theft rate (per 1,000 vehicles produced)
129	GENERAL MOTORS	CADILLAC CTS	69	68,264	1.0108
130	LAND ROVER	FREELANDER	10	9,985	1.0015
131	NISSAN	INFINITI Q45	3	3,034	0.9888
132	MAZDA	B SERIES PICKUP	19	19,342	0.9823
133	AUDI	TT	6	6,138	0.9775
134	TOYOTA	LEXUS ES	60	61,512	0.9754
135	MERCEDES–BENZ	210 (E–CLASS)	61	62,547	0.9753
136	NISSAN	INFINITI M45	6	6,402	0.9372
137	FORD MOTOR CO.	FORD EXPLORER SPORT TRAC	58	62,059	0.9346
138	TOYOTA	LEXUS LS	20	21,592	0.9263
139	TOYOTA	LEXUS GX	21	22,932	0.9158
140	NISSAN	MURANO	50	54,632	0.9152
141	BMW	5	36	39,342	0.9151
142	FORD MOTOR CO.	FORD WINDSTAR VAN	134	148,016	0.9053
143	PORSCHE	911	9	10,027	0.8976
144	BMW	3	90	100,589	0.8947
145	JAGUAR	X–TYPE	27	30,483	0.8857
146	VOLVO	XC70	8	9,175	0.8719
147	TOYOTA	AVALON	59	68,872	0.8567
148	GENERAL MOTORS	GMC ENVOY	71	83,069	0.8547
149	KIA MOTORS	SEDONA VAN	44	51,515	0.8541
150	VOLKSWAGEN	PASSAT	89	105,230	0.8458
151	GENERAL MOTORS	OLDSMOBILE AURORA	3	3,550	0.8451
152	AUDI	A4/A4 QUATTRO	40	47,520	0.8418
153	GENERAL MOTORS	CHEVROLET VENTURE VAN	80	96,022	0.8331
154	ISUZU	RODEO	11	13,625	0.8073
155	MAZDA	MX–5 MIATA	10	12,458	0.8027
156	HYUNDAI	SANTA FE	79	98,515	0.8019
157	MERCEDES–BENZ	208 (CLK–CLASS)	25	31,560	0.7921
158	JAGUAR	VANDEN PLAS/SUPER V8	1	1,265	0.7905
159	GENERAL MOTORS	BUICK LESABRE	97	124,342	0.7801
160	TOYOTA	SIENNA VAN	33	42,688	0.7731
161	GENERAL MOTORS	SATURN ION	73	96,382	0.7574
162	FORD MOTOR CO.	FORD THUNDERBIRD	10	13,948	0.7169
163	MAZDA	TRIBUTE	33	47,099	0.7007
164	GENERAL MOTORS	PONTIAC MONTANA VAN	32	45,936	0.6966
165	HONDA	ELEMENT	51	75,457	0.6759
166	HONDA	ACURA MDX	36	55,826	0.6449
167	TOYOTA	LEXUS RX	22	34,745	0.6332
168	GENERAL MOTORS	BUICK RENDEZVOUS	42	67,239	0.6246
169	TOYOTA	HIGHLANDER	77	128,157	0.6008
170	GENERAL MOTORS	OLDSMOBILE SILHOUETTE VAN	11	18,330	0.6001
171	VOLKSWAGEN	NEW BEETLE	35	58,891	0.5943
172	HONDA	PILOT	71	123,095	0.5768
173	GENERAL MOTORS	SATURN VUE	58	109,455	0.5299
174	BMW	Z4	12	24,198	0.4959
175	VOLVO	XC90	6	12,404	0.4837
176	VOLVO	V70	3	6,242	0.4806
177	GENERAL MOTORS	BUICK PARK AVENUE	14	29,309	0.4777
178	SUBARU	BAJA	7	14,966	0.4677
179	SAAB	9–5	7	15,159	0.4618
180	NISSAN	INFINITI FX35	8	17,691	0.4522
181	BMW	MINI COOPER	15	33,255	0.4511
182	HONDA	CR–V	61	140,449	0.4343
183	SAAB	9–3	13	33,653	0.3863
184	SUBARU	LEGACY/OUTBACK	30	84,858	0.3535
185	VOLVO	V40	3	9,155	0.3277
186	SUBARU	FORESTER	21	65,691	0.3197
187	MERCEDES–BENZ	170 (SLK–CLASS)	2	6,526	0.3065
188	MAZDA	MPV VAN	10	33,563	0.2979
189	HONDA	ODYSSEY VAN	48	165,197	0.2906
190	GENERAL MOTORS	SATURN LW	2	7,251	0.2758
191	NISSAN	INFINITI FX45	2	7,743	0.2583
192	ASTON MARTIN	VANQUISH	0	286	0.0000
193	ASTON MARTIN	VANTAGE	0	399	0.0000
194	AUDI	ALLROAD QUATTRO	0	5,256	0.0000
195	AUDI	RS6	0	1,436	0.0000
196	AUDI	S8	0	301	0.0000
197	BMW	Z8	0	539	0.0000

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2003 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2003—Continued

	Manufacturer	Make/model (line)	Thefts 2003	Production (Mfr's) 2003	2003 Theft rate (per 1,000 vehicles produced)
198	DAIMLERCHRYSLER	DODGE VIPER	0	1,707	0.0000
199	FERRARI	360	0	885	0.0000
200	FERRARI	456	0	32	0.0000
201	FERRARI	575M	0	167	0.0000
202	FERRARI	ENZO	0	102	0.0000
203	GENERAL MOTORS	CADILLAC FUNERAL COACH/HEARSE	0	988	0.0000
204	GENERAL MOTORS	CADILLAC LIMOUSINE	0	692	0.0000
205	HONDA	ACURA NSX	0	176	0.0000
206	HONDA	INSIGHT	0	1,011	0.0000
207	JAGUAR	XJS	0	594	0.0000
208	LAMBORGHINI	MURCIELAGO	0	75	0.0000
209	LOTUS	ESPRIT	0	96	0.0000
210	MASERATI	COUPE/SPYDER	0	408	0.0000
211	MITSUBISHI	NATIVA [1]	0	470	0.0000
212	QUANTUM TECH.	CHEVROLET CAVALIER	0	313	0.0000
213	ROLLS ROYCE	BENTLEY	0	2	0.0000
214	ROLLS ROYCE	BENTLEY ARNAGE	0	107	0.0000
215	ROLLS ROYCE	BENTLEY AZURE	0	35	0.0000
216	ROLLS ROYCE	CONTINENTAL R	0	1	0.0000
217	VOLKSWAGEN	EUROVAN/CAMPER	0	4,662	0.0000

[1] This vehicle was manufactured for sale only in Puerto Rico and represents the U.S. version of Mitsubishi's Montero Sport line.

Issued on: August 3, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–15689 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 080305B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska

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

ACTION: Temporary rule; prohibition of retention.

SUMMARY: NMFS is prohibiting retention of Pacific Ocean perch in the West Yakutat District of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific Ocean perch in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Pacific Ocean perch 2005 total allowable catch (TAC) in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 4, 2005, until 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2005 TAC of Pacific Ocean perch in the West Yakutat District of the GOA is 841 metric tons as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the Pacific Ocean perch TAC in the West Yakutat District of the GOA has been reached. Therefore, NMFS is requiring that further catches of Pacific Ocean perch in the West Yakutat District of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of Pacific Ocean perch in the West Yakutat District of the GOA.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 3, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–15734 Filed 8–4–05; 2:53 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 080305A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the West Yakutat District of the Gulf of Alaska

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

ACTION: Temporary rule; prohibition of retention.

SUMMARY: NMFS is prohibiting retention of pelagic shelf rockfish in the West Yakutat District of the Gulf of Alaska (GOA). NMFS is requiring that catch of pelagic shelf rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the pelagic shelf rockfish 2005 total allowable catch (TAC) in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 4, 2005, until 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2005 TAC of pelagic shelf rockfish in the West Yakutat District of the GOA is 211 metric tons as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the pelagic shelf rockfish TAC in the West Yakutat District of the GOA has been reached. Therefore, NMFS is requiring that further catches of pelagic shelf rockfish in the West Yakutat District of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of pelagic shelf rockfish in the West Yakutat District of the GOA.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 3, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–15732 Filed 8–4–05; 2:53 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 152
Tuesday, August 9, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM318; Notice No. 25–05–13–SC]

Special Conditions: Airbus Model A380–800 Airplane, Escape Systems Installed in Non-Pressurized Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. Many of these novel or unusual design features are associated with the complex systems and the configuration of the airplane, including its full-length double deck. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding escape systems installed in non-pressurized compartments. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before September 23, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM318, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM318. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380–800 has been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of April 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The part 25 certification basis for the Model A380–800 airplane was adjusted to reflect the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR

part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Discussion of Novel or Unusual Design Features

All of the escape systems on the upper deck and one pair of the escape systems on the main deck of this airplane are installed in non-pressurized compartments. These non-pressurized compartments will be exposed to extremely cold temperatures on every flight.

When the certification testing was conducted for previous airplane programs, the FAA considered that the extreme environmental conditions to which the escape systems can be exposed would be independent of other certification criteria. For example, the escape system would be tested under conditions of extreme cold in one test and exposed to 25-knot winds at ambient temperature in a separate test. On the Model A380–800 airplane, however, all the upper deck escape systems and one pair of the main deck escape systems are located in non-pressurized compartments. As a result, these escape systems will be exposed to extremely cold temperatures on every flight. Therefore, the escape systems must be tested under conditions of both extremely cold temperatures and strong winds.

In the past, several airplanes have had a pair of escape systems installed in non-pressurized compartments. These escape systems were off-wing systems that are less affected by wind than are other escape systems, and only one pair of exits was affected. Testing the combined effects of extremely cold temperature and strong winds was not required for these systems. On the A380, however, one-half of the escape systems are installed in non-pressurized compartments. Therefore, the adverse effects of a failure of the escape system—due to the combination of extremely cold temperatures and strong wind—would be much more severe.

The regulations do not adequately address escape systems installed in non-pressurized compartments; therefore, the FAA is proposing a special condition to require the applicant to demonstrate that escape systems in non-pressurized compartments function properly when exposed to both extremely cold temperatures and strong winds.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380–800 airplane.

In addition to the requirements of §§ 25.810, 25.1301 and 25.1309, the following special condition applies:

For the escape systems on the Model A380 airplane that are installed in non-pressurized compartments and thus are exposed to extremely cold temperatures on every flight, it must be demonstrated that the escape systems function properly in the combination of the cold soak associated with long flight at altitude and a 25-knot wind from the critical angle.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15647 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM320; Notice No. 25–05–15–SC]

Special Conditions: Airbus Model A380–800 Airplane, Escape Systems Inflation Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. Many of these novel or unusual design features are associated with the complex systems and the configuration of the airplane, including its full-length double deck. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding escape system reliability. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before September 23, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM320, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No.NM 320. Comments may be inspected in the Rules Docket

weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380–800 has been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of April 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The part 25 certification basis for the Model A380–800 airplane was adjusted to reflect the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Discussion of Novel or Unusual Design Features

The inflation system for the escape systems associated with the exits includes a pressurized cylinder with a mixture of carbon dioxide and argon in both gaseous and liquid states. The inflation system also includes a smaller cylinder containing a solid propellant that burns to generate gaseous propellant. The opening of the valve and the ignition of the propellant are accomplished by the firing of squibs. The firing of these squibs is sequenced to improve their performance in the extreme temperatures to which they are subjected. Firing of the squibs is controlled by a system mounted on the the emergency exit.

The proposed design for the escape systems on the A380 is much more complex than the design of systems currently in use. Typically, inflation systems for escape systems consist of a pressurized cylinder containing a mixture of gases and a regulator valve that reduces the outlet pressure supplied from the inflation cylinder. The regulator valve is opened either by mechanical means or by the firing of a squib.

The regulations governing the certification of the A380 do not adequately address the certification requirements of this type of inflation system for an escape system. Furthermore, the Technical Standard Order (TSO) that addresses escape systems (*i.e.*, TSO–C69c) does not adequately address this type of inflation system. The current requirements for escape system reliability are predicated on a simple inflation system, where reliability is driven by the performance of the inflatable itself. The existing requirements do not account for an inflation system that could adversely affect the overall reliability of the escape system.

Since the A380 has 16 emergency exits, the requirements of § 25.810 require a total of 80 successful deployments (5 successive deployments for each exit). However, since the requirements apply to each system independently, failures in a system common to all the escape systems

would not be adequately addressed. Therefore, the inflation system needs a specific requirement that will show adequate system reliability. With a goal of achieving 95% reliability of the inflation system with a 95% confidence, we are establishing such a requirement. As we noted above, the propellant used is designed to burn. The regulations do not address this type of propellant, and some measure of fire safety protection is needed. United Nations document No.ST/SG/AC.10/I1/Rev.3 "Transport of Dangerous Goods, Manual of Tests and Criteria," section 13.7.1 contains a small scale test that addresses this concern. Propellants that pass this test will not be a fire hazard.

Therefore, the FAA is proposing a special condition to ensure that the inflation system for the A380 escape system is reliable and that the propellant itself does not constitute a fire hazard.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380–800 airplane.

a. In addition to the requirements of § 25.810, the following special conditions apply:

To ensure that the inflation system is a reliable design, it must be tested using 84 inflation/firing system bench tests with no more than one failure. For these special conditions, the inflation/firing system is defined as everything upstream of the outlet connection to the inflation valve, which includes but is not limited to the door-mounted systems that provide the firing signals to the squibs, the squibs themselves, the solid propellant, and the valve.

b. In addition to the requirements of § 25.853(a) and Appendix F Part I (a)(ii), in standard atmosphere conditions the following special conditions apply:

To ensure that the propellant itself does not contribute significantly to a fire, the propellant must be subjected to and must pass a standard "Small-Scale Burning Test," as specified in United Nations document No.ST/SG/AC.10/I1/Rev.3 "Transport of Dangerous Goods, Manual of Tests and Criteria," section 13.7.1.

Issued in Renton, Washington, on July 25, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15648 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM319; Notice No. 25–05–14–SC]

Special Conditions: Airbus Model A380–800 Airplane, Crashworthiness

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. Many of these novel or unusual design features are associated with the complex systems and the configuration of the airplane, including its full-length double deck. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding crash survivability. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before September 23, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM319, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM319. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380–800 has been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of April 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The part 25 certification basis for the Model A380–800 airplane was adjusted to reflect the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Discussion of Novel or Unusual Design Features

With its complex configuration including a full-length double deck, the Model A380 airplane has a novel and unusual design relative to large transport category airplanes which have been previously certificated under 14 CFR part 25. The A380 should provide a level of crash survivability which is at least equivalent to that demonstrated for such conventional large transport airplanes. However, its size and configuration could cause the airplane to be subject to effects of scale that decrease the ability of the occupants to survive a crash landing, compared to the occupants of those conventional airplanes.

Currently, 14 CFR 25.561 contains design load conditions covering emergency landings or minor crash landings for the local structures which support passengers, equipment, cargo, and other large items of mass in the passenger compartment. However, neither 14 CFR 25.561 nor any other part 25 requirements address the structural capability of the airframe as a whole in a crash landing. Service experience indicates that—even without specific regulatory requirements—the airframes of conventional transport category airplanes show reasonable structural capability in crash landings. Therefore, in the past we have not considered it necessary to specify design load conditions addressing the structural capability of the airplane as a whole in a crash landing.

The FAA, however, has no information to indicate whether an airplane the size and configuration of the A380 would provide reasonable airframe structural capability in a crash landing without a specific regulatory requirement. Therefore, the FAA is proposing special conditions which specify testing and analysis to ensure that the Model A380 provides a level of crash survivability equivalent to that of conventional large transport category airplanes. These special conditions address only the vertical loading of the fuselage. The longitudinal loading is not significantly different from that of a conventional transport category airplane and thus is adequately addressed by part 25.

For the special conditions, it is necessary to establish a reference point to compare the structural capability of the A380 airplane with the structural capability of current generation airplanes in a crash. This reference point is referred to as the "Limit of Reasonable Survivability." It is defined—in terms of the vertical descent rate—as the level of structural degradation that would lead, either directly or by exceedance of physiological limits of the occupants, to a significant reduction in the probability of survival in an otherwise survivable incident. (An incident can be unsurvivable due to a non-structural cause, such as a fire. An otherwise survivable incident, then, is one in which no fire or other cause makes the incident unsurvivable.). We intend that this Limit of Reasonable Survivability must be determined first for the current generation of the applicant's airplanes and then for the A380 to show that the latter has equal or better characteristics at the same vertical descent rate.

The special conditions contain a provision to ensure that the supporting airframe structure is strong and rigid enough to provide survivable living space and to hold seats, overhead bins, and other items of mass in place, even if the local attachment hardware is designed to exceed the minimum strength required by § 25.561. To provide this protection, the special conditions specify that the airframe structure must be able to support the loads imposed by items of mass, assuming that their local supporting structure does not fail, thus relieving the load on the supporting airframe structure. This assumption will ensure that the airframe structure will not collapse, even if the strength of the local attachment for items of mass exceeds the strength required by § 25.561. Since

it is the airframe as a whole and its survivable living space that are the subject of these special conditions, the FAA does not intend to increase the strength requirements of § 25.561 by special condition. Therefore, the special conditions state explicitly that the attachments of items of mass need not be designed for static emergency landing loads in excess of those specified in § 25.561.

Since larger airframe structures typically have more volume within which to absorb energy, they normally provide occupants with reasonable protection from crash loads. Therefore, the effects of the A380 design on occupant loads are not expected to be significant. In order to confirm that this assumption is correct, these special conditions require an assessment of the effect of the design on the occupant loads. For the purposes of these special conditions, an analytical tool known as the Dynamic Response Index (DRI) is used to make the assessment. DRI was developed through research and is documented in USAA VSCOM TR 89–D–22B, "Aircraft Crash Survival Design Guide, Volume II, Aircraft Design Crash Impact Conditions and Human Tolerance." DRI approximates the effect of an impact on spinal load. Based on the results of the assessment using DRI, any additional, detailed occupant load considerations can be established.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380–800 airplane.

In addition to the requirements of §§ 25.561, 25.562, 25.721, and 25.785, the following special conditions apply:

It must be demonstrated that the Model A380 provides a level of crash survivability equivalent to that of conventional large transport airplanes. This may be achieved by demonstrating by test or validated analysis that—at impacts up to a vertical descent rate representing the Limit of Reasonable Survivability—the structural capability of typical fuselage sections is equal to or better than that of a conventional large transport airplane.

(The Limit of Reasonable Survivability is defined as the level of structural degradation that would either directly or by exceedance of physiological limits of the occupants lead to a significant reduction in the probability of survival in an otherwise survivable incident.) The results of this demonstration must show the following:

a. Structural deformation will not result in infringement of the occupants' normal living space.

b. The occupants will be protected from the release of seats, overhead bins, and other items of mass due to structural deformation of the supporting structure. That is, the supporting structure must be able to support the loads imposed by these items of mass, assuming that they remain attached during the impact event, and the floor structure must deform in a way that would allow them to remain attached. However, the attachments of these items need not be designed for static emergency landing loads in excess of those specified in § 25.561.

c. The Dynamic Response Index experienced by the occupants will not be more severe than that experienced on conventional large transport airplanes. (The Dynamic Response Index is described in USAA VSCOM TR 89–D–22B, "Aircraft Crash Survival Design Guide, Volume II, Aircraft Design Crash Impact Conditions and Human Tolerance.")

d. Cargo loading of the fuselage for this evaluation accounts for variations that could have a deleterious effect on structural performance.

Issued in Renton, Washington on July 25, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15649 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM322; Notice No. 25–05–17–SC]

Special Conditions: Airbus Model A380–800 Airplane, Transient Engine Failure Loads

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. Some of these novel or unusual design features are associated with the high bypass engines used on the Model A380. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding transient engine failure loads. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before September 23, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM322, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM322. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane

Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenge, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380–800 has been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of April 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The part 25 certification basis for the Model A380–800 airplane was adjusted to reflect the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full-length double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101.

Discussion of Novel or Unusual Design Features

The Model A380 will have very large high bypass ratio engines with 110 inch diameter bypass fans, representing the latest in a trend toward increasing engine size. Engines of this size were not envisioned when § 25.361 pertaining to loads imposed by engine seizure was adopted in 1965. Worst case engine seizure events become increasingly more severe with increasing engine size because of the higher inertia of the rotating components.

Section 25.361(b)(1) requires that for turbine engine installations, the engine mounts and the supporting structures must be designed to withstand a "limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure." Limit loads are expected to occur about once in the lifetime of any airplane. Section 25.305 requires that supporting structures be able to support limit loads without detrimental permanent deformation, meaning that the supporting structures should remain serviceable after a limit load event.

Since the adoption of § 25.361(b)(1), the size, configuration, and failure modes of jet engines have changed considerably. Current engines are much larger and are designed with large bypass fans. In the event of a structural failure, these engines are capable of producing much higher transient loads on the engine mounts and supporting structures.

As a result, modern high bypass engines are subject to certain rare-but-severe engine seizure events. Service history shows that such events occur far less frequently than limit load events. Although it is important for the airplane to be able to support such rare loads safely without failure, it is unrealistic to expect that no permanent deformation will occur.

Given this situation, the Aviation Rulemaking Advisory Committee (ARAC) has proposed a design standard for today's large engines. For the commonly-occurring deceleration events, the proposed standard requires engine mounts and structures to support maximum torques without detrimental permanent deformation. For the rare-but-severe engine seizure events (*i.e.*, loss of any fan, compressor, or turbine blade), the proposed standard requires engine mounts and structures to support maximum torques without failure, but

allows for some deformation in the structure.

The FAA concludes that modern large engines, including those on the Model A380, are novel and unusual compared to those envisioned when § 25.361(b)(1) was adopted and thus warrant a special condition. The proposed special condition contains design criteria as recommended by the ARAC.

The ARAC proposal would revise the wording of § 25.361(b), including §§ 25.361(b)(1) and (b)(2), removing the language pertaining to structural failures and moving it to a separate requirement that discusses the reduced factors of safety that apply to these failures. The revised wording of § 25.361(b) would also include non-substantive changes recommended by ARAC to clarify the existing requirement. The FAA is using this ARAC text in the proposed special condition, because it clarifies the supplementary conditions for engine torque.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380–800 airplane.

a. In lieu of compliance with § 25.361(b), the following special condition applies:

For turbine engine installations, the engine mounts, pylons, and adjacent supporting airframe structure must be designed to withstand 1 g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

1. Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust; and

2. The maximum acceleration of the engine.

b. In addition to the requirements of 14 CFR part 25, the following special condition applies:

1. For engine supporting structure, an ultimate loading condition must be considered that combines 1 g flight loads with the transient dynamic loads resulting from:

(a) The loss of any fan, compressor, or turbine blade; and

(b) Separately, where applicable to a specific engine design, any other engine structural failure that results in higher loads.

2. The ultimate loads developed from the conditions specified in paragraph b. 1. above are to be:

(a) multiplied by a factor of 1.0 when applied to engine mounts and pylons; and

(b) multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

Issued in Renton, Washington, on August 1, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15654 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM321; Notice No. 25–05–16–SC]

Special Conditions: Airbus Model A380–800 Airplane, Ground Turning Loads

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. Many of these novel or unusual design features are associated with the complex systems and the configuration of the airplane, including its full-length double deck. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding ground turning loads. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before September 23, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM321, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM321. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so

without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

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

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380–800 has been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of April 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The part 25 certification basis for the Model A380–800 airplane was adjusted to reflect the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Discussion of Novel or Unusual Design Features

The A380 has a landing gear arrangement consisting of a nose gear, two wing mounted gears, and two body mounted gears. This is different from the conventional tricycle landing gear arrangement envisioned by 14 CFR 25.495. The simple load condition specified in § 25.495, while providing a realistic approximation for designing a tricycle landing gear arrangement, will give unrealistic results for the A380. Safe sizing of the A380 landing gears necessitates a rational ground turning analysis that considers the way the airplane as a whole responds to a turning maneuver.

Furthermore, recent studies of the current generation of transport category airplanes carried out in the U.S. and in Europe indicate a correlation between lower load factors in ground turns and higher gross weight of an airplane. This correlation was documented in the FAA-sponsored report, DOT/FAA/AR–02/129 *Side Load Factor Statistics from Commercial Aircraft Ground Operations,* dated January 2003. As stated in the report's abstract, "The results of this study clearly indicate, however, that the lateral loads experienced by the larger/heavier transport jets during ground turns are substantially less than those of smaller jet transports." Based on this rationale, for the A380 at maximum ramp weight—which is more than 30% heavier than any currently certificated airplane—the 0.5 g design turning load factor specified in § 25.495 is conservative. A load factor of 0.45 g is more appropriate for the A380. The data provided to the FAA support this reduced factor.

Therefore, in lieu of the requirements of § 25.495, a special condition regarding ground turning loads is justified for the Model A380 airplane. The proposed special condition would require the applicant to determine the loads on the airplane during ground turning in a rational manner and would allow the applicant to determine a limit turning lateral load factor—not less than 0.45 g's—which is appropriate for the A380 at maximum ramp weight.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380–800 airplane.

In lieu of the requirements of § 25.495, the following special condition applies:

a. The airplane is assumed to execute a steady turn by steering of any steerable gear or by application of any differential power. The airplane limit vertical load factor must be 1.0, and, in the absence of a more rational analysis, the limit airplane lateral load factor must be 0.5.

b. The airplane is assumed to be in static balance, the lateral load factor being reacted by friction forces applied at the ground contact point of each tire. The lateral load must be shared between each individual tire in a rational or conservative manner. The distribution of the load on the tire must account at least for the effects of the factors specified in subparagraph c. (2) of this special condition.

c. At maximum ramp weight, a limit value of lateral center of gravity (cg) inertia load factor lower than specified in subparagraph a. but not less than 0.45g (wing axis) may be used, if it can be shown by a rational analysis that this lower value cannot be exceeded. The rational analysis must consider at least the following:

1. The maximum lateral load factor that can be reached during the full range of likely ground operations at maximum ramp weight, including ground turning, "fishtailing," and high-speed runway exit. In each case, the full dynamic maneuver must be considered.

2. The rational analysis must include at least the following parameters:

(a) Landing gear spring curves and landing gear kinematics

(b) Reliable tire friction characteristics

(c) Airframe and landing gear flexibility when significant

(d) Airplane rigid body motion

(e) The worst combination of tire diameter, tire pressure, and runway shapes, specified in §§ 25.511(b)(2), 25.511(b)(3), and 25.511(b)(4).

d. The limit lateral load factor at maximum landing weight is 0.5.

e. Details of the analysis and any assumptions used must be agreed to by the FAA.

Any assumptions made in the analysis must be based on the intrinsic characteristics of the airplane and must be independent of airfield geometry. Other influences that cannot be controlled by the airplane design must be conservatively assessed.

Issued in Renton, Washington, on August 1, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15655 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM313; Notice No. 25–05–08–SC]

Special Conditions: Airbus Model A380–800 Airplane; Fire Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane, which has novel and unusual design features, such as a full-length double deck passenger cabin and distributed electrical equipment bays. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding fire protection. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before September 23, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM313, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM313. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX--100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380–800 has been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of April 20, 1999, and requested that the 7-year certification period which had already

been approved be continued. The part 25 certification basis for the Model A380–800 airplane was adjusted to reflect the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Discussion of Novel or Unusual Design Features

With its configuration, the Model A380–800 airplane has a novel and unusual design relative to those which have been previously certificated under 14 CFR part 25. These novel design features include a full-length double deck passenger cabin and electrical equipment bays that are distributed throughout the airplane in various locations, including one electrical equipment bay located above the flight deck.

While current regulations (§ 25.857) require that cargo compartments have a means to exclude hazardous quantities of smoke or extinguishing agent from penetrating into the occupied areas of the airplane, there is no requirement that addresses penetration of hazardous quantities of smoke or extinguishing agent from one airplane deck to another deck or between two decks via a connecting stairway.

Similarly, no current regulation requires the detection of smoke or fire in an electrical equipment bay. Typically, the electrical equipment bay on transport airplanes is located beneath the flight deck next to the forward cargo compartment. The number and location of the electrical equipment bays on the A380 is novel and may contribute to an increased risk of smoke affecting passengers and crew.

Therefore, the FAA is proposing a special condition that includes requirements to prevent propagation of smoke or extinguishing agents between or throughout cabins and to provide smoke or fire detection for electrical equipment bays.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380–800 airplane.

a. Requirements to prevent propagation of smoke or extinguishing agents between or throughout main deck and upper deck passenger cabins:

1. To prevent such propagation, the following must be demonstrated:

(a) Means to prevent hazardous quantities of smoke or extinguishing agent originating from the electrical equipment bays on either deck from incapacitating passengers and crew on the same deck, and

(b) Means to prevent hazardous quantities of smoke or extinguishing agent originating from one deck from propagating to the other deck via vents and stairways.

2. A "small quantity" of smoke may enter an occupied area only under the following conditions:

(a) The smoke enters occupied areas during system transients [1] from below deck sources. No sustained smoke penetration beyond that from environmental control system transients is permitted.

(b) Penetration of the small quantity of smoke is a dynamic event, involving either dissipation or mobility. Dissipation is rapid dilution of the smoke by ventilation air, and mobility is rapid movement of the smoke into and out of the occupied area. In no case, should there be formation of a light haze indicative of stagnant airflow, as this would indicate that the ventilation system is failing to meet the requirements of § 25.831(b).

(c) The smoke from a smoke source below the deck must not rise above armrest height.

(d) The smoke from a source on the same deck or above the deck must dissipate rapidly via dilution with fresh air and be evacuated from the airplane. A procedure must be included in the Airplane Flight Manual to evacuate smoke from the occupied areas of the airplane. In order to demonstrate that the quantity of smoke is small, a flight test must be conducted which simulates

[1] Transient airflow conditions may cause air pressure differences between compartments, before the ventilation and pressurization system is reconfigured. Additional transients occur during changes to system configurations such as pack shut-down, fan shut-down, or changes in cabin altitude; transition in bleed source change, such as from intermediate stage to high stage bleed air; and cabin pressurization "fly-through" during descent may reduce air conditioning inflow. Similarly, in the event of a fire, a small quantity of smoke that penetrates into an occupied area before the ventilation system is reconfigured would be acceptable under certain conditions described within this special condition.

the emergency procedures used in the event of a fire during flight, including the use of V_{mo}/M_{mo} descent profiles and a simulated landing, if such conditions are specified in the emergency procedure.

b. Requirement for fire detection in electrical equipment bays:

A smoke or fire detection system that complies with 14 CFR 25.858(c) and (d) must be provided for each electrical equipment bay. Each system must provide a visual indication to the flight deck within one minute after the start of a fire in an electrical equipment bay. Airplane tests must be conducted to show compliance with this requirement, and the performance of the smoke or fire detection system must be shown, in accordance with Advisory Circular 25–9A or by other means acceptable to the FAA.

Issued in Renton, Washington, on July 18, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15656 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM314; Notice No. 25–05–09–SC]

Special Conditions: Airbus Model A380–800 Airplane; Stairways Between Decks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. Many of these novel or unusual design features are associated with the complex systems and the configuration of the airplane, including its full-length double deck. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding stairways between decks. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before September 23, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM314, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM314. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380–800 has been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of April 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The part 25 certification basis for the Model A380–800 airplane was adjusted to reflect the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800

airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Discussion of Novel or Unusual Design Features

The A380 incorporates seating on two full-length passenger decks, each of which has the capacity of a typical wide body airplane. Two staircases—one located in the front of the cabin and one located in the rear—allow for the movement of persons between decks. With large seating capacities on the main deck and the upper deck of the A380–800 airplane, the staircases need to be able to support movement between decks in an inflight emergency. In addition, although compliance with the evacuation demonstration requirements of § 25.803 does not depend on the use of stairs, there must be a way for passengers on one deck to move to the other deck during an emergency evacuation. This need must be addressed in the certification of the airplane.

The regulations governing the certification of the A380 do not adequately address a passenger airplane with two separate full-length decks for passengers. The Boeing 747 and Lockheed L–1011 airplanes were certificated with limited seating capacity on two separate decks, and special conditions were issued to certificate those arrangements. When the seating capacity of the upper deck of the Boeing 747 exceeded 24 passengers, the FAA issued Special Conditions 25–61–NW–1 for a maximum seat capacity of 32 passengers on the upper deck for take-off and landing. A second set of Special Conditions, 25–71–NW–3, was issued to cover airplanes with a maximum seating capacity of 45 passengers on the upper deck for take-off and landing. That second set of Special Conditions was later modified to address airplanes with a maximum seating capacity of 110 passengers on the upper deck. These previously issued special conditions provided a starting point for the development of special conditions for the A380–800 airplane.

In the case of both the L1011 and the 747, the special conditions were based on the requirements and associated level of safety in place at the time of application for type certificate. The requirements and the level of safety have improved significantly since that time, and these special conditions reflect those improvements.

The FAA is proposing—in addition to the requirements of §§ 25.803 and 25.811 through 25.813—special conditions to address the movement of passengers between the two full-length decks on the Model A380. These special conditions provide additional requirements for the stairways to ensure the safe passage of occupants between decks during moderate turbulence, an inflight emergency, or an emergency evacuation.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380–800 airplane.

In addition to the requirements of §§ 25.803 and 25.811 through 25.813, the following special conditions apply:

a. At least one stairway between decks must meet the following requirements:

The stairway accommodates the carriage of an incapacitated person from one deck to the other. The crew member procedures for such carriage must be established.

b. At least two stairways between decks must meet the following requirements:

The stairways must be designed such that evacuees can achieve an adequate rate for going down or going up under probable emergency conditions, including a condition in which a person falls or is incapacitated while on a stairway. One of these two stairways must be the stairway specified in paragraph a. above.

c. Each stairway between decks must meet the following requirements:

1. It must have an entrance, exit, and gradient characteristics that—with the assistance of a crew member—would allow the passengers of one deck to merge with passengers of the other deck during an evacuation and exit the airplane. These entrance, exit, and gradient characteristics must occur with the airplane in level attitude and in each attitude resulting from the collapse of any one or more legs of the landing gear. These requirements must be demonstrated by tests and/or analysis.

2. The stairway must have a handrail on at least one side in order to allow people to steady themselves during foreseeable conditions, including but not limited to the condition of gear collapse on the ground and moderate turbulence in flight. The handrails must be constructed, so that there will be no obstruction on them which will cause the user to release his/her grip on the handrail or will hinder the continuous movement of the hands along the handrail. Handrails must be terminated in a manner which will not obstruct pedestrian travel or create a hazard. Adequacy of the design must be demonstrated by using persons representative of the 5% female and the 95% male.

3. The stairway must be designed and located to minimize damage to it during an emergency landing or ditching.

4. The stairway must have a wall or the equivalent on each side to minimize

the risk of falling and to facilitate use of the stairway under conditions of abnormal airplane attitude.

5. Treads and landings must be designed and demonstrated to be free of hazard. The landing area at each deck level must be demonstrated to be adequate in terms of flow rate for the maximum number of people that will be using the stair in an emergency. Treads and risers must be designed to ensure an easy and safe use of the stairway.

6. General emergency illumination must be provided so that—when measured along the centerlines of each tread and landing—the illumination is not less than 0.05 foot-candle.

7. In normal operation, the general illumination level must not be less than 0.05 foot-candles. The assessment must be done under day light and dark of night conditions.

8. Both stairway ends must be indicated by an exit sign visible to passengers when in the stairway. This exit sign must meet the requirements of § 25.812(b)(1)(ii).

9. A floor proximity path marking system which meets the requirements of § 25.812(e) must be available to guide passengers in the stairway to the stairway ends. It must not direct the occupants of the cabin to the stair entrance.

10. The public address system must be audible in the stairway during all flight phases.

11. "No smoking" and "return to seat" signs must be installed and must be visible in the stairway both going up and down and at the stairway entrances.

d. Cabin crew procedures and positions must be established to control the use of the stairs on the ground and in flight under both normal and emergency situations. This may require that cabin crew members have specific dedicated duties for the control of the stairs during emergency and precautionary evacuations.

e. It should not be hazardous for crew members or passengers who are returning to their seats to use the stairways during moderate turbulence.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15657 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM315; Notice No. 25–05–10–SC]

Special Conditions: Airbus Model A380–800 Airplane; Emergency Exit Arrangement—Outside Viewing

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. Many of these novel or unusual design features are associated with the complex systems and the configuration of the airplane, including its full-length double deck. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding outside viewing from emergency exits. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before September 23, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM315, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM315. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

Airbus applied for FAA certification/validation of the provisionally designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE-A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of

the Model A380–800 has been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of April 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The part 25 certification basis for the Model A380–800 airplane was adjusted to reflect the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Discussion of Novel or Unusual Design Features

Emergency evacuations are generally associated with adverse conditions, such as a fire outside the airplane. Because those adverse conditions may pose an immediate threat to the occupants of the airplane, it is often necessary to avoid opening emergency exits that would otherwise be usable. For this reason, it would be extremely useful to have a viewing window or other means of assessing the outside conditions to determine whether to open a particular emergency exit.

The regulations governing the certification of the A380 do not adequately address a full-length double deck airplane in terms of the exit of passengers in an emergency and a viewing window or other means of assessing the outside conditions to determine whether to open an emergency exit. Therefore, the FAA is proposing special conditions to ensure that each emergency exit has a means to permit viewing of the conditions outside the exit when the exit is closed. These special conditions are based upon Notice of Proposed Rulemaking (NPRM) 96–9 and Amendment 25–116, effective November 26, 2004, which adopted a similar requirement into § 25.809(a).

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380–800 airplane.

In addition to the requirements of § 25.809(a), the following special conditions apply:

Each emergency exit must have means to permit viewing of the conditions outside the exit when the exit is closed. The viewing means may be on the exit or adjacent to it, provided that no obstructions exist between the exit and the viewing means. Means must also be provided to permit viewing of the likely areas of evacuee ground contact with the landing gear extended as well as in all conditions of landing gear collapse. A single device that satisfies both objectives is acceptable.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15658 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM316; Notice No. 25–05–11–SC]

Special Conditions: Airbus Model A380–800 Airplane, Discrete Gust Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. Many of these novel or unusual design features are associated with the complex systems and the configuration of the airplane, including its full-length double deck. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding discrete gust requirements. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be

issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before September 23, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM316, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM316. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type certification of the Model A380–800 has been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of April 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The part 25 certification basis for the Model A380–800 airplane was adjusted to reflect the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Discussion of Novel or Unusual Design Features

In terms of discrete gust requirements, the size of the Airbus Model A380 is a novel or unusual design feature. These requirements are found in 14 CFR 25.341 (Amendment 25–86) which specifies that the gust loads acting on the airplane are to be determined by dynamic analysis, considering the dynamic and rigid body responses of the airplane. Section 25.341(a)(3) requires that a sufficient number of gust gradient distances in the range of 30 feet to 350 feet be investigated to find the critical response for each load quantity. For large airplanes, the longer gust gradient distances are vital to assess the rigid body response.

At the time § 25.341 was adopted, the value of the upper end of the range of gust gradient distances to be investigated was determined from the largest commercial airplane then in existence, the Boeing Model 747. This value was calculated to be the mean geometric chord of the Boeing 747 (which is 28 feet) multiplied by 12.5, which equals 350 feet.

Since the mean geometric chord of the A380 is larger than that of the Boeing 747, a special condition is necessary to define an appropriate upper value for the range of gust gradient distances to be investigated. That value would be the mean geometric chord of the A380 (which is 34.8 feet) multiplied by 12.5, which equals 435 feet. Increasing the range of gust gradient distances to be

investigated to 435 feet will ensure an appropriate analysis of the critical rigid body response of the A380.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Airbus A380–800 airplane.

In lieu of the requirements of § 25.341(a)(3), the following special conditions apply:

A sufficient number of gust gradient distances in the range of 30 feet to 435 feet (12.5 times the Geometric Mean Chord of the Model A380) must be investigated to find the critical response for each load quantity.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15659 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM317; Notice No. 25–05–12–SC]

Special Conditions: Airbus Model A380–800 Airplane, Flotation and Ditching

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Airbus A380–800 airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. Many of these novel or unusual design features are associated with the complex systems and the configuration of the airplane, including its full-length double deck. For these design features, the applicable airworthiness regulations do not contain adequate or appropriate safety standards regarding flotation and ditching. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Airbus Model A380–800 airplane.

DATES: Comments must be received on or before September 23, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM317, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM317. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1357; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

Airbus applied for FAA certification/validation of the provisionally-designated Model A3XX–100 in its letter AI/L 810.0223/98, dated August 12, 1998, to the FAA. Application for certification by the Joint Aviation Authorities (JAA) of Europe had been made on January 16, 1998, reference AI/L 810.0019/98. In its letter to the FAA, Airbus requested an extension to the 5-year period for type certification in accordance with 14 CFR 21.17(c). The request was for an extension to a 7-year period, using the date of the initial application letter to the JAA as the reference date. The reason given by Airbus for the request for extension is related to the technical challenges, complexity, and the number of new and novel features on the airplane. On November 12, 1998, the Manager, Aircraft Engineering Division, AIR–100, granted Airbus' request for the 7-year period, based on the date of application to the JAA.

In its letter AI/LE–A 828.0040/99 Issue 3, dated July 20, 2001, Airbus stated that its target date for type

certification of the Model A380–800 has been moved from May 2005, to January 2006, to match the delivery date of the first production airplane. In accordance with 14 CFR 21.17(d)(2), Airbus chose a new application date of April 20, 1999, and requested that the 7-year certification period which had already been approved be continued. The part 25 certification basis for the Model A380–800 airplane was adjusted to reflect the new application date.

The Model A380–800 airplane will be an all-new, four-engine jet transport airplane with a full double-deck, two-aisle cabin. The maximum takeoff weight will be 1.235 million pounds with a typical three-class layout of 555 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Airbus must show that the Model A380–800 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Airbus A380–800 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A380–800 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36. In addition, the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with 14 CFR 11.38 and become part of the type certification basis in accordance with 14 CFR 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Discussion of Novel or Unusual Design Features

While the main deck of the A380–800 airplane has five pairs of type A exits, these are not sufficient for the total number of persons on board the airplane. Therefore, the upper deck exits must also be used as ditching exits. As a result, these exits are being equipped with slide/rafts. With two decks, there is the possibility of interference between the slides or rafts of the upper deck and the slides or rafts of the main deck.

Since 14 CFR part 25 does not address the use of upper deck exits as ditching exits, the FAA is proposing special conditions to ensure that occupants can be safely evacuated from these exits following a ditching event.

Applicability

As discussed above, these special conditions are applicable to the Airbus A380–800 airplane. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features of the Airbus A380–800 airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special condition as part of the type certification basis for the Airbus A380–800 airplane.

In addition to the requirements of §§ 25.801, 25.807(i), 25.810, 25.1411, and 25.1415, the following special conditions apply:

a. For door sill heights that would be greater than six (6) feet above the waterline during a ditching event, an assist means must be provided from the airplane to the water.

b. Boarding of the upper deck slide/rafts must be demonstrated for the rated and overload capacity of the slide/rafts from the representative door sill heights associated with planned and unplanned ditching. The boarding procedure must ensure that the occupants boarding the slide/rafts remain on the slide/raft whether the occupants enter the slide or raft by walking, jumping or sliding. In addition, the boarding procedure must not result in injury to either occupants entering the slide/raft or occupants already in the slide/raft.

c. When door M3, the overwing exit on the main deck, is used to launch slide/rafts or life rafts, there must be means to prevent the release of the upper deck slide/rafts on top of the slide/raft or life rafts launched from that door. Those means may use either airplane design or a crew procedure.

d. It must be demonstrated that the upper deck slide/rafts located at doors U1 and U2 (just forward and just aft of the wing) can be safely separated from the airplane. Safety considerations include damage to the slide/rafts, injury to occupants of the slide/raft, ejection of the occupants from the slide/raft into the water as a result of the contact with the wing, and the slide/raft becoming beached on the wing. Probable damage to the wing leading and trailing edge flight control structure during a water landing must be considered when assessing the damage caused to the slide/rafts or life rafts.

e. It must be demonstrated that when the upper deck slide/rafts are separated from the airplane, they do not injure occupants of the slide/raft, eject occupants of the slide/raft into the water, or damage the slide/raft in a way that affects its seaworthiness.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15660 Filed 8–8–05; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 174, 175, and 176

RIN 0790–AH91

Revitalizing Base Closure Communities and Addressing Impacts of Realignment

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) proposes to consolidate parts 174

and 175, and amend part 176 of title 32, Code of Federal Regulations. These parts provide rules for the disposal of property at installations being closed and realigned and how to address the impacts of realignment at receiving installations. The resulting part 174 also contains amendments to address changes in the laws governing base closure and realignment (BRAC) made since the current parts 174 and 175 were promulgated. In addition to the amendments to address changes in law, additional amendments are proposed to reflect current DoD policy and to address various environmental requirements not currently addressed in parts 174 and 175. The amendment to part 176 is ministerial to reflect the renumbering of parts 174 and 175.

DATES: Submit comments on or before October 11, 2005.

ADDRESSES: Address all comments concerning this proposed rule to—Attn: BRAC Regulations, Deputy Under Secretary of Defense (Installations & Environment), 3015 Defense Pentagon, Washington, DC 20301–3015.

FOR FURTHER INFORMATION CONTACT: Mr. Steven N. Kleiman at (703) 571–9085.

SUPPLEMENTARY INFORMATION: This action is authorized by the Defense Base Closure and Realignment Act of 1990, Title XXIX of the National Defense Authorization Act for Fiscal Year 1991, Pub. L. 101–510; the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Pub. L. 103–421; the Military Construction Authorization Act for Fiscal Year 1994, Division B of Pub. L. 103–160; and 10 U.S.C. 113.

The Department of Defense engaged in four rounds of base closures and realignments announced in 1988, 1991, 1993, and 1995. The Congress has authorized another round of base closures and realignments in 2005 and the process for selecting installations for closure and realignment is currently underway. In anticipation of the recommendations of the 2005 Defense Base Closure and Realignment Commission becoming law, the DoD is revising its existing regulations on the disposal process to ensure they reflect current law and policy and take advantage of experience gained from the previous four rounds.

The current parts 174 and 175 reflect two separate DoD issuances: DoD Directive 4165.66, Revitalizing Base Closure Communities and Community Assistance, and DoD Instruction 4165.67, Revitalizing Base Closure Communities—Base Closure Community Assistance. These two issuances are being revised to become DoD Directive 4165.66, Revitalizing Base Closure Communities and Addressing Impacts of Realignment, and DoD Instruction 4165.67, Revitalizing Base Closure Communities and Addressing Impacts of Realignment. The proposed part 174 will reflect these two revised DoD issuances. Because the Instruction is tiered off of, and subservient to, the Directive, there is no reason to continue with separate parts in title 32. Combining these two DoD issuances, when published in the Code of Federal Regulations, helps to clarify and consolidate the rules that the two issuances jointly address.

Since the original publication of the current parts 174 and 175, which directly reflect the formatting and style of the current DoDD 4165.66 and DoDI 4165.67, the Department of Defense has changed the formatting and style of its issuances. This new formatting and style is reflected in the proposed amendments, particularly with regard to the proposed sections 174.1 through 174.5, which reflect the standardized language now used in DoD issuances. Of immediate note is the division of the material into separate sections based on subject, rather than having most of the material of the current part 175 contained in a single long section.

The proposed section 174.1 continues to authorize publication of a DoD manual, DoD 4165.66–M, which is renamed the "Base Redevelopment and Realignment Manual".

The proposed section 174.3 contains new and updated definitions, relying, when appropriate, on adopting by reference definitions contained in law.

The proposed section 174.4 contains updated policy statements. The policy statements are reflective of current DoD policy and are similar to the policy enunciated in the Secretary of Defense's recommendations to the 2005 Defense Base Closure and Realignment Commission.

The proposed section 174.5 contains more expansive delegations and re-delegations of authority. It does not include authority to select installations for closure and realignment, since that is not the subject of the proposed part. It also specifically excludes authority under section 330 of the National Defense Authorization Act for Fiscal Year 1993, because that authority has been delegated by the Secretary of Defense to the General Counsel of the Department of Defense.

The proposed section 174.6 more closely tracks the statutory role given the local redevelopment plan than does the current provision.

The proposed section 174.7 more closely tracks statutory provisions by clarifying the process for transfer of property to other DoD Components and Federal agencies. One goal is to expedite the process for determining when excess real property will be transferred to another Federal agency. Expediting this process should aid the Local Redevelopment Authority (LRA) in formulating its redevelopment plan.

The proposed section 174.8 recognizes changes made in the law governing disposal by referring the user to part 176, which contains the current provisions governing disposal outside of the Federal Government.

The proposed section 174.9 provides new language addressing economic development conveyances (EDCs) to reflect changes in the law. It deletes prior language that is now either inaccurate or unnecessary. It recognizes the duty of the Secretary to seek to obtain fair market value for EDCs. It recognizes the statutory purpose of job generation for an EDC. It explicitly adopts the use of the Uniform Appraisal Standards for Federal Land Acquisitions, published by the Appraisal Institute in cooperation with the U.S. Department of Justice.

The proposed section 174.10 provides new language addressing consideration for EDCs. It recognizes the statutory preference for obtaining fair market value with the alternative of a no-cost EDC. The changes from prior language track changes in the law.

The proposed section 174.11 changes prior language by emphasizing that the purpose of leasing property to non-Federal entities is to secure the final disposition of the real property.

The proposed section 174.12 provides new language to reflect statutory changes in the leasing back by Federal agencies of transferred real property. It clarifies when such leases with an LRA can be used and when and how they can be terminated. In the past, such leasing arrangements were referred to as "leasebacks".

The proposed section 174.13 reflects changes in the law dealing with the disposal of personal property. It clarifies what constitutes personal property, when and how an inventory will be conducted, and when further action can be taken with regard to the personal property. It more closely tracks the current law with regard to what qualifies as personal property for purposes of an inventory. It explicitly states that fixtures are not part of the personal property, it being the common rule that fixtures are part of the real property. It clarifies that only property owned by the United States can be considered under the provision, since property belonging to the State or to

private individuals does not belong to the United States and cannot be included for purposes of this provision.

The proposed section 174.14 revises language to reflect current law relating to time limits on maintenance of property. It deletes prior language that is no longer accurate.

The current rule does not address certain environmental matters that the DoD has found, as a result of previous BRAC rounds, to be central to the disposal and realignment process. The proposed changes to the current rule address four issues: (1) Indemnification under Section 330 of the National Defense Authorization Act for Fiscal Year 1993; (2) decontamination of potentially explosive materials; (3) the National Environmental Policy Act (NEPA); and (4) historic preservation.

The proposed section 174.15 is entirely new. It provides guidance to DoD personnel regarding the application of section 330 of the National Defense Authorization Act for Fiscal Year 1993. Because that provision of law is handled under other procedures and by an office other than the organizations applying the revised part 174, explicit guidance is provided to the DoD Components to avoid attempting to apply that provision of law in the process addressed by the revised part 174.

The proposed section 174.16 is entirely new. It provides direction to DoD Components to ensure that restoration projects involving contamination by potentially explosive materials are properly coordinated with the DoD Explosives Safety Board in accordance with DoD Directive 6055.9.

The proposed section 174.17 is entirely new. It provides direction to DoD Components that when conducting environmental analysis pursuant to the National Environmental Policy Act of 1969 (NEPA), the analysis will be conducted in accordance with the regulations of the Military Department exercising real property accountability for the installation. This provision clarifies which NEPA regulation will control when the DoD Component being realigned to an installation is different from the Military Department that has jurisdiction over the installation.

The proposed section 174.18 is entirely new. It provides guidance and authority for use of what are generally referred to as preservation easements when disposing of property that is eligible for listing on the National Register under the National Historic Preservation Act.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action. This rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The regulatory changes proposed in this notice address the disposal of Government property, primarily to LRAs, which are local governmental entities. The impacts on small entities that result from base closure are due to the closure of installations, which is not covered by these regulations. These regulations deal primarily with the subsequent disposal of property.

It has been certified that this part does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Parts 174, 175, and 176

Community development, Government employees, Military personnel, Surplus Government property.

Accordingly, 32 CFR part 174 is revised, part 175 is removed, and part 176 is amended to read as follows:

1. Part 174 is revised to read as follows:

PART 174—REVITALIZING BASE CLOSURE COMMUNITIES AND ADDRESSING IMPACTS OF REALIGNMENT

Authority: 10 U.S.C. 113 and 10 U.S.C. 2687 note.

Subpart A—General

§ 174.1 Purpose.

This part:

(a) Establishes policy, assigns responsibilities, and implements base closure laws and associated provisions of law relating to the closure and the realignment of installations. It does not address the process for selecting installations for closure or realignment.

(b) Authorizes the publication of DoD 4165.66-M,[1] "Base Redevelopment and Realignment Manual," in accordance with DoD 5025.1-M,[2] "DoD Directive System Procedures," March 2003.

§ 174.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

[1] Document scheduled for publication after completion of the Directive.

[2] Copies may be obtained at *http://www.dtic.mil/whs/directives/corres/pub1.html.*

(b) Installations in the United States selected for closure or realignment under a base closure law.

(c) Federal agencies and non-Federal entities that seek to obtain real or personal property on installations selected for closure or realignment.

§ 174.3 Definitions.

(a) *Base closure law.* This term has the same meaning as provided in 10 U.S.C. 101(a)(17)(B) and (C).

(b) *Closure.* An action that ceases or relocates all current missions of an installation and eliminates or relocates all current personnel positions (military, civilian, and contractor), except for personnel required for caretaking, conducting any ongoing environmental cleanup, or property disposal. Retention of a small enclave, not associated with the main mission of the base, is still a closure.

(c) *Consultation.* Explaining and discussing an issue, considering objections, modifications, and alternatives; but without a requirement to reach agreement.

(d) *Date of approval.* This term has the same meaning as provided in section 2910(8) of the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510.

(e) *Excess property.* This term has the same meaning as provided in 40 U.S.C. 102(3).

(f) *Installation.* This term has the same meaning as provided in the definition for "military installation" in section 2910(4) of the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510.

(g) *Local Redevelopment Authority* (LRA). This term has the same meaning as provided in the definition for "redevelopment authority" in section 2910(9) of the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510.

(h) *Military Department.* This term has the same meaning as provided in 10 U.S.C. 101(a)(8).

(i) *National Environmental Policy Act* (NEPA). The National Environmental Policy Act of 1969, Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*, as amended.

(j) *Realignment.* This term has the same meaning as provided in section 2910(5) of the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510.

(k) *Secretary concerned.* This term has the same meaning as provided in 10 U.S.C. 101(a)(9) (A), (B), and (C).

(l) *Surplus property.* This term has the same meaning as provided in 40 U.S.C. 102(10).

(m) *Transition coordinator.* This term has the same meaning as used in section 2915 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160.

Subpart B—Policy

§ 174.4 Policy.

It is DoD policy to:

(a) Act expeditiously whether closing or realigning. Relocating activities from installations designated for closure will, when feasible, be accelerated to facilitate the transfer of real property for community reuse. In the case of realignments, the Department will pursue aggressive planning and scheduling of related facility improvements at the receiving location.

(b) Fully utilize all appropriate means to transfer property. Federal law provides the Department with an array of legal authorities, including public benefit transfers, economic development conveyances at cost and no cost, negotiated sales to state or local government, conservation conveyances, and public sales, by which to transfer property on closed or realigned installations. Recognizing that the variety of types of facilities available for civilian reuse and the unique circumstances of the surrounding communities does not lend itself to a single universal solution, the Department will use this array of authorities in a way that considers individual circumstances.

(c) Rely on and leverage market forces. Community redevelopment plans and military conveyance plans should be integrated to the extent practical and should take account of any anticipated demand for surplus military land and facilities.

(d) Collaborate effectively. Experience suggests that collaboration is the linchpin to successful installation redevelopment. Only by collaborating with the local community can the Department close and transfer property in a timely manner and provide a foundation for solid economic redevelopment.

(e) Speak with one voice. The Department of Defense, acting through the DoD Components, will provide clear and timely information and will encourage affected communities to do the same.

(f) Work with communities to address growth. If installation growth is substantial, the Department will work with the surrounding community so that the public and private sectors can provide the services and facilities needed to accommodate new personnel and their families. The Department recognizes that installation commanders and local officials need to integrate elements of their growth planning so that appropriate off-base facilities and services are available for arriving personnel and their families.

§ 174.5 Responsibilities.

(a) The Under Secretary of Defense for Acquisition, Technology, and Logistics shall issue DoD Instructions as necessary to further implement applicable public laws affecting installation closure and realignment implementation and shall monitor compliance with this part. All authorities and responsibilities of the Secretary of Defense—

(1) Vested in the Secretary of Defense by a base closure law, but excluding those provisions relating to the process for selecting installations for closure or realignment;

(2) Delegated from the Administrator of General Services relating to base closure and realignment matters;

(3) Vested in the Secretary of Defense by any other provision relating to base closure and realignment in a national defense authorization act, a Department of Defense appropriations act, or a military construction appropriations act, but excluding section 330 of the National Defense Authorization Act for Fiscal Year 1993; or

(4) Vested in the Secretary of Defense by Executive Order or regulation and relating to base closure and realignment, are hereby delegated to the Under Secretary of Defense for Acquisition, Technology, and Logistics.

(b) The authorities and responsibilities of the Secretary of Defense delegated to the Under Secretary of Defense for Acquisition, Technology, and Logistics under subsection (a) of this section are hereby re-delegated to the Deputy Under Secretary of Defense (Installations and Environment).

(c) The Heads of the DoD Components shall ensure compliance with this part and any implementing guidance.

(d) Subject to the delegations in paragraphs (a) and (b) of this section, the Secretaries concerned shall exercise those authorities and responsibilities specified in subparts C through G of this part.

(e) The cost of recording deeds and other transfer documents is the responsibility of the transferee.

Subpart C—Working With Communities and States

§ 174.6 LRA and the Redevelopment Plan.

(a) The LRA should have broad-based membership, including, but not limited to, representatives from those jurisdictions with zoning authority over

the property. Generally, there will be one recognized LRA per installation.

(b) The LRA should focus primarily on developing a comprehensive redevelopment plan based upon local needs. The plan should recommend land uses based upon an exploration of feasible reuse alternatives. If applicable, the plan should consider notices of interest received under a base closure law. This section shall not be construed to require a plan that is enforceable under state and local land use laws, nor is it intended to create any exemption from such laws.

(c)(1) The Secretary concerned will develop a disposal plan and, to the extent practicable, complete the appropriate environmental documentation no later than 12 months after receipt of the redevelopment plan. The redevelopment plan will be used as part of the proposed Federal action in conducting environmental analyses required under NEPA.

(2) In the event there is no LRA recognized by DoD or if a redevelopment plan is not received from the LRA within 9 months from the date referred to in section 2905(b)(7)(F)(iv) of Pub. L. 101–510 (unless an extension of time has been granted by the Deputy Under Secretary of Defense (Installations and Environment)), the Secretary concerned shall, after required consultation with the governor and heads of local governments, proceed with the disposal of property under applicable property disposal and environmental laws and regulations.

Subpart D—Real Property

§ 174.7 Retention for DoD Component use and transfer to other Federal agencies.

(a) To speed the economic recovery of communities affected by closures and realignments, the Department of Defense will identify DoD and Federal interests in real property at closing and realigning installations as quickly as possible. The Secretary concerned shall identify such interests. The Secretary concerned will keep the LRA informed of these interests. This section establishes a uniform process, with specified timelines, for identifying real property that is available for use by DoD Components (which for purposes of this section includes the United States Coast Guard) or is excess to the needs of the Department of Defense and available for use by other Federal agencies, and for the disposal of surplus property for various purposes.

(b) Upon the President's submission of the recommendations for base closures and realignments to the Congress in accordance with a base closure law, the Secretary concerned shall send out a notice of potential availability to the DoD Components and other Federal agencies. The notice of potential availability is a public document and should be made available on a timely basis, upon request. Federal agencies are encouraged to review this list, and to evaluate whether they may have a requirement for the listed properties. The notice of potential availability should describe the property and buildings that may be available for transfer. Installations which wholly or in part are comprised of withdrawn and reserved public domain lands shall implement paragraph (m) of this section at the same time.

(c) The Secretary concerned should consider LRA input, if provided, in making determinations on the retention of property (location and size of cantonment area).

(d) Within one week of the date of approval of the closure or realignment, the Secretary concerned shall issue a notice of availability to the DoD Components and other Federal agencies covering closing and realigning installation buildings and property available for transfer to the DoD Components and other Federal agencies. Withdrawn public domain lands which the Secretary of the Interior has determined are suitable for return to the jurisdiction of the Department of the Interior (DoI) will not be included in the notice of availability.

(e) To obtain consideration of a requirement for such available buildings and property, a DoD Component or Federal agency is required to provide a written, firm expression of interest for buildings and property within 30 days of the date of the notice of availability. An expression of interest must explain the intended use and the corresponding requirement for the buildings and property.

(f)(1) Within 60 days of the date of the notice of availability, the DoD Component or Federal agency expressing interest in buildings or property must submit an application for transfer of such property to a Military Department or Federal agency. In the case of a DoD Component that would normally, under the circumstances, obtain its real property needs from the Military Department disposing of the real property, the application should indicate the property would not transfer to another Military Department but should be retained by the current Military Department for the use of the DoD Component. To the extent a different Military Department provides real property support for the requesting DoD Component, the application must indicate the concurrence of the supporting Military Department.

(2) Within 90 days of the notice of availability, the Federal Aviation Administration (FAA) should survey the air traffic control and air navigation equipment at the installation to determine what is needed to support the air traffic control, surveillance, and communications functions supported by the Military Department, and to identify the facilities needed to support the National Airspace System. FAA requests for property to manage the National Airspace System will not be governed by paragraph (i) of this section. Instead, the FAA shall work directly with the Military Department to prepare an agreement to assume custody of the property necessary for control of the airspace being relinquished by the Military Department.

(g) The Secretary concerned will keep the LRA informed of the progress in identifying interests. At the same time, the LRA is encouraged to contact Federal agencies which sponsor public benefit conveyances for information and technical assistance. The Secretary concerned will provide to the LRA points of contact at the Federal agencies.

(h) DoD Components and Federal agencies are encouraged to discuss their plans and needs with the LRA, if an LRA exists. If an LRA does not exist, the consultation should be pursued with the governor or the heads of the local governments in whose jurisdiction the property is located. DoD Components and Federal agencies are encouraged to notify the Secretary concerned of the results of this consultation. The Secretary concerned, the Transition Coordinator, and the DoD Office of Economic Adjustment Project Manager are available to help facilitate communication between the DoD Components and Federal agencies, and the LRA, governor, and heads of local governments.

(i) An application for property from a DoD Component or Federal agency must contain the following information:

(1) A completed GSA Form 1334, Request for Transfer (for requests from DoD Components, a DD Form 1354 will be used). This must be signed by the head of the Component or agency requesting the property. If the authority to acquire property has been delegated, a copy of the delegation must accompany the form;

(2) A statement from the head of the requesting Component or agency that the request does not establish a new program (*i.e.*, one that has never been reflected in a previous budget submission or Congressional action);

(3) A statement that the requesting Component or agency has reviewed its real property holdings and cannot satisfy its requirement with existing property. This review must include all property under the requester's accountability, including permits to other Federal agencies and outleases to other organizations;

(4) A statement that the requested property would provide greater long-term economic benefits for the program than acquisition of a new facility or other property;

(5) A statement that the program for which the property is requested has long-term viability;

(6) A statement that considerations of design, layout, geographic location, age, state of repair, and expected maintenance costs of the requested property clearly demonstrate that the transfer will prove more economical over a sustained period of time than acquiring a new facility;

(7) A statement that the size of the property requested is consistent with the actual requirement;

(8) A statement that fair market value reimbursement to the Military Department will be made at the later of January of 2008, or at the time of transfer, unless this obligation is waived by the Office of Management and Budget and the Secretary concerned, or a public law specifically provides for a non-reimbursable transfer (this requirement does not apply to requests from DoD Components);

(9) A statement that the requesting DoD Component or Federal agency agrees to accept the care and custody costs for the property on the date the property is available for transfer, as determined by the Secretary concerned; and

(10) A statement that the requesting agency agrees to accept transfer of the property in its existing condition, unless this obligation is waived by the Secretary concerned.

(j) The Secretary concerned will make a decision on an application from a DoD Component or Federal agency based upon the following factors:

(1) The requirement must be valid and appropriate;

(2) The proposed use is consistent with the highest and best use of the property;

(3) The proposed transfer will not have an adverse impact on the transfer of any remaining portion of the installation;

(4) The proposed transfer will not establish a new program or substantially increase the level of a Component's or agency's existing programs;

(5) The application offers fair market value for the property, unless waived;

(6) The proposed transfer addresses applicable environmental responsibilities to the satisfaction of the Secretary concerned; and

(7) The proposed transfer is in the best interest of the Government.

(k) When there is more than one acceptable application for the same building or property, the Secretary concerned shall consider, in the following order—

(1) The need to perform the national defense missions of the Department of Defense and the Coast Guard;

(2) The need to support the homeland defense mission; and

(3) The LRA's comments as well as other factors in the determination of highest and best use.

(l) If the Federal agency does not meet its commitment under subsection (i)(8) of this section to provide the required reimbursement, and the requested property has not yet been transferred to the agency, the requested property will be declared surplus and disposed of in accordance with the provisions of this part.

(m) Closing or realigning installations may contain "public domain lands" which have been withdrawn by the Secretary of the Interior from operation of the public land laws and reserved for use by the Department of Defense. Lands deemed suitable for return to the public domain are not real property governed by title 40, United States Code, and are not governed by the property management and disposal provisions of a base closure law. Public domain lands are under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management (BLM) unless the Secretary of the Interior has withdrawn the lands and reserved them for another Federal agency's use.

(1) The Secretary concerned will provide the BLM with the notice of potential availability, as well as information about which, if any, public domain lands will be affected by the installation's closure or realignment.

(2) The BLM will review the notice of potential availability to determine if any installations contain withdrawn public domain lands. Before the date of approval of the closure or realignment, the BLM will review its land records to identify any withdrawn public domain lands at the closing installations. Any records discrepancies between the BLM and Military Departments should be resolved within this time period. The BLM will notify the Secretary concerned as to the final agreed upon withdrawn and reserved public domain lands at an installation.

(3) Upon agreement as to what withdrawn and reserved public domain lands are affected at closing installations, the BLM will initiate a screening of DoI agencies to determine if these lands are suitable for programs of the Secretary of the Interior.

(4) The Secretary concerned will transmit a Notice of Intent to Relinquish (see 43 CFR Part 2370) to the BLM as soon as it is known that there is no DoD Component interest in reusing the public domain lands. The BLM will complete the suitability determination screening process within 30 days of receipt of the Secretary's Notice of Intent to Relinquish. If a DoD Component is approved to reuse the public domain lands, the BLM will be notified and BLM will determine if the current authority for military use of these lands needs to be modified or amended.

(5) If BLM determines the land is suitable for return, it shall notify the Secretary concerned that the intent of the Secretary of the Interior is to accept the relinquishment of the land by the Secretary concerned.

(6) If BLM determines the land is not suitable for return to the DoI, the land should be disposed of pursuant to base closure law.

(n) The Secretary concerned should make a surplus determination within six (6) months of the date of approval of closure or realignment, and shall inform the LRA of the determination. If requested by the LRA, the Secretary may postpone the surplus determination for a period of no more than six (6) additional months after the date of approval if the Secretary determines that such postponement is in the best interests of the communities affected by the closure or realignment.

(1) In unusual circumstances, extensions beyond six months can be granted by the Deputy Under Secretary of Defense (Installations and Environment).

(2) Extensions of the surplus determination should be limited to the portions of the installation where there is an outstanding interest, and every effort should be made to make decisions on as much of the installation as possible, within the specified timeframes.

(o) Once the surplus determination has been made, the Secretary concerned shall follow the procedures in part 176 of this title.

(p) Following the surplus determination, but prior to the disposal of property, the Secretary concerned may, at the Secretary's discretion,

withdraw the surplus determination and evaluate a Federal agency's late request for excess property.

(1) Transfers under this subsection shall be limited to special cases, as determined by the Secretary concerned.

(2) Requests shall be made to the Secretary concerned, as specified under paragraphs (h) and (i) of this section, and the Secretary shall notify the LRA of such late request.

(3) Comments received from the LRA and the time and effort invested by the LRA in the planning process should be considered when the Secretary concerned is reviewing a late request.

§ 174.8 Screening for properties covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, cross-reference.

The Departments of Defense and Housing and Urban Development have promulgated regulations to address state and local screening and approval of redevelopment plans for installations covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103–421). The Department of Defense regulations can be found at part 176 of this title.

§ 174.9 Economic development conveyances.

(a) The Secretary concerned may transfer real property and personal property to the LRA for purposes of job generation on the installation. Such a transfer is an Economic Development Conveyance (EDC).

(b) For installations having a date of approval for closure after January 1, 2005, the Secretary concerned shall seek to obtain consideration in connection with any transfer under this section in an amount equal to the fair market value of the property.

(c) An LRA is the only entity able to receive property under an EDC.

(d) A properly completed application will be used to decide whether an LRA will be eligible for an EDC. An LRA may submit an EDC application only after it adopts a redevelopment plan. The Secretary concerned shall establish a reasonable time period for submission of an EDC application after consultation with the LRA. The Secretary will review the application and make a decision whether to make an EDC based on the criteria specified in paragraph (g) of this section; such decision will only be made after the Secretary has notified and obtained the concurrence of the Deputy Under Secretary of Defense (Installations & Environment) of the proposed decision. The terms and conditions of the EDC will be negotiated between the Secretary and the LRA.

(e) The application should explain why an EDC is necessary for job generation on the installation. In addition to the following elements, after the Secretary concerned reviews the application, additional information may be requested to allow for a better evaluation of the application:

(1) A copy of the adopted redevelopment plan.

(2) A project narrative including the following:

(i) A general description of the property requested.

(ii) A description of the intended uses.

(iii) A description of the economic impact of closure or realignment on the local community.

(iv) A description of the financial condition of the community and the prospects for redevelopment of the property.

(v) A statement of how the EDC is consistent with the overall redevelopment plan.

(3) A description of how the EDC will contribute to short- and long-term job generation on the installation, including the projected number and type of new jobs it will assist in generating.

(4) A business/operational plan for the EDC parcel, including such elements as:

(i) A development timetable, phasing schedule, and cash flow analysis.

(ii) A market and financial feasibility analysis describing the economic viability of the project, including an estimate of net proceeds over a fifteen-year period, the proposed consideration or payment to the Department of Defense, and the estimated present fair market value of the property.

(iii) A cost estimate and justification for infrastructure and other investments needed for the development of the EDC parcel.

(iv) Local investment and proposed financing strategies for the development.

(5) A statement describing why other authorities, such as public or negotiated sales and public benefit conveyances for education, parks, public health, aviation, historic monuments, prisons, and wildlife conservation, cannot be used to accomplish the job generation goals.

(6) Evidence of the LRA's legal authority to acquire and dispose of the property.

(7) Evidence that the LRA has full authority to perform all of the actions required pursuant to the terms of the EDC, and that the officers executing the EDC documents on behalf of the LRA have full authority to do so.

(8) Proof the LRA has obtained sufficient financing for acquiring the EDC property and carrying out the LRA's redevelopment objectives.

(f) Upon receipt of an application for an EDC, the Secretary concerned will determine whether an EDC is needed for purposes of job generation and examine whether the terms and conditions proposed are fair and reasonable. The Secretary may also consider information independent of the application, such as views of other Federal agencies, appraisals, caretaker costs, and other relevant material. The Secretary may propose and negotiate any alternative terms or conditions that the Secretary considers necessary seeking always to obtain an amount equal to the fair market value.

(g) The following factors will be considered, as appropriate, in evaluating the application and the terms and conditions of the proposed transfer, including price, time of payment, and other relevant methods of compensation to the Federal Government.

(1) Adverse economic impact of closure or realignment on the region and potential for economic recovery through an EDC.

(2) Extent of short- and long-term job generation.

(3) Consistency with the entire redevelopment plan.

(4) Financial feasibility of the development, including market analysis and need and extent of proposed infrastructure and other investments.

(5) Extent of state and local investment, level of risk incurred, and the LRA's ability to implement the plan.

(6) Current local and regional real estate market conditions.

(7) Incorporation of other Federal agency interests and concerns, and applicability of, and conflicts with, other Federal surplus property disposal authorities.

(8) Relationship to the overall Military Department disposal plan for the installation.

(9) Economic benefit to the Federal Government, including protection and maintenance cost savings and anticipated consideration from the transfer.

(10) Compliance with applicable Federal, State, interstate, and local laws and regulations.

(h) Before making an EDC, the Secretary concerned shall prepare an estimate of the fair market value of the property.

(1) In preparing the estimate of fair market value, the Secretary concerned shall use the most recent edition of the Uniform Appraisal Standards for Federal Land Acquisitions, published by the Appraisal Institute in cooperation with the U.S. Department of Justice.

(2) The Secretary concerned shall consult with the LRA on valuation assumptions, guidelines, and on instructions given to the appraiser.

(3) The Secretary concerned is fully responsible for completion of the valuation. The Secretary, in preparing the estimate of fair market value shall consider the proposed uses identified in the redevelopment plan to the extent that they are not inconsistent with the highest and best use.

§ 174.10 Consideration for economic development conveyances.

(a) For conveyances made pursuant to § 174.9 of this part, the Secretary concerned will review the application for an EDC and negotiate the terms and conditions of each transaction with the LRA. The Secretary will have the discretion and flexibility to enter into agreements that specify the form of payment and the schedule. The consideration may be in cash or in-kind and may be paid over time.

(b) The Secretary concerned shall seek to obtain consideration at least equal to the fair market value, as determined by the Secretary.

(c) Any amount paid in the future should take into account the time value of money and include repayment of interest.

(d) Additional provisions may be incorporated in the conveyance documents to protect the Department's interest in obtaining the agreed upon consideration, including such items as predetermined release prices, or other appropriate clauses designed to ensure payment and protect against fraudulent transactions.

(e)(1) An EDC without consideration may only be made if—

(i) The LRA agrees that the proceeds from any sale or lease of the property (or any portion thereof) received by the LRA during at least the first seven years after the date of the initial transfer of property shall be used to support economic redevelopment of, or related to, the installation; and

(ii) The LRA executes the agreement for transfer of the property and accepts control of the property within a reasonable time after the date of the property disposal record of decision.

(2) The following purposes shall be considered a use to support economic redevelopment of, or related to, the installation—

(i) Road construction;

(ii) Transportation management facilities;

(iii) Storm and sanitary sewer construction;

(iv) Police and fire protection facilities and other public facilities;

(v) Utility construction;

(vi) Building rehabilitation;

(vii) Historic property preservation;

(viii) Pollution prevention equipment or facilities;

(ix) Demolition;

(x) Disposal of hazardous materials generated by demolition;

(xi) Landscaping, grading, and other site or public improvements; and

(xii) Planning for or the marketing of the development and reuse of the installation.

(f) Every agreement for an EDC without consideration shall contain provisions allowing the Secretary concerned to recoup from the LRA such portion of the proceeds from its sale or lease as the Secretary determines appropriate if the LRA does not use the proceeds to support economic redevelopment of, or related to, the installation for the period specified in paragraph (e)(1) of this section.

§ 174.11 Leasing of real property to non-Federal entities.

(a) Leasing of real property to non-Federal entities prior to the final disposition of closing and realigning installations may facilitate state and local economic adjustment efforts and encourage economic redevelopment, but the Secretary concerned will always concentrate on the final disposition of real and personal property.

(b) In addition to leasing property at fair market value, to assist local redevelopment efforts the Secretary concerned may also lease real and personal property, pending final disposition, for less than fair market value if the Secretary determines that:

(1) A public interest will be served as a result of the lease; and,

(2) The fair market value of the lease is unobtainable or not compatible with such public benefit.

(c) Pending final disposition of an installation, the Secretary concerned may grant interim leases which are short-term leases that make no commitment for future use or ultimate disposal. When granting an interim lease, the Secretary will generally lease to the LRA but can lease property directly to other entities. If the interim lease (after complying with NEPA) is entered into prior to completion of the final disposal decisions, the term may be for up to five years, including options to renew, and may contain restrictions on use. Leasing should not delay the final disposal of the property. After completion of the final disposal decisions, the term of the lease may be longer than five years.

(d) If the property is leased for less than fair market value to the LRA and the interim lease permits the property to be subleased, the interim lease shall provide that rents from the subleases will be applied by the lessee to the protection, maintenance, repair, improvement, and costs related to the property at the installation consistent with 10 U.S.C. 2667.

§ 174.12 Leasing of transferred real property by Federal agencies.

(a) The Secretary concerned may transfer real property that is still needed by a Federal agency (which for purposes of this section includes DoD Components) to an LRA provided the LRA agrees to lease the property to the Federal agency in accordance with all statutory and regulatory guidance. (This leasing arrangement was referred to as a "leaseback" in previous versions of this part.)

(b) The decision whether to transfer property pursuant to such a leasing arrangement rests with the Secretary concerned. However, a Secretary shall only transfer property subject to such a leasing arrangement if the Federal agency that needs the property agrees to the leasing arrangement.

(c) If the subject property cannot be transferred pursuant to such a leasing arrangement (*e.g.*, the relevant Federal agency prefers ownership, the LRA and the Federal agency cannot agree on terms of the lease, or the Secretary concerned determines that such a lease would not be in the Federal interest), such property shall remain in Federal ownership unless and until the Secretary concerned determines that it is surplus.

(d) If a building or structure is proposed for transfer pursuant to this section, that which is leased by the Federal agency may be all or a portion of that building or structure.

(e) Transfers pursuant to this section must be to an LRA.

(f) Either existing Federal tenants or Federal agencies desiring to locate onto the property after operational closure may make use of such a leasing arrangement. The Secretary concerned may not enter into such a leasing arrangement unless:

(1) In the case of a Defense Agency, the Secretary concerned is acting in an Executive Agent capacity on behalf of the Agency that certifies that such a leasing arrangement is in the interest of that Agency; or,

(2) In the case of a Military Department, the Secretary concerned certifies that such a leasing arrangement is in the best interest of the Military Department and that use of the property by the Military Department is consistent with the obligation to close or realign

the installation in accordance with the recommendations of the Defense Base Closure and Realignment Commission.

(g) Property eligible for such a leasing arrangement is not surplus because it is still needed by the Federal Government. Even though the LRA would not otherwise have to include such property in its redevelopment plan, it should include the property in its redevelopment plan anyway to take into account the planned Federal use of such property.

(h) The terms of the LRA's lease to the Federal Government should afford the Federal agency rights as close to those associated with ownership of the property as is practicable. The requirements of the General Services Administration (GSA) Federal Acquisition Regulation (48 CFR Part 570) are not applicable to the lease, but provisions in that regulation may be used to the extent they are consistent with this part. The terms of the lease are negotiable subject to the following:

(1) The lease shall be for a term of no more than 50 years, but may provide for options for renewal or extension of the term at the request of the Federal Government. The lease term should be based on the needs of the Federal agency.

(2) The lease, or any renewals or extensions thereof, shall not require rental payments.

(3) Notwithstanding paragraph (h)(2) of this section, if the lease involves a substantial portion of the installation, the Secretary concerned may obtain facility services for the leased property and common area maintenance from the LRA or the LRA's assignee as a provision of the lease.

(i) Such services and common area maintenance shall be provided at a rate no higher than the rate charged to non-Federal tenants of the transferred property.

(ii) Such services and common area maintenance shall not include—

(A) Municipal services that a State or local government is required by law to provide to all landowners in its jurisdiction without direct charge, including police protection; or

(B) Firefighting or security-guard functions.

(iii) The Federal agency may be responsible for services such as janitorial, grounds keeping, utilities, capital maintenance, and other services normally provided by a landlord. Acquisition of such services by the Federal agency is to be accomplished through the use of Federal Acquisition Regulation procedures or otherwise in accordance with applicable statutory and regulatory requirements.

(4) The lease shall include a provision prohibiting the LRA from transferring fee title to another entity during the term of the lease, other than one of the political jurisdictions that comprise the LRA, without the written consent of the Federal agency occupying the leased property.

(5)(i) The lease shall include an option specifying that if the Federal agency no longer needs the property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another Federal agency that needs property for a similar use. ("Similar use" is a use that is comparable to or essentially the same as the use under the original lease, as determined by the Secretary concerned.)

(ii)(A) If the tenant is a DoD Component, before notifying GSA of the availability of the leasehold, it shall determine whether any other DoD Component has a requirement for the leasehold; in doing so, it shall consult with the LRA. If another DoD Component has a requirement for the leasehold, that DoD Component shall be allowed to assume the leasehold for the remainder of its term. If no DoD Component has a requirement for the leasehold, the tenant shall notify GSA in accordance with paragraph (h)(5)(i)(B) of this section.

(B) The Federal tenant shall notify the GSA of the availability of the leasehold. GSA will then decide whether to exercise this option after consulting with the LRA or other property owner. The GSA shall have 60 days from the date of notification in which to identify a Federal agency to serve out the term of the lease and to notify the LRA or other property owner of the new tenant. If the GSA does not notify the LRA or other property owner of a new tenant within such 60 days, the leasehold shall terminate on a date agreed to by the Federal tenant and the LRA or other property owner.

(iii) If the GSA decides not to exercise this option after consulting with the LRA or other property owner, the leasehold shall terminate on a date agreed to by the Federal tenant and the LRA or other property owner.

(6) The terms of the lease shall provide that the Federal agency may repair and improve the property at its expense after consultation with the LRA.

(i) Property subject to such a leasing arrangement shall be conveyed in accordance with the existing EDC procedures. The LRA shall submit the following in addition to the application requirements outlined in § 174.9(e) of this part:

(1) A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease to a Federal agency;

(2) A written statement signed by an authorized representative of the Federal agency that it agrees to accept the lease of the property; and,

(3) A statement explaining why such a leasing arrangement is necessary for the long-term economic redevelopment of the installation property.

(j) The exact amount of consideration, or the formula to be used to determine that consideration, as well as the schedule for payment of consideration must be agreed upon in writing before transfer pursuant to this section.

Subpart E—Personal Property

§ 174.13 Personal property.

(a) This section outlines procedures to allow transfer of personal property to the LRA for the effective implementation of a community redevelopment plan. Personal property does not include fixtures.

(b) The Secretary concerned, supported by DoD Components with personal property on the installation, will take an inventory of the personal property, including its condition, within 6 months after the date of approval of closure or realignment. This inventory will be limited to the personal property located on the real property to be disposed of by the Military Department. The inventory will be taken in consultation with LRA officials. If there is no LRA, the Secretary concerned shall consult with the local government in whose jurisdiction the installation is wholly located, or a local government agency or a State government agency designated for that purpose by the Governor of the State. Based on these consultations, the installation commander will determine the items or category of items that have the potential to enhance the reuse of the real property.

(c) Except for property subject to the exemptions in subsection (e) of this section, personal property with potential to enhance the reuse of the real property shall remain at an installation being closed or realigned until the earlier of:

(1) one week after the Secretary concerned receives the redevelopment plan;

(2) the date notified by the LRA that there will be no redevelopment plan;

(3) 24 months after the date of approval of the closure or realignment of the installation; or

(4) 90 days before the date of the closure or realignment of the installation.

(d) National Guard property under the control of the United States Property and Fiscal Officer is subject to inventory and may be made available for redevelopment planning purposes.

(e) Personal property may be removed upon approval of the installation commander or higher authority, as prescribed by the Secretary concerned, after the inventory required in paragraph (b) of this section has been sent to the LRA, when:

(1) The property is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

(2) The property is uniquely military in character and is likely to have no civilian use (other than use for its material content or as a source of commonly used components). This property consists of classified items; nuclear, biological, and chemical items; weapons and munitions; museum property or items of significant historic value that are maintained or displayed on loan; and similar military items;

(3) The property is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary concerned and the LRA);

(4) The property is stored at the installation for purposes of distribution (including spare parts or stock items) or redistribution and sale (DoD excess/surplus personal property). This property includes materials or parts used in a manufacturing or repair function but does not include maintenance spares for equipment to be left in place;

(5) The property meets known requirements of an authorized program of a DoD Component or another Federal agency that would have to purchase similar items, and is the subject of a written request by the head of the DoD Component or other Federal agency. If the authority to acquire personal property has been delegated, a copy of the delegation must accompany the request. (For purposes of this paragraph, "purchase" means the DoD Component or Federal agency intends to obligate funds in the current quarter or next six fiscal quarters.) The DoD Component or Federal agency must pay packing, crating, handling, and transportation charges associated with such transfers of personal property;

(6) The property belongs to a nonappropriated fund instrumentality (NAFI) of the Department of Defense; separate arrangements for communities to purchase such property are possible and may be negotiated with the Secretary concerned;

(7) The property is not owned by the Department of Defense, *i.e.*, it is owned by a Federal agency outside the Department of Defense or by non-Federal persons or entities such as a State, a private corporation, or an individual; or,

(8) The property is needed elsewhere in the national security interest of the United States as determined by the Secretary concerned. This authority may not be re-delegated below the level of an Assistant Secretary. In exercising this authority, the Secretary may transfer the property to any DoD Component or other Federal agency.

(f) Personal property not subject to the exemptions in subsection (e) of this section may be conveyed to the LRA as part of an EDC for the real property if the Secretary concerned makes a finding that the personal property is necessary for the effective implementation of the redevelopment plan.

(g) Personal property may also be conveyed separately to the LRA under an EDC for personal property. This type of EDC can be made if the Secretary concerned determines that the transfer is necessary for the effective implementation of a redevelopment plan with respect to the installation. Such determination shall be based on the LRA's timely application for the property, which should be submitted to the Secretary upon completion of the redevelopment plan. The application must include the LRA's agreement to accept the personal property after a reasonable period and will otherwise comply with the requirements of sections 174.9 and 174.10 of this part. The transfer will be subject to reasonable limitations and conditions on use.

(h) Personal property that is not needed by a DoD Component or a tenant Federal agency or conveyed to an LRA (or a state or local jurisdiction in lieu of an LRA), or conveyed as related personal property together with the real property, will be transferred to the Defense Reutilization and Marketing Office for disposal in accordance with applicable regulations.

(i) Useful personal property not needed by the Federal Government and not qualifying for transfer to the LRA under an EDC may be donated to the community or LRA through the appropriate State Agency for Surplus Property (SASP) under 41 CFR part 102–37 surplus program guidelines. Personal property donated under this procedure must meet the usage and control requirements of the applicable SASP.

Subpart F—Maintenance and Repair

§ 174.14 Maintenance and repair.

(a) Facilities and equipment located on installations being closed are often important to the eventual reuse of the installation. This section provides maintenance procedures to preserve and protect those facilities and items of equipment needed for reuse in an economical manner that facilitates installation redevelopment.

(b) In order to ensure quick reuse, the Secretary concerned, in consultation with the LRA, will establish initial levels of maintenance and repair needed to aid redevelopment and to protect the property for the time periods set forth in subsection (c) of this section. Where agreement between the Secretary and the LRA cannot be reached, the Secretary will determine the required levels of maintenance and repair and its duration. In no case will these initial levels of maintenance:

(1) Exceed the standard of maintenance and repair in effect on the date of approval of closure or realignment;

(2) Be less than maintenance and repair required to be consistent with Federal Government standards for excess and surplus properties as provided in the Federal Management Regulations of the GSA;

(3) Be less than the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes; or,

(4) Require any property improvements, including construction, alteration, or demolition, except when the demolition is required for health, safety, or environmental purposes, or is economically justified in lieu of continued maintenance expenditures.

(c) Unless the Secretary concerned determines that it is in the national security interest of the United States, the levels of maintenance and repair specified in paragraph (b) of this section shall not be changed until the earlier of:

(1) One week after the Secretary concerned receives the redevelopment plan;

(2) The date notified by the LRA that there will be no redevelopment plan;

(3) 24 months after the date of approval of the closure or realignment of the installation; or

(4) 90 days before the date of the closure or realignment of the installation.

(d) The Secretary concerned may extend the time period for the initial levels of maintenance and repair for property still under the Secretary's control for an additional period, if the Secretary determines that the LRA is

actively implementing its redevelopment plan, and such levels of maintenance are justified.

(e) Once the time period for the initial or extended levels of maintenance and repair expires, the Secretary concerned will reduce the levels of maintenance and repair to levels consistent with Federal Government standards for excess and surplus properties as provided in the Federal Management Regulations of the GSA, except in the case of facilities still being used to perform a DoD mission.

Subpart G—Environmental Matters

§ 174.15 Indemnification under Section 330 of the National Defense Authorization Act for Fiscal Year 1993.

Section 330 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102–484, as amended, provides for indemnification of transferees of closing Department of Defense properties under circumstances specified in that statute. The authority to implement this provision of law has been delegated by the Secretary of Defense to the General Counsel of the Department of Defense; therefore, this provision of law shall only be referred to or recited in any deed, sales agreement, bill of sale, lease, license, easement, right-of-way, or transfer document for real or personal property after obtaining the written concurrence of the Deputy General Counsel (Environment and Installations), Office of the General Counsel, Department of Defense.

§ 174.16 Decontamination of potentially explosive materials.

The DoD Component conducting restoration shall submit all plans for decontamination of potentially explosive materials to the DoD Explosives Safety Board, in accordance with DoD Directive 6055.9, DoD Explosives Safety Board (DDESB) and DoD Component Explosives Safety Responsibilities, and any implementing standards issued under that Directive, for approval prior to disposing of property, either directly or by transfer to another agency for disposal or reuse.

§ 174.17 NEPA.

At installations subject to this part, NEPA analysis shall comply with the promulgated NEPA regulations of the Military Department exercising real property accountability for the installation, including any requirements relating to responsibility for funding the analysis. See 32 CFR parts 651 (for the Army), 775 (for the Navy), and 989 (for the Air Force). Nothing in this section shall be interpreted as releasing a Military Department from complying with its own NEPA regulation.

§ 174.18 Historic preservation.

(a) The transfer, lease, or sale of National Register-eligible historic property to a non-Federal entity at installations subject to this part may constitute an "adverse effect" under the regulations implementing the National Historic Preservation Act (36 CFR 800.5(a)(2)(vii)). One way of resolving this adverse effect is to restrict the use that may be made of the property subsequent to its transfer out of Federal ownership or control through the imposition of legally enforceable restrictions or conditions. The Secretary concerned may include such restrictions or conditions (typically a real property interest in the form of a restrictive covenant or preservation easement) in any deed or lease conveying an interest in historic property to a non-Federal entity. Before doing so, the Secretary should first consider whether the historic character of the property can be protected effectively through planning and zoning actions undertaken by units of State or local government; if so, working with such units of State or local government to protect the property through these means is preferable to encumbering the property with such a covenant or easement.

(b) Before including such a covenant or easement in a deed or lease, the Secretary concerned shall consider—

(1) Whether the jurisdiction that encompasses the property authorizes such a covenant or easement; and

(2) Whether the Secretary can give or assign to a third party the responsibility for monitoring and enforcing such a covenant or easement.

PART 175—[REMOVED AND RESERVED]

2. Part 175 is removed and reserved.

PART 176—REVITALIZING BASE CLOSURE COMMUNITIES AND COMMUNITY ASSISTANCE—COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE

3. The authority citation for part 176 continues to read as follows:

Authority: 10 U.S.C. note.

§ 176.20 [Amended]

4. Section 176.20 (b) is amended by revising "32 CFR part 175" to read "32 CFR part 174".

Dated: August 4, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–15698 Filed 8–8–05; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R09–OAR–2005–CA–0002; FRL–7945–1]

Revision to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing approval of local rules that address the opacity standard; PM–10, CO, and SO_2 emissions from industrial processes; and source tests. We are also proposing the rescission of local rules that concern exemptions from emission standards; analytical methods; and PM–10, CO, and SO_2 emission standards.

DATES: Any comments on this proposal must arrive by September 8, 2005.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2005–CA–0002, by one of the following methods:

- Agency Web site: *http://docket.epa.gov/rmepub/*. EPA prefers receiving comments through this electronic public docket and comment system. Follow the on-line instructions to submit comments.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions.
- *E-mail: steckel.andrew@epa.gov.*
- Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that

you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through the agency Web site, eRulemaking portal, or e-mail. The agency Web site and eRulemaking portal are "anonymous access" systems, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *http://docket.epa.gov/rmepub* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed below.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local VCAPCD Rules 50, 52, 53, 68, 74.25, and 102 and the recision of local VCAPCD Rules 55, 60, and 100. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 5, 2005.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 05–15742 Filed 8–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2005–OH–0005; FRL–7949–5]

Approval and Promulgation of Implementation Plans; Ohio Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve assorted revisions to regulations governing particulate matter emissions in the Cleveland area. These revisions affect emission limits for Ford Motor Company's Cleveland Casting Plant and Cleveland facilities of General Chemical Corporation and International Steel Group (formerly LTV Steel). EPA concludes that Ohio has provided a suitable modeling demonstration that the revised limits continue to provide for attainment of the air quality standard for particles 10 microns and less (known as PM_{10}).

Ohio submitted these revisions on July 18, 2000, along with revisions of other particulate matter regulations, most of which had statewide applicability. EPA proposed action on these other revisions on December 2, 2002, at 67 FR 71515. EPA is not reopening the comment period on the prior proposal. EPA anticipates publishing final rulemaking addressing the complete Ohio submittal, considering comments on the prior proposal and any comments addressing today's proposal.

DATES: Written comments on this proposed rule must arrive on or before September 8, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–OH–0005, by one of the following methods:

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

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

E-mail: mooney.john@epa.gov.

Fax: (312)886–5824.

Mail: You may send written comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05-OAR–2005-OH–0005. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section IV of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some

information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone John Summerhays at 312–886–6067 before visiting the Region 5 office. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

This notice is organized as follows:

I. Background of State Submittal

A. Does This Action Apply to Me?

This action addresses particulate matter in Cuyahoga County, Ohio. Thus, this action applies to you if you have an interest in particulate matter air quality in Cuyahoga County.

B. What Did Ohio Submit?

Ohio submitted several revisions to its particulate matter regulations on July 18, 2000. These revisions generally addressed appeals by affected industries of the regulations that Ohio adopted in 1991. The revisions amended several rules with statewide applicability, particularly affecting the requirements for utilities and for iron and steelmaking facilities, and further amended the requirements for several specific facilities in the Cleveland and Steubenville areas.

EPA proposed rulemaking on most of these revisions on December 2, 2002, at 67 FR 71515. That notice of proposed rulemaking provided a more detailed discussion of the background and contents of Ohio's submittal. At that time, EPA deferred rulemaking on the Cleveland area emission limits pending receipt of a further assessment of the impact of the revisions on attainment of the annual air quality standard for particles 10 microns and smaller, known as PM_{10}. EPA also solicited further information from Ohio concerning the emissions of selected sources in the area.

Ohio submitted a revised modeling analysis of air quality impacts on February 12, 2003. Ohio provided further emissions documentation on January 7, 2004, and February 1, 2005, and provided a final modeling analysis on April 21, 2005. With this information, EPA is now proposing rulemaking on the remainder of Ohio's July 2000 submittal, specifically addressing emission limit revisions in the Cleveland area. EPA anticipates publishing a single final rulemaking that addresses the entire Ohio submittal.

II. Review of Cleveland Area Emission Limits

Ohio revised emission limits for Ford Motor Company, General Chemical Corporation, and International Steel Group (ISG, formerly LTV Steel) facilities in the area. Some of these revisions affected numerical emission limits of units at these facilities. In addition, the revised rules provide modified approaches to regulating fugitive emissions from roadways, parking areas, and storage piles for the Ford Motor Company and ISG facilities.

The principal criterion for reviewing these revisions is whether the revised limits continue to provide for attainment of the PM_{10} standards. Ohio's July 2000 submittal included a modeling analysis seeking to demonstrate that the revised limits continue to yield concentrations below both the 24-hour average standard and the annual average standard even if sources emit at their maximum capacity. Ohio submitted further information addressing annual average modeling results by letter dated February 12, 2003, and by electronic mail dated March 24, 2003. Ohio provided further information on selected emission rates by memoranda dated January 7, 2004, and February 1, 2005, and provided further modeling information by electronic mail dated April 21, 2005. The review of Ohio's revisions primarily involves reviewing this modeling demonstration that the revised limits continue to provide for attainment. The next section of this notice reviews the emissions estimates used in this analysis, followed by a section that reviews the modeling analysis.

One other relevant criterion is whether the limitations in Ohio's rules are enforceable. In general, these rules impose the same types of limitations as did previous rules; these rules raise no new issues regarding enforceability. EPA believes that these regulations are fully enforceable.

A. Did Ohio Use Appropriate Emissions Estimates?

The revised limitations address both stack sources and fugitive sources of air emissions. For the stack sources, the emissions to be input into the model simply reflect the applicable emissions limit, which defines the maximum allowable emissions for these sources. To be precise, since the adopted regulations limit total suspended particulate matter (TSP) emissions while the modeling assesses PM_{10} concentrations, the model input reflects the PM_{10} emissions expected when the source is emitting TSP at the allowable level. Thus, the modeled emissions reflect subtraction of emissions of particles larger than 10 micrometers and addition where estimates can be made of emissions of condensible particles that are PM_{10} but are not measured by the applicable TSP test method.

For the fugitive sources, the emissions associated with the applicable limits are more difficult to assess. The fugitive sources subject to revised limits in Cuyahoga County include the paved and unpaved roadways and parking areas as well as the storage piles at the Ford and ISG facilities. At the Ford facility, the limit for paved roadways and parking areas was changed from one minute of visible emissions per hour to five percent opacity, based on an average of three readings for each of four vehicle passes. For the Ford facility's unpaved roadways and parking areas, the revised rules allow Ford to opt (with at least 30 days' notice) to be subject to either the prior limit of 13 minutes of visible emissions per hour or an alternative requirement for a specified set of emission control practices. For the Ford facility's storage piles, the revised rules allow Ford to opt (again with at least 30 days' notice) to be subject either to the prior limit of 13 minutes of visible emissions per hour or an alternative limit of 20 percent opacity.

For unpaved roadways and parking areas at the ISG facility, the revised rules replace the former limit of three minutes of visible emissions with a limit of five percent opacity, averaged over three readings from each of four vehicle passes. Similarly for paved roadways and parking areas at ISG, the

revised rules replace the former limit of one minute per hour of visible emissions with a limit of five percent opacity, again averaged over three readings from each of four vehicle passes. For storage piles at ISG, the revised rules replace the prior limit of one minute visible emissions per hour with a limit of 20 percent opacity for material handling and 10 percent for wind erosion (based on a 3-minute average) and 10 percent opacity for vehicle operation on storage piles (based on 3 readings for each of four vehicle passes).

With the exception of the limits at storage piles at the ISG facility, Ohio believes that the new limits are equivalent to the former limits. For the various options that the rules provide the Ford facility, Ohio's submittal reflects a view that Ford is in each case given a choice between two equivalent options. EPA concurs that, again with the exception of the ISG storage pile limits, the revised rules have approximately equivalent stringency as the former rules. Therefore, Ohio may appropriately assume the same emission levels for these sources in its attainment demonstration as it used in its 1991 SIP.

With the ISG facility's storage piles, on the other hand, a revised emission estimate is necessary. These estimates are difficult to make, in part due to the limited information available on fugitive emissions at specified opacity levels. Ohio estimated that, as compared to the 90 percent control required by the prior limit, the revised limits require a 75 percent reduction from uncontrolled emission levels. EPA believes this provides an appropriate estimate of allowable emissions from these sources.

EPA reviewed the emissions values used in the modeling analysis and requested further documentation of the values used for selected emission points at the Ford and ISG facilities. Ohio provided this documentation on January 7, 2004 (addressing the Ford facility), and February 1, 2005 (addressing the ISG facility). The remainder of this section reviews issues arising in this supplemental documentation.

A first issue concerns use of actual rather than allowable emission rates. For PM_{10} attainment plans, for most emission points, EPA guidance calls for use of maximum allowable emissions. At a pair of emission points at the ISG facility, Ohio used actual emissions levels. These two emission points are the combustion stacks for a pair of coke batteries that were both shut down about 10 years ago and thus currently have zero emissions.

In effect, EPA guidance for PM_{10} attainment plans mandates modeling the maximum quantity of emissions that the source in its existing configuration is allowed to emit. If the source is modified, the new source review rules protect against significant adverse impacts: if the modification increases emissions enough to have potential for more than *de minimis* air quality impact, then explicit steps must be taken to address the impact.

For these coke combustion stacks, one scenario would be a resumption of operations. Such a resumption would likely trigger permit review, including reassessment of whether the permit limits continue to assure attainment of the PM_{10} air quality standards.

A more likely scenario would be for the emission reductions from the shutdown of the coke batteries to be used to compensate for another emission increase at the plant, *i.e.* to use the reductions as "netting credits" to show that the facility has no more than a *de minimis* net increase in emissions notwithstanding the other emission increase. The quantity of "netting credits" is limited to the actual emissions of the source when it was in operation, not its allowable emissions. Consequently, for these two emission points, the appropriate baseline is their former actual emission level rather than the allowable emission level, since the actual emission level is the baseline above which emission increases will either be judged to be *de minimis* or trigger the full set of new source review requirements including air quality impact protection. Thus, for these emission points, it is appropriate to model their former actual emissions.

EPA reviewed the additional documentation on emissions at the Ford facility, submitted to EPA on January 7, 2004, and concluded that emissions at this facility were properly estimated. On the other hand, the documentation submitted on February 1, 2005 identifies errors in the emissions values that had been used in the modeling analyses for ISG's Number 2 Basic Oxygen Furnace scrubber stack and for the General Chemical facility. The modeling provided by Ohio on April 21, 2005 corrects these errors. EPA concludes that the emission estimates used in the April 21, 2005 modeling provide a proper basis for assessing whether Ohio's emission limits assure attainment of the PM_{10} standard.

B. Did Ohio Conduct an Appropriate Modeling Analysis?

Ohio's modeling analysis in many ways resembled the modeling for the 1991 SIP which EPA ultimately approved on June 12, 1996 (61 FR 29662). In general, emission inputs were identical to those in the 1991 SIP except for those emissions expected to change as a result of modified emission limits. The meteorological data were the same as in the 1991 SIP, again using surface data from Cleveland and upper air data from Buffalo from the 5-year period from 1983 to 1987.

Ordinarily, states are required to use the most recent available 5 years of meteorological data. This guidance is intended to assure an unbiased selection of meteorological data. At the time of the 1991 SIP, Ohio's meteorological data were the most recent available data. EPA believes that it is not necessary to use more recent meteorological data in this case. In a multi-source context such as Cleveland, for a pollutant such as PM_{10} where source impacts are relatively localized, the most likely effect of changing the meteorological data set is to have a mix of results in which some sources have larger estimated impacts and other sources have smaller estimated impacts. This in turn would suggest that some sources would need lower emission limits and other sources could have higher emission limits. Overall, however, EPA has no reason to expect the use of an updated meteorological data set to provide a more protective set of emission limits in these circumstances. Since most emissions sources in the area are not becoming subject to new emission limits, EPA believes that to require use of new meteorological data to review existing emissions limits would be disruptive, resource intensive and not warranted. EPA seeks to assure that the meteorological data provide an unbiased basis for assessing the adequacy of the area's emission limits for assuring attainment of the clean air standards, and we believe that the existing meteorological data satisfy this purpose in these circumstances.

Although inputs in the State's analysis were largely the same as in the 1991 analysis (other than emission rates allowed to change by new limits), Ohio used an updated dispersion model. Specifically, Ohio used the Industrial Source Complex-Short Term-3 (ISCST3, Version 99155) in this analysis, as compared to ISC in the 1991 analysis. This change is warranted in order to take advantage of the improvements in analytical tools in the newer model.

One improvement in the newer model is the ability to model large area sources. Ohio's 1991 analysis addressed large area sources by using a separate model called RAM. Unfortunately, RAM was only able to predict short term average concentrations. The modeling in Ohio's July 2000 submittal matched its 1991 modeling by considering large area

source impacts in assessing 24-hour average concentrations but not in assessing annual average concentrations. Ohio then conducted further modeling, including these large area sources in the assessment of annual average concentrations, modeling which it submitted on February 12, 2003.

Ohio's annual average modeling included two steps. First, Ohio modeled all sources, including the large area sources, at full capacity operation, estimating concentrations at numerous receptor sites. At one site near Ford and two sites near ISG, estimated concentrations exceeded the annual standard for selected modeled years.

As a second step, Ohio further assessed concentrations at these three receptor sites, using emission rates adjusted in accordance with EPA modeling guidance to consider the percent of time that sources are not operating and thus not emitting. Consistent with EPA guidance, Ohio obtained this information for the last two years. Ohio found that the Ford facility is routinely shut down for several days a year. In 2001 and 2002, the facility was shut down for an average of 29.5 days, indicating that annual emissions from all its emission points could be modeled at (365 − 29.5)/365 or 0.92 times the emission rate used in the modeling of 24-hour average concentrations. For the ISG facility, Ohio obtained further information on hours of operations of a barge unloading source, and modeled with emissions adjusted to reflect this usage information for this source. Ohio's analysis using these adjusted emission rates showed concentrations below 50 $\mu g/m^3$ for all receptors for all modeled years, with the highest year's annual average at these receptors found to be 49.8 $\mu g/m^3$, 48.0 $\mu g/m^3$, and 42.7 $\mu g/m^3$, respectively. More importantly, the 5-year average concentrations were found to be 40.7 $\mu g/m^3$, 47.2 $\mu g/m^3$, and 40.1 $\mu g/m^3$ at the receptor near the Ford facility and the two receptors near the ISG facility, respectively.

Ohio did not directly address annual average PM_{10} concentrations with an emissions inventory that corrects the errors identified in Ohio's submittal of February 1, 2005. However, Ohio's analyses of 24-hour PM_{10} concentrations demonstrate that correction of these errors does not affect estimated short term average concentrations by more than 0.4 $\mu g/m^3$. The effect on annual average concentrations would be even less. Therefore, EPA concludes that Ohio has provided adequate evidence that the rules it submitted assure that the emissions allowed under the rules will not cause violations of the annual PM_{10} standard.

The most relevant modeling analysis relative to the 24-hour PM_{10} standard is the modeling that Ohio submitted April 21, 2005, reflecting corrected emission rates appropriate for assessing whether the limits in the submitted rules assure attainment of the standard. This analysis again shows the highest concentrations to be near the Ford facility and the ISG facility. Since this standard allows 1 expected exceedance of 150 $\mu g/m^3$ per year, the critical question is whether the sixth highest concentration at any receptor across the 5 years that were modeled exceeds 150 $\mu g/m^3$. The highest of the sixth highest concentrations at receptors near the Ford facility is 147.4 $\mu g/m^3$. The highest of the sixth highest concentrations at receptors near the ISG facility is 143.6 $\mu g/m^3$. Concentrations estimated elsewhere are lower, usually substantially lower. Consequently, based on this analysis, EPA concludes that Ohio's regulations continue to assure attainment of the PM_{10} standards in Cuyahoga County. Since the regulations are also fully enforceable, EPA concludes that it may propose to approve these regulations as continuing to meet relevant requirements.

III. Summary of EPA Action

EPA is proposing to approve the limits for Cuyahoga County sources contained in the particulate matter rules that Ohio submitted July 18, 2000. These limits are primarily contained in Rule 3745–17–12 of Ohio Administrative Code, but also include Rule 3745–17–07(B)(9) and (B)(10), related provisions in Rule 3745–17–08 (providing revised limits on fugitive dust at the Ford facility), and Rule 3745–17–11(B)(6) (limiting emissions from ISG's 84-inch mill reheat furnaces). EPA is also proposing to approve the compliance schedules contained in Rule 3745–17–04 for sources with revised limits.

IV. Procedures for Commenting

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

1. The Regional Office has established an electronic public rulemaking file available for inspection at RME under ID No. R05–OAR–2005–OH–0005, and a hard copy file which is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include CBI or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

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

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

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket R05–OAR–2005–OH–0005" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. Submit comments to John Mooney at the email or street address given in the **ADDRESSES** section at the beginning of this notice.

V. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

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

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

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13132 Federalism

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

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

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

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 27, 2005.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 05–15747 Filed 8–8–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 70, No. 152
Tuesday, August 9, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 05–025N]

Codex Alimentarius Commission: Fifth Session of the Codex *ad hoc* Intergovernmental Task Force on Foods Derived From Biotechnology

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on August 30, 2005, to provide draft U.S. positions and receive public comments on agenda items that will be discussed at the Fifth Session of the Codex *ad hoc* Intergovernmental Task Force on Foods Derived from Biotechnology of the Codex Alimentarius Commission (Codex), which will be held in Chiba, Japan, September 19–23, 2005. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to comment on the agenda items that will be debated at this forthcoming Session of the FBT.

DATES: The public meeting is scheduled for Tuesday, August 30, 2005, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in Room 107A, Jamie Whitten Building, 1400 Independence Ave., SW., Washington, DC.

Documents related to the Fifth Session of the FBT will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*.

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to the FSIS Docket Clerk, USDA, Food Safety and Inspection Service, 300 12th Street, SW., Room 102, Cotton Annex, Washington, DC 20730. All comments received must include the Agency name and docket number 05–025N. All comments submitted in response to this notice, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/*.

Participation by Conference Call: A call-in number has been arranged: 1–888–405–9176, participant code CODEX.

FOR FURTHER INFORMATION ABOUT THE FIFTH SESSION OF THE FBT CONTACT: U.S. Delegate, Bernice Slutsky, Special Assistant to the Secretary for Biotechnology, Office of the Secretary, USDA, 1400 Independence Ave., SW., Washington, DC 20250, Phone (202) 720–3631, Fax: (202) 720–6314, E-mail: *Bernice.Slutsky@usda.gov*.

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Ellen Matten, International Issues Analyst, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and the Environmental Protection Agency manage and carry out U.S. Codex activities.

The Codex *ad hoc* Intergovernmental Task Force on Foods Derived from Biotechnology was established by the 23rd Session of the Codex Alimentarius Commission in 1999 to elaborate standards, guidelines, or other principles as relates to foods derived from biotechnology. The Task Force completed its mandates within its four year time frame and was dissolved by the 26th Session of the Commission. The 27th Session re-established the Task Force for another four year period. The Task Force is hosted by the government of Japan.

Issues to be Discussed at the Public Meeting

The following items on the agenda for the Fifth Session of FBT will be discussed during the public meeting:

- Matters referred to the Committee from other Codex bodies.
- Review of the Work by International Organizations on the Evaluation of the Safety and Nutrition Aspects of Foods Derived from Biotechnology.
- Consideration of the Elaboration of Standards, Guidelines or other Texts for Foods Derived from Biotechnology.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Japanese Secretariat to the Meeting. Members of the public may access or request copies of these documents at: *http://www.codexalimentarious.net/current.asp*.

Public Meeting

At the August 30, 2005, public meeting, draft U.S. positions on these agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the Fifth Session of FBT, Dr. Bernice Slutsky, (see **FOR FURTHER INFORMATION ABOUT THE FIFTH SESSION OF THE FBT CONTACT**). Written comments should state that they relate to activities of the Fifth Session of the FBT.

Additional Public Information

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and, in particular, minorities, women, and persons with

disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an electronic mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to protect their accounts with passwords.

Done at Washington, DC on August 4, 2005.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 05–15729 Filed 8–8–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Commercial Pack Station and Pack Stock Outfitter/Guide Permit Issuance; Inyo National Forest; Inyo, Mono, and Tulare Counties, CA and Mineral County, NV

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 to document and disclose the environmental impacts of a proposal to issue long term permits for a variety of commercial pack stock related activities to twelve existing Resort Special Use Permit holders (commercial service supported by horse). The DEIS also analyzes a proposal from one current outfitter and guide (commercial service supported by burros) and a proposal from one new outfitter and guide (commercial service supported by llamas) to issue permits for their proposed commercial activities. The services as proposed would occur on the Inyo National Forest in the Ansel Adams (AA), John Muir (JM), Golden Trout (GT), and South Sierra (SS) Wildernesses, and the non-wilderness portions of the Inyo National Forest. This EIS tiers to the Record of Decision that will be signed for the Trail and Commercial Pack Stock Management Plan Environmental Impact Statement for all activities and uses proposed in the AA and JM Wildernesses. Current activities provided by pack stations include full service guided trips (guide remains for the entire trip), dunnage trips (transport of material and supplies), spot trips (transport of people and supplies to a location and guide leaving), day rides, wild horse viewing in the Pizona Area (from a base camp finding and viewing wild horses), and stock drives (movement of stock to and from winter range to operating areas). Activities currently conducted by the Outfitter and Guides include use of burros and llamas to provide dunnage service, backpacking trips, and camp re-supply services.

DATES: Comments concerning the scope of the analysis should be received no later than September 30, 2005. A draft environmental impact statement is expected to be published in February 2006, with public comment on the draft material requested for a period of 45 days. The final EIS is expected in August 2006.

ADDRESSES: Send written comments to Commercial Pack Station and Pack Stock Outfitter/Guide Permit Issuance, Inyo National Forest, 351 Pacu Lane, Suite 200, Bishop, CA 93514. Electronic comments may be sent to: *comments-pacificsouthwest-inyo@fs.fed.us.* Include "Commercial Pack Station and Pack Stock Outfitter/Guide Permit Issuance" in the subject line.

FOR FURTHER INFORMATION CONTACT: Roger Porter, Interdisciplinary Team Leader, Inyo National Forest, 351 Pacu Lane, Suite 200, Bishop, CA 93514, (760) 873–2449.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

There is a need for action on permit applications from twelve resort pack stations to issue their term permits for their existing facilities, activities and uses, and new uses on all portions of the Inyo National Forest, including the AA, JM, GT, and SS Wildernesses and non-wilderness areas. The action is needed because many of the existing permits are due to expire in the near future. The twelve resort pack stations are: Bishop Pack Outfitters, Cottonwood Pack Station, Frontier Pack Train, Glacier Pack Train, Mammoth Lakes Pack Outfit, McGee Creek Pack Station, Mt. Whitney Pack Trains, Pine Creek Pack Station, Rainbow Pack Outfitters, Reds Meadow/Agnew Meadows Pack Stations, Rock Creek Pack Station, and Sequoia Kings Pack Trains. There is also a need for action on a permit application from one existing outfitter and guide to issue their term permit (Three Corner Round Pack Outfit) and for action on a permit from one new outfitter and guide providing llama service.

This project is also needed to respond to a Court Order issued in 2001. The Court Order required that the Forest Service reevaluate the existing management direction and impacts of commercial pack stock operations on the Ansel Adams and John Muir Wildernesses prior to issuing permits for these operations. The court also ordered that the cumulative effects analysis be completed by December 2005 followed by a second NEPA process to issue individual special use permits by December 2006. The first planning effort—the Trail and Commercial Pack Stock Management in the Ansel Adams and John Muir Wildernesses EIS—will analyze the management direction and cumulative impacts of these operations. This Commercial Pack Station and Pack Stock Outfitter/Guide Permit Issuance EIS will respond to the portion of the Court Order requiring the second level of NEPA analysis related to the re-issuance of commercial pack station permits.

The purpose of the project is to continue to provide commercial pack stock services as a part of a wide range of available recreational activities available on the Inyo National Forest and to provide these services in a manner consistent with existing forest plan direction.

The Final EIS (FEIS) and Record of Decision (ROD) for this project will tier to the Trail and Commercial Pack Stock Management in the John Muir/Ansel Adams FEIS and ROD. The Trail and

Commercial Pack Stock FEIS and ROD will identify the levels and terms of commercial pack stock use in the AA and JM Wilderness. This Permit Issuance EIS will authorize these uses in the AA and JM Wildernesses as well as authorize uses on other areas of the Inyo National Forest.

Proposed Action

To meet the purpose and need, the Forest Service proposes to issue long term permits for a variety of commercial pack stock related activities to twelve existing Resort Special Use Permit holders (commercial service supported by horses and mules). The Forest Service also proposes to issue an outfitter/guide permit for one current outfitter and guide (commercial service supported by burros) and an outfitter/guide permit for one new outfitter and guide (commercial service supported by llamas). The services as proposed would occur on the Inyo National Forest in the AA, JM, GT, and SS Wildernesses, and the non-wilderness portions of the Inyo National Forest. The proposed action authorizes the terms, conditions, and appropriate use levels for these activities. Specifically, the proposed action includes: (1) Pack station/outfitter guide-specific use authorizations in the AA and JM Wildernesses; (2) pack station/outfitter guide-specific authorizations in the GT and SS Wildernesses; (3) grazing/range readiness standards and approval and authorization of incidental grazing in the GT and SS Wildernesses and non-wilderness areas of the Inyo National Forest; (4) authorizations of pack station base facilities (including pastures and corrals) and boundaries; (5) location and authorization of front country (*i.e.*, non-wilderness) day rides and activities; and (6) restricting commercial pack stock travel to existing trails within identified Concentrated Recreation Areas. The Proposed Action also contains a number of actions specific for each of the twelve pack stations and two outfitter/guides analyzed in the Draft EIS. A more detailed description of the proposed action is available by contacting the project team leader.

Possible Alternatives

In addition to the Proposed Action, a No Action alternative, as required by NEPA will also be analyzed. The No Action alternative to be analyzed would allow for the natural expiration of current Pack Station special use permits with no new permits being issued.

Responsible Official

The responsible official is Jeffrey E. Bailey, Forest Supervisor, Inyo National Forest, 351 Pacu Lane, Suite 200, Bishop, CA 93514.

Nature of Decision To Be Made

Given the purpose and need, the deciding official reviews the proposed action, the other alternatives, and the environmental consequences in order to make the following decision: Whether to issue the permits with modified terms and conditions, or not to authorize the uses and require removal of all facilities from public land.

Scoping Process

Public participation is an important part of this analysis. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposed action. Comments submitted during the scoping process should be in writing. They should be specific to the action being proposed and should describe as clearly and completely as possible any issues the commenter has with the proposal. This input will be used in preparation of the draft EIS.

To facilitate public participation, additional scoping opportunities will include a public scoping letter, meetings (dates and locations to be determined), newsletters, and information posted on the Inyo National Forest's Web sites.

Estimated Dates for the Draft and Final EIS

A draft environmental impact statement will be prepared for public 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**. It is expected that the Draft EIS will be available for comment in February 2006.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

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)

Jeffrey E. Bailey,

Forest Supervisor, Inyo National Forest.

[FR Doc. 05–15695 Filed 8–8–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Commercial Pack Station and Pack Stock Outfitter/Guide Permit Issuance; Sierra National Forest; Fresno, Madera, and Mariposa Counties, CA

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 document and disclose the environmental impacts of a proposal to re-issue long term permits for a variety of commercial pack stock related activities to seven existing

Resort Special Use Permit holders (commercial service supported by horse) and one existing Outfitter-Guide Special Use Permit Holder. The EIS will also designate a trail system and trail management objective for the Dinkey Lakes Wilderness. The services as proposed would occur on the Sierra National Forest in the Ansel Adams (AA), and John Muir (JM), and the non-wilderness portions of the Sierra National Forest. This EIS tiers to the Record of Decision that will be signed for the Trail and Commercial Pack Stock Management Plan Environmental Impact Statement for all activities and uses proposed in the AA and JM Wildernesses. Current activities provided by pack stations include full service guided trips (guide remains for the entire trip), dunnage trips (transport of material and supplies), spot trips (transport of people and supplies to a location and guide leaving), and day rides.

DATES: Comments concerning the scope of the analysis should be received no later than September 15, 2005. A draft environmental impact statement is expected to be published in February 2006, with public comment on the draft material requested for a period of 45 days. The final EIS is expected in August 2006.

ADDRESSES: Send written comments to Commercial Pack Station and Pack Stock Outfitter/Guide Permit Issuance, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611. Electronic comments may be sent to: *comments-pacificsouthwest-sierra@fs.fed.us.* Include "Commercial Pack Station and Pack Stock Outfitter/Guide Permit Issuance" in the subject line.

FOR FURTHER INFORMATION CONTACT: Kim Sorini-Wilson, Interdisciplinary Team Leader, Sierra National Forest, 29688 Auberry Road, Prather, CA 93651 (559) 855–5355 ext.3328.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

There is a need for action on permit applications from seven resort pack stations and one existing Outfitter-Guide Special Use Permit holder to re-issue their term permits for their existing facilities, activities and uses, on all portions of the Sierra National Forest, including the AA, JM, and non-wilderness areas of the Sierra National Forest. The seven resort pack stations are: Yosemite Trails Pack Station, Inc., Miller Meadow Inc dba Minarets Pack Stations, D&F Stables, LLC, High Sierra Pack Station, Clyde Pack Outfitters and Lost Valley Pack Station. Muir Trail Ranch is an outfitter-guide based off of private property within the John Muir Wilderness and Florence Lake Resort is a resort located on the east end of Florence Lake.

This project is also needed to respond to a Court Order issued in 2001. The Court Order required that the Forest Service reevaluate the existing management direction and impacts of commercial pack stock operations on the Ansel Adams and John Muir Wildernesses prior to issuing permits for these operations. The court also ordered that the cumulative effects analysis be completed by December 2005 followed by a second NEPA process to issue individual special use permits by December 2006. The first planning effort—the Trail and Commercial Pack Stock Management in the Ansel Adams and John Muir Wildernesses EIS—will analyze the management direction and cumulative impacts of these operations. This Commercial Pack Station and Pack Stock Outfitter/Guide Permit Issuance EIS will respond to the portion of the Court Order requiring the second level of NEPA analysis related to the re-issuance of commercial pack station permits.

The purposes of the project is to continue to provide commerical pack stock services as a part of a wide range of available recreational activities available on the Sierra National Forest and to provide these services in a manner consistent with existing forest plan direction. In addition, this EIS will also designate a trail system and trail management objective for the Dinkey Lakes Wilderness.

The Final EIS (FEIS) and Record of Decision (ROD) for this project will tier to the Trail and Commercial Pack Stock Management in the John Muir/Ansel Adams FEIS and ROD. The Trail and Commercial Pack Stock FEIS and ROD will identify the levels and terms of commercial pack stock use in the AA and JM Wilderness. This Permit Issuance EIS will authorize these uses in the AA and JM Wildernesses as well as authorize uses on other areas of the Sierra National Forest.

Proposed Action

To meet the purpose and need, the Forest Service proposes to re-issue long term permits for a variety of commercial pack stock related activities to seven existing Resort Special Use Permit holders (commercial service supported by horse) and one existing Outfitter-Guide Special Use Permit holder. The proposed action authorizes the terms, conditions, and appropriate use levels for these activities. Specifically, the proposed action includes: (1) Pack station/outfitter guide-specific use authorizations in the AA and JM Wildernesses; (2) authorizations of pack station base facilities (including pastures and corrals) and boundaries; (3) location and authorization of front country (*i.e.*, non-wilderness) day rides and activities; and (4) implementation of grazing/range readiness standards. The Proposed Action also contains a number of actions specific for each of the seven pack stations and one outfitter/guide analyzed in the Draft EIS. A more detailed description of the proposed action is available by contacting the project team leader.

Possible Alternatives

In addition to the Proposed Action, a No Action alternative, as required by NEPA will also be analyzed. The No Action alternative to be analyzed would allow for the natural expiration of current Pack Station special use permits with no new permits being issued.

Responsible Official

The responsible official is Edward C. Cole, Forest Supervisor, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611.

Nature of Decision To Be Made

Given the purpose and need, the deciding official reviews the proposed action, the other alternatives, and the environmental consequences in order to make the following decision: Whether to reissue the permits with modified terms and conditions, or not to authorize the uses and require removal of all facilities from public land.

Scoping Process

Public participation is an important part of this analysis. The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies, tribes, and other individuals or organizations who may be interested in or affected by the proposed action. Comments submitted during the scoping process should be in writing. They should be specific to the action being proposed and should describe as clearly and completely as possible any issues the commenter has with the proposal. This input will be used in preparation of the draft EIS.

To facilitate public participation, additional scoping opportunities will include a public scoping letter, meetings (dates and locations to be determined), newsletters, and information posted on the Sierra National Forest's Web sites.

Estimated Dates for the Draft and Final EIS

A draft environmental impact statement will be prepared for public 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**.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

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)

Teresa A. Drivas,

Acting Forest Supervisor, Sierra National Forest.

[FR Doc. 05–15696 Filed 8–8–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utiiities Service

Basin Electric Power Cooperative, Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact in connection with a request from Basin Electric Power Cooperative (Basin Electric) of Bismarck, North Dakota for assistance from RUS to finance the construction of a natural gas-fired combustion turbine and associated equipment near Groton in Brown County, South Dakota.

FOR FUTHER INFORMATION CONTACT: Nurul Islam, Environmental Protection Specialist, Rural Utilities Service, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–1414, fax (202) 720–0820, e-mail *nurul.islam@wdc.usda.gov*. Information is also available from Mr. James A. Berg, Environmental Monitoring Coordinator, Basin Electric, 1717 East Interstate Avenue, Bismarck, North Dakota 58501, telephone (701) 223–0441, Fax (701) 224–5336, e-mail address *jberg@bepc.com*.

SUPPLEMENTARY INFORMATION: Basin Electric of Bismarck, North Dakota is proposing to construct a new 80–100 megawatt (MW) simple cycle gas turbine near Groton in Brown County, South Dakota. The primary purpose of the East Side Peaking Project (Project) is to meet the increasing power consumption requirements on the east side of Basin Electric's service territory. The proposed project would be located adjacent to an existing Basin Electric and Western Area Power Administration substation. The evaluated turbine offers the advantages of an aero-derivative gas turbine in achieving low emissions. The project would include a natural gas-fired combustion turbine and a modification to an existing substation will be required. In addition, approximately ½ mile of new transmission line will be constructed, and a new gas supply pipeline will be constructed to supply the natural gas. The South Dakota Department of Environment and Natural Resources approved Basin Electric's request to construct the proposed project and issued an Air Quality Construction/Operation permit in May 2005. The South Dakota Public Utilities Commission also approved the proposed project in May 2005. The Project is required to help meet the growing needs for power of Basin Electric's membership in South Dakota. RUS may provide financial assistance to Basin Electric for this project.

Basin Electric applied to the U.S. Department of Energy (DOE), Western Area Power Administration (Western) to interconnect the Project to Western's Groton Substation in Brown County, South Dakota. Western proposes to modify its substation to accommodate a new transmission line linking the peaking facility to the substation. RUS prepared an environmental assessment (EA) for the Project. The EA was distributed for public and agency review. Western was designated a cooperating agency for the EA by RUS. Western provided comments and the final EA was completed on June 20, 2005. U.S. Fish and Wildlife Service made a very general comment on the final EA. RUS did not receive any comments on the final EA from the public or from any other agencies. The EA, RUS believes, adequately addressed the potential environmental impacts of the Project. A number of environmental resource areas were analyzed including air quality, water quality, land use, floodplains, wetlands, cultural and historic properties, fish and wildlife resources, aesthetics, transportation, noise, human health and safety, and environmental justice. RUS, in accordance with its environmental policies and procedures, required that Basin Electric prepare an Environmental Report reflecting the potential impacts of the proposed facilities. The Environmental Analysis, which includes input from Federal, State, and local agencies, has been reviewed and accepted as RUS' EA for the project in accordance with 7 CFR 1794.41. Basin Electric published notices of the availability of the EA and solicited public comments per 7 CFR 1794.42. The 30-day comment period on the EA for the proposed project ended June 5, 2005.

Based on the EA, RUS has concluded that the proposed action will not have a significant effect to various resources, including important farmland, floodplains, wetlands, cultural resources, threatened and endangered species and their critical habitat, air and water quality, and noise.

RUS has also determined that there would be no negative impacts of the proposed project on minority communities and low-income communities as a result of the construction of the project.

Dated: July 21, 2005.

James R. Newby,

Assistant Administrator, Electric Program, Rural Utilities Service.

[FR Doc. 05–15675 Filed 8–8–05; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 9, 2005.

SUMMARY: In response to a request from petitioners [1] and one Taiwanese manufacturer/exporter, Chia Far Industrial Factory Co., Ltd. ("Chia Far"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on stainless steel sheet and strip in coils ("SSSS") from Taiwan. This review covers six producers/exporters of the subject merchandise. The period of review ("POR") is July 1, 2003, through June 30, 2004.

The Department has preliminarily determined that all but one of the companies subject to this review made U.S. sales at prices less than normal value ("NV"). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results of review. We will issue the final results of review no later than 120 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge (Chia Far) or Karine Gziryan (YUSCO); AD/CVD Operations Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3518 or (202) 482–4081, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on SSSS from Taiwan. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 39903 (July 1, 2004). In response to this opportunity notice, on July 30, 2004, petitioners and one producer/exporter, Chia Far, requested that the Department conduct an administrative review covering the period July 1, 2003, through June 30, 2004. Based on these requests, the Department initiated an administrative review of the following sixteen companies: Ta Chen Stainless Pipe Co., Ltd. ("Ta Chen"), Tung Mung Development Co. Ltd. ("Tung Mung"), China Steel Corporation ("China Steel"), Yieh Mau Corp. ("Yieh Mau"), Chain Chon Industrial Co., Ltd. ("Chain Chon"), Goang Jau Shing Enterprise Co., Ltd. ("Goang Jau Shing"), PFP Taiwan Co., Ltd. ("PFP Taiwan"), Yieh Loong Enterprise Company, Ltd. ("Yieh Loong"), Tang Eng Iron Works Company, Ltd. ("Tang Eng"), Yieh Trading Corporation ("Yieh Trading"), Chien Shing Stainless Steel Company Ltd. ("Chien Shing"), Chia Far, Yieh United Steel Corporation ("YUSCO"), Emerdex Stainless Flat–Rolled Products, Inc., Emerdex Stainless Steel, Inc., and the Emerdex Group ("the Emerdex companies"). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 52857 (August 30, 2004).

During September, October, and November, 2004, the Department issued its antidumping questionnaire to all of the companies for which a review was initiated except the Emerdex companies (for further discussion of the Emerdex companies, see the section of this notice entitled "Partial Final Rescission of Review," below).[2] Of the six companies that responded to the questionnaire, only two, Chia Far and YUSCO, reported that they sold subject merchandise to the United States during the POR.

On November 10, 2004, we notified the following companies by letter that if they did not respond to the Department's requests for information by November 17, 2004, the Department may use adverse facts available ("AFA") in determining their dumping margins: Tang Eng, Goang Jau Shing, Chien Shing, PFP Taiwan, Yieh Mau, Yieh Trading, and Yieh Loong. In November 2004, Tang Eng, Yieh Mau, and Yieh Loong reported that they did not sell or ship subject merchandise to the United States during the POR.

Throughout this administrative review, the Department has issued supplemental questionnaires to Chia Far and YUSCO, and petitioners have submitted comments regarding the respondents' questionnaire responses. The petitioners have also submitted comments regarding Ta Chen and the Emerdex companies.

On March 9, 2005, the Department extended the deadline for issuing the preliminary results in this administrative review until August 1, 2005. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 11614 (March 9, 2005).

Scope of the Order

The products covered by the order on SSSS from Taiwan are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise de–scaled. The subject sheet and strip may also be further processed (*e.g.*, cold–rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

[1] The petitioners are Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, J&L Specialty Steel, Inc., United Steelworks of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under review. Section E requests information on further manufacturing.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings: 7219.13.00.31, 7219.13.00.51, 7219.13.00.71, 7219.13.00.81, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise covered by this order is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise de–scaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not further worked than cold–rolled ("cold–reduced"), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department also determined that certain specialty stainless steel products were excluded from the scope of the investigation and the subsequent order. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness ("Hv") of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of the order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron. Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III." "Arnokrome III" is a trademark of the Arnold Engineering Company.

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36." "Gilphy 36" is a trademark of Imphy, S.A.

Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17." "Durphynox 17" is a trademark of Imphy, S.A.

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of the order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives). This steel is similar to AISI grade 420, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and

1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6." This list of uses is illustrative and provided for descriptive purposes only. "GIN4 Mo," "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

Partial Preliminary Rescission of Review

Seven respondents, Ta Chen, Yieh Mau, Chain Chon, Tung Mung, Tang Eng, Yieh Loong, and China Steel, certified to the Department that they did not ship subject merchandise to the United States during the POR. The Department subsequently obtained CBP information in order to substantiate the respondents' claims. *See Memorandum From Melissa Blackledge To The File, U.S. Customs and Border Protection Data Query Results*, dated August 1, 2005. Thus, the evidence on the record does not indicate that Ta Chen, Yieh Mau, Chain Chon, Tung Mung, Tang Eng, Yieh Loong, or China Steel exported subject merchandise to the United States during the POR. Therefore, in accordance with 19 C.F.R. § 351.213(d)(3) and consistent with the Department's practice, we are preliminarily rescinding our review with respect to Ta Chen, Yieh Mau, Chain Chon, Tung Mung, Tang Eng, Yieh Loong, and China Steel. *See, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35190, 35191 (June 29, 1998); *Certain Fresh Cut Flowers from Columbia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (October 14, 1997).

Partial Final Rescission of Review

On October 27, 2004, the Department issued a letter to petitioners noting that while 19 C.F.R. § 351.213 provides that domestic interested parties may request a review of "specified individual exporters or producers covered by the order," record information indicates the Emerdex companies are U.S. corporations located in California, rather than producers or exporters covered by the order on SSSS from Taiwan.[3] *See also* petitioners' September 10, 2004, submission to the Department. Therefore, we informed petitioners that the Department intends to rescind the instant review with respect to the Emerdex companies. Petitioners, however, claim that the following record information supports their contention that "Emerdex" is a Taiwanese exporter, supplier, or producer of subject merchandise: (1) a 2003 Dun & Bradstreet *Business Information Report* for Emerdex Stainless Flat Roll Products Inc. ("Emerdex Flat Roll") indicating the company "operates blast furnaces or steel mills, specializing in the manufacture of stainless steel," (2) Emerdex Flat Roll's 2003 U.S. income tax return indicating at least 25% of the company is owned by someone in Taiwan, 3) the 2002 financial statement of Ta Chen showing the second largest accounts payable balance for the company was owed to Emerdex. According to petitioners, the principal input used by Ta Chen in production is SSSS.[4] Based upon the above information, petitioners urge the Department to explore this matter further by issuing a series of questions regarding affiliation to any parent company that Emerdex might have in Taiwan (via Emerdex Flat Roll or Ta Chen).

Notwithstanding petitioners' arguments, we find it appropriate to rescind the instant review with respect to the Emerdex companies rather than undertake an examination of those U.S. companies, and their affiliates, in order to determine the appropriate respondent. The party requesting an administrative review "must bear the relatively small burden imposed on it by the regulation to name names" of the appropriate respondent in its review request. *See Floral Trade Council of Davis, California v. United States, et al.*, 1993 WL 534598 (December 22, 1993). *See also Potassium Permanganate From the People's Republic of China: Rescission of Antidumping Duty Administrative Review*, 68 FR 58306, 58307 (October 9, 2003) (the Department rescinded the review noting that the party requested a review of a U.S. importer, rather than an exporter or producer of subject merchandise). Where this burden has not been met, the "ITA is not required to conduct an investigation to determine who should be investigated in an administrative review proceeding." *See Floral Trade Council of Davis, California v. United States et al.*, 707 F. Supp. 1343, 1345 (February 16, 1989). Moreover, petitioners' failure to name the actual parties to be reviewed has deprived importers of notice that their imports could be affected by the review. As the Court of International Trade ("CIT") stated, the Department's initiation notice "serves to notify any interested party that the antidumping duty rate on goods obtained from exporters named in the notice of initiation for an administrative review may be affected by the outcome of that review. So apprised, "importers could participate in the administrative review in an effort to ensure that the calculation of antidumping duties on those products was correct." *See Transcom, Inc. and L&S Bearing Company v. United States*, 182 F.3d 876, 880 (June 16, 1999). Here, no such notice was given because petitioners failed to name the foreign exporters or producers to be reviewed.

Lastly, we note that none of the information placed on the record by petitioners demonstrates that there is an Emerdex parent corporation in Taiwan that produces or exports subject merchandise. The Dunn & Bradstreet report and Ta Chen's accounts payable balance relate to the Emerdex companies located in California, not companies located in Taiwan.[5]

[3] Neither petitioners, nor the Department, were able to locate any company in Taiwan named "Emerdex" or with "Emerdex" as part of its name.

[4] Ta Chen has been a respondent in the antidumping duty proceeding involving stainless steel butt-weld pipe fittings from Taiwan. In the 2002-2003 segment of that proceeding, the Department found Ta Chen to be affiliated to the Emerdex companies (these companies imported stainless steel-butt-weld pipe fittings into the United States). As noted above, Ta Chen is also a respondent in the instant administrative review.

[5] Additionally, the Department has obtained information from Dunn & Bradstreet indicating that Emerdex Flat Roll is a wholesaler of stainless steel products, not a producer. *See* the Memorandum From Melissa Blackledge To The File regarding the Dun & Bradstreet *Business Information Report* submitted by Collier Shannon Scott, PLLC on behalf of petitioners. The information the Department obtained from Dunn & Bradstreet is consistent with the business activity code reported for Emerdex Flat Roll in the company's 2003 U.S. income tax return and the information reported to the Department in

Continued

Furthermore, Emerdex Flat Roll's 2003 U.S. tax return does not state that the company has a parent corporation in Taiwan. Rather, the tax return simply notes that during the tax year, a "foreign person" in Taiwan owned, directly or indirectly, either 25% or more of the company's voting shares or 25% or more of the total value of all classes of the company's stock. The information in the tax return does not indicate that the "foreign person" is a company, let alone a company that produces or exports subject merchandise. Accordingly, the Department is rescinding the instant review with respect to the Emerdex companies.

Use of Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended ("the Act"), provides that if any interested party: (A) withholds information that has been requested by the Department, (B) fails to provide such information by the deadlines for submission of the information or in the form or manner requested, (C) significantly impedes an antidumping investigation, or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in making its determination.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

The evidence on the record of this review establishes that, pursuant to section 776(a)(2)(A) of the Act, the use of total facts available is warranted in determining the dumping margin for PFP Taiwan, Yieh Trading, Goang Jau Shing, and Chien Shing, because these companies failed to provide requested information. Specifically, these companies failed to respond to the Department's antidumping questionnaire.

On November 10, 2004, the Department informed these companies by letter that failure to respond to the requests for information by November 17, 2004, may result in the use of AFA in determining their dumping margins. These four manufacturers/exporters, however, did not respond to the Department's November 10, 2004, letter. Because these respondents failed to provide any of the necessary information requested by the Department, pursuant to section 776(a)(2)(A) of the Act, we have based the dumping margins for these companies on the facts otherwise available.

Use of Adverse Inferences

Section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission ..., in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *See also* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act (URAA), H. Rep. No. 103–316 at 870 (1994). Section 776(b) of the Act goes on to note that an adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 or determination under section 753; or (4) any other information on the record.

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* SAA at 870; *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221 (CIT 1998); *Mannesmannrohren–Werke AG v. United States*, 77 F. Supp. 2d 1302 (CIT 1999). The Court of Appeals for the Federal Circuit ("CAFC"), in *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1380 (Fed. Cir. 2003), provided an explanation of the "failure to act to the best of its ability" standard, holding that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed, *i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown." *Id.*

The record shows that PFP Taiwan, Yieh Trading, Goang Jau Shing, and Chien Shing failed to cooperate to the best of their abilities, within the meaning of section 776(b) of the Act. As noted above, PFP Taiwan, Yieh Trading, Goang Jau Shing, and Chien Shing failed to provide any response to the Department's requests for information. As a general matter, it is reasonable for the Department to assume that these companies possessed the records necessary to participate in this review; however, by not supplying the information the Department requested, these companies failed to cooperate to the best of their abilities. As these companies have failed to cooperate to the best of their abilities, we are applying an adverse inference in determining their dumping margin pursuant to section 776(b) of the Act. As AFA, we have assigned these companies a dumping margin of 21.10 percent, which is the highest appropriate dumping margin from this or any prior segment of the instant proceeding. This rate was the highest petition margin and was used as AFA in a number of the segments in the instant proceeding. *See, e.g., Stainless Steel Sheet and Strip from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002) ("*1999–2000 AR of SSSS from Taiwan*"). **See also Stainless Steel Sheet and Strip in Coils from Taiwan: Notice of Court Decision**, 67 FR 63887 (October 16, 2002).

The Department notes that while the highest dumping margin calculated during this or any prior segment of the instant proceeding is 36.44 percent, as argued by petitioners, this margin represents a combined rate applied to a channel transaction in the investigative phase of this proceeding, and it is based on middleman dumping by Ta Chen. *See Final Results of Redetermination Pursuant to Court Remand*, (Nov. 29, 2000) affirmed by 219 F. Supp. 2d 1333, 1345 (CIT 2002), aff'd 354 F. 3d 1371, 1382 (Fed. Cir. 2004). Where circumstances indicate that a particular dumping margin is not appropriate as AFA, the Department will disregard the margin and determine another more appropriate one as facts available. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest dumping margin for use as AFA because the margin was based on another company's uncharacteristic business expense, resulting in an unusually high dumping margin). Because a dumping

the 2002-2003 administrative review of stainless steel butt-weld pipe fittings from Taiwan. *See* Ta Chen's January 23, 2004, supplemental questionnaire response (at B-2) from the stainless steel butt-weld pipe fittings case (on November 5, 2004, at Enclosure 6, petitioners placed this page on the record of the instant review).

margin based on middleman dumping would be inappropriate, given that the record does not indicate that any of PFP Taiwan's, Yieh Trading's, Goang Jau Shing's, and Chien Shing's exports to the United States during the POR involved a middleman, the Department has, consistent with previous reviews, continued to use as AFA the highest dumping margin from any segment of the proceeding for a producer's direct exports to the United States, without middleman dumping, which is 21.10 percent.

Section 776(c) of the Act requires that the Department, to the extent practicable, corroborate secondary information from independent sources that are reasonably at its disposal. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. As noted in *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information.

The rate of 21.10 percent constitutes secondary information. The Department corroborated the information used to establish the 21.10 percent rate in the less than fair value ("LTFV") investigation in this proceeding, finding the information to be both reliable and relevant. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Taiwan*, 64 FR 30592, 30592 (June 8, 1999) ("*Final Determination*"); *see also 1999–2000 AR of SSSS from Taiwan*, 67 FR 6682, 6684 and accompanying *Issues and Decision Memorandum* at Comment 28. Nothing on the record of this instant administrative review calls into question the reliability of this rate. Furthermore, with respect to the relevancy aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. As discussed above, in selecting this margin, the Department considered whether a margin derived from middleman dumping was relevant to PFP Taiwan's, Yieh Trading's, Goang Jau Shing's, and Chien Shing's commercial experience, and determined the use of this margin was inappropriate. The Department has determined that there is no evidence on the record of this case, however, which would render the 21.10 percent dumping margin irrelevant. Thus, we find that the rate of 21.10 percent is sufficiently corroborated for purposes of the instant administrative review.

Affiliation

YUSCO

During the course of this administrative review, petitioners have argued that YUSCO is under common control with certain companies, and thus it is affiliated with these companies. Specifically, petitioners contend that through direct and indirect interests and Board of Director positions associated with YUSCO's Chairman, Mr. Lin, YUSCO is affiliated with a number of companies, including Yieh Loong and China Steel. As has been the case in prior segments of this proceeding, we find that the facts on the record do not demonstrate that YUSCO is affiliated with Yieh Loong or China Steel. Nor do we conclude that the facts support a finding that YUSCO is affiliated with any of the other companies identified by petitioners. Because our discussion of this issue necessitates the use of business proprietary information, we have addressed the issue in the memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, covering the subject of affiliation.

Chia Far

During the first administrative review in this proceeding, the Department found Chia Far and its U.S. reseller, Lucky Medsup Inc. ("Lucky Medsup"), to be affiliated by way of a principal–agency relationship. The Department primarily based its finding on: (1) a document evidencing the existence of a principal–agent relationship, (2) Chia Far's degree of involvement in sales between Lucky Medsup and its customers, (3) evidence indicating Chia Far knew the identity of Lucky Medsup's customers, and the customers were aware of Chia Far, (4) Lucky Medsup's operations as a "go–through" who did not maintain any inventory or further manufacture products, and (5) Chia Far's inability to provide any documents to support its claim that the document evidencing the principal–agent relationship was not valid during the POR. *See Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 6682 (February 13, 2002) and the accompanying *Issues and Decision Memorandum* at Comment 23 (upheld by CIT in *Chia Far Industrial Factory Co. Ltd. v. United States, et al.*, 343 F. Supp. 2d 1344, 1356 (August 2, 2004)). The Department has continued to treat Chia Far and Lucky Medsup as affiliated parties throughout this proceeding.

In the instant administrative review, however, Chia Far contends that it is no longer affiliated with Lucky Medsup because: (1) there is no cross–ownership between Chia Far and Lucky Medsup and no sharing of officers or directors, (2) Lucky Medsup's owner operates independently of Chia Far as a middleman, (3) Lucky Medsup's transactions with Chia Far are at arm's length, (4) there are no exclusive distribution contracts between Lucky Medsup and Chia Far (the one that existed in 1994, was terminated in 1995), and (5) Lucky Medsup is not obligated to sell Chia Far's merchandise and Chia Far is not obligated to sell through Lucky Medsup in the United States.

We, however, find the fact pattern in the instant review mirrors that which existed when the Department found the parties to be affiliated. First and foremost, Chia Far could not provide any documents in response to the Department's request that it demonstrate that the agency agreement was terminated and the principal–agent relationship no longer exists. *See* Chia Far's March 25, 2002, supplemental questionnaire response at page 1. Furthermore, Chia Far's degree of involvement in Lucky Medsup's U.S. sales is similar to that found in prior reviews. Specifically, Chia Far played a role in the sales negotiation process with the end–customer (Chia Far was informed of the identity of the end–customers and the sales terms that they had requested before it set its price to Luck Medsup), Lucky Medsup's sales order confirmation identifies Chia Far as the manufacturer, and Chia Far shipped the merchandise directly to end–customers and provided technical assistance directly to certain end–customers. Lastly, as was true in prior segments of this proceeding, during the instant POR Lucky Medsup did not maintain inventory or further manufacture SSSS. Therefore, we continue to find that Chia Far is affiliated with Lucky Medsup.

Identifying Home Market Sales

Section 773 (a)(1)(B) of the Act defines NV as the price at which foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country (home market), in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price ("EP") or constructed export price ("CEP"). In implementing this provision, the CIT has found that sales should be reported as home market sales if the producer "knew or should have known that the merchandise {it sold} was for home consumption based upon the particular facts and circumstances surrounding the sales." *See Tung Mung Development Co., Ltd. & Yieh United Steel Corp. v. United States and Allegheny Ludlum Corp., et al.*, Slip Op. 01–83 (CIT 2001); *citing INA Walzlager Schaeffler KG v. United States*, 957 F. Supp. 251 (1997). Conversely, if the producer knew or should have known the merchandise that it sold to home market customers was not for home market consumption, it should exclude such sales from its home market sales database. Even though a producer may sell merchandise destined for exportation by a home market customer, if that merchandise is used to produce non–subject merchandise in the home market, it is consumed in the home market and such sales will be considered to be home market sales. *See Final Determination of Sales at Less Than Fair Value: Certain Hot–Rolled Carbon Steel Flat Products, Certain Cold–Rolled Carbon Steel Plate Products, Certain Corrosion–Resistant Carbon Steel Flat Products, and Certain Cut–to-Length Carbon Steel Plate From Korea*, 58 FR 37176, 37182 (July 9, 1993).

The issue of whether respondents have properly reported home market sales has arisen in each of the prior segments of the instant proceeding. It is also an issue in the instant administrative review.

YUSCO

Throughout the instant administrative review, petitioners have questioned the accuracy of YUSCO's home market sales database. Specifically, petitioners claim that YUSCO has not properly addressed the very important part of the Department's knowledge test - consumption of YUSCO's merchandise in Taiwan before exportation. As a result, petitioners maintain that the Department cannot rely upon the sales databases submitted by YUSCO and must base the company's dumping margin on total AFA. *See* petitioners' April 14, 2005, and April 28, 2005, submissions to the Department.

For these preliminary results, we have not rejected YUSCO's sales databases in favor of total AFA because information on the record indicates that YUSCO knew, or should have known, the merchandise that it sold was for consumption in the home market based upon the particular facts and circumstances surrounding the sales. Thus, there is information on the record that allows the Department to identify YUSCO's home market sales. Specifically, YUSCO reported that it sold SSSS to a certain home market customer who was planning to further process the SSSS into non–subject merchandise and then export the merchandise. Further, YUSCO delivered the merchandise to this customer at a location that had facilities to further process the SSSS into non–subject merchandise. YUSCO reported these sales in its HM3 database. *See* YUSCO's April 4, 2005, supplemental questionnaire response at 11. Because the record indicates that YUSCO knew at the time of sale that this merchandise would be consumed in the home market, the Department has preliminarily considered sales to this home market customer to be home market sales. In its HM4 database YUSCO reported its sales to an affiliated home market customer, who has the ability to further process the SSSS into non–subject merchandise but did not inform YUSCO about its plans regarding possible further manufacturing prior to exportation. YUSCO delivered these sales to the affiliated customer's processing plant. *See* YUSCO's November 22, 2004, Sections B–C questionnaire response at 2, 3. Consistent with the approach taken in the prior administrative review of this order, we have considered YUSCO's sales to an affiliated home market customer delivered to the customer's further processing plant to be home market sales.

Chia Far

In its November 15, 2004, questionnaire response, Chia Far stated that it has reason to believe that some of the home market customers to whom it sold SSSS during the POR may have exported the merchandise. Specifically, Chia Far indicated that it shipped some of the SSSS it sold to home market customers during the POR to a container yard or placed the SSSS in an ocean shipping container at the home market customer's request. Chia Far stated that even though the merchandise was containerized or sent to a container yard, it could not prove the merchandise was exported to a third country, and therefore, it included those sales in its reported home market sales. Although Chia Far stated that it does not definitively know whether the SSSS in question will be exported, the Department has preliminarily determined that, based the fact that these sales were sent to a container yard or placed in a container by Chia Far at the request of the home market customer, Chia Far should have known that the SSSS in question was not for consumption in the home market. Therefore, the Department has preliminarily excluded these sales from Chia Far's home market sales database.

Comparison Methodology

In order to determine whether the respondents sold SSSS to the United States at prices less than NV, the Department compared the EP and CEP of individual U.S. sales to the monthly weighted–average NV of sales of the foreign like product made in the ordinary course of trade. *See* section 777A(d)(2) of the Act; *see also* section 773(a)(1)(B)(i) of the Act. Section 771(16) of the Act defines foreign like product as merchandise that is identical or similar to subject merchandise and produced by the same person and in the same country as the subject merchandise. Thus, we considered all products covered by the scope of the order, that were produced by the same person and in the same country as the subject merchandise, and sold by YUSCO and Chia Far in the comparison market during the POR, to be foreign like products, for the purpose of determining appropriate product comparisons to SSSS sold in the United States. During the POR, Chia Far sold subject merchandise and foreign-like product that it made from hot- and cold–rolled stainless steel coils (products covered by the scope of the order) purchased from unaffiliated parties. Chia Far further processed the hot- and cold–rolled stainless steel coils by performing one or more of the following procedures: cold–rolling, bright annealing, surface finishing/shaping, slitting. We did not consider Chia Far to be the producer of the merchandise under review if it performed insignificant processing on the coils (*e.g.*, annealing, slitting, surface finishing). *See Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 69 FR 74495 (December 14, 2004) and the accompanying *Issues and Decision Memorandum* at Comment 4 (listing painting, slitting, finishing, pickling,

oiling, and annealing as minor processing for flat–rolled products). Furthermore, we did not consider Chia Far to be the producer of the cold–rolled products that it sold if it was not the first party to cold roll the coils. The cold–rolling process changes the surface quality and mechanical properties of the product and produces useful combinations of hardness, strength, stiffness, and ductility. Further cold–rolling does not appear to change the fundamental character of a product that has already been cold–rolled. Thus, we considered the original party that cold–rolled the product to be its producer.

The Department compared U.S. sales to sales made in the comparison market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise made in the comparison market in the ordinary course of trade, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making product comparisons, the Department selected identical and most similar foreign like products based on the physical characteristics reported by the respondents in the following order of importance: grade, hot- or cold–rolled, gauge, surface finish, metallic coating, non–metallic coating, width, temper, and edge. Where there were no appropriate sales of the foreign like product to compare to a U.S. sale, we compared the price of the U.S. sale to constructed value ("CV"), in accordance with section 773(a)(4) of the Act.

Export Price and Constructed Export Price

The Department based the price of each of YUSCO's U.S. sales of subject merchandise on EP, as defined in section 772(a) of the Act, because the merchandise was sold, prior to importation, to unaffiliated purchasers in the United States, and CEP was not otherwise warranted based on the facts of the record. We calculated EP using packed prices to unaffiliated purchasers in the United States from which we deducted, where applicable, inland freight expenses (from YUSCO's plant to the port of exportation), international freight expenses, brokerage and handling charges, container handling fees, and certification fees in accordance with section 772(c) of the Act.

We based the price of Chia Far's U.S. sales of subject merchandise on EP or CEP, as appropriate. Specifically, when Chia Far sold subject merchandise to unaffiliated purchasers in the United States prior to importation, and CEP was not otherwise warranted based on the facts of the record, we based the price of the sale on EP, in accordance with section 772 (a) of the Act. On the other hand, when Chia Far sold subject merchandise to unaffiliated purchasers in the United States after importation through its U.S. affiliate, Lucky Medsup, we based the price of the sale on CEP, in accordance with section 773(b) of the Act. Although Chia Far based the date of sale for its EP and CEP transactions on the order confirmation date, in response to questions from the Department, Chia Far reported information showing that the material terms of U.S. sales changed after the order confirmation date (*e.g.*, changes to the ordered quantity in excess of the allowable variation). *See* Chia Far's March 18, 2005, supplemental questionnaire response at page 5 and attachment C–21. *See also* Chia Far's December 13, 2004, supplemental questionnaire response at page 6 where Chia Far indicated the material terms of U.S. sales can change after the initial agreement.

Normally, the Department considers the respondent's invoice date as recorded in its business records to be the date of sale unless a date other than the invoice date better reflects the date on which the company establishes the material terms of sale. *See* 19 C.F.R. § 351.401(i). Given that changes to the material terms of sale occurred after the order confirmation date, the record does not support using the reported date of sale. Therefore, we have preliminarily used invoice date as the date of sale for Chia Far's EP and CEP transactions. However, consistent with the Department's practice, where the invoice was issued after the date of shipment to the first unaffiliated U.S. customer, we relied upon the date of shipment as the date of sale. *See Certain Cold–Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea; Final Results of Antidumping Duty Administrative Reviews*, 64 FR 12927, 12935 (March 16, 1999), citing *Certain Cold–Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13172–73 (March 18, 1998) ("in these final results we have followed the Department's methodology from the final results of the third reviews, and have based date of sale on invoice date from the U.S. affiliate, unless that date was subsequent to the date of shipment from Korea, in which case that shipment date is the date of sale.").

We calculated EP using packed prices to unaffiliated purchasers in the United States from which we deducted, where applicable, foreign inland freight expense (from Chia Far's plant to the port of exportation), brokerage and handling expense, international ocean freight expense, marine insurance expense, container handling charges, and harbor construction fees. Additionally, we added to the starting price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. We calculated CEP using packed prices to the first unaffiliated purchaser in the United States from which we deducted foreign inland freight expense (from Chia Far's plant to the port of exportation), brokerage and handling expense, international ocean freight expense, marine and inland insurance expense, container handling charges, harbor construction fees, other U.S. transportation expenses and U.S. duty. Additionally, we added to the starting price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. In accordance with section 772(d)(1) of the Act, we deducted from the starting price selling expenses associated with economic activities occurring in the United States, including direct and indirect selling expenses. Furthermore, we deducted from the starting price the profit allocated to expenses deducted under sections 772(d)(1) and (d)(2) of the Act in accordance with sections 772(d)(3) and 772(f) of the Act. We computed profit by deducting from total revenue realized on sales in both the U.S. and comparison markets, all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and comparison markets.

Normal Value

After testing home market viability, whether comparison–market sales to affiliates were at arm's–length prices, and whether comparison–market sales were at below–cost prices, we calculated NV as noted in the "Price–to-Price Comparisons" and "Price–to-CV Comparisons" sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(B) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we separately compared the aggregate volume of YUSCO's and Chia Far's home market sales of the foreign like

product to the aggregate volume of their U.S. sales of subject merchandise. Because the aggregate volume of YUSCO's and Chia Far's home market sales of the foreign like product is greater than five percent of the aggregate volume of their respective U.S. sales of subject merchandise, we determined that the home market is viable for each of these respondents and have used the home market as the comparison market.

2. Arm's–Length Test

YUSCO reported that it made sales in the home market to affiliated and unaffiliated end users and distributors/retailers. The Department will calculate NV based on sales to an affiliated party only if it is satisfied that the prices charged to the affiliated party are comparable to the prices charged to parties not affiliated with the producer, i.e., the sales are at arm's–length. See section 773(f)(2) of the Act and 19 C.F.R. § 351.403(c). Where the home market prices charged to an affiliated customer were, on average, found not to be arm's–length prices, sales to the affiliated customer were excluded from our analysis. To test whether YUSCO's sales to affiliates were made at arm's–length prices, the Department compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Pursuant to 19 C.F.R. § 351.403(c), and in accordance with the Department's practice, when the prices charged to affiliated parties were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's–length prices. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). YUSCO's affiliated home market customer did not pass the arm's–length test. Therefore, we have disregarded YUSCO's sales to its affiliated home market customer in favor of that customer's downstream sales of foreign like product to its first unaffiliated customer.

3. Cost of Production ("COP") Analysis

In the previous administrative review in this proceeding, the Department determined that YUSCO and Chia Far sold the foreign like product in the home market at prices below the cost of producing the merchandise and excluded such sales from the calculation of NV. Based on the results of the previous administrative review, the Department determined that there are reasonable grounds to believe or suspect that during the instant POR, YUSCO and Chia Far sold the foreign like product in the home market at prices below the cost of producing the merchandise. *See* section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a COP inquiry for both YUSCO and Chia Far.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, for each unique foreign like product sold by the respondents during the POR, we calculated a weighted–average COP based on the sum of the respondent's materials and fabrication costs, home market selling general and administrative ("SG&A") expenses, including interest expenses, and packing costs. We made the following adjustments to YUSCO's cost data: (1) we increased the reported cost of inputs purchased from affiliated suppliers to reflect the higher of the transfer price or market price as required by section 773(f)(2) of the Act, and (2) we adjusted YUSCO's reported general and administrative (G&A) expense ratio to exclude certain income. *See* Analysis Memorandum for the Preliminary Results of Review for Stainless Steel Sheet and Strip in Coils From Taiwan Yieh United Steel Corp., Ltd. (August 1, 2005) ("YUSCO Preliminary Analysis Memorandum"). *See also* Analysis Memorandum for the Preliminary Results of Review for Stainless Steel Sheet and Strip in Coils From Taiwan - Chia Far Industrial Factory Co., Ltd. (August 1, 2005) ("Chia Far Preliminary Analysis Memorandum").

B. Test of Home Market Prices

In order to determine whether sales were made at prices below the COP, on a product–specific basis we compared each respondent's weighted–average COPs, adjusted as noted above, to the prices of its home market sales of foreign like product, as required under section 773(b) of the Act. In accordance with section 773(b)(1)(A) and (B) of the Act, in determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time, and (2) at prices which permitted the recovery of all costs within a reasonable period of time. We compared the COP to home market sales prices, less any applicable movement charges and discounts.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices less than the COP, we did not disregard any below–cost sales of that product because the below–cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were made at prices less than the COP during the POR, we determined such sales to have been made in "substantial quantities" and within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act. In such cases, because we used POR average costs, we also determined, in accordance with section 773(b)(2)(D) of the Act, that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. Based on this test, we disregarded below–cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

Price–to-Price Comparisons

Where it was appropriate to base NV on prices, we used the prices at which the foreign like product was first sold for consumption in Taiwan, in usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade ("LOT") as the comparison EP or CEP sale.

We based NV on the prices of home market sales to unaffiliated customers and to affiliated customers to whom sales were made at arm's–length prices. We excluded from our analysis home market sales of merchandise identified by the Department as having been manufactured by parties other than the respondents. Merchandise manufactured by parties other than the respondents was not sold in the U.S. market during the POR. We made price adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In accordance with sections 773(a)(6)(A), (B), and (C) of the Act, where appropriate, we deducted from the starting price rebates, warranty expenses, movement expenses, home market packing costs, credit expenses and other direct selling expenses and added U.S. packing costs and, for NVs compared to EPs, credit expenses, and other direct selling expenses. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale resulted in difference–in-merchandise adjustments exceeding 20 percent of the cost of manufacturing the U.S. product, we based NV on CV.

Price–to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV when

we were unable to compare the U.S. sale to a home market sale of an identical or similar product. For each unique SSSS product sold by the respondents in the United States during the POR, we calculated a weighted–average CV based on the sum of the respondent's materials and fabrication costs, SG&A expenses, including interest expenses, packing costs, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in Taiwan. We based selling expenses on weighted–average actual home market direct and indirect selling expenses. In calculating CV, we adjusted the reported costs as described in the COP section above.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same LOT as the EP or CEP sales. For NV, the LOT is based upon the level of the starting–price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. LOT is also based upon the level of the starting price sale, which is usually from the exporter to the importer. For CEP sales, it is the level of the constructed sale from the exporter to the importer. The Department adjusts CEP, pursuant to section 772(d) of the Act, prior to performing the LOT analysis, as articulated by 19 C.F.R. § 351.412. *See Micron Technology, Inc. v. United States*, 243 F.3d, 1301, 1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than the EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In determining whether separate LOTs exist, we obtained information from YUSCO and Chia Far regarding the marketing stages for the reported U.S. and home market sales, including a description of the selling activities performed by YUSCO and Chia Far for each channel of distribution. Generally, if the reported LOTs are the same, the functions and activities of the seller at each level should be similar. Conversely, if a party reports that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

YUSCO reported that it sold foreign like product in the home market through one channel of distribution and at one LOT. *See* YUSCO's November 22, 2004, Questionnaire Response at B–29. In this channel of distribution, YUSCO provided the following selling functions: inland freight, invoicing, packing, warranty services, and technical advice. Because there is only one sales channel in the home market involving similar functions for all sales, we preliminarily determine that there is one LOT in the home market.

In addition, YUSCO reported that it sold subject merchandise to customers in the United States through one channel of distribution and at one LOT. *See* YUSCO's November 15, 2004, Questionnaire Response at A–14. In this channel of distribution, YUSCO provided the following selling functions: arranging freight and delivery, invoicing, and packing. YUSCO did not incur any other expenses in the United States for its U.S. sales. Because the one sales channel in the United States involves similar functions for all sales, we preliminarily determine that there is one LOT in the United States.

Based upon our analysis of the selling functions performed by YUSCO, we preliminarily determine that YUSCO sold the foreign like product and subject merchandise at the same LOT. Although YUSCO provided technical advice and warranty services in the home market, but not in the U.S. market, these services were rarely provided in the home market and thus, there is no significant difference between the selling functions performed in the home and U.S. markets. Therefore, we preliminarily determine that a LOT adjustment is not warranted.

Chia Far reported that it sold subject merchandise in the home market to two types of customers, distributors and end users, through one channel of distribution. Chia Far provided the same selling functions for home market sales to both customer categories, such as providing technical advice, making freight and delivery arrangements, processing orders, providing after–sale warehousing, providing after–sale packing services, performing warranty services, and post–sale processing. *See* Chia Far's September 22, 2004, Section A Questionnaire Response at Exhibit A–6. Based on the similarity of the selling functions and the fact that one channel of distribution serviced the two types of customers, we preliminarily determine that there is one LOT in the home market.

For the U.S. market, Chia Far reported that it made sales to unaffiliated distributors directly and through its U.S. affiliate, Lucky Medsup. Since the Department bases the LOT of CEP sales on the price in the United States after making CEP deductions under section 772(d) of the Act, we based the LOT of Chia Far's CEP sales on the price after deducting selling expenses.

Chia Far performed the same selling functions, such as arranging freight and delivery, providing after–sale packing services, processing orders, providing technical advice, and performing warranty services for all U.S. customers, including Lucky Medsup's customers. *See* Chia Far's September 22, 2004, Section A Questionnaire Response at Exhibit A–6. Based on the similarity of selling functions to the same customer type, we preliminarily determine that there is one LOT in the United States.

To determine whether NV is at a different LOT than the U.S. transactions, the Department compared home market selling activities with those for EP and CEP transactions. The Department made the comparison after deducting expenses associated with selling activities occurring in the United States from the CEP. *See* section 772(d) of the Act. Chia Far engaged in the following selling activities for both the home and U.S. markets: providing technical advice, warranty services, freight and delivery arrangements, packing, and order processing. *See* AQR at Exhibit A–6 and A–7. Chia Far's selling activities in the home and U.S. markets differed in that additional activity was required to ship subject merchandise to U.S. customers (*i.e.*, arranging international freight and marine insurance) and it engaged in post–sale processing and post–sale warehousing in the home market, but not the U.S. market. While Chia Far may have engaged in certain selling activities in the home market that it did not perform in the U.S.

market, according to Chia Far, the significance of these activities is minimal. Based on the foregoing, the Department determined that the differences between the home and U.S. market selling activities do not support a finding that Chia Far's sales in the home market were made at a different LOT than U.S. sales.

In its questionnaire response, Chia Far requested a CEP offset (noting that there is only one LOT in the home market). *See* AQR at A–14. The Department will grant a CEP offset if NV is at a more advanced LOT than the CEP transactions and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability (*e.g.*, a LOT adjustment is not possible because there is only one LOT in the home market). Here, the Department has not found the NV LOT to be more advanced than the CEP LOT and thus, it has not granted Chia Far a CEP offset.

Currency Conversion

Pursuant to section 773A(a) of the Act, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following weighted–average dumping margins exist for the period July 1, 2003, through June 30, 2004:

Manufacturer/Exporter/ Reseller	Weighted–Average Margin (percentage)
Yieh United Steel Corporation ("YUSCO") ..	0.00
Chia Far Industrial Factory Co., Ltd. ("Chia Far")	1.37
Goang Jau Shing Enterprise Co., Ltd.	21.10
PFP Taiwan Co., Ltd. ...	21.10
Yieh Trading Corporation	21.10
Chien Shing Stainless Steel Company Ltd. ..	21.10

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 C.F.R. § 351.212(b)(1), where possible, the Department calculated importer–specific assessment rates for merchandise subject to this review. Where the importer–specific assessment rate is above *de minimis*, we will instruct CBP to assess the importer–specific rate uniformly on the entered customs value of all entries of subject merchandise made by the importer during the POR. Since YUSCO did not report the entered value of its sales, we calculated per–unit assessment rates for its merchandise by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the per–unit duty assessment rates were *de minimis* (*i.e.*, less than 0.50 percent *ad valorem*), in accordance with the requirement set forth in 19 C.F.R. § 351.106(c)(2), we calculated importer–specific *ad valorem* ratios based on the export prices. For the respondents receiving dumping margins based upon AFA, the Department will instruct CBP to liquidate entries according to the AFA *ad valorem* rate. The Department will issue appropriate appraisement instructions directly to CBP within 15 days of publication of the final results of review.

Cash Deposit Rates

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for each of the reviewed companies will be the rate listed in the final results of this review (except if the rate for a particular company is *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required for that company), (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent review period, (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise, and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 12.61 percent, the "all others" rate established in the LTFV investigation. *See Final Determination*, 64 FR 30592. These required cash deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

According to 19 C.F.R. § 351.224(b), the Department will disclose any calculations performed in connection with the preliminary results of review within 10 days of publicly announcing the preliminary results of review. Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 C.F.R. § 351.310(c). If requested, a hearing will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties are invited to comment on the preliminary results. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice. Also, interested parties may file rebuttal briefs, limited to issues raised in case briefs. The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, we request that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 C.F.R. § 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 1, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4306 Filed 8–8–05; 8:45 am]

(Billing Code: 3510–DS–S)

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Workshop To Participate in the Development of Software Assurance Metrics

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) announces the first in a series of planned workshops being held in support of NIST's Software Assurance Metrics and Tool Evaluation (SAMATE) project. NIST is working with industry, academia, and users:

- To identify deficiencies in software assurance (SA) methods and tools
- To develop metrics for the effectiveness of SA tools.

NIST invites parties interested in these issues to contribute to the specification of such metrics and to the development of reference data sets capable of testing the effectiveness of SA tools. These reference data sets, when used during an SA tool's development, can aid in building a correct implementation with regard to these metrics.

The first workshop "Defining the State of the Art in Software Security Tools" is being held at NIST Gaithersburg August 10 and 11. Future Workshops will be announced on the Project's Web site *http://samate.nist.gov/* and on other SA forums.

DATES: The first workshop is being held at NIST Gaithersburg August 10, 9 a.m. to 5 p.m. and August 11, 2005, 9 a.m. to 1 p.m.

FOR FURTHER INFORMATION CONTACT: For further information, you may visit the Software Assurance Metrics Project Website at *http://samate.nist.gov/*. In addition, you may telephone Dr. Paul E. Black at (301) 975–4794, or by e-mail at: *paul.black@nist.gov*.

SUPPLEMENTARY INFORMATION: In support of its Software Assurance Metrics and Tool Evaluation (SAMATE) project, NIST is working with industry, academia, and users:

- To identify deficiencies in software assurance (SA) methods and tools
- To develop metrics for the effectiveness of SA tools.

The SA Metrics Project surveys current SA tools and develops a classification scheme, grouping SA tools with similar functionality or capability. A set of metrics and tests are developed for each tool class. Source/object code vulnerability scanners are an example of one possible class. A series of Workshops will be used to:

- Validate the tool classes.
- Establish priorities for the order in which SA tool classes are tested.
- Help determine the required and optional functionality for each class of SA tools.

After a tool class is selected, requirements, metrics, and tests for these functionalities are developed. Classification and testing activities can proceed simultaneously. As a result, a draft specification and test methodology for the highest priority tool class is developed. Further information on the project, including the Project Plan, may be found at the Project's Web site *http://samate.nist.gov/* and on other SA forums.

Dated: August 3, 2005.

Matthew Heyman,

Chief of Staff.

[FR Doc. 05–15724 Filed 8–8–05; 8:45 am]

BILLING CODE 3510–13–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Emergency Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled AmeriCorps Application Instructions: State Competitive, State Education Award, National Direct, National Direct Education Award, National Professional Corps, Indian Tribes, States and Territories without Commissions, and National Planning, to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Corporation for National and Community Service, AmeriCorps, Amy Borgstrom, Associate Director of Policy, (202) 606–6930, or by e-mail at *ABorgstrom@cns.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to (1) Corporation for National and Community Service, and (2) the Office of Information and Regulatory Affairs. Please send comments to:

1. Corporation for National and Community Service, Attn: Amy Borgstrom, Associate Director of Policy for AmeriCorps, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(a) By fax to: (202) 606–3476, Attention: Amy Borgstrom, Associate Director of Policy for AmeriCorps; and

(b) Electronically by e-mail to: *ABorgstrom@cns.gov*; and

2. Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(a) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(b) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments

Description: Since the President's Call to Service, many Americans have

expressed a renewed desire to serve their country by volunteering in their community. Now, we have an obligation to ensure that Americans have quality opportunities to serve. The Corporation for National and Community Service (the "Corporation") has amended several provisions relating to the AmeriCorps national service program, and has added a rule to clarify the Corporation's requirements for program sustainability, performance measures and evaluation, capacity-building activities by AmeriCorps members, qualifications for tutors, and other requirements. The implementation of these changes through the rulemaking process includes ensuring the Corporation's information collection instruments accurately reflect these issues. In an effort to be compliant while maintaining functions essential to the operations of each State Commission and AmeriCorps program, we are submitting the enclosed request to OMB for approval of information collection activities.

Type of Review: Information collection, OMB Emergency Review.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application Instructions: State Competitive, State Education Award, National Direct, National Direct Education Award, National Professional Corps, Indian Tribes, States and Territories without Commissions, and National Planning.

OMB Number: 3045–0047.

Agency Number: None.

Affected Public: Nonprofit organizations, State, local and tribal.

Total Respondents: 2,000.

Frequency: Annually.

Average Time Per Response: 16 hours.

Estimated Total Burden Hours: 32,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: August 3, 2005.

Rosie Mauk,

Director, AmeriCorps State and National.

[FR Doc. 05–15730 Filed 8–8–05; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–35]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–35 with attached transmittal and policy justification.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

29 JUL 2005
In reply refer to:
I-05/007179

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-35, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Egypt for defense articles and services estimated to cost $181 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-35

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Egypt**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 60 million
Other	$121 million
TOTAL	$181 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 200 M109A5 155mm self-propelled howitzers, overhaul/refurbishment, intercoms, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, Quality Assurance Team, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support.**

(iv) **Military Department: Army (UWQ)**

(v) **Prior Related Cases, if any:**
FMS case UTM accepted on 17Jul00
FMS case UUN accepted on 18Mar02

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none**

(viii) **Date Report Delivered to Congress:** 29 JUL 2005

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Egypt – M109A5 155mm Self-propelled Howitzers

The Government of Egypt has requested a possible sale of 200 M109A5 155mm self-propelled howitzers, overhaul/refurbishment, intercoms, spare and repair parts, support and test equipment, publications and technical documentation, personnel training and training equipment, Quality Assurance Team, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics support. The estimated cost is $181 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

We previously notified transmittal number 00-39 to Congress on 24 May 2000 for the sale of 279 M109A2/A3 155mm self-propelled howitzers and logistics support for an estimated value of $48 million and transmittal number 02-10 to Congress on 6 November 2001 for overhaul/refurbishment of 201 M109A2/A3 155mm self-propelled howitzers and logistics support for an estimated value of $77 million.

Egypt will use the M109A5 howitzers primarily in support of its armed forces, but may also use them in joint exercises with the U.S. Government. The howitzers will improve Egypt's current fleet of ground defense equipment. Egypt will have no difficulty absorbing the howitzers into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

Equipment is considered long supply and is no longer utilized by the U.S. Government. The prime contractor will be United Defense, Limited Partnership of York, Pennsylvania for the overhaul/refurbishing of the howitzers. There are no known offset agreements proposed in connection with this potential sale.

Up to six U.S. Government Quality Assurance representatives will be required for two weeks intervals to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 05–15673 Filed 8–8–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity (DoDEA).

ACTION: Open meeting notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Appendix 2 of title 5, United States Code, Public Law 92–463, notice is hereby given that a meeting of the Advisory Council on Dependents' Education (ACDE) is scheduled to be held on September 23, 2005, from 8 a.m. to 5 p.m. The meeting will be held at the DoDEA headquarters building at 4040 North Fairfax Drive, Arlington, Virginia 22203. The purpose of the ACDE is to recommend to the Director, DoDEA, general policies for the operation of the Department of Defense Dependents Schools (DoDDS); to provide the Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense. The meeting emphases will be the current operational qualities of schools and the institutionalized school improvement processes, as well as other educational matters.

DATES: September 23, 2005, from 8 a.m. to 5 p.m.

ADDRESSES: DoDEA headquarters building at 4040 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Jarrard, at (703) 588–3121 or at *James.Jarrard@hq.dodea.edu*.

Dated: August 2, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liasion Officer, Department of Defense.

[FR Doc. 05–15668 Filed 8–8–05; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting—Joint Advisory Committee on Nuclear Weapons Surety.

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on September 8th, 2005 at the Institute for Defense Analyses, Alexandria, VA. The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons safety and security. In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended, Title 5, U.S.C. App. 2, (1988)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. Section 552b(c)(1) and accordingly this meeting will be closed to the public.

DATES: September 8, 2005.

ADDRESSES: Institute for Defense Analyses, 4850 Mark Center Drive, Alexandria, VA 22311–1882.

Dated: August 2, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–15672 Filed 8–8–05; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Department of Defense, Assistant Secretary of Defense (Health Affairs).

ACTION: Notice of meeting; Uniform Formulary Beneficiary Advisory Panel.

SUMMARY: This notice announces a meeting of the Uniform Formulary Beneficiary Advisory Panel. The panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics Committee regarding the Uniform Formulary. The meeting will be open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES: Wednesday, September 28, 2005, from 8 a.m. to 4 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Rich Martel, TRICARE Management Activity, Pharmacy Operations, Beneficiary Advisory Panel, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041, telephone (703) 681–0064 ext. 3672, fax (703) 681–1242, or e-mail at *richard.martel.ctr@tma.osd.mil*.

SUPPLEMENTARY INFORMATION: The Uniform Formulary Beneficiary Advisory Panel will only review and comment on the development of the Uniform Formulary as reflected in the recommendations of the DoD Pharmacy and Therapeutics (P&T) Committee coming out of that body's meeting in August 2005. The P&T Committee information and subject matter concerning drug classes reviewed for that meeting are available at *http://pec.ha.osd.mil*. Any private citizen is permitted to file a written statement with the advisory panel. Statements must be submitted electronically to *richard.martel.ctr@tma.osd.mil* no later than September 21, 2005. Any private citizen is permitted to speak at the Beneficiary Advisory Panel meeting, time permitting. One hour will be reserved for public comments, and speaking times will be assigned only to the first twelve citizens to sign up at the meeting, on a first-come, first-served basis. The amount of time allocated to a speaker will not exceed five minutes.

Dated: August 3, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–15697 Filed 8–5–05; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Threat Reduction Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to Alter a System of Records; HDTRA 006—Employees Occupational Health Programs.

SUMMARY: The Defense Threat Reduction Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 8, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 325–1205.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on August 1, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 2,2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 006

SYSTEM NAME:

Employees Occupational Health Programs (December 14, 1998, 63 FR 68736).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Environment, Safety and Occupational Health Division, Defense Threat Reduction Agency, 8725 John J. Kingman Road, MS 6201 Ft Belvoir, VA 22060–6201."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Any individual, military, civilian, or contractor personnel employed by the Defense Threat Reduction Agency (DTRA) and other Government Agency employees assigned to DTRA."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "5 U.S.C. 7901, Health Services Program; DTRA Directive 6055.1, DTRA Safety and Occupational Health Program; and E.O. 9397 (SSN)".

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief, Environmental, Safety and Occupational Health Division, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

NOTIFICATION PROCEDURE:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

RECORD ACCESS PROCEDURES:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

CONTESTING RECORD PROCEDURES:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

* * * * *

HDTRA 006

SYSTEM NAME:

Employees Occupational Health Programs.

SYSTEM LOCATION:

Environment, Safety and Occupational Health Division, Defense Threat Reduction Agency, 8725 John J. Kingman Road, MS 6201 Ft Belvoir, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, military, civilian, or contractor personnel employed by the Defense Threat Reduction Agency (DTRA) and other Government Agency employees assigned to DTRA.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains a variety of records relating to an employee's participation in the DTRA Occupational Health Program. Information which may be included in this system are the employee's name, Social Security Number, date of birth, weight, height, blood pressure, medical history, blood type, nature of injury or complaint, type of treatment/medication received, immunizations, examination findings and laboratory findings, exposure to occupational hazards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901, Health Services Program; DTRA Directive 6055.1, DTRA Safety and Occupational Health Program; and E.O. 9397 (SSN).

PURPOSE(S):

For use by authorized medical personnel in providing any medical treatment or referral; to provide information to agency management officials pertaining to job-related injuries or potential hazardous conditions' and to provide information relative to claims or litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The Office of Personnel Management, and the Federal Labor Relations Authority (including the General Counsel) in the Performance of official duties.

The Department of Labor in connection with claims for compensation.

The Department of Justice in connection with litigation relating to claims.

The Occupational Safety and Health Agency in connection with job-related injuries, illnesses, or hazardous condition.

The 'Blanket Routine Uses' published at the beginning of DTRA's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Records are stored in paper file folders in a locked file cabinet.

RETRIEVABILITY:

Records may be retrieved by the individual's name and Social Security Number.

SAFEGUARDS:

During the employment of the individual, medical records are maintained in files located in a secured room with access limited to those whose official duties require access. Buildings are protected by security guards and an intrusion alarm system.

RETENTION AND DISPOSAL:

Records are retained until the individual leaves the DTRA. Records are combined with the Official Personnel Folder which is forwarded to the Federal Personnel Records Center or to the new employing agency, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Environmental, Safety and Occupational Health Division, Defense

Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

The letter should contain the full name, Social Security Number and signature of the requester and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquires to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Written requests for information should contain the full name, Social Security Number, and signature of the requester. For personal visits the individual should provide a military or civilian identification card.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

RECORD SOURCE CATEGORIES:

Information is supplied directly by the individual, or derived from information supplied by the individual, or supplied by the medical officer or nurse providing treatment or medication, or supplied by the individual's private physician.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–15669 Filed 8–8–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Threat Reduction Agency; Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice To Alter a System of Records; HDTRA 010—Nuclear Test Participants.

SUMMARY: The Defense Threat Reduction Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 8, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 325–1205.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on August 1, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 2, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 010

SYSTEM NAME:

Nuclear Test Participants (December 14, 1998, 63 FR 68736).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Nuclear Test Personnel Review Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add the following "Veterans Advisory Board on Dose Reconstruction for the purposes of reviewing and overseeing the Department of Defense Radiation Dose Reconstruction Program, to include the conduct of audits of dose reconstructions and decisions by the Department of Veterans Affairs (DVA) on claims for radiogenic diseases and the provision of assistance to both the DVA and the DTRA in providing information on the Program, and such other activities as authorized by the Veterans Benefits Act of 2003 (Pub. L. 108–183, section 601)."

* * * * *

STORAGE:

Delete entry and replace with "Paper records in files and on electronic storage media."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "NTPR Program Manager, Nuclear Test Personnel Review Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

NOTIFICATION PROCEDURE:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

RECORD ACCESS PROCEDURES:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

CONTESTING RECORD PROCEDURES:

Delete address and replace with "General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

* * * * *

HDTRA 010

SYSTEM NAME:

Nuclear Test Participants.

SYSTEM LOCATION:

Nuclear Test Personnel Review Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and DoD civilian participants of the U.S. nuclear testing programs,

military occupation forces assigned to Hiroshima or Nagasaki from August 6, 1945 to July 1, 1946, and individuals who participated in the cleanup of Enewetak Atoll.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, rank, grade, service number, Social Security Number, last known or current address, dates and extent of test participation, exposure data, unit of assignment, medical data, and documentation relative to administrative claims or civil litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Atomic Energy Act of 1954, 42 U.S.C. 2013, Tasking Memorandum from Office of the Secretary of Defense to the Director, Defense Nuclear Agency dated 28 Jan 78, Subject: DoD Personnel Participation in Atmospheric Nuclear Weapons Testing and Military Construction Appropriations Act of 1977 (Pub. L. 94–367), DNA OPLAN 600–77, Cleanup of Enewetak Atoll, and the Radiation Exposure Compensation Act (Pub. L. 100–426, as amended by Pub. L. 100–510); and E.O. 9397 (SSN).

PURPOSE(S):

For use by agency officials and employees, or authorized contractors, and other DoD components in the preparation of the histories of nuclear test programs; to conduct scientific studies or medical follow-up programs and to provide data or documentation relevant to the processing of administrative claims or litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

National Research Council and the Center for Disease Control, for the purpose of conducting epidemiological studies on the effects of ionizing radiation on participants of nuclear test programs.

Department of Labor and the Department of Justice for the purpose of processing claims by individuals who allege job-related disabilities as a result of participation in nuclear test programs and for litigation actions.

Department of Energy for the purpose of identifying DOE and DOE contractor personnel who were, or may be in the future, involved in nuclear test programs; and for use in processing claims or litigation actions.

Department of Veterans Affairs for the purpose of processing claims by individuals who allege service-connected disabilities as a result of participation in nuclear test programs and for litigation actions' and to conduct epidemiological studies on the effect of radiation on nuclear test participants.

Information may be released to individuals or their authorized representatives.

Veterans Advisory Board on Dose Reconstruction for the purposes of reviewing and overseeing the Department of Defense Radiation Dose Reconstruction Program, to include the conduct of audits of dose reconstructions and decisions by the Department of Veterans Affairs (DVA) on claims for radiogenic diseases and the provision of assistance to both the DVA and the DTRA in providing information on the Program, and such other activities as authorized by the Veterans Benefits Act of 2003 (Pub. L. 108–183, section 601).

The 'Blanket Routine Uses' published at the beginning of DTRA's compilation of system of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in files and on electronic storage media.

RETRIEVABILITY:

Name, Social Security Number, service number, or military ID number.

SAFEGUARDS:

Paper records are filed in folders, microfilm/fiche and computer printouts stored in area accessible only by authorized personnel. Buildings are protected by security guards and intrusion alarm systems. Magnetic tapes are stored in a vault in a controlled area within limited access facilities. Access to computer programs is controlled through software applications which require validation prior to use.

RETENTION AND DISPOSAL:

Records are retained for 75 years after termination of case.

SYSTEM MANAGER(S) AND ADDRESS:

NTPR Program Manager, Nuclear Test Personnel Review Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency,8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the General Counsel, Defense Threat Reduction Agency,8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the General Counsel, Defense Threat Reduction Agency,8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

RECORD SOURCE CATEGORIES:

Retired Military Personnel records from the National Personnel Records Center, U.S. DTRA Form 10 from individuals voluntarily contacting DTRA or other elements of DoD or other Government Agencies by phone or mail. DoD historical records, dosimetry records and records from the Department of Energy, Department of Veterans Affairs, the Social Security Administration, the Internal Revenue Service, and the Department of Health and Human Service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–15670 Filed 8–8–05; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Threat Reduction Agency; Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to Alter a System of Records; HDTRA 020—Security Operations.

SUMMARY: The Defense Threat Reduction Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 8, 2005 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 325–1205.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on August 1, 2005, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 2, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 020

SYSTEM NAME:

Security Operations (December 14, 1998, 63 FR 68736).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Nuclear Test Personnel Review, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 133, Under Secretary of Defense for Acquisitions, Technology and Logistics; E.O. 12891, Committee on Human Radiation Experiments; and E.O. 9397 (SSN)."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM:

Delete second paragraph and replace with "To the National Aeronautics and Space Administration, Department of Justice, Department of Energy, Department of Health and Human Services, Department of Veterans Affairs, Central Intelligence Agency, and Office of Management and Budget for purposes of performing official activities or requirements related to the Department of Defense's review program for human radiation research."

* * * * *

STORAGE:

Delete entry and replace with "Paper records in files and on electronic storage media."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Access to or disclosure of information is limited to authorized personnel. Paper records and computer systems are located in areas accessible only by authorized personnel. Buildings are protected by security guards and intrusion alarm systems. Access to computer programs is controlled through software applications that require validation prior to use."

RETENTION AND DISPOSAL:

Delete the words "command center" and replace with "Defense Threat Reduction Agency".

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Nuclear Test Personnel Review Program Manager, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

NOTIFICATION PROCEDURE:

Delete address and replace with "Nuclear Test Personnel Review, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

RECORD ACCESS PROCEDURES:

Delete address and replace with "Nuclear Test Personnel Review, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

CONTESTING RECORD PROCEDURES:

Delete address and replace with "Nuclear Test Personnel Review, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201."

* * * * *

HDTRA 020

SYSTEM NAME:

Human Radiation Research Review.

SYSTEM LOCATION:

Nuclear Test Personnel Review, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who were or may have been the subject of tests involving ionizing radiation or other human-subject experimentation; individuals who have inquired or provided information to the Department of Energy Helpline or the Department of Defense Human Radiation Experimentation Command Center concerning such testing.

Military and DoD civilian personnel who participated in atmospheric nuclear testing between 1945 and 1962 or the occupation of Hiroshima and Nagasaki are already included in the Defense Threat Reduction Agency Privacy Act system of records notice HDTRA 010, Nuclear Test Participants and are not part of this effort. However, inquiries referred from the Helpline that later are determined to fall within this category will be included in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes an individual's name, Social Security Number or service number, last known or current address, occupational information, dates and extent of involvement in an experiment, exposure data, medical data, medical history of subject and relatives, and other documentation of exposure to ionizing radiation or other agents.

The system contains information abstracted from historical records, and information furnished to the Department of Defense, Department of Energy or other Federal Agencies by affected individuals or other interested parties.

Records include human radiation experimentation conducted from 1944 to the present. However, experiments conducted after May 20, 1974 (the date of issuance of the Department of Health, Education and Welfare Regulations for the Protection of Human Subjects, 45 CFR part 46), may be covered by other systems of records.

Common and routine medical practices, such as established diagnostic and treatment methods involving incidental exposures to ionizing radiation are not included within this system.

Examples of such methods are panorex radiographs for dental evaluations and thyroid scans for the evaluation and treatment of hypo/hyperthyroidism.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Under Secretary of Defense for Acquisitions, Technology and Logistics; E.O. 12891, Committee on

Human Radiation Experiments; and E.O. 9397 (SSN).

PURPOSE(S):

For use by agency officials and employees, or authorized contractors, and other DoD components in the preparation of the histories of human radiation experimentation; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the exposure of individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the National Aeronautics and Space Administration, Department of Justice, Department of Energy, Department of Health and Human Services, Department of Veterans Affairs, Central Intelligence Agency, and Office of Management and Budget for purposes of performing official activities or requirements related to the Department of Defense's review program for human radiation research. The "Blanket Routine Uses" published at the beginning of DTRA's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in files and on electronic storage media.

RETRIEVABILITY:

Records are retrieved by case number, name, study control number, Social Security Number, or service number.

SAFEGUARDS:

Access to or disclosure of information is limited to authorized personnel. Paper records and computer systems are located in areas accessible only by authorized personnel. Buildings are protected by security guards and intrusion alarm systems. Access to computer programs is controlled through software applications that require validation prior to use.

RETENTION AND DISPOSAL:

Files will be retained permanently. They will be maintained in the custody of the Defense Threat Reduction Agency until all claims have been settled and then transferred to the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Nuclear Test Personnel Review Program Manager, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Nuclear Test Personnel Review, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individuals should provide full name, Social Security Number, or service number, and if known, case or study control number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Nuclear Test Personnel Review, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individuals should provide full name, Social Security Number, or service number, and if known, case or study control number.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the Nuclear Test Personnel Review, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

RECORD SOURCE CATEGORIES:

Information will be collected directly from individuals, as well as extracted from historical records to include personnel files and lists, training files, medical records, legal case files, radiation and other hazard exposure records, occupational and industrial accident records, employee insurance claims, organizational and institutional administrative files, and related sources. The specific types of records used are determined by the nature of an individual's exposure to radiation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–15671 Filed 8–8–05; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 8, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: August 3, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: National Longitudinal Transition Study—2 (NLTS2).

Frequency: One time.

Affected Public:

Individuals or household; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 4,432.

Burden Hours: 2,085.

Abstract: NLTS2 will provide nationally representative information about youth with disabilities in secondary school and in transition to adult life, including their characteristics, programs and services and achievements in multiple domains (*e.g.*, employment, postsecondary education). The study will inform special education policy development and support Individuals with Disabilities Education Act (IDEA) reauthorization.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2778. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to 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. 05–15716 Filed 8–8–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC05–113–000]

AIG Energy Inc.; Notice of Filing

August 2, 2005.

Take notice that on July 27, 2005, AIG Energy Inc. (Applicant) submitted an Application pursuant to section 203 of the Federal Power Act for authorization of the indirect disposition of jurisdictional facilities that may have resulted from an internal transfer of intermediate upstream ownership interests.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 17, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4285 Filed 8–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–115–000]

Berkshire Hathaway Inc., MidAmerican Energy Company, MidAmerican Energy Holdings Company; Notice of Filing

August 3, 2005.

Take notice that on July 29, 2005, Berkshire Hathaway Inc. (Berkshire Hathaway), MidAmerican Energy Company (MidAmerican), and MidAmerican Energy Holdings Company filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for approval of an indirect transfer of control of MidAmerican, and possibly PacifiCorp, to Berkshire Hathaway.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 29, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4287 Filed 8–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–395–000]

Dominion Cove Point LNG, LP; Notice of Application

August 3, 2005.

Take notice that on July 26, 2005, Dominion Cove Point LNG, LP (Cove Point LNG) filed an application in Docket No. CP05–395–000, pursuant to section 3 of the Natural Gas Act (NGA), for authority to construct, install, own, operate and maintain certain facilities at the Cove Point LNG import terminal at Cove Point, Maryland (Vaporizer Reactivation Project). The details of this proposal are more fully set forth in the application that is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY(202) 502–8659.

Any questions regarding this application should be directed to Anne E. Bomar, Managing Director, Transmission, Rates and Regulation, Dominion Resources, Inc., 120 Tredegar Street, Richmond, Virginia 23219, or by phone at (804) 819–2134.

The Vaporizer Reactivation Project is designed to refurbish and reactivate two unused waste heat vaporizers that were originally installed at the Cove Point LNG Terminal in the 1970s. These vaporizers will use combustion exhaust heat from the gas turbine generators to indirectly vaporize LNG. The proposed project will provide spare vaporization capability that will create an opportunity to firm up sendout from the facility, during times when the vaporization facilities would otherwise be limited by normal maintenance requirements. Cove Point LNG says that reactivating these waste heat vaporizers will enable Cove Point LNG to provide up to its current peak-day capability of 1.0 MMDth/day of sendout for which it is currently authorized on a year-round basis, subject only to certain excused interruptions. Cove Point LNG says that the Vaporizer Reactivation Project will not impair the ability of Cove Point LNG to render service at reasonable rates to its existing customers.

Cove Point LNG requests that the Commission approve the use of the facilities associated with the Vapor Reactivation Project to support an incremental send-out service (ISQ) for LTD–1 customers under Section 4 of the NGA. The terms and conditions of the proposed ISQ service are set forth in *pro forma* tariff sheets modifying Rate Schedule LTD–1 in Exhibit P to the application. Cove Point LNG is also proposing that an off-peak firm transportation service (OTS) on the Cove Point LNG natural gas pipeline be approved by the Commission under Section 4 of the NGA. The terms and conditions of the proposed OTS service are also set forth in *pro forma* tariff sheets in Exhibit P to the application.

Cove Point LNG requests that the Commission grant the requested authorization at the earliest practicable date, in order to ensure an in-service date on the earlier of: (i) The earliest practicable date, or (ii) the later of (a) May 24, 2006, or (b) six months following issuance of the requested authorizations.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA(18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Comment Date: 5 p.m. Eastern Time on August 26, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4283 Filed 8–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC05–114–000, ER05–1258–000]

FPL Energy Duane Arnold, LLC; Interstate Power and Light Company; Notice of Filing

August 3, 2005.

Take notice that on July 29, 2005, FPL Energy Duane Arnold, LLC (FPLE Duane Arnold) and Interstate Power and Light Company (IPL) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of the sale of the majority ownership interests in Duane Arnold Energy Center (DAEC) from IPL to FPLE Duane Arnold, a wholly-owned, direct subsidiary of FPL Group, Inc. In addition, IPL is submitting for filing a Large Generator Interconnection Agreement.

The applicants also are requesting confidential treatment pursuant to 18 CFR 388.112 for certain data submitted in support of the application.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of

the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 28, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4286 Filed 8–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–521–000]

Gas Transmission Northwest Corporation; Notice of Refund Report

August 3, 2005.

Take notice that on July 29, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing a Refund Report which reports GTN's refund of revenues collected under its Competitive Equalization Surcharge mechanism for the period from November 1, 2004 through December 31, 2004.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 10, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4291 Filed 8–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–110–000]

MidAmerican Energy Holdings Company; Scottish Power plc; PacifiCorp Holdings, Inc.; PacifiCorp; Notice of Filing

August 3, 2005.

Take notice that on July 29, 2005, MidAmerican Energy Holdings Company (MEHC) filed with the Federal Energy Regulatory Commission an amendment to the application filed in this proceeding on July 22, 2005, pursuant to section 203 of the Federal Power Act for authorization of the sale of PacifiCorp from PacifiCorp Holdings to a wholly-owned, indirect subsidiary of MEHC. MEHC states that the amendment explains that MEHC may not be pursuing a contract transmission path and will not be filing a joint operating agreement between MidAmerican Energy Company and PacifiCorp at this time.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on September 26, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4284 Filed 8–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–15–000]

The Union Light, Heat and Power Company; Notice of Application for Rate Approval

August 3, 2005.

Take notice that on July 21, 2005, The Union Light, Heat, and Power Company (Union Light) filed with the Federal Energy Regulatory Commission an application pursuant to section 284.123(b)(2)(i) for rate approval. Union Light proposes to establish a monthly reservation charge for no-notice quality service to be rendered pursuant to its Order No. 63 blanket certificate.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest-date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time August 24, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4290 Filed 8–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 2, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–874–001.

Applicants: Energy West Resources, Inc.

Description: Energy West Resources, Inc. submits its updated triennial market power analysis and revisions to its market-based rate tariff.

Filed Date: 07/25/2005.

Accession Number: 20050728–0117.

Comment Date: 5 p.m. eastern time on Monday, August 15, 2005.

Docket Numbers: ER01–2783–006.

Applicants: TEC Trading, Inc.

Description: TEC Trading, Inc. submits its report regarding the requirement that sellers with market-based rate authority make a triennial market power analysis filing pursuant to the Commission's order issued 5/31/2005, 111 FERC ¶ 61,295 (2005).

Filed Date: 07/26/2005.

Accession Number: 20050728–0118.

Comment Date: 5 p.m. eastern time on Tuesday, August 16, 2005.

Docket Numbers: ER02–1406–009; ER01–1099–008; ER99–2928–005; ER01–1397–006.

Applicants: Acadia Power Partners, LLC; Cleco Power LLC; Cleco Evangeline LLC; Perryville Energy Partners, L.L.C.

Description: Acadia Power Partners, LLC; Cleco Power LLC; Cleco Evangeline LLC and Perryville Energy Partners, L.L.C. submit the Delivered Price Test Analysis and related analyses in compliance with the Commission's order issued 5/25/05, 111 FERC ¶ 61,239 (2005).

Filed Date: 07/25/2005.

Accession Number: 20050728–0005.

Comment Date: 5 p.m. eastern time on Monday, August 15, 2005.

Docket Numbers: ER05–1245–000.

Applicants: Bangor Hydro-Electric Company.

Description: Bangor Hydro-Electric Company submits proposed revisions to its local service schedule set forth as Schedule 21–BHE in the ISO New England Inc. FERC Open Access Transmission Tariff.

Filed Date: 07/22/2005.

Accession Number: 20050728–0201.

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: ER05–1246–000.

Applicants: Enron Sandhill Limited Partnership.

Description: Enron Sandhill Limited Partnership submits a Notice of Termination of its FERC Electric Tariff, Original Volume No.1, effective as of 11/1/02.

Filed Date: 07/25/2005.

Accession Number: 20050728–0200.

Comment Date: 5 p.m. eastern time on Monday, August 15, 2005.

Docket Numbers: ER05–1247–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation (CAISO) submits Notice of Cancellation of the Dynamic Scheduling Agreement for Scheduling Coordinators between CAISO and Reliant Energy Services (Non-Conforming Service Agreement No. 579) effective as of 4/1/05.

Filed Date: 07/25/2005.

Accession Number: 20050728–0202.

Comment Date: 5 p.m. eastern time on Monday, August 15, 2005.

Docket Numbers: ER05–1248–000.

Applicants: Public Service Company of Colorado.

Description: Xcel Energy Services Inc., on behalf of Public Service Company of Colorado, submits the Second Restated and Amended Power Purchase Agreement between Public Service Company of Colorado and Intermountain Rural Electric Association.

Filed Date: 07/26/2005, as amended 07/29/2005.

Accession Number: 20050728–0203.

Comment Date: 5 p.m. eastern time on Tuesday, August 16, 2005.

Docket Numbers: ER05–1249–000.

Applicants: Granite State Electric Company; The Narragansett Electric Company; Massachusetts Electric Company; The Narragansett Electric Company; Niagara Mohawk Power

Corporation; New England Power Company.

Description: National Grid USA, on behalf of its subsidiaries Granite State Electric Company (Granite State), The Narragansett Electric Company (Narragansett), Massachusetts Electric Company Mass Electric), Niagara Mohawk Power Corporation (Niagara Mohawk) and New England Power Company (NEP), submits revisions to the market-based rate sales tariffs of Niagara Mohawk and NEP; and market-based rate sales tariffs for Mass Electric, Narragansett and Granite State.

Filed Date: 07/26/2005.

Accession Number: 20050728–0190.

Comment Date: 5 p.m. eastern time on Tuesday, August 16, 2005.

Docket Numbers: ER96–2585–004; ER98–6–009.

Applicants: Niagara Mohawk Power Corporation; New England Power Company.

Description: National Grid USA, on behalf of its subsidiaries Niagara Mohawk Power Corporation and New England Power Company, submits an updated market power analysis in compliance with the Commission's 5/31/05 Order, 111 FERC ¶ 61.295 (2005).

Filed Date: 07/26/2005.

Accession Number: 20050728–0115.

Comment Date: 5 p.m. eastern time on Tuesday, August 16, 2005.

Docket Numbers: ER98–4095–005; ER99–1764–006; ER05–98–002.

Applicants: Carr Street Generating Station, L.P.; Erie Boulevard Hydropower, L.P.; Brascan Power St. Lawrence River, LLC.

Description: Carr Street Generating Station, LP, Erie Boulevard Hydropower, L.P., Brascan Power St. Lawrence River, LLC submit a consolidated updated market power analysis.

Filed Date: 07/25/2005.

Accession Number: 20050727–0010.

Comment Date: 5 p.m. eastern time on Monday, August 15, 2005.

Docket Numbers: ER99–2992–003.

Applicants: Tenaska Gateway Partners, Ltd.

Description: Tenaska Gateway Partners, Ltd. submits its triennial updated market analysis and revisions to its FERC Electric Tariff, Original Volume No.1 incorporating the Commission's change in status reporting requirement adopted in Order No. 652.

Filed Date: 07/26/2005.

Accession Number: 20050728–0116.

Comment Date: 5 p.m. eastern time on Tuesday, August 16, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4280 Filed 8–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings #1

August 3, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–3109–002, ER00–3774–002.

Applicants: NYSD, LP; Adirondack Hydro Fourth Branch; Warrensburg Hydro Power, LP; Sissonville, LP; Adirondack Hydro Development Corporation.

Description: Boralex Operations Inc., on behalf of the above listed licensees, pursuant to the Commission's order issued 5/31/05 (111 FERC 61,295) informs the Commission that the licensees referenced above are exempt from the power marketing requirements and are not obligated to file market power analyses.

Filed Date: 7/26/2005.

Accession Number: 20050729–0007.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 16, 2005.

Docket Numbers: ER01–1758–002.

Applicants: Altorfer, Inc.

Description: Altorfer, Inc. submits its market power update, in compliance with the Commission's Order issued 3/31/05, 111 FERC 61,295.

Filed Date: 7/28/2005.

Accession Number: 20050801–0014.

Comment Date: 5 p.m. Eastern Time on Thursday, August 18, 2005.

Docket Numbers: ER01–1760–003.

Applicants: Haleywest L.L.C.

Description: Haleywest, LLC submits its Triennial Updated Market Analysis and revised tariff sheets reflecting certain Commission reporting requirements.

Filed Date: 7/28/2005.

Accession Number: 20050801–0017.

Comment Date: 5 p.m. Eastern Time on Thursday, August 18, 2005.

Docket Numbers: ER05–1054–001.

Applicants: Eastern Landfill Gas, LLC.

Description: Pepco Energy Services, on behalf of Eastern Landfill Gas, LLC, submits an Amendment to its application filed on 5/31/05 for blanket authorizations, certain waivers, and for an order approving rate schedule.

Filed Date: 7/28/2005.

Accession Number: 20050729–0095.

Comment Date: 5 p.m. Eastern Time on Thursday, August 18, 2005.

Docket Numbers: ER05–1251–000.

Applicants: Madison Windpower, LLC.

Description: Madison Windpower LLC submits a notice of cancellation of

its market-based rate electric tariff, FERC Electric Rate Schedule Original Volume 1, to be effective 8/24/05.

Filed Date: 7/26/2005.

Accession Number: 20050729–0184.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 16, 2005.

Docket Numbers: ER05–1252–000.

Applicants: Public Service Company of New Mexico.

Description: Public Service Co. of New Mexico (PNM) submits a notice of cancellation of Service Agreement No. 192, under its FERC Electric Tariff, Second Revised Volume No. 4, between PNM and Celerity Energy of New Mexico, LLC.

Filed Date: 7/22/2005.

Accession Number: 20050729–0181.

Comment Date: 5 p.m. Eastern Time on Friday, August 12, 2005.

Docket Numbers: ER05–1253–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Power Company (collectively, Southern Companies) submits notification that the Southern Companies are adopting the revised North American Electric Reliability Council's (NERC) Transmission Loading Relief procedures as of the date approved by the NERC board (April 1, 2005).

Filed Date: 7/25/2005.

Accession Number: 20050729–0182.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2005.

Docket Numbers: ER05–1254–000.

Applicants: Attala Energy Company, LLC.

Description: Attala Energy Company, LLC submits a Notice of Cancellation of its Rates Schedule FERC 1, effective 7/27/05.

Filed Date: 7/26/2005.

Accession Number: 20050729–0183.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 16, 2005.

Docket Numbers: ER05–1255–000.

Applicants: Horizon Power, Inc.

Description: NFR Power, Inc. submits a Notice of Succession and tariff filing reflecting a change in the corporate name from NFR Power, Inc. to Horizon Power, Inc.

Filed Date: 7/27/2005.

Accession Number: 20050729–0190.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2005.

Docket Numbers: ER05–1256–000.

Applicants: BP Energy Company.

Description: BP Energy Company submits a petition for acceptance of revisions to tariff to allow for sales of ancillary services at market-based rates.

Filed Date: 7/26/2005.

Accession Number: 20050729–0188.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 16, 2005.

Docket Numbers: ER05–1257–000.

Applicants: Duke Energy Corporation.

Description: Duke Energy Corp. submits proposed changes to its Interconnection Agreement with North Carolina Electric Membership Corp.

Filed Date: 7/26/2005.

Accession Number: 20050729–0191.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 16, 2005.

Docket Numbers: ER05–855–001.

Applicants: Duke Energy Corporation.

Description: Duke Electric Transmission submits an amendment to, and additional information concerning, the Large Generator Interconnection Agreement with Power Ventures Group, LLC, originally filed on April 22, 2005.

Filed Date: 7/27/2005.

Accession Number: 20050729–0105.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2005.

Docket Numbers: ER97–18–004.

Applicants: P&T Power Co.

Description: P&T Power Co. submits its updated triennial market power report.

Filed Date: 7/28/2005.

Accession Number: 20050801–0018.

Comment Date: 5 p.m. Eastern Time on Thursday, August 18, 2005.

Docket Numbers: ER99–2061–001.

Applicants: Enjet, Inc.

Description: Enjet, Inc. submits an updated market power analysis and revised tariff sheet reflecting certain Commission reporting requirements.

Filed Date: 7/28/2005.

Accession Number: 20050801–0016.

Comment Date: 5 p.m. Eastern Time on Thursday, August 18, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern Time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4281 Filed 8–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

August 2, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–316–017.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits its Index of Customers for the second quarter of 2005 under the ISO's FERC Tariff for Transmission Dispatch and Power Administration Services.

Filed Date: 7/27/2005.

Accession Number: 20050728–0205.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2005.

Docket Numbers: ER02–1942–002.

Applicants: Tenaska Virginia Partners, L.P.

Description: Tenaska Virginia Partners L.P. submits its Triennial Updated Market Analysis and its revised Rate Schedule 1, Original Volume No. 1 incorporating the Commission's change in status reporting requirement adopted in Order No. 652.

Filed Date: 7/27/2005.

Accession Number: 20050729–0001.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2005.

Docket Numbers: ER04–691–058; ER04–106–014; EL04–104–044.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume No. 1, in compliance with the Commission's order issued 6/27/05, 111 FERC 61,491 (2005).

Filed Date: 7/27/2005

Accession Number: 20050728–0204.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2005.

Docket Numbers: ER05–1025–001.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation (CAISO) submits response to the Commission deficiency letter issued 7/8/05 regarding CAISO's 5/25/05 filing submitting Amendment No. 70 to its open access transmission tariff.

Filed Date: 7/27/2005.

Accession Number: 20050729–0003.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2005.

Docket Numbers: ER05–1178–001.

Applicants: Gila River Power, L.P.

Description: Gila River Power, L.P. amends its 6/30/05 filing in Docket No. ER05–1178–000 by submitting substitute tariff sheets and submitting a change in status notification.

Filed Date: 7/27/2005.

Accession Number: 20050729–0004.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2005.

Docket Numbers: ER05–1191–001.

Applicants: Union Power Partners, L.P.

Description: Union Power Partners, LP amends its 6/30/05 filing in Docket No. ER05–1191–000 by submitting additional revised tariff sheets and a Substitute First Revised Sheet No. 2 and submitting a change in status notification.

Filed Date: 7/27/2005.

Accession Number: 20050729–0005.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2005.

Docket Numbers: ER05–1250–000.

Applicants: ISO New England, Inc.; New England Hydro-Transmission Electric Company, Inc.; New England Hydro-Transmission Corporation; New England Electric Transmission Corporation; Vermont Electric Transmission Company.

Description: ISO New England, Inc., New England Hydro-Transmission Electric Company, Inc., New England Hydro-Transmission Corporation, New England Electric Transmission Corporation and Vermont Electric Transmission Company submit the final executed versions of the English-French translated versions of two contracts related to the tariff schedules and agreements that the Commission accepted on May 25, 2005, in Docket No. ER05–754.

Filed Date: 7/27/2005.

Accession Number: 20050728–0191.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2005.

Docket Numbers: ER98–2603–004.

Applicants: Southwood 2000, Inc.

Description: Southwood 2000, Inc. submits its updated market power study.

Filed Date: 7/27/2005.

Accession Number: 20050729–0006.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 17, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4282 Filed 8–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1656–000]

California Independent System Operator Corporation; Notice of FERC Staff Participation

August 3, 2005.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on August 8, 2005, members of its staff will participate in a conference call on Congestion Revenue Rights (CRR) Study 2, hosted by the CAISO. The call will review participants' questions and comments on the Draft CRR Study 2 Report.

Sponsored by the CAISO, the conference call is open to all stakeholders, and staff's participation is part of the Commission's ongoing outreach efforts. The call may discuss matters at issue in Docket No. ER02–1656–000.

For further information, contact Katherine Gensler at *katherine.gensler@ferc.gov*; (916) 294–0275.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4288 Filed 8–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Technical Conferences

August 3, 2005.

Take notice that several technical conferences will be held to address certain specific issues related to the electronic tariff and rate case filing software that has been developed in connection with the Commission's Notice of Proposed Rulemaking requiring electronic tariff filings. *Electronic Tariff Filings, Notice of Proposed Rulemaking*, 69 FR 43929 (July 23, 2004), FERC Stats. & Regs., Proposed Regulations ¶ 32,575 (July 8, 2004). Pursuant to the Commission's July 6, 2005 Notice, Commission staff is arranging meetings with the test companies and the industry to develop the electronic software.[1]

These meetings will address the tariff filing definitions used for electronic filing and the attachments that are required, in accordance with the Commission's regulations, for each tariff filing type. The conferences will be held at the Commission's offices, 888 First Street, NE., Washington, DC. All interested persons are invited to attend.

The dates of the technical conferences and the regulatory sections to be discussed are as follows:

Industry	Date	Time and room location	Agenda
Natural Gas Act Pipelines	August 9, 2005	9 a.m. EDT, Room 3M–3	Parts 154 and 385.
Natural Gas Policy Act Pipelines	August 9, 2005	1 p.m. EDT (After NGA pipelines), Room 3M–3.	Section 284.123 and Part 385.
Federal Power Act Public Utilities	August 10, 2005	1 p.m. EDT, Room 3M–3	Parts 35 and 385.
Interstate Commerce Act Pipelines	August 18, 2005	10 a.m. EDT, Room 3M–2A	Parts 341, 342, 344, 346, 347, 348 and 385.

The conferences are open to the public to attend. Those planning to attend are encouraged to notify Keith Pierce to ensure sufficient space is available. Parties who wish to participate by teleconference must pre-register 2 business days prior to the date of the meeting with the contact listed below.

As discussed in the July 6, 2005 Commission Notice, once the changes to the Commission's software have been completed, another technical conference will be held. A separate notice will be issued for that conference.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about these conferences, please contact Keith Pierce, Office of Markets, Tariffs and Rates at (202) 502–8525 or *Keith.Pierce@ferc.gov*.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4289 Filed 8–8–05; 8:45 am]

BILLING CODE 6717–01–P

[1] *Electronic Tariff Filings, Notice of Additional Proposals and Procedures*, 70 FR 40941 (July 15, 2005), 112 FERC ¶ 61,043 (2005).

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0512; FRL–7949–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Vehicle Service Information Web Site Audit, EPA ICR Number 2181.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 8, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0512, to EPA online using EDOCKET (our preferred method), by e-mail to "*a-and-r-Docket@epa.gov*", or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Holly Pugliese, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: (734) 214–4288; E-mail address: *pugliese.holly@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 27, 2005 (70 FR 21745) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received two comments on this ICR. One commenter requested that all of the information collected under this ICR be made available to the public and that a copy of this information be sent to the commenter. All of the information collected will be made available to the public at the Web site EPA has established for this project at *www.oemaudit.com*. EPA can also arrange to have hard copies available to interested parties.

EPA also received comment from the National Automobile Dealers Association (NADA). NADA commented that EPA misidentified the NAICS Code of the potential participants of the survey. In the ICR, EPA identified

NAICS Code 8111 which is the general category for automotive repair and maintenance. NADA commented that EPA should include other NAICS codes including automobile dealers (NAICS 4411), automotive parts, accessories and tire stores (NAICS 4413), gasoline stations (NAICS 4471), and other transportation and vehicle maintenance facilities covered under two digit code 48.

In response to this comment, EPA believed that NAICS code 8111 was sufficiently broad to encompass the diversity of the automotive repair industry and we did not intend to limit participation in the audit by selecting this particular NAICS code. However, in order to avoid any perception that participation will be limited, EPA believes it is reasonable to add the NAICS code as outlined in the NADA comments and has changed the supporting statement for this ICR accordingly.

NADA also commented on the labor rate used by EPA to calculate the total burden of this ICR. To calculate the total burden, EPA used $27/hour. NADA commented that this seemed unreasonably low and referenced unidentified 2004 data that the average customer labor rate for new car dealers (NAICS code 44111) is $75/hour.

The $27/hour figure used by EPA comes from the Bureau of Labor Statistics Civilian Worker Cost Table (June, 2005) (*http://stats.bls.gov/news.release/ecec.t02.htm*). According to this table, employee compensation for the occupational group that represents installation, maintenance, and repair workers is $27.59/hour. EPA consistently uses information from the this table provided by the Bureau of Labor Statistics to estimate ICR burden and therefore believe that this figure is appropriate to use for this ICR.

EPA has established a public docket for this ICR under Docket ID number OAR–2004–0512, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Vehicle Service Information Web Site Audit

Abstract: EPA finalized regulations in June of 2003 (68 FR 38427; June 27, 2003) requiring auto manufacturers to launch full text Web sites containing all required service information for 1996 and later model years. In order to assess the effectiveness of the Web site provisions of the regulations, EPA believes that input from independent technicians must be of primary consideration. As part of our broader efforts to evaluate the OEM Web sites, EPA is initiating a process to gather feedback directly from the technician community on their experiences with the Web sites and to communicate those findings directly to the OEMs and the service industry as a whole. EPA staff will use this data in conjunction with other internal analyses to assess the effectiveness of the service information Web sites that are required by the regulations. In addition, this information will be used by the Agency to determine if manufacturer guidance or changes to the regulations are needed.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 24 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are independent aftermarket service providers.

Estimated Number of Respondents: 250.

Frequency of Response: bi-weekly.

Estimated Total Annual Hour Burden: 2,042 hours.

Estimated Total Annual Cost: $55,125, which includes $0 annualized capital/startup costs, $0 O&M costs, and $55,125 annual labor costs.

Changes in the Estimates: There is an increase of 2,042 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to a change in program requirements.

Dated: August 1, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–15744 Filed 8–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7949–9; Docket ID Number: OAR–2005–0120]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks (Renewal); EPA ICR Number 1285.06, OMB Control Number 2060–0132

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This ICR is scheduled to expire on July 31, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. The ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 8, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2005–0120 to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Nydia Y. Reyes-Morales, Mail Code 6403J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9264; fax number: (202) 343–2804; e-mail address: *reyes-morales.nydia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 31, 2005, (70 FR 30943), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OAR–2005–0120, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number as identified below.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks (40 CFR part 86, subpart L) (Renewal).

Abstract: Section 206(g) of the Clean Air Act, as amended, contains nonconformance penalty provisions (NCP) that allow manufacturers to introduce into commerce heavy-duty engines or vehicles (including light-duty trucks) which fail to conform with certain emission standards upon payment of a monetary penalty. Manufacturers who elect to use NCPs are require to test production engines and vehicles to determine the extent of their nonconformity and conduct a Production Compliance Audit (PCA). The collection activities of the nonconformance penalty program include periodic reports and other information (including the results of emission testing conducted during the PCA). CCD will use this information to ensure that manufacturers are complying with the regulations and that appropriate nonconformance penalties are being paid. Responses to this collection are voluntary.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 196 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Automobile Manufacturers; Light Truck and Utility Vehicle Manufacturers; Heavy Duty Truck Manufacturers; Gasoline Engine and Engine Parts Manufacturers; Motor Vehicle Body Manufacturers; Construction Machinery Manufacturers; Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturers; Military Armored Vehicle, Tank, and Tank Component Manufacturers; Other Engine Equipment Manufacturers; Other Motor Vehicle Electrical and Electronic Equipment Manufacturers.

Estimated Number of Respondents: 2.

Frequency of Response: Annually and Quarterly.

Estimated Total Annual Hour Burden: 1,178.

Estimated Total Annual Cost: $94,998, which includes $0 annualized capital/startup costs, $18,180 annual O&M costs, and $76,818 annual labor costs.

Changes in the Estimates: There is no change in the total estimated burden hours currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: July 28, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–15745 Filed 8–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7949–6]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Sierra Club and United States Public Interest Research Group (collectively, "Plaintiffs"): *Sierra Club, et al.* v. *Johnson*, No. 1:04CV00094 (RBW) (D.D.C.) to compel EPA to issue further regulations containing requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels. The proposed consent decree would establish a deadline of February 28, 2006 for EPA to sign a notice of proposed rulemaking containing requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels as the Administrator determines are appropriate pursuant to section 202(l)(2) of the Act, or, in the alternative, propose that no such requirements are necessary. No later than February 9, 2007, EPA shall sign a final rule taking final action on such proposal.

DATES: Written comments on the proposed consent decree must be received by September 8, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2005–0010, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Steven Silverman, Air and Radiation Law Office (2366A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5523.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would establish a schedule for EPA to take action pursuant to section 202(l)(2) of the Clean Air Act. That provision requires EPA to issue regulations controlling emissions of toxic air pollutants from motor vehicles and motor vehicle fuels. EPA is to establish standards for motor vehicles and motor vehicle fuels reflecting the greatest degree of emission reduction of hazardous air pollutants achievable through application of technology which will be available, taking into consideration, among other things, costs of the technology, noise, energy and safety factors, and lead time.

EPA issued an initial set of standards implementing this provision, and as part of those regulations, indicated that the agency would propose further requirements considered appropriate by July 1, 2003, and would take final action on such a proposal by July 1, 2004. 40 CFR 80.1045 ("What additional rulemaking will EPA conduct?"). EPA did not propose rules or take final action by these dates.

Plaintiffs filed suit pursuant to section 304(a)(2) of the Act (42 U.S.C. 7604(a)(2)) claiming that this regulation established a mandatory duty to act by the dates specified in the regulation. EPA moved to dismiss, arguing that the rule did not create a mandatory duty, and if it did, it was not a duty arising under the relevant chapter of the Act, as required by section 304(a)(2). The District Court rejected both arguments, holding that the rule created a mandatory duty and that it arose from the Clean Air Act. *Sierra Club* v. *Leavitt*, 355 F. Supp. 2d 544, 557 (D.D.C. 2005).

Rather than litigate deadlines for EPA to take the actions specified in section 80.1045, the parties have negotiated a draft consent decree. Under the terms of the proposed decree, no later than February 28, 2006, EPA shall sign a proposed rule containing requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels as the Administrator determines are appropriate pursuant to section 202(l)(2) of the Act, or, in the alternative, propose that no such requirements are necessary. No later than February 9, 2007, EPA shall sign a final rule taking final action on that proposal.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

EPA has established an official public docket for this action under Docket ID No. OGC–2005–0010 which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search,"

then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 1, 2005.

Richard B. Ossias,

Acting Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 05–15739 Filed 8–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7950–2]

Proposed Settlement Agreement, Clean Air Act Petitions for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address petitions for review filed by UCB Films, Inc. and Teepak LLC (collectively, "Petitioners"): *UCB Films, Inc., et al.* v. *EPA*, No. 02–1250 (D.C. Cir.) consolidated with *Teepak, LLC* v. *EPA*, No. 02–1252 (D.C. Cir.). On or about August 9, 2002, Petitioners filed petitions for review of EPA's final rule "National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing" published at 67 FR 40043 (June 11, 2002). Under the terms of the proposed settlement agreement, EPA intends to make certain amendments to portions of the rule that may resolve the claims raised by Petitioners.

DATES: Written comments on the proposed settlement agreement must be received by September 8, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2005–0011, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Diane McConkey, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5588.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement

The proposed settlement agreement is in response to Petitioners' requests for specific changes to the final rule entitled "National Emission Standards for Hazardous Air Pollutants: Cellulose Products Manufacturing." Specifically, the agreement concerns amendments to subpart UUUU of 40 CFR part 63 that would revise the work practice standards, general and initial compliance requirements, definitions, and General Provisions applicability. In addition, the amendments would correct typographical, formatting, and cross-referencing errors identified after the final rule was published.

Under the proposed settlement agreement, no later than 3 months after the agreement is final EPA is to sign a notice of proposed rulemaking or a direct final rule with a concurrent proposal, proposing or stating , as applicable, that 40 CFR part 63, subpart UUUU shall be amended as provided in Appendix A, which contains a draft of the amendments in question.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement

A. How Can I Get a Copy of the Settlement?

EPA has established an official public docket for this action under Docket ID No. OGC–2005–0011 which contains a copy of the settlement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD—ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 1, 2005.

Richard B. Ossias,

Acting Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 05–15740 Filed 8–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7949–7]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree that addresses lawsuits filed by Sierra Club and the Louisiana Environmental Action Network (collectively, "Plaintiffs): *Sierra Club* v. *Johnson,* No. 1:03CV02411 (GK) (D.D.C.) and *Louisiana Environmental Action Network* v. *Johnson,* No. 1:04CV00484 (GK) (D.D.C.) (consolidated cases). On November 20, and December 23, 2003, respectively, Plaintiffs filed actions against EPA pursuant to the Clean Air Act's citizen suit provision, 42 U.S.C. 7604(a)(2). Collectively, Plaintiffs allege that the Administrator failed to take actions required by sections 112(d)(6) and 112(f)(2) of the Clean Air Act, 42 U.S.C. 7412(d)(6) and (f)(2), for six source categories for which EPA had previously promulgated emission standards under Clean Air Act section 112(d). The proposed consent decree establishes certain deadlines for EPA final action, including a March 31, 2006 and December 15, 2006 deadline.

DATES: Written comments on the proposed consent decree must be received by September 8, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2005–0009, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Wendy L. Blake, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone: (202) 564–1821.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

Plaintiffs filed actions against EPA to compel the Administrator to take certain actions pursuant to sections 112(d)(6) and 112(f)(2) of the Clean Air Act concerning certain source categories for which EPA had previously promulgated emission standards under Clean Air Act

section 112(d). The source categories for which EPA had previously issued section 112(d) standards and that are the subject of the Complaints are: Gasoline Distribution (Stage 1), 59 FR 64303 (December 14, 1994); Commercial Sterilizers, 59 FR 62585 (December 6, 1994); Industrial Cooling Towers, 59 FR 46339 (September 8, 1994); Magnetic Tape, 59 FR 64580 (December 15, 1994); Hazardous Organic National Emissions Standards for Hazardous Air Pollutants, 59 FR 19402 (April 22, 1994); and the Degreasing Organic Cleaners (Halogenated Solvent Cleaning), 59 FR 61801 (December 2, 1994).

The proposed consent decree establishes deadlines for EPA final action, including a March 31, 2006 and December 15, 2006 deadline. Specifically, the proposed consent decree calls for EPA to review the existing emission standards for the six source categories noted above and either revise those standards if determined necessary pursuant to section 112(d)(6), or conclude that no revisions are necessary. The proposed consent decree further calls for EPA to review the existing emission standards for the same six source categories pursuant to section 112(f)(2) and either promulgate standards pursuant to section 112(f)(2) or conclude that such standards are not required.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How Can I Get a Copy of the Consent Decree?

EPA has established an official public docket for this action under Docket ID No. OGC–2005–0009 which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 1, 2005.

Richard B. Ossias,

Acting Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 05–15743 Filed 8–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[MN87; FRL–7949–4]

Notice of Issuance of Prevention of Significant Deterioration Construction Permit and Part 71 Federal Operating Permit to Great Lakes Gas Transmission L.P.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces that, on June 30, 2005, pursuant to Titles I and V of the Clean Air Act, 42 U.S.C. 7401–7479 and 7501–7515, the Environmental Protection Agency (EPA), Region 5 issued a Prevention of Significant Deterioration Construction Permit (PSD permit) and a Title V Permit to Operate (Title V permit) to Great Lakes Gas Transmission L.P. (Great Lakes). These permits authorize the company to construct and operate

Compressor Station No. 5 (CS #5), one of five Great Lakes compressor stations located in Minnesota. Although these permits authorize the company to construct and operate, the source previously had sought and been issued a construction permit by the Minnesota Pollution Control Agency (MPCA). The federal construction permit supersedes the previously issued MPCA permit.

The compressor station is composed of three natural gas-fired turbines and one natural gas-fired standby electrical generator, which the source uses to add pressure along a natural gas pipeline. The turbines are located in Cloquet, Minnesota on privately-owned fee land within the exterior boundaries of the Fond du Lac Band of Lake Superior Chippewa Indian Reservation.

DATES: During the public comment period, ending May 16, 2005, EPA received no comments on either the draft PSD or Title V permit. Therefore, in accordance with 40 CFR 124.15 and 71.11(i)(2)(iii), both permits became effective immediately upon permit issuance, June 30, 2005.

ADDRESSES: The final signed permits are available for public inspection online at *http://www.epa.gov/region5/air/permits/epermits.htm* or during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ethan Chatfield, EPA, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604, (312) 886–5112, or *chatfield.ethan@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Is the Background Information?
B. What Action Is EPA Taking?

A. What Is the Background Information?

Great Lakes operates nearly 2,000 miles of large diameter underground pipeline, through which it transports natural gas for delivery to customers in the midwest and northeast United States and eastern Canada. The pipeline's 14 compressor stations, located approximately 75 miles apart, operate to keep natural gas moving through the system. Compressors operated at these stations add pressure to natural gas in the pipeline, causing it to flow to the next compressor station. The pipeline normally operates continuously, but at varying load, 24 hours per day and 365 days per year.

CS #5 is located approximately 17 miles west of Cloquet, Minnesota, near the intersection of county roads 847 and 851, on the Fond du Lac Band of Lake Superior Chippewa Indian Reservation in St. Louis County, Minnesota. The station consists of three stationary natural gas-fired turbines (EU–001 through EU–003), which drive three natural gas compressors, and one natural gas-fired standby electrical generator (EU–004), which provides electrical power for critical operations during temporary electrical power outages and during peak loading.

Since CS #5 is a major stationary source, Great Lakes was required to obtain a preconstruction permit under 40 CFR 52.21. Furthermore, because CS #5 is subject to section 111 of the Clean Air Act and is located in Indian Country, 40 CFR 71.3(a) and 71.4(b) make it subject to the permitting requirements of 40 CFR part 71. On June 30, 2005, EPA issued a PSD construction permit (PSD–FDL–R50001–04–01) and a federal Title V Permit (No. V–FDL–R50006–04–01) which incorporates all applicable air quality requirements, including monitoring sufficient to yield reliable data on the source's compliance with the permit. In accordance with the requirements of 40 CFR 71.11(d) and 124.10, EPA provided the public with the required 30 days to comment on the draft permit. EPA did not receive any comments during the public comment period.

B. What Action Is EPA Taking?

EPA is notifying the public of the issuance of the PSD and Title V permits to Great Lakes Gas Transmission L.P. Because EPA did not receive comments on the permits, only persons who demonstrate that there are new grounds for review that were not reasonably foreseeable during the public comment period may, within 30 days of the date of this notice, seek review of the Title V operating permit pursuant to 40 CFR 71.11.

Dated: July 22, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–15737 Filed 8–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7949–3]

Notice of Proposed Administrative Order on Consent Under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, 42 U.S.C. 9622(h)(1), Creighton Chemical Superfund Site, Creighton, NE, Docket No. CERCLA 07–2005–0310

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Administrative Order on Consent, Creighton Chemical Superfund Site, Creighton, Nebraska.

SUMMARY: Notice is hereby given that a proposed administrative order on consent regarding the Creighton Chemical Superfund Site located in Knox County, Nebraska, will be signed the United States Environmental Protection Agency (EPA) following completion of the public comment period.

DATES: EPA will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed administrative order.

ADDRESSES: Comments should be addressed to Denise L. Roberts, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to: In the Matter of Creighton Chemical Superfund Site, Creighton, Nebraska, Docket No. CERCLA–07–2005–0310.

The proposed administrative order may be examined or obtained in person or by mail from Denise L. Roberts, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7559.

SUPPLEMENTARY INFORMATION: This proposed administrative order on consent concerns the Creighton Chemical Superfund Site, located in Creighton, Nebraska. It is made and entered into by EPA and The Estate of Ralph Block (Settling Party).

In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 14 of CERCLA, 42 U.S.C. 9604, and may undertake additional response actions in the future. EPA performed a removal action at the Site. In performing response action at the Site, EPA has incurred response costs and will incur additional response costs in the future.

EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site. This administrative order requires the Settling Party to pay to the EPA Hazardous Substance Superfund the principal sum of $9,000. EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a).

Dated: July 24, 2005.

James B. Gulliford,

Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 05–15746 Filed 8–8–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7948–8]

Public Water System Supervision Program Revision for the State of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the provisions of section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR 142.13, public notice is hereby given that the State of Montana has revised its Public Water System Supervision (PWSS) Primacy Program by adopting federal regulations for the Arsenic Rule, Consumer Confidence Report Rule (CCR), Stage 1 Disinfectants/Disinfection Byproducts Rule (D/DBPR), Filter Backwash and Recycling Rule (FBRR), Interim Enhanced Surface Water Treatment Rule (IESWTR), Lead and Copper Rule Minor Revisions (LCRMR), Long-Term 1 Enhanced Surface Water Treatment Rule (LT1), Public Notification Rule (PNR), Radionuclides Rule, and Variances and Exemptions Rule, which correspond to 40 CFR Parts 141 and 142. The EPA has completed its review of these revisions in accordance with SDWA, and proposes to approve Montana's primacy revisions for the above stated Rules.

Today's approval action does not extend to public water systems in Indian country, as defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

DATES: Any member of the public is invited to request a public hearing on this determination by September 8, 2005. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details. Should no timely and appropriate request for a hearing be received, and the Regional Administrator (RA) does not elect to hold a hearing on his own motion, this determination shall become effective September 8, 2005. If a hearing is granted, then this determination shall not become effective until such time following the hearing, as the RA issues an order affirming or rescinding this action.

ADDRESSES: Requests for a public hearing shall be addressed to: Robert E. Roberts, Regional Administrator, c/o Jay Sinnott (8–MO), U.S. EPA, Region 8, Federal Building, 10 West 15th Street, Suite 3200, Helena, MT 59626.

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA, Region 8, Montana Office, 10 West 15th St., Helena, MT 59626; (2) State of Montana, Dept. of Environmental Quality, Permitting and Compliance Division, 1520 E. 6th Ave., Helena, MT 59620–0901.

FOR FURTHER INFORMATION CONTACT: Jay Sinnott at (406) 457–5017.

SUPPLEMENTARY INFORMATION: EPA previously approved Montana's application for assuming primary enforcement authority for the PWSS program, pursuant to section 1413 of SDWA, 42 U.S.C. 300g–2, and 40 CFR part 142. The Department of Environmental Quality administers Montana's PWSS program.

A. Why Are Revisions to State Programs Necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 for maintaining primacy. They must adopt regulations that are at least as stringent as the NPDWRs at 40 CFR parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

B. How Does Today's Action Affect Indian Country in Montana?

Montana is not authorized to carry out its PWSS program in "Indian country." This includes lands within the exterior boundaries of the Blackfeet, Crow, Flathead, Fort Belknap, Fort Peck, Northern Cheyenne and Rocky Boys Indian Reservations; any land held in trust by the United States for an Indian tribe, and any other areas which are "Indian country" within the meaning of 18 U.S.C. 1151.

C. Requesting a Hearing

Any request for a public hearing shall include: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requester's interest in the RA's determination and of information that he/she intends to submit at such hearing; and (3) the signature of the requester or responsible official, if made on behalf of an organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing, and will be made by the RA in the **Federal Register** and newspapers of general circulation in the State. A notice will also be sent to both the person(s) requesting the hearing and the State. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The RA will issue a final determination upon review of the hearing record.

Frivolous or insubstantial requests for a hearing may be denied by the RA. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: July 25, 2005.

Max H. Dodson,

Acting Regional Administrator, Region 8.

[FR Doc. 05–15610 Filed 8–8–05; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 11, 2005, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open

to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- July 14, 2005 (Open and Closed)

B. New Business

1. *Regulations*
- Preferred Stock—Final Rule

2. *Reports*
- FCS Condition and Risk Assessment Process

Closed Session*

- Oversight/Examination Strategies, Operational Changes and Risk Assessment Results

Dated: August 4, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–15765 Filed 8–4–05; 4:14 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting Change in Date of Open Commission Meeting to Friday, August 5, 2005

August 3, 2005.

The Federal Communications Commission previously announced on July 28, 2005, its intention to hold an Open Meeting on Thursday, August 4, 2005, commencing at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

The date has been changed to Friday, August 5, 2005.

The prompt and orderly conduct of Commission business required this change and no earlier announcement was possible.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–15809 Filed 8–5–05; 12:45 pm]

BILLING CODE 6712–01–P

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(2), (6), (8) and (9).

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 23, 2005.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Fisher Woodside LP/Paul Fisher, Salisbury, North Carolina; to retain voting shares of F&M Financial Corporation, Granite Quarry, North Carolina, and thereby indirectly retain voting shares of Farmers and Merchants Bank, Granite Quarry, North Carolina.

2. Phyllis L. Fisher, Salisbury, North Carolina; Joy Kluttz Fisher, Granite Quarry, North Carolina; Donald Mitchell, Kingwood, Texas; Jacob Steven Fisher, Salisbury, North Carolina; Paula Dawn Philpot, Greenwood, South Carolina; and Irvin Henry Philpot III, Greenwood, South Carolina; to retain voting shares of F&M Financial Corporation, Granite Quarry, North Carolina, and thereby indirectly retain voting shares of Farmers and Merchants Bank, Granite Quarry, North Carolina.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Marvin J. Carter and Donald C. Stamps, both of Lawton, Oklahoma, as trustees of the 2000 Green Family Trust; to acquire voting shares of B.O.E. Bancshares, Inc., and thereby indirectly acquire voting shares of Liberty National Bank, both of Lawton, Oklahoma.

Board of Governors of the Federal Reserve System, August 3, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–15676 Filed 8–8–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 22, 2005.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1.Marsh & McLennan Cos., Inc., New York, New York; Putnam Investments Trust, Putnam, LLC, Putnam Investment Management, LLC, The Putnam Advisory Co., LLC, Putnam Fiduciary Trust Co., TH Lee, Putnam Capital Management, LLC, and PanAgora Asset Management, Inc., all of Boston, Massachusetts; Putnam Investments Limited, London, United Kingdom; to acquire voting shares of Commerce Bancorp, Inc., Cherry Hill, New Jersey, and thereby indirectly acquire voting shares of Commerce Bank, NA, Cherry Hill, New Jersey; Commerce Bank/North, Ramsey, New Jersey; Commerce Bank/Delaware, NA, Wilmington, Delaware; and Commerce Bank/Pennsylvania, NA, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Ben D. Grimstad, Decorah, Iowa, and Joseph L. Grimstad, Decorah, Iowa, individually, to acquire voting shares of Security Agency, Inc., Decorah, Iowa, and thereby indirectly acquire voting shares of Decorah Bank & Trust Company, Decorah, Iowa.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Reatha Coleen Beck, Austin, Texas; to acquire additional voting shares of Union State Bancshares, Inc., Killeen, Texas, and thereby indirectly acquire

additional voting shares of Union State Holding Company, Wilmington, Delaware, and Union State Bank, Florence, Texas.

Board of Governors of the Federal Reserve System, August 2, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–15704 Filed 8–8–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 2, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Northside Bancshares, Inc., Adairsville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Northside Bank, Adairsville, Georgia.

Board of Governors of the Federal Reserve System, August 3, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–15677 Filed 8–8–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 1, 2005.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Monson Financial Services Corp., and Monson Financial Services MHC, both of Monson, Massachusetts; to become bank holding companies by acquiring Monson Savings Bank, Monson, Massachusetts.

B. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. IA Bancorp, Inc., Iselin, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Indus American Bank, Iselin, New Jersey.

C. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. CCB Financial Corporation, Jonesboro, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Community Capital Bank, Jonesboro, Georgia.

2. Northside Bancshares, Inc., Adairsville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Northside Bank, Adairsville, Georgia (in organization).

Board of Governors of the Federal Reserve System, August 2, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–15705 Filed 8–8–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 042–3196]

Advertising.com, Inc., and John Ferber; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 31, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Advertising.com, Inc., *et al.*, File No. 042 3196," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form,

must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Thomas B. Pahl (202) 326–2128 or Michael Ostheimer (202) 326–2699, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and section 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 3, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/08/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Advertising.com, Inc. and John Ferber, individually and as an officer of Advertising.com (together "respondents").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents advertised and distributed computer software products, including the SpyBlast computer software product, which was advertised as an Internet security program. This matter concerns the allegation that respondents failed to disclose adequately that SpyBlast included adware that caused consumers to receive pop-up advertisements.

The Commission's complaint alleges that respondents disseminated ads for SpyBlast that represented that because a consumer's computer was broadcasting an Internet IP address, the computer was at risk from hackers. According to the complaint, consumers who clicked on this advertisement were shown an ActiveX "security warning" installation box with a hyperlink describing SpyBlast as "Personal Computer Security and Protection Software from unauthorized users" and telling them "once you agree to the License Terms and Privacy Policy—click YES to continue." If a consumer clicked "Yes," the software was installed, even if the consumer had not clicked on the hyperlink. Only if a consumer clicked on the hyperlink describing SpyBlast as "Personal Computer Security and Protection Software from unauthorized users" before clicking "YES," did SpyBlast's End User Licensing Agreement ("EULA") appear. The EULA contained a statement that consumers agreed to receive marketing messages, including pop-up ads, in exchange for getting SpyBlast.

The complaint further alleges that SpyBlast could also be downloaded directly from the *http://www.SpyBlast.com* Web site. At the very bottom of the *www.SpyBlast.com* home page, below several hyperlinks to download SpyBlast, a small disclosure stating that "In exchange for usage of the SpyBlast software, user agrees to receive * * * offers on behalf of SpyBlast's marketing partners" appeared.

According to the Commission's complaint, respondents downloaded bundled adware onto the computers of consumers who installed SpyBlast. The adware collected information about SpyBlast users, including URLs of visited pages and the user's IP address, and this information allowed respondents to send users advertisements that they believed might be of interest to them. Consumers received a substantial number of pop-up advertisements as result of respondents' installation of this adware onto their computers.

The complaint alleges that in representing that SpyBlast is an Internet security program, respondents failed to disclose adequately that SpyBlast included adware that caused consumers to receive pop-up advertisements. The complaint further alleges that the presence of the bundled adware would have been material to consumers in their decision whether to install SpyBlast, and, therefore, that the failure to disclose adequately this material fact was a deceptive practice. This allegation regarding the disclosure of bundled adware applies general Commission law on deception, as enunciated in the Federal Trade Commission Policy Statement on Deception, appended to Cliffdale Assocs., 103 F.T.C. 110, 174–83 (1984). The application of this law in an online context was illustrated in a 2000 FTC Staff Guidance Document, Dot Com Disclosures: Information about Online Advertising, which is available at *http://www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/index.pdf*.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future. The proposed order is designed specifically to address the facts of the case at hand. However, the limitation in the proposed order to respondents' software programs whose principal function is to enhance security or privacy should not be read

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

more broadly to suggest that the requirement for clear and prominent disclosure is necessarily limited to those situations. Moreover, the problem here was not the security software that Advertising.com disseminated with its adware. Instead, it was the respondents' practice of downloading software onto users' computers, without adequate notice and consent, that generated repeated pop-up ads as the computer users surfed the Web.

Part I of the proposed order prohibits respondents from making any representation about the performance, benefits, efficacy, or features of SpyBlast or any of respondents' other executable computer software programs whose principal function is to enhance security or privacy, unless respondents disclose clearly and conspicuously that consumers who install the program will receive advertisements, if that is the case.

Parts II through VI require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure (for the corporate respondents) and changes in employment (for the individual respondent) that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part VII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–15684 Filed 8–8–05; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 051–0029]

Penn National Gaming, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 25, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Penn National Gaming, Inc., *et al.*, File No. 051 0029," to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

FOR FURTHER INFORMATION CONTACT: Joseph Lipinsky, FTC Northwest Region, Seattle (206) 220–4473.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 27, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/07/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

I. Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Penn National Gaming, Inc. ("PNG"), which is designed to remedy the likely anticompetitive effects resulting from Penn's acquisition of Argosy Gaming Company ("Argosy"). If the Commission grants final approval, PNG will be required to divest Argosy's Baton Rouge, Louisiana, casino and associated assets to Columbia Sussex Corporation within four (4) months after the Consent Agreement becomes final. The Consent Agreement also includes an Order to Hold Separate and Maintain Assets ("Hold Separate Order") that requires PNG to preserve Argosy's Baton Rouge casino and associated assets as a viable, competitive, and ongoing operation until the divestiture is achieved. The Commission has issued the Hold Separate Order.

The proposed Consent Agreement has been placed on the public record for thirty (30) days to solicit comments from interested persons. Comments received during this period will become

part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received and will decide whether it should withdraw from the proposed Consent Agreement or make it final.

Pursuant to the November 3, 2004, merger agreement, PNG proposes to acquire Argosy ("Proposed Acquisition"). The total value of the Proposed Acquisition is approximately $2.2 billion. The Commission's Complaint alleges that the Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the Baton Rouge, Louisiana, metropolitan area casino services market.

II. The Parties

PNG is a publicly traded company headquartered in Wyomissing, Pennsylvania. The company owns and operates: Casino Rouge in Baton Rouge, Louisiana; Hollywood Casino in Aurora, Illinois; Charles Town Races & Slots in Charles Town, West Virginia; the Bullwhackers casino properties in Black Hawk, Colorado; and three Mississippi casinos: Hollywood Casino in Tunica, Casino Magic in Bay St. Louis, and the Boomtown Biloxi casino in Biloxi. Penn also operates Casino Rama, a gaming facility located approximately 90 miles north of Toronto in Ontario, Canada, pursuant to a management contract.

Argosy is a publicly traded company headquartered in Alton, Illinois. The company owns and operates casinos and related entertainment and hotel facilities in the Midwestern and Southern United States. Argosy owns and operates the Argosy Casino-Baton Rouge in Baton Rouge, Louisiana; the Alton Belle Casino in Alton, Illinois; the Argosy Casino-Riverside in Riverside, Missouri; the Argosy Casino-Sioux City in Sioux City, Iowa; the Argosy Casino-Lawrenceburg in Lawrenceburg, Indiana; and the Empress Casino Joliet in Joliet, Illinois.

III. Casino Services

The casino services market includes a combination of slot machine, video poker machine, and table gaming services, and associated amenities such as parking, food and beverages, and entertainment.

There are three main categories of casino gaming: Slot machines, video poker machines, and table and counter games. Coin or ticket-operated slot machines usually are allocated the largest portion of the gaming floor. These machines are controlled by random-number-generating computer chips that are set to return a percentage of the amount played to the player ("player win") and to keep a percentage for the casino ("casino win" or "hold"). The machines may be programmed to provide many different game styles or themes, but they all fall into the subcategories of traditional "reel" slot machines or video slot machines.

Video poker machines sometimes are counted among the slot machines, but they actually represent a separate gaming category. While still based on a random-number-generating computer chip, the programming of the video poker rules and pay tables allows an element of player skill to affect the outcome of a game.

Table and counter games represent the third gaming category. Table games include blackjack, craps, poker, and let it ride. Counter games, which are played without cards, include roulette and keno. Casinos have been quick to capitalize on their consumers' preference for slot machines, as those machines require far less labor, consume fewer square feet of the casino floor, and generate both greater profits and higher profit margins than other types of casino gaming.

Louisiana's riverboat casinos offer a number of games from each of the three main gaming categories. Each riverboat casino has a similar number of gaming machines and tables, because they are limited by statute to a maximum of 30,000 square feet of aggregated casino floor space. When riverboat casinos differ in gaming minimums, limits, denominations, and hold rates, it is likely in response to highly localized competition. Other differences among riverboat casinos are the colors and layout of the casino's decks, and the level of amenities provided within the shoreside pavilions alongside of which the riverboats are moored. In December 2004, Louisiana's riverboat casinos generated nearly $125 million in gaming revenue.[2]

IV. The Complaint

The Commission's Complaint alleges that the Proposed Acquisition would create a monopoly in the Baton Rouge, Louisiana, metropolitan area casino services market. This includes the combination of slot machine, video poker machine, and table gaming, and associated amenities such as parking, food and beverages, and entertainment. The Proposed Acquisition would combine the only two casinos—one owned by PNG, the other by Argosy—in Baton Rouge, Louisiana. Industry participants refer to the Baton Rouge, Louisiana, riverboat casinos as "locals' casinos" because the vast majority of their revenue comes from consumers who make frequent visits to the casinos and live in the Baton Rouge, Louisiana, metropolitan area.

The Complaint further alleges that new entry into the Baton Rouge, Louisiana, metropolitan area casino services market is not likely to occur in a timely manner, even if prices increased substantially after the Proposed Acquisition, because there are significant impediments to such entry. Louisiana law allows the operation of only 15 riverboat casinos, four racinos, and one non-Native American land-based casino. All those licenses have been granted, and there is no evidence that any of the licensees are planning to relocate.

V. The Consent Agreement

The Consent Agreement effectively remedies the Proposed Acquisition's likely anticompetitive effects in the Baton Rouge, Louisiana, metropolitan area casino services market by requiring PNG to divest Argosy's Baton Rouge casino and associated assets. Pursuant to the Consent Agreement, PNG is required to divest Argosy's Baton Rouge casino to Columbia Sussex Corporation within four (4) months from the date the consent order is final. This period may be extended for an additional two (2) months to allow the State of Louisiana to determine whether to grant regulatory approvals required to operate the casino. If Columbia Sussex Corporation does not obtain regulatory approvals, the Consent Agreement provides PNG with up to ten (10) months from the date the Consent Agreement becomes final to divest the casino to a buyer approved by the Commission. The Commission's goal in evaluating possible purchasers of divested assets is to ensure that the competitive environment that existed prior to the acquisition is maintained. A proposed acquirer of divested assets must not itself present competitive problems.

Should PNG fail to accomplish the divestiture within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest these assets. If approved, the trustee would have the exclusive power and authority to accomplish the divestiture within six (6) months of being appointed, subject to any necessary extensions by the Commission. The Consent Agreement requires PNG to provide the trustee with access to information related to Argosy's

[2] Louisiana State Police, Gaming Revenue Report.

Baton Rouge casino as necessary to fulfill his or her obligations.

The Commission's Hold Separate Order requires that PNG hold separate and maintain the viability of the Argosy Baton Rouge casino as a competitive operation from the date PNG acquires Argosy until the business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between the PNG and the Argosy Baton Rouge casino (except as otherwise provided in the Consent Agreement), and provisions designed to prevent interim harm to competition in the Baton Rouge, Louisiana, metropolitan area casino services market pending divestiture. The Hold Separate Order names Frank Quigley, the present general manager of the casino, as the Hold Separate Trustee who is charged with the duty of monitoring Penn's compliance with the Consent Agreement and Hold Separate Order until the casino is divested.

In order to ensure that the Commission remains informed about the status of Argosy's Baton Rouge casino's pending divestiture, and about the efforts being made to accomplish the divestiture, the Consent Agreement requires PNG to file periodic reports with the Commission until the divestiture is completed.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and is not intended to constitute an official interpretation of the proposed Decision and Order or the Order to Maintain Assets, or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–15685 Filed 8–8–05; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request for Application 05033]

Cooperative Agreement With the Joint United Nations Programme on HIV/AIDS (UNAIDS) Through the World Health Organization (WHO) as Bona Fide Agent; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The purpose of the program is to support the field-centered technical collaborations between the U.S. Government and the United Nations in support of national HIV/AIDS programs and strategies in priority countries. In particular, CDC Global AIDS Program and the Joint United Nations Programme on HIV/AIDS (UNAIDS) will serve as primary collaborators on behalf of their organizational counterparts and, through this program, facilitate the technical cooperation between the U.S. Government and the United Nations.

The Catalog of Federal Domestic Assistance number for this program is 93.067.

B. Eligible Applicant

Applications may only be submitted by the Joint United Nations Programme on HIV/AIDS (UNAIDS), through a Bona Fide agent, if necessary.

A Bona Fide Agent is an agency/organization identified by the applicant as eligible to submit an application under the UNAIDS eligibility in lieu of an application submitted directly by UNAIDS. This is done specifically in recognition that WHO is the bona fide agent for HIV/AIDS as it relates to the receipt of external funds for program implementation. In applying as a bona fide agent of UNAIDS, WHO must provide a letter from UNAIDS as documentation of its status. Place this documentation behind the first page of your application form.

C. Funding

Approximately $2,000,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before August 31, 2005, and will be made for a 12-month budget period within a project period of up to four 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 technical questions about this program, contact: Dr. Jacob A. Gayle, Project Officer, CDC Global AIDS Program/Geneva, Switzerland, 20 Avenue Appia: WCC 448, 1211 Geneva 27 Switzerland. Telephone: +41–22. 791.4430. E-mail: *jgayle@cdc.gov.*

For financial, grants management, or budget assistance, contact: Vivian Walker, Contract Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341. Telephone:770–488–2724. E-mail: *vwalker@cdc.gov.*

Dated: August 3, 2005.

Alan A. Kotch,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–15699 Filed 8–8–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request for Application (RFA) AA051]

Program To Reduce the Impact of HIV/AIDS Within the Correctional Services System of South Africa; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to award fiscal year (FY) 2005 funds for a cooperative agreement program. The purpose of the program is to continue and expand the HIV/AIDS prevention, care and support services currently available to prisoners and staff in the correctional centers in all nine provinces of South Africa. The program will focus on the following key areas: Prevention, care and support, capacity building, policy implementation, and monitoring and evaluation.

The Catalog of Federal Domestic Assistance number for this program is 93.067.

B. Eligible Applicant

Assistance will be provided only to the South Africa DCS. No other applications are solicited.

The South Africa DCS is the only appropriate and qualified organization to conduct a specific set of activities supportive of the CDC GAP's technical assistance to South Africa because the DCS is uniquely positioned, in terms of legal authority and commitment, to continue and expand HIV/AIDS prevention, care and support services to the prisoners and staff in correctional centers in South Africa.

C. Funding

Approximately $1,000,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before August 31, 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: Dr. Melanie Duckworth, Project Officer, U.S. Embassy, 877 Pretorius Street, Acadia, Pretoria 0001, South Africa, Telephone: 011 27 12 346 0170, E-mail: *duckworthm@sacdc.co.za*.

For financial, grants management, or budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, MS E–09, Atlanta, GA 30341, Telephone: 770–488–1515, E-mail: *zbx6@cdc.gov*.

Alan A. Kotch,

Deputy Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–15714 Filed 8–8–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures.

OMB No.: 0970–0230.

Description: This is a proposed extension of a current information collection. The purpose of this collection is to obtain data upon which to base the computation for measuring State performance in meeting the legislative goals of TANF as specified in section 403(a)(4) of the Social Security Act and 45 CFR part 270. Specifically, the Department of Health and Human Services (HHS) will use the data to award the portion of the bonus that rewards States for their success in moving TANF recipients from welfare to work. States will not be required to submit this information unless they elect to compete on a work measure for the TANF High Performance Bonus awards.

Respondents: Respondents may include any of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State High Performance Bonus System (HPBS) Transmission File Layouts for HPBS Work Measures	54	2	16	1,728

Estimated Total Annual Burden Hours: 1,728.

In compliance with the requirements of section 3506(c)92)(A) of the Paperwork Reduction act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail: *grjohnson@acf.hhs.gov*.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 3, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–15678 Filed 8–8–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration for Native Americans

AGENCY: Administration for Native Americans.

ACTION: Award announcement.

SUMMARY: The Administration for Native Americans (ANA) herein announces an urgent grant award to the Red Lake Band of Chippewa Indians, Red Lake, Minnesota, in the amount of $311,400 for a project period of 24 months. This urgent grant award will assist the Tribe in mitigating the effects of the tragic events of the school shooting in March 2005 that resulted in the death of students, faculty and staff. The shooting marked the highest death toll in U.S. school shootings since the Columbine High School massacre in April 1999.

Due to the devastation created by the high school shooting, ANA is providing urgent financial assistance for minor renovations to the local community centers to support positive community development; funding to hire eleven volunteers to assist youth and members of the community in coping with this event; and building support systems, which will aid in preventing future tragedies.

FOR FURTHER INFORMATION CONTACT: Sheila Cooper, Director of Program Operations, toll-free at (877) 922–9262.

SUPPLEMENTARY INFORMATION: This award will be made pursuant to Section 803 of the Native American Programs Act of 1974.

Dated: August 2, 2005.

Kimberly Romine,

Deputy Commissioner, Administration for Native Americans.

[FR Doc. 05–15680 Filed 8–8–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement

AGENCY: Office of Refugee Resettlement, Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Notice of public comment on the proposed Noncompetitive Single Source Program expansion supplement to the Hebrew Immigrant Aid Society (HIAS).

CFDA#: The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.576. The title is the Refugee Family Enrichment Program.

SUMMARY: Notice is hereby given that it has been proposed that a noncompetitive single-source program expansion supplement to an ongoing competitive award be made to the Hebrew Immigrant Aid Society (HIAS) in response to an unsolicited application. This application proposes to provide additional training and technical assistance to organizations implementing Refugee Marriage Enrichment projects. The application is not within the scope of any existing or expected to be issued program announcement for the Fiscal Year 2006. HIAS's application is expected to address issues critical to the development and implementation of marriage education programs for refugees by providing valuable on-site training and technical assistance to grantees and sub-grantees that offer marital communication training to refugee couples.

In September of 2003, ORR awarded HIAS a grant of $200,000 to develop a Refugee Family Enrichment program which included technical assistance to subgrantees. Because of their success in the development of their marriage enrichment program, in 2004 HIAS was awarded a noncompetitive single source program expansion supplement to an ongoing competitive award to expand its Technical Assistance Services Program to Refugee Family Enrichment project sites specified by ORR. HIAS has since provided over 600 hours of technical assistance to project sites operated by organizations across the country. Their technical assistance primarily supports the work of small Mutual Assistance Associations, and without it, these agencies might struggle to provide refugee clients with the programs they need in order to achieve self sufficiency. The proposed project period is 9/30/2005–9/29/2006.

Technical assistance to support grantees in developing better approaches to the delivery of services provided to refugees is authorized by section 412(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1522(c)(1)).

DATES: The deadline for receipt of comments is 15 days from the date of publication in the **Federal Register**.

ADDRESSES: Comments in response to this notice should be addressed to Nguyen Van Hanh, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447, Loren Bussert—(202) 401–4732, *lbussert@acf.hhs.gov*.

Dated: August 2, 2005.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 05–15679 Filed 8–8–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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.

Proposed Project: Drug Abuse Warning Network (OMB No. 0930–0078)—Revision.

The Drug Abuse Warning Network (DAWN) is an ongoing data system that collects information on drug-related medical emergencies as reported from about 350 hospitals nationwide, and drug-related deaths as reported from 6 states and 135 medical examiners/coroner jurisdictions (ME/C) in 35 metropolitan areas. DAWN provides national and metropolitan estimates of substances involved with drug-related emergency department (ED) visits; disseminates information about substances involved in deaths investigated by participating medical examiners and coroners (ME/Cs); tracks drug abuse patterns, trends, and the emergence of new substances; monitors post-market adverse drug incidents; assesses health hazards associated with the use of illicit, prescription, and over-the-counter drugs; and generates information for national and local drug abuse policy and program planning. DAWN data are used by Federal, State, and local agencies, as well as universities, pharmaceutical companies, and the media.

From 2006 to 2008, DAWN will continue to recruit hospitals in the 13 oversampled metropolitan areas in order to improve the precision of estimates, adding approximately 18 hospitals to the sample. In 2007 and 2008, DAWN plans to recruit approximately 20 more ME/Cs from metropolitan areas that are currently profiled by DAWN, but have incomplete participation. DAWN data are submitted electronically, using eHERS (electronic Hospital Emergency Reporting System) and eMERS (electronic Medical Examiner Reporting System). DAWN proposes that all facilities (EDs and ME/Cs) will start using the revised electronic forms for all events occurring from 1/1/2006 forward.

The annual burden estimates are shown below:

ANNUALIZED REPORTING BURDEN FOR DAWN: 2006–2008.

Activity	Number of respondents	Estimated number of responses per respondent	Estimated time per response	Gross burden hours	Burden hours where SAMHSA contractor[1] conducts data collection	Total adjusted burden
Emergency Departments						
Chart review	350	24,400	2 min	284,667	193,573	91,094
eHERS cases	350	756	10 min	44,100	29,988	14,112
ED activity report	350	12	2 min	140	95	45
Subtotal						105,251
Medical Examiners/Coroners[2]						
Death records review	104	1538	2.5 min	6,665	705	5,960
eMERS cases	104	111	4 min	770	81	689
ME/C activity report	104	12	2 min	42	4	38
Subtotal						6687
Total	454					111,938

[1] Data collection for 238 EDs and 11 ME/Cs will be conducted by SAMHSA contractor. Because there is no burden associated with these reporters, their hours are deducted from the total burden.

[2] Some medical examiner/coroner offices report for multiple jurisdictions. For this reason, the number of respondents is smaller than the number of ME/C jurisdictions participating in DAWN.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 71–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 3, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–15708 Filed 8–8–05; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2005–0055]

Notice of Meeting of Homeland Security Science and Technology Advisory Committee

AGENCY: Office of Studies and Analysis, Science and Technology Directorate, DHS.

ACTION: Notice.

SUMMARY: The Homeland Security Science and Technology Advisory Committee (HSSTAC) will meet in closed session.

DATES: The meeting dates are August 23, 2005, and August 24, 2005.

ADDRESSES: If you wish to submit comments, you must do so by August 15, 2005. Comments must be identified by DHS–2005–0055 and may be submitted by one of the following methods:

- EPA Federal Partner EDOCKET Web site: *http://www.epa.gov/feddocket.* Follow instructions for submitting comments on the Web site.
- E-mail: *HSSTAC@dhs.gov.* Include docket number in the subject line of the message.
- Fax: (202) 254–6177.
- Mail: Ms. Brenda Leckey, Office of Studies and Analysis, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528.

Docket: For access to the docket to read background documents or comments received, go to *http://www.epa.gov/feddocket.*

FOR FURTHER INFORMATION CONTACT: Brenda Leckey, Office of Studies and Analysis, Science and Technology Directorate, Department of Homeland Security, Washington, DC 20528, *HSSTAC@dhs.gov,* 202–254–5041.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended (5 U.S.C. App. 1 *et seq.*). The HSSTAC will meet for purposes of: (1) Identifying how DHS Science and Technology Directorate portfolios are designed to meet DHS objectives; (2) receiving a report from the Under Secretary for Science and Technology on how the prior year's HSSTAC recommendations are being/will be implemented; (3) receiving a report from the Under Secretary of Science and Technology on the planned Department reorganization and priorities; and (4) receiving subcommittee reports.

Specifically, the HSSTAC will receive briefings from the Science and Technology Directorate's Portfolio Managers identifying how the Portfolios are designed to meet DHS objectives (utilizing threat assessments, user requirements, filling capability needs, reducing vulnerabilities). The HSSTAC will then review the results of its subcommittees' activities undertaken since the last quarterly meeting in May 2005, and discuss any proposed subcommittee recommendations. The Committee will also receive a report from the Under Secretary detailing proposed actions and actions currently being taken by the Directorate as a result of the recommendations contained in the HSSTAC annual report to the Under Secretary and Congress. And lastly, the Committee will review past subcommittee activities, discuss areas of interest for future subcommittee activities, and dispense subcommittee assignments for the annual report to Congress due in January.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*) and pursuant to the authority delegated to him by the Secretary in DHS Management Directive 2300, the Under Secretary for Science and Technology has determined that this HSSTAC meeting will address: Matters that would disclose investigative techniques and procedures

or endanger the lives or physical safety of law enforcement personnel; and matters the disclosure of which would be likely to frustrate significantly proposed agency actions. Accordingly, consistent with the provisions of 5 U.S.C. 552b(c)(7) and (c)(9)(B), the meeting will be closed to the public.

Dated: July 28, 2005.

Charles E. McQueary,

Under Secretary for Science and Technology, Science and Technology Directorate.

[FR Doc. 05–15728 Filed 8–8–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; 1018–0118; Private Stewardship Grants Program; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments; correction.

SUMMARY: The Fish and Wildlife Service (Service) published a document in the **Federal Register** of August 2, 2005, requesting comments on an information collection for the Private Stewardship Grants Program (1018–0118). The document contained an incorrect URL.

FOR FURTHER INFORMATION CONTACT: Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); (703) 358–2269 (fax); or 703–358–2482 (telephone).

Correction

In the **Federal Register** of August 2, 2005, in FR Doc. 05–15187, on page 44354, in the third column, correct the URL at the end of the second paragraph under the **SUPPLEMENTARY INFORMATION** caption to read: *http://www.fws.gov/endangered/grants/private_stewardship/FY2003/Awards.pdf.*

Dated: August 3, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. 05–15713 Filed 8–8–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by September 8, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Minnesota Zoological Garden, Apple Valley, MN, PRT–105498.

The applicant requests a permit to import seven Komodo Island monitors (Varanus komodoensis) from the Toronto Zoo, Ontario, Canada, for the purpose of enhancement of the species through captive propagation.

Applicant: Wildlife Conservation Society, Bronx, NY, PRT–105479.

The applicant requests a permit to export four captive-born Madagascar radiated tortoises (*Geochelone radiata*) to the Bermuda Aquarium Museum and Zoo, Flatt's, Bermuda, for the purpose of enhancement of the species through conservation education.

Applicant: Kenneth L. Eberly, York, PA, PRT–092644.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Wade A.Boggs, Tampa, FL, PRT–106617.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: U.S. Fish and Wildlife Service, Marine Mammals Management, Anchorage, AK, PRT–041309.

The applicant requests an amendment to their permit which currently authorizes research to capture up to 100 wild Northern sea otters (*Enhydra lutris kenyoni*) for the purpose of scientific research to assess a wide variety of the health parameters and body condition indices, as well as, aerial and/or skiff-based population surveys. The applicant requests authorization to implant these animals with VHF radio transmitters and time/depth recorders to assess survival and habitat use patterns for the purpose of research and enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above application to the Marine Mammal

Commission and the Committee of Scientific Advisors for their review.

Applicant: Waitman R. Kesling, Scott Depot, WV, PRT–106076.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Arthur K. Tonkin, Willow Creek, CA, PRT–106581.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Scott D. Mertens, Wausau, WI, PRT–106582.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Kevin B. Gustafson, Stanchfield, MN, PRT–106625.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Eric G. Turnquist, Lebanon, NJ, PRT–106641.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Paul W. Prudler, Sacramento, CA, PRT–106376.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: James C. Newton, Mountain Home, AR, PRT–105806.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Woodward S. Smith, Mt. Pleasant, MI, PRT–105857.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: John D. Smythe, Park Rapids, MN, PRT–105539.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Robert G. Moyer, Harleysville, PA, PRT–103429.

The applicant requested a permit to import a sport-hunted polar bear (*Ursus maritimus*) from Canada for personal, non-commercial use. On June 3, 2005, (70 FR 32645) the Service published a notice that the polar bear was sport hunted from the Southern Beaufort Sea polar bear population. Subsequently, the Service determined that the polar bear was actually sport hunted from the Lancaster sound polar bear population. Therefore, we are republishing the request for the correct population.

Dated: July 22, 2005.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–15710 Filed 8–8–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by September 8, 2005.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: National Zoological Park, Washington, DC, PRT–106016

The applicant requests a permit to export DNA samples from a deceased Asian elephant (*Elephas maximus*), captive-born at the Rosamond Gifford Zoo, New York, to Australia for the purpose of scientific research about the EEHV herpes virus that occurs in Asian elephants.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Scott A. Jesseman, Sugar Grove, IL, PRT–106369

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Dwight W. Gochenaur, Boiling Springs, PA, PRT–106137

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Dated: July 29, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority,

[FR Doc. 05–15711 Filed 8–8–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for survival enhancement permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from the public, and from local, State, and Federal agencies on the following permit requests.

DATES: Comments on these permit applications must be received on or before September 8, 2005.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the address above. Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–018078

Applicant: Hawaii Volcanoes National Park, Hawaii.

The permittee requests an amendment to remove/reduce to possession (collect and store seed, propagate, and reintroduce) *Sesbania tomentosa* ('ohai), *Portulaca sclerocarpa* ('ihi makole), *Cyrtandra giffardii* (no common name), *Cyrtandra tintinnabula* (no common name), *Sicyos alba* ('anunu), *Hibiscadelphus giffardianus* (hau kuahiwi), *Phyllostegia parviflora* var. *glabriuscula* (no common name), and *Melicope zahibruckneri* (alani) in conjunction with activities to stabilize these species on the island of Hawaii, Hawaii, for the purpose of enhancing their survival.

Permit No. TE–826600

Applicant: Michael G. Hadfield, Honolulu, Hawaii.

The permittee requests an amendment to take (apply radio transmitters) the Oahu tree snails (*Achatinella* spp.) in conjunction with monitoring activity and migration patterns on the island of Oahu, Hawaii, for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: July 22, 2005.

Don Weathers,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 05–15700 Filed 8–8–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service ("we") solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

DATES: Comments on these permit applications must be received on or before September 8, 2005.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the address above. Please refer to the respective permit number for each application when requesting copies of documents.

SUPPLEMENTARY INFORMATION:

Permit No. TE–106759

Applicant: Lauronda D. Cooper, Cupertino, California.

The applicant requests a permit to take (capture and mark) the giant kangaroo rat (*Dipodomys ingens*) and the Morro Bay kangaroo rat (*Dipodomys heermanni morrensis*) in conjunction with surveys throughout the range of each species in San Luis Obispo and Kern Counties, California, for the purpose of enhancing their survival.

Permit No. TE–106908

Applicant: Manna Warburton, San Diego, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the arroyo toad (*Bufo californicus*), the mountain yellow-legged frog (*Rana muscosa*), the Santa Ana sucker (*Catostomus santaanae*), and the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in conjunction with demographic surveys throughout the range of the species in California for the purpose of enhancing their survival.

Permit No. TE–107075

Applicant: Steven Powell, San Pablo, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with demographic surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–107981

Applicant: Margaret E. K. Evans, Seattle, Washington.

The applicant requests a permit to remove/reduce to possession (collect seed) the *Oenothera deltoides* ssp. *howellii* (Antioch Dunes evening-primrose) and the *Oenothera avila* ssp. *eurekensis* (Eureka Valley evening-primrose) in conjunction with research in Contra Costa and Inyo Counties, California, for the purpose of enhancing their survival.

Permit No. TE–006559

Applicant: Dale A. Powell, Riverside, California.

The permittee requests an amendment to take (capture and collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the vernal pool tadpole shrimp (*Lepidurus packardi*), the Riverside fairy shrimp (*Streptocephalus wootoni*), and the San Diego fairy shrimp (*Branchinecta sandiegonensis*)

in conjunction with surveys throughout the range of each species in Southern California for the purpose of enhancing their survival.

Permit No. TE–004939

Applicant: Gordon Pratt, Riverside, California.

The permittee requests an amendment to take (survey by pursuit, capture, handle, remove from the wild, captively propagate, and release to the wild) the El Segundo blue butterfly (*Euphilotes battiudes allyni*) and the Smith's blue butterfly (*Euphilotes enoptes smithi*) in conjunction with surveys and propagation activities throughout the range of each species in California for the purpose of enhancing their survival.

We solicit public review and comment on each of these recovery permit applications.

Dated: July 27, 2005.

Robert Williams,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 05–15707 Filed 8–8–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Emergency Exemption: Issuance of Permit for Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of emergency issuance of permit for endangered species.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: On July 28, 2005, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–108841) to the Virginia Polytechnic Institute and State University (CVM Phase 2), Blacksburg, Virginia, to import biological samples from wild chimpanzees (*Pan troglodytes*) in Tanzania for the purpose of scientific research. This action was authorized under Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Service determined that an emergency affecting the health and life of the chimpanzees at the Mahale Mountains National Park in Kigoma, Tanzania, existed and that no reasonable alternative was available to the applicant for the following reasons.

Virginia Polytechinic Institute and State University requested a permit to import biological samples (bodily tissues and organs, hair, saliva, and other body parts) from the forest floor and from deceased animals found in the Mahle Mountains National Park in Tanzania for emergency and ongoing health and disease evaluation purposes. Samples will be utilized exclusively for diagnostic and scientific purposes. The specimens will be used to run diagnostics tests to determine the cause of death of several animals that have died during an ongoing disease outbreak at the National Park within the past several weeks. The necessary diagnostic testing is not available in Africa. The results of health and disease testing from these chimpanzees will help determine why the animals are sick and what caused the outbreak in order to develop interventions to help prevent reoccurrence.

Dated: July 29, 2005.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 05–15712 Filed 8–8–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Scoping Meeting and Notice of Intent to Prepare a Habitat Conservation Plan and Environmental Impact Statement for the Barton Springs Ecosystem in the Barton Springs Segment of the Edwards Aquifer

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of intent to conduct scoping meetings and prepare a Habitat Conservation Plan (HCP) and Environmental Impact Statement (EIS).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), this notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to prepare a draft EIS for an anticipated incidental take permit application, including an HCP, by the Barton Springs Edwards Aquifer Conservation District (District) of Austin, Texas. The proposed application is for an Incidental Take Permit for the District's management of underground water through permits authorizing withdrawals from the Barton Springs segment of the Edwards Aquifer. Such withdrawals directly affect the flow of Barton Springs, which are four hydraulically connected spring outlets constituting the major discharge points for the Barton Springs segment of the Edwards Aquifer. The District is evaluating the need for a permit for the endangered Barton Springs salamander (*Eurycea sosorum*) and the Austin blind salamander (*Eurycea waterlooensis*), a candidate for listing. Additionally, the District may prepare an HCP that includes measures to minimize and mitigate any taking of species incidental to the permitted withdrawal of groundwater from the Barton Springs segment of the Edwards Aquifer.

DATES: To ensure consideration, written comments from all interested parties concerning the scope of the analysis must be received on or before September 12, 2005. A public scoping meeting for receipt of comments will be held at 5 p.m. on August 23, 2005, at the Lady Bird Johnson Wildflower Center in Austin, Texas. The draft EIS is expected April 2007.

ADDRESSES: Comments and requests for information should be sent to the U.S. Fish and Wildlife Service, ATTN: Carrie Thompson, 10711 Burnet Road, Suite 200, Austin, Texas 78758; telephone (512) 490–0057 x230; facsimile (512) 490–0974. Comments and materials received will be available for public inspection, by appointment, during normal business hours (8 a.m. to 4:30 p.m.) at the Austin Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas. Questions regarding the HCP should be directed to Timothy Riley, Barton Springs Edwards Aquifer Conservation District, 1124 Regal Row, Austin, Texas 78748, telephone (512) 282–8441.

Applicant: The District, a political subdivision of the State of Texas, is charged with the duty to manage, conserve, preserve, and protect the Barton Springs segment of the Edwards Aquifer. The District issues permits for the drilling of wells and the production of groundwater for purposes that are not exempt from regulation under the Texas law requiring the District-issued permits.

SUPPLEMENTARY INFORMATION: This notice is provided as required by the NEPA, its implementing regulations (40

CFR 1500–1508) and related applicable Federal laws, Executive Orders, and regulations.

Background: The Barton Springs Ecosystem is dependent upon adequate spring flow from the Barton Springs segment of the Edwards Aquifer to support endangered species. Cessation of spring flow in the Barton Springs Ecosystem may result in "take" of listed species and an appreciable reduction in the likelihood of survival and recovery of listed species. Due to the growing water use anticipated in the Barton Springs segment of the Edwards Aquifer, a comprehensive management plan may be necessary to assure the sustained spring flow in the Barton Springs Ecosystem.

The Service proposes to prepare a draft EIS to evaluate the impacts of alternatives associated with issuing an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). Section 9 of the Act prohibits the taking of Federally listed species, unless authorized under the provisions of Section 7 or 10 of the Act. The term "take" under the Act includes actions that may directly kill or injure listed species, actions that significantly disrupt normal behavioral patterns such as feeding and breeding, and actions that detrimentally modify habitat to the extent that harms individuals of the species.

Section 10(a)(1)(B) allows the Service to permit taking of listed species, provided that taking is incidental to an otherwise legal activity, and that it will not jeopardize a listed species. The applicant must submit an HCP as part of the incidental take permit application.

Proposed Action: The District will consider adoption of an HCP consistent with the Service's Barton Springs Salamander (Draft) Recovery Plan (January 2005) and with Sections 9 and 10 of the Act. The District's proposed HCP will consider a comprehensive approach to protect Federally listed species and their habitats that may be affected by groundwater withdrawals from the aquifer. Activities proposed for consideration under the Permit may include management and permitting of certain water withdrawals from the Edwards Aquifer within the jurisdiction of the District, and habitat conservation measures to mitigate impacts of changes in flows of Barton Springs.

Comments Requested: The Service is soliciting information and comments on the scope of issues to be addressed in the draft EIS. The NEPA process is intended to aid public officials to make decisions based on the understanding of environmental consequences and take actions that protect, restore, and enhance the human environment. NEPA scoping procedures are intended to ensure that information on the proposed action, alternatives, and impacts are solicited from the public and that all information is available to public officials and citizens before planning decisions are made. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. NEPA documents concentrate on the issues that are significant to the action in question. The Service invites the public to submit information and comments either in writing or at the scheduled meeting. The Austin meeting is scheduled for 5 p.m. on August 23, 2005, at the Lady Bird Johnson Wildflower Center, 4801 La Crosse Avenue in Travis County, Texas. The Service requests that comments be as specific as possible.

Major environmental and species concerns in this scoping process include the direct, indirect, and cumulative impacts that implementation of the proposal could have on endangered and candidate listed species, other environmental resources, and the quality of the human environment. Other relevant issues include effects of aquifer and water withdrawal levels on Barton Springs flows, effect of various aquifer water use management options, and alternative water supply options on the environments affected by those options.

The Service is gathering information necessary for the preparation of an EIS. Information regarding the following topics would assist the Service in assessing the impacts of the proposed issuance of an incidental take permit under the provisions of an HCP: The hydrogeology of the Barton Springs segment of the Edwards Aquifer and the effects of aquifer levels on spring flows at Barton Springs as they relate to the habitat needs of Federally listed species; potential water conservation measures and strategies to reduce the withdrawal demands on the Edwards Aquifer and their negative effects on spring flows; alternate water supplies and their potential effect on reducing Edwards Aquifer water withdrawals and maintaining spring flows; effects of aquifer level management and spring flow changes on the quality of the issues; the impact of no action; or suggestions that would be relevant toward the Service's review and development of alternatives.

In addition to considering impacts on listed species and their habitat, the EIS must include information on impacts from the proposal and alternatives to the proposal on other components of the human environment. These other components include such things as air and water quality, cultural resources, other fish and wildlife species, social resources, and economic resources.

Joy E. Nicholopoulos,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 05–15804 Filed 8–8–05; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Availability of Supplemental Air Quality Information for the Draft Environmental Impact Statement for Jonah Infill Drilling Project, Pinedale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of supplemental information and its public review period

SUMMARY: The Bureau of Land Management (BLM) announces the availability of supplemental air quality analyses and information prepared for the Draft Environmental Impact Statement (DEIS) for the Jonah Infill Drilling Project (JIDP), Sublette County, Wyoming. The supplemental information will be available to the public for a 60-day review and comment period.

DATES: The supplemental air quality information will be available for review for 60 calendar days starting on the date this notice is published in the **Federal Register**. The BLM can best use your comments within this 60-day review period.

ADDRESSES: A copy of the supplemental air quality information is available for public inspection during regular business hours (8 a.m. to 4:30 p.m., Monday through Friday) at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming.
- Bureau of Land Management, Pinedale Field Office, 432 East Mill Street, Pinedale, Wyoming.

The document may be available electronically on the following Web site: *http://www.wy.blm.gov/nepa/nepadocs.htm*. If you wish to review the information electronically, please check with the Pinedale Field Office as to the availability of BLM Internet documents.

FOR FURTHER INFORMATION CONTACT: For information regarding the JIDP DEIS, contact Carol Kruse, Project Manager, Pinedale Field Office, 432 E. Mill Street, P.O. Box 768, Pinedale, Wyoming 82941. For technical air quality information contact Susan Caplan, Meteorologist, BLM, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009. Ms. Kruse and Ms. Caplan may be contacted by telephone at (307) 367–5352 and (307) 775–6113, respectively.

SUPPLEMENTARY INFORMATION: On February 11, 2005, the BLM published in the **Federal Register** a Notice of Availability of a DEIS for the JIDP for public review and comment. On April 12, 2005, the BLM published notification in the **Federal Register** of its intent to prepare supplemental air quality information for the JIDP DEIS. Until the analyses and supplemental information were completed, the public was provided with additional time to submit comments on the air quality information contained in the DEIS. The analyses have been completed and the supplemental air quality information is now available for review.

A summary of the supplemental air quality information has been sent to affected Federal, State, and local government agencies and to interested parties. A copy of the full report is available from the Pinedale Field Office upon request.

How To Submit Comments

The BLM welcomes your comments on the supplemental air quality information prepared for the JIDP DEIS. The BLM asks that your comments specifically reference page number and paragraph in the report, where possible. Comments that contain only opinions or preferences will not receive a formal response; they will, however, be considered and included as part of the BLM decisionmaking process.

Written comments may be mailed directly or delivered to the BLM at: Jonah Infill Drilling Project DEIS, Project Manager, Bureau of Land Management, Pinedale Field Office, 432 East Mill Street, P.O. Box 768, Pinedale, Wyoming 82941.

You may also send your comments electronically to *WYMail_Jonah_Infill@blm.gov*. Please write "Attention: Carol Kruse" in the subject line.

To ensure full consideration by the BLM, all comment submittals must include the commenter's name and street address.

Comments, including the names and street addresses of each respondent, will be available for public review at the Pinedale Field Office during regular business hours, Monday through Friday, except for Federal holidays. You comments may be published as part of the EIS process. Individual respondents may request confidentiality. If you wish to withhold your name or street address, or both, from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comments. Such requests will be honored to the extent allowed by law. We will not consider anonymous comments. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Dated: June 21, 2005.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 05–15808 Filed 8–8–05; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held September 7, 2005 from 9:15 a.m. to 4 p.m.

ADDRESSES: Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8500.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics include: Manager updates on current land management issues; current realty actions and travel management planning. All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9:30 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm*.

Dated: August 2, 2005.

Roy L. Masinton,

Royal Gorge Field Manager.

[FR Doc. 05–15702 Filed 8–8–05; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–300–1020–PH]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held September 7 and 8, 2005 at the BLM Salmon Field Office, 50 U.S. Highway 93 South in Salmon, Idaho. The meeting will start at 1 p.m. September 7, with the public comment period as the first agenda item. The meeting will adjourn at or before 3 p.m. on the following day. This will be the final meeting of the 2004–05 session. The first meeting of the new session will be held in November or December.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District (IFD), which covers eastern Idaho. At this meeting, topics we plan to discuss include:

- Sage Grouse Conservation strategies for the State of Idaho, if completed and released for public review.

• Updates on Budgetary and Legislative issues, including the current status on Wild Horse & Burro program.

• A field trip to discuss how grazing allotment assessments are completed, and a discussion of associated watershed issues.

• Updates on the latest litigation for BLM, and other current issues as appropriate.

• Other items of interest raised by the Council.

Transportation for the field trip will be provided for RAC members. Members of the public wishing to accompany the RAC on the field trip must furnish their own transportation.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: David Howell, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone (208) 524–7559. E-mail: *David_Howell@blm.gov.*

Dated: August 2, 2005.

Joe Kraayenbrink,

District Manager.

[FR Doc. 05–15706 Filed 8–8–05; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,244]

Alcatel, Inc., Plano, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 24, 2005, in response to a petition filed by a state agency representative on behalf of workers of Alcatel, Inc., Plano, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 14th day of July, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4294 Filed 8–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,517]

Dan River, Inc., Danville, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 7, 2005, in response to a worker petition filed on behalf of workers at Dan River, Inc., Danville, Virginia.

The petitioning group of workers is covered by an active certification, (TA–W–52,427) which expires on August 20, 2005. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 21st day of July, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4296 Filed 8–8–05; 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 19, 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 19, 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 in Washington, DC this 1st day of August, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Petitions instituted between 06/27/2005 and 07/01/2005

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,451	Granite Knitwear Inc. (Comp)	Granite Quarry, NC	06/27/2005	06/22/2005
57,452	Zorli Manufacturing LLC (Wkrs)	Union Point, GA	06/27/2005	06/14/2005
57,453	Federal Screw Works (UAW)	Chelsea, MI	06/27/2005	06/15/2005
57,454	Glenayre Electronics (State)	Duluth, GA	06/27/2005	06/16/2005
57,455	Brand Mills (UNITE)	Hackensack, NJ	06/27/2005	06/10/2005
57,456	Beach Patrol, Inc. (State)	Carson, CA	06/27/2005	06/13/2005

APPENDIX—Continued

Petitions instituted between 06/27/2005 and 07/01/2005

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57,457	TRW Automotive (Comp)	Cookeville, TN	06/28/2005	06/27/2005
57,458	Northern Technologies, Inc. (Comp)	Liberty Lake, WA	06/28/2005	06/28/2005
57,459	Cardinal Brands (Wkrs)	Washington, MO	06/28/2005	06/23/2005
57,460	Alandale Knitting Co., Inc. (Comp)	Troy, NC	06/28/2005	06/22/2005
57,461	Elkin Printing Inc. (Comp)	Ronda, NC	06/28/2005	06/01/2005
57,462	Kennametal Inc. (Comp)	Latrobe, PA	06/28/2005	06/24/2005
57,463	Union Underwear Company, Inc. (Wkrs)	Jamestown, KY	06/28/2005	06/17/2005
57,464	Delta Galil USA, Inc. (Comp)	Williamsport, PA	06/29/2005	06/28/2005
57,465	Premier Refracteries (Comp)	Snow Shoe, PA	06/29/2005	06/22/2005
57,466	Varco—Pruder Buildings (Wkrs)	Pine Bluff, AR	06/29/2005	06/24/2005
57,467	Texas Instruments (State)	Tucson, AZ	06/29/2005	06/24/2005
57,468	Milwaukee Electric Tool Corp. (State)	Brookfield, WI	06/29/2005	06/24/2005
57,469A	NABCO, Inc. (Comp)	Marion, MI	06/29/2005	06/27/2005
57,469	NABCO, Inc. (Comp)	Kaleva, MI	06/29/2005	06/27/2005
57,470	Wilson Sporting Goods Co. (Comp)	Humboldt, TN	06/29/2005	06/27/2005
57,471	Rohm and Haas Powder Coatings (Wkrs)	Wytheville, VA	06/29/2005	06/27/2005
57,472	Kustom Fit (State)	South Gate, CA	06/29/2005	06/28/2005
57,473	Laneko (Comp)	Royersford, PA	06/29/2005	06/23/2005
57,474	Lund Boat Company (Comp)	New York Mills, MN	06/29/2005	06/28/2005
57,475	Onux Medical, Inc. (Comp)	Hampton, NH	06/29/2005	06/27/2005
57,476	Menasha Packaging Company (Comp)	Otsego, MI	06/29/2005	06/28/2005
57,477	Mount Vernon Mills, Inc. (Comp)	McCormick, SC	06/29/2005	06/28/2005
57,478	Thomasville Furniture Ind., Inc. (Comp)	Thomasville, NC	06/29/2005	06/28/2005
57,479	Robert Bosch Tool Corp. (Comp)	Estanollee, GA	06/29/2005	06/24/2005
57,480	Vishay Micro-Measurements (Comp)	Wendell, NC	06/29/2005	06/29/2005
57,481	Crown City Plating Co. (Wkrs)	El Monte, CA	06/29/2005	06/15/2005
57,482	Industrial Distribution Group (Comp)	West Jefferson, NC	06/30/2005	06/27/2005
57,483	Bronze Craft Corp. (Comp)	Nashua, NH	06/30/2005	06/12/2005
57,484	Oce Display Graphics Systems, Inc. (Comp)	San Jose, CA	06/30/2005	06/27/2005
57,485	Proman Mfg. Co. (Wkrs)	Boston, MA	06/30/2005	06/24/2005
57,486	Homecrest Industries (State)	Wadena, MN	06/30/2005	06/29/2005
57,487	Continental Tire North America (Comp)	Charlotte, NC	06/30/2005	06/23/2005
57,488	Plastic Oddities, Inc. (Wkrs)	Shelby, NC	06/30/2005	06/18/2005
57,489	APAC Customer Services (NPW)	Canton, IL	06/30/2005	06/21/2005
57,490	Teleflex Incorporated (Wkrs)	Van Wert, OH	06/30/2005	06/20/2005
57,491	Iberia Sugar Cooperative, Inc. (Comp)	New Iberia, LA	06/30/2005	06/20/2005
57,492	Gilmour Mfg. Co. (Comp)	Somerset, PA	07/01/2005	07/01/2005
57,493	Qualex (Wkrs)	Durham, NC	07/01/2005	06/26/2005
57,494	Toter, Inc. (Comp)	Sanger, CA	07/01/2005	06/14/2005
57,495	VMC—Volt (Wkrs)	Portland, OR	07/01/2005	06/29/2005
57,496	Hermitage Hospital Products (State)	Niantic, CT	07/01/2005	06/30/2005
57,497	FUN–TEES, Inc. (Comp)	Concord, NC	07/01/2005	06/29/2005
57,498	Custom Machine Works (State)	Fayetteville, AR	07/01/2005	07/01/2005
57,499	National Spinning Co., LLC (Comp)	Warsaw, NC	07/01/2005	06/30/2005
57,500	Amital Spinning Corp. (Comp)	Wallace, NC	07/01/2005	07/01/2005
57,501	Unifi, Inc. (Comp)	Reidsville, NC	07/01/2005	07/01/2005

[FR Doc. E5–4300 Filed 8–8–05; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,688]

Lands' End, a Subsidiary of Sears Roebuck and Company, Business Outfitters CAD Operations, Dodgeville, WI; Notice of Negative Determination on Reconsideration

On June 6, 2005, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 20, 2005 (70 FR 35456).

The Department denied Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) to workers of Lands' End, a Subsidiary of Sears Roebuck and Company, Business Outfitters CAD Operations, Dodgeville, Wisconsin, because the workers' separations were not due to a shift of production overseas or increased imports of articles, but due to the subject company's decision to move computer assisted design operations abroad. The subject worker group is engaged in computerizing embroidery and logo designs which are utilized by the production division of Lands' End, also located in Dodgeville, Wisconsin. Workers in the Business Outfitters CAD Operations are separately identifiable from those workers who produce embroidered goods (clothing, tote bags, etc.) at Lands' End, Dodgeville, Wisconsin.

In the request for reconsideration, the petitioners alleged that workers produce an article (digitized embroidery designs), that digitized embroidery design production shifted overseas, and that imports of digitized embroidery design increased.

During the reconsideration investigation, the Department contacted the petitioners and Lands' End officials

to better understand the operations of the subject worker group and to obtain information which will enable the Department to address the petitioners' allegations.

According to the petitioners, the workers use a computer program to convert customers' logos from a two-dimensional form to one which is readable by the embroidery machines at the Dodgeville, Wisconsin facility. Petitioners also allege that foreign companies are digitizing the design work, using a remote file transfer protocol site and the Internet to receive the logos from Lands' End and to send digitized logos back to Lands' End. A company official confirmed that the electronic digitizing of embroidery logos shifted overseas and that sample stitching and the production of embroidered goods remain at the Dodgeville, Wisconsin facility.

Based on this information, the Department has determined that the subject workers do not produce an article. As such, the second and third allegations, the shift of digitized design production abroad and the increased imports of digitized designs, are rendered moot.

During the reconsideration investigation, the Department also inquired into Lands' End's reasons for shifting digitization of the designs abroad and was informed that the subject company wanted to utilize the time difference between the countries in order to more quickly satisfy customers' demands for embroidered goods. By doing so, the subject company can have logos digitized "overnight" and be ready to be used when the American production workers return to work the next day.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 28th day of July 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4292 Filed 8–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,504]

Menasha Holding Company, Menasha Packaging Company, LLC, Danville, 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 Menasha Holding Company, Menasha Packaging Company, LLC, Danville, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 18th day of July 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4301 Filed 8–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,427]

Pomeroy Computer Resources, Macon, Georgia; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 21, 2005, in response to petition filed on behalf of workers at Pomeroy Computer Resources, Macon, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 11th day of July, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4299 Filed 8–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,270]

TRW Automotive, Occupant Safety Systems Division, El Paso Warehouse, El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 1, 2005, in response to a petition filed by a company official on behalf of workers at TRW Automotive, Occupant Safety Systems Division, El Paso Warehouse, El Paso, Texas.

The company has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 11th day of July 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4297 Filed 8–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,946]

UITS Support Center, A Division Of NBC Universal, Universal City, CA; Notice of Negative Determination Regarding Application for Reconsideration

By application dated May 20, 2005, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of UITS Support Center, a division of NBC Universal, Universal City, California, was signed on April 21, 2005, and published in the **Federal Register** on May 16, 2005 (70 FR 25859).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or

of the law justified reconsideration of the decision.

The TAA petition filed on behalf of a worker at UITS Support Center, a division of NBC Universal, Universal City, California, engaged in technical support for the employees of the Universal Studios and Universal Music was denied because the petitioning workers did not produce an article within the meaning of section 222 of the Act.

The petitioner contends that the Department erred in its interpretation of work performed at the subject facility as a service and further conveys that movies which are filmed and taped at the Universal Studios lot should be considered a product and workers dealing with the technological aspects such as soundstage locations, wardrobe inventory and actors' contracts should be considered workers engaged in production.

A company official was contacted for clarification in regard to the nature of the work performed at the subject facility. The official stated that the role of the petitioning group of workers at the subject firm was that of information technology help desk analyst. In particular, workers of the subject firm provided assistance pertaining to computer problems over the telephone to the workers at Universal Studios, Universal City, California. The official further clarified that workers of the University Studios, University City, California, do not manufacture articles, and are engaged in activities related to making movies and television shows.

The company official further stated that the position of help desk analyst was transferred from the subject facility to India.

Technical support is not considered production within the context of TAA eligibility requirements, so there are no imports of products nor was there a shift in production of an "article" abroad within the meaning of the Trade Act of 1974 in this instance.

Service workers can be certified only if worker separations are caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article domestically who meet the eligibility requirements, or if the group of workers are leased workers who perform their duties on-site at a facility that meet the eligibility requirements.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 15th day of July, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4293 Filed 8–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,253]

Vision Knits, Inc., Albemarle, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 28, 2005, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on June 16, 2005, and published in the **Federal Register** on July 14, 2005 (70 FR 40741).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Vision Knits, Inc., Albemarle, North Carolina engaged in production of unfinished knit fabric was denied because the "contributed importantly" group eligibility requirement of section 222 of the Trade Act of 1974, as amended, was not met, nor was there a shift in production from that firm to a foreign country. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The survey revealed no imports of unfinished knit fabric during the relevant period. The subject firm did not import unfinished knit fabric nor did it shift production to a foreign country during the relevant period.

The petitioner states that even though the subject firm produces fabric, this fabric is further used in the production of garments. The petitioner alleges that because final customers purchase garments from foreign countries, the subject firm lost its business due to the imports of finished garments.

The petitioner attached two letters from customers to support the allegations. The letters state that increased imports of finished garments resulted in customers' loss of business.

The petitioner concludes that, because the production of garments occurs abroad, the subject firm workers producing fabric are import impacted.

In order to establish import impact, the Department must consider imports that are like or directly competitive with those produced at the subject firm. Imports of garments cannot be considered like or directly competitive with unfinished fabric produced by Vision Knits, Inc.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, day 28th of July, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4295 Filed 8–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,327]

Westpoint Stevens, Bed Products Division, Lanett, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 8, 2005, in response to a petition filed by a company official on behalf of workers at WestPoint Stevens, Bed Products Division, Lanett, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 20th day of July, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–4298 Filed 8–8–05; 8:45 am]

BILLING CODE 4510–30–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2005–2 CRB SD 2001–2003]

Distribution of the 2001, 2002, and 2003 Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Request for comments.

SUMMARY: The Interim Chief Copyright Royalty Judge, on behalf of the Copyright Royalty Board, is requesting comments on the existence of controversies to the distribution of the 2001, 2002, and 2003 satellite royalty funds.

DATES: Written comments should be received no later than September 8, 2005.

ADDRESSES: If hand delivered by a private party, an original and five copies of comments must be brought to Room LM–401 of the James Madison Memorial Building, Monday through Friday, between 8:30 a.m. and 5 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier (excluding overnight delivery services such as Federal Express, United Parcel Service and similar overnight delivery services), an original and five copies of comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Monday through Friday, between 8:30 a.m. and 4 p.m., and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000. If sent by mail (including overnight delivery using United States Postal Service Express Mail), an original and five copies of comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Comments may not be delivered by means of overnight delivery services such as Federal Express, United Parcel Service, etc., due to delays in processing receipt of such deliveries.

FOR FURTHER INFORMATION CONTACT: William J. Roberts, Jr., Senior Attorney, or Abioye E. Oyewole, CRB Program Specialist. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Each year satellite carriers submit royalties to the Copyright Office under the section 119 statutory license for the retransmission to their subscribers of distant over-the-air television broadcast signals. 17 U.S.C. 119. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a retransmission of an over-the-air television broadcast signal and who timely filed a claim for royalties with the Copyright Office. The copyright owners may either negotiate the terms of a settlement as to the division of the royalty funds, or the Copyright Royalty Board may conduct a proceeding to determine the distribution of the royalties that remain in controversy. *See* 17 U.S.C. Chapter 8.

By Motion received on June 20, 2005, representatives of the Phase I claimant categories (the "Phase I Parties")[1] have asked the Board to authorize a partial distribution of 50% of each of the 2001, 2002, and 2003 satellite royalty funds, asserting that 50% of those funds is not in controversy. As set forth in the Motion, the proposed partial distribution would be preceded by a notice in the **Federal Register**, seeking comments with respect to the premise of the Motion that 50% of the relevant royalty funds is not in controversy. The Phase I Parties also indicated that, "in the event that the final percentage shares to Phase I Parties differ from the distributions made pursuant to this Motion, any overpayment that results from the final distribution shall be repaid * * * with interest * * *." Motion, at 4 (internal quotation and citation omitted).

In support of their Motion, the Phase I Parties invoked the Board's authority under Copyright Act sections 801(b)(3)(C) and 119(b)(4)(C). Because no distribution proceeding with respect to the 2001–2003 satellite funds was "pending," the Board was concerned that it might lack authority to act favorably on the requested 50% partial distribution. Accordingly, on July 1, 2005, the Board invited supplemental briefing from the Phase I Parties on this issue. In their supplemental brief, filed July 26, 2005, the Phase I Parties rely heavily on section 801(b)(3)(A). 17 U.S.C. 801(b)(3)(A), which was enacted as part of the Copyright Royalty and Distribution Reform Act of 2004, Public Law 108–419, 118 Stat. 2341 (November 30, 2004), "authorize[s] the distribution" of satellite and other royalty funds "to the extent that the Copyright Royalty Judges have found that the distribution of such fees is not subject to controversy." In arguing that section 801(b)(3)(A) should be construed to permit partial distributions prior to the formal initiation of distribution proceedings, the Phase I Parties point to the historic practices of the Copyright Royalty Tribunal and the Copyright Arbitration Royalty Panel system and demonstrate that Congress did not intend to alter that flexibility in adopting the current language of Copyright Act section 801(b)(3). After considering the arguments made by the Phase I Parties, the Board agrees with the Phase I Parties that section 801(b)(3)(A) should be construed to authorize the partial distribution of royalties not in controversy prior to the initiation of proceedings under sections 803(b)(1).

Accordingly, through this **Federal Register** notice, the Board is seeking comments on whether any controversy exists that would preclude the distribution of 50% of the satellite royalty funds to the Phase I Parties. If no controversy exists with respect to 50% of the funds, or no comments are received, the Board will grant the Phase I Parties' Motion for the partial distribution of the 2001–2003 satellite royalty funds, subject to the protective refund conditions required for partial distributions.

The Board also seeks comment on the existence and extent of any controversies to the 2001–2003 satellite royalty funds, either at Phase I or Phase II, with respect to the 50% of the 2001–2003 satellite royalty funds that would remain, if the partial distribution is granted. In Phase I of a satellite royalty distribution, royalties are distributed to certain categories of broadcast programming that have been retransmitted by satellite carriers. The categories have traditionally been movies and syndicated television series, sports programming, commercial and noncommercial broadcaster-owned programming, religious programming, music programming and Canadian programming. In Phase II of a satellite royalty distribution, royalties are distributed to claimants within each of the Phase I categories. Any party submitting comments on the existence

[1] The "Phase I Parties" are the Program Suppliers, the Joint Sports Claimants, the Public Television Claimants, the Broadcaster Claimants Group, the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., and the Devotional Claimants.

of a Phase II controversy must identify the category or categories in which there is a dispute, and the extent of the controversy or controversies.

The Board must be advised of the existence and extent of all Phase I and Phase II controversies by the end of the comment period. It will not consider any controversies that come to its attention after the close of that period.

Dated: August 4, 2005.

Bruce G. Forrest,

Interim Chief Copyright Royalty Judge.

[FR Doc. 05–15731 Filed 8–8–05; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 23, 2005. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means (Note the new address for requesting schedules using e-mail):

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001. E-mail: *requestschedule@nara.gov*. FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Acting Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending (Note the New Address for Requesting Schedules Using E-Mail)

1. Department of Agriculture, National Agricultural Statistics Service (N1–355–05–1, 1 item, 1 temporary item). Completed 1998 Farm and Ranch Irrigation Survey questionnaires, which were used in a census sampling of farms and ranches in order to obtain irrigation data.

2. Department of the Army, Agency-wide (N1–AU–05–2, 2 items, 2 temporary items). Records relating to aviation accident prevention, including files relating to safety education, awards, and safety information sharing. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of the Air Force, Agency-wide (N1–AFU–03–16, 3 items, 3 temporary items). Litigation case files relating to such subjects as civilian employment discrimination, military promotions and benefits, Freedom of Information Act requests, contracts, environmental pollution, land use, and foreign civil matters. Also included are electronic copies of records created using electronic mail and word processing. This schedule provides on-going disposal authority for this series. Records accumulated prior to ca. 1993 were previously approved for disposal.

4. Department of Defense, National Geospatial-Intelligence Agency (N1–537–04–2, 14 items, 9 temporary items). Imagery and intelligence program records accumulated by offices not responsible for the related programs or projects. Also included are electronic copies of documents created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of such records as priority files, conference files, and publications as well as studies, requirements, plans, and project files

that are maintained by the office assigned functional program responsibility. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of Justice, Bureau of Prisons (N1–129–05–14, 4 items, 4 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with personnel files relating to agency medical staff as well as records relating to National Health Service Corps participants. This schedule also reduces the retention periods for recordkeeping copies of these files, which were previously approved for disposal.

6. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (N1–436–05–4, 3 items, 3 temporary items). Files containing contact information for Federal, state, and local chief law enforcement officers maintained in connection with semi-annual notifications of the current firearms licensee population. Also included are electronic copies of documents created using electronic mail and word processing.

7. Department of State, Bureau of Political and Military Affairs (N1–59–05–8, 12 items, 4 temporary items). Tracking and control logs and electronic spreadsheets of the Political-Military Action Team. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of substantive records, including situation reports, inter-agency clearance records, and crisis reports.

8. Department of State, Bureau of Educational and Cultural Affairs (N1–59–05–13, 4 items, 4 temporary items). Records accumulated by the Office of the Executive Director relating to managing grants and to the Bureau's day-to-day administrative operations. Also included are electronic copies of records accumulated by this office that are created using electronic mail and word processing.

9: Department of Transportation, Federal Aviation Administration (N1–237–05–4, 4 items, 3 temporary items). Scanned images of records relating to the events of September 11, 2001. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are original recordkeeping copies of these records, which include flight strips, maps, charts, radar data, press releases, correspondence, and voice recordings.

10. Department of the Treasury, Bureau of the Public Debt (N1–53–05–2, 12 items, 11 temporary items). Auction files of the Office of Financing, including such records as allotment notices, routine violation files, compliance records, and issue folders. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of auction violation files that affect auction policies.

11. Federal Communications Commission, Office of Legislative Affairs (N1–173–03–2, 4 items, 3 temporary items). Paper versions of the chairman's congressional correspondence and paper and electronic versions of congressional correspondence accumulated by bureau and office chiefs. Proposed for permanent retention are electronic versions of the chairman's congressional correspondence.

12. National Archives and Records Administration, Policy and Communications Staff (N1–64–05–5, 12 items, 7 temporary items). Records of the Lifecycle Coordination Staff relating to lifecycle management data standards, especially those related to archival description, records management initiatives, the Electronic Records Archives, and other activities designed to increase the effectiveness of lifecycle processes. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of policy documents and project files, charter documents, formal comments/rulings, and meeting minutes.

13. National Archives and Records Administration, Office of Records Services—Washington, DC (N2–15–05–1, 1 item, 1 temporary item). Microfilm copies of Department of Veterans Affairs' Veterans Benefits Administration Forms 10–2593 (Record of Hospitalization), 1918–1957. These records, which lack historical value, were mistakenly accessioned into the National Archives.

14. Small Business Administration, Office of the Chief Information Officer (N1–309–05–18, 4 items, 4 temporary items). Inputs, master files, backups, and documentation associated with an electronic system that is used to assist with migrating changes to agency automated systems.

Dated: July 28, 2005.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 05–15667 Filed 8–8–05; 8:45 am]

BILLING CODE 7515–01–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Meeting of the Advisory Commission on Drug Free Communities

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Drug-Free Communities Act, a meeting of the Advisory Commission on Drug Free Communities will be held on September 28 & 29, 2005, at the Office of National Drug Control Policy in the 5th Floor Conference Room, 750 17th Street NW., Washington, DC. The meeting will commence at 12 noon on Wednesday, September 28, 2005 and adjourn for the evening at 5:30 p.m. The meeting will reconvene at 8:30 a.m. on Thursday, September 29 in the same location. The meeting will adjourn at 4 p.m. on Thursday, September 29. The agenda will include: Remarks by ONDCP Deputy Director Mary Ann Solberg, remarks by the DFC Program's Acting Administrator, a discussion of the program's evaluation, a review of the new grant awards, and an update from the Substance Abuse and Mental Health Services Administration. There will be an opportunity for public comment from 9–9:30 on Thursday September 29. Members of the public who wish to attend the meeting and/or make public comment should contact Carlos Dublin, at (202) 395–6762 to arrange building access.

FOR FURTHER INFORMATION CONTACT: Ken Shapiro, (202) 395–6762.

Dated: August 4, 2005.

Linda V. Priebe,

Assistant General Counsel.

[FR Doc. 05–15726 Filed 8–8–05; 8:45 am]

BILLING CODE 3180–02–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

DATE: Weeks of August 8, 15, 22, 29, and September 5, 12, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of August 8, 2005

There are no meetings scheduled for the week of August 8, 2005.

Week of August 15, 2005—Tentative

Tuesday, August 16, 2005

10 a.m. Meeting with the Organization of Agreement States (OAS) and the Conference of Radiation Control Program Directors (CRCPD) (Public Meeting). (Contact: Shawn Smith, (303) 415–2620.)

This meeting will be webcast live at the Web address, *http://www.nrc.gov.*

1 p.m. Discussion of Security Issues (closed—ex. 3 & 9).

Week of August 22, 2005—Tentative

There are no meetings scheduled for the week of August 22, 2005.

Week of August 29, 2005—Tentative

There are no meetings scheduled for the week of August 29, 2005.

Week of September 5, 2005—Tentative

Wednesday, September 7, 2005

9 a.m. Discussion of Security Issues (closed—ex. 1).

1:30 p.m. Discussion of Security Issues (closed—ex. 3).

Week of September 12, 2005—Tentative

There are no meetings scheduled for the week of September 12, 2005.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers: If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 4, 2005.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 05–15776 Filed 8–5–05; 10:06 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Sunshine Act Meetings

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: Tuesday, August 9, 2005, at 10:30 a.m.

PLACE: Commission conference room, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: Consideration of fiscal year 2006 budget; election of vice chairman.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820.

Dated: August 4, 2005.

Steven W. Williams,

Secretary.

[FR Doc. 05–15769 Filed 8–4–05; 4:27 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27024; File No. 812–13148]

ING USA Annuity & Life Insurance Company, et al.

August 1, 2005.

AGENCY: The Securities and Exchange Commission.

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940, as amended (the "1940 Act"), approving certain substitutions of securities and for an order of exemption pursuant to Section 17(b) of the Act.

Applicants: ING Insurance Company of America, ING Life Insurance and Annuity Company, ING USA Annuity and Life Insurance Company, ReliaStar Life Insurance Company, ReliaStar Life Insurance Company of New York, and Security Life of Denver Insurance Company (each a "Company" and together, the "Companies"), Variable Annuity Account I of ING Insurance Company of America, Variable Annuity Account B of ING Life Insurance and Annuity Company, Separate Account B of ING USA Annuity and Life Insurance Company, Separate Account EQ of ING USA Annuity and Life Insurance Company, Separate Account U of ING USA Annuity and Life Insurance Company, MFS ReliaStar Variable Account of ReliaStar Life Insurance Company, ReliaStar Select Variable Account of ReliaStar Life Insurance Company, Select*Life Variable Account of ReliaStar Life Insurance Company, Separate Account N of ReliaStar Life Insurance Company, ReliaStar Life Insurance Company of New York Separate Account NY–B, ReliaStar Life Insurance Company of New York Variable Annuity Funds M, P & Q, ReliaStar Life Insurance Company of New York Variable Life Separate Account I, Security Life Separate Account A1, Security Life Separate Account L1, Security Life Separate Account S–A1, and Security Life Separate Account S–L1 (each, an "Account" and together, the "Accounts"), ING Investors Trust, ING Partners, Inc. and ING Variable Products Trust. The Companies, the Accounts, ING Investors Trust, ING Partners, Inc. and ING Variable Products Trust are collectively referred to herein as the "Applicants."

SUMMARY: The Applicants have submitted an application (the "Application") for an order of the Securities and Exchange Commission (the "Commission"), pursuant to Section 26(c), formerly Section (b), of the 1940 Act, permitting the substitutions of securities issued by certain registered investment companies held by the Accounts to support certain in force variable life insurance policies and variable annuity contracts (collectively, the "Contracts") issued by the Companies. More particularly, the Applicants propose to substitute shares of certain series of ING Investors Trust, ING Partners, Inc. and ING Variable Products Trust (the "Substitute Funds") for shares of certain registered investment companies currently held by subaccounts of the various Accounts (the "Replaced Funds") as follows:

Replaced funds	Substitute funds
AIM V.I. Health Sciences Fund—Series I	ING Evergreen Health Sciences Portfolio—Class S

Replaced funds	Substitute funds
ING Evergreen Health Sciences Portfolio—Class A.	
AIM V.I. Capital Appreciation Fund—Series I	ING Evergreen Omega Portfolio—Class I
Alger American Leveraged AllCap Portfolio—Class O.	
Putnam VT New Opportunities Fund—Class IA.	
Putnam VT New Opportunities Fund—Class IB.	
Putnam VT Voyager Fund—Class IA.	
Putnam VT Voyager Fund—Class IB.	
AIM V.I. Capital Appreciation Fund—Series II	ING Evergreen Omega Portfolio—Class S
Putnam VT Discovery Growth Fund—Class IB.	
AIM V.I. Growth Fund—Series I	ING FMR Earnings Growth Portfolio—Class I
Alger American Growth Portfolio—Class O.	
Alger American Income & Growth Portfolio—Class O.	
AllianceBernstein VPSF Large Cap Growth Portfolio—Class A.	
AIM V.I. Growth Fund—Series II	ING FMR Earnings Growth Portfolio—Class S
AllianceBernstein VPSF Large Cap Growth Portfolio—Class B.	
AIM V.I. Small Company Growth Fund—Series I	ING JP Morgan Small Cap Equity Portfolio—Class I
Alger American Small Capitalization Portfolio—Class O.	
AllianceBernstein VPSF Small Cap Growth Portfolio—Class A.	
Premier VIT OpCap Small Cap Portfolio.	
AllianceBernstein VPSF Growth and Income Portfolio—Class A	ING JP Morgan Value Opportunities Portfolio—Class I
Putnam VT Growth and Income Fund—Class IA.	
AllianceBernstein VPSF Growth and Income Portfolio—Class B	ING JP Morgan Value Opportunities Portfolio—Class S
AllianceBernstein VPSF Value Portfolio—Class B.	
Federated American Leaders Fund II—P Shares.	
Putnam VT Growth and Income Fund—Class IB.	
AIM V.I. Premier Equity Fund—Series I	ING Legg Mason Value Portfolio—Class I
AIM V.I. Premier Equity Fund—Series II	ING Legg Mason Value Portfolio—Class S
Federated Prime Money Fund II—P Shares	ING Liquid Assets Portfolio—Class S
Janus Aspen International Growth Portfolio—Institutional Shares	ING Marsico International Opportunities Portfolio—Class I
Putnam VT International Equity Fund—Class IA.	
AIM V.I. International Growth Fund—Series I	ING Marsico International Opportunities Portfolio—Class S
Janus Aspen International Growth Portfolio—Service Shares.	
Prudential SP William Blair International Growth Portfolio Class II.	
AIM V.I. Dent Demographic Trends Fund—Series II	ING Mercury Large Cap Growth Portfolio—Class S
ING Mercury Large Cap Growth Portfolio—Class A.	
Prudential Jennison Portfolio—Class II Shares.	
MFS VIT Total Return Series—Initial Class	ING MFS Total Return Portfolio—Class I
MFS VIT Utilities Series—Initial Class	ING MFS Utilities Portfolio—Class I
Putnam VT Utilities Growth and Income Fund—Class IA.	
AIM V.I. Utilities Fund—Series I	ING MFS Utilities Portfolio—Class S
Premier VIT OpCap Global Equity Portfolio	ING Oppenheimer Global Portfolio—I Class
AIM V.I. Diversified Income Fund—Series I	ING Oppenheimer Strategic Income Portfolio—S Class
Van Eck Worldwide Bond Fund—Initial Class.	
Federated High Income Bond Fund II—P Shares	ING PIMCO High Yield Portfolio—Class S
Pioneer Mid Cap Value VCT Portfolio—Class I	ING Pioneer Mid Cap Value Portfolio—Class I
Pioneer Mid Cap Value VCT Portfolio—Class II	ING Pioneer Mid Cap Value Portfolio—Class S
AIM V.I. Core Equity Fund—Series I	ING Pioneer Fund Portfolio—Class I
AIM V.I. Core Equity Fund—Series II	ING Pioneer Fund Portfolio—Class S
Pioneer Fund VCT Portfolio—Class II.	
Alger American MidCap Growth Portfolio—Class O	ING T. Rowe Price Diversified Mid Cap Growth Portfolio—I Class
UBS Series Trust U.S. Allocation Portfolio—Class I	ING UBS U.S. Allocation Portfolio—Class S
Premier VIT OpCap Equity Portfolio	ING UBS U.S. Large Cap Equity Portfolio—I Class
Alger American Balanced Portfolio—Class O	ING Van Kampen Equity and Income Portfolio—I Class
Federated Capital Income Fund II—P Shares.	
AIM V.I. Financial Services Fund—Series I	ING VP Financial Services Portfolio—Class S
AIM V.I. High Yield Fund—Series I	ING VP High Yield Bond Portfolio—Class I
Van Eck Worldwide Real Estate Fund—Initial Class	ING VP Real Estate Portfolio—Class S

Applicants also seek an order of exemption pursuant to Section 17(b) of the 1940 Act to permit certain in-kind redemptions and purchases in connection with the substitutions.

Filing Date: The Application was filed on December 27, 2004. The Application was amended and restated on July 19, 2005 and on July 29, 2005.

Hearing or Notification of Hearing: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 26, 2005, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: For the Commission: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–9303. For Applicants, J. Neil McMurdie, Esquire, ING Americas U.S. Legal Services, 151

Farmington Avenue, TS31, Hartford, CT 06156–8975.

FOR FURTHER INFORMATION CONTACT: Alison White, Senior Counsel, Office of Insurance Products, Division of Investment Management, at (202) 551–6795.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Public Reference Branch of the Commission.

I. The Application

The Applicants have requested that the Commission issue an order to permit the substitution ("Substitution") of certain shares of certain investment management companies currently held by sub-accounts of the various Accounts for shares of certain series of the Substitute Funds.

II. The Applicants, Funds and Contracts

A. *The Companies.* Each of the Companies is an indirect wholly owned subsidiary of ING Groep, N.V. ("ING"). ING is a global financial services holding company based in The Netherlands which is active in the field of insurance, banking and asset management. As a result, each Company likely would be deemed to be an affiliate the others.

1. ING Insurance Company of America ("ING America"). ING America is a stock life insurance company organized under the laws of the State of Connecticut in 1990 and redomesticated under the insurance laws of the State of Florida in 2000. Prior to May 1, 2002, ING America was known as Aetna Insurance Company of America ("Aetna America"). ING America is principally engaged in the business of issuing life insurance and annuities.

ING America is the depositor of Variable Annuity Account I, a separate account which is registered with the Commission as a unit investment trust.

2. ING Life Insurance and Annuity Company ("ING Life"). ING Life is a stock life insurance company organized under the laws of the State of Connecticut in 1976 as Forward Life Insurance Company. Through a December 31, 1976 merger ING Life's operations include the business of Aetna Variable Annuity Life Insurance Company (formerly known as Participating Annuity Life Insurance Company). Prior to May 1, 2002, ING Life was known as Aetna Life Insurance and Annuity Company ("Aetna"). ING Life is principally engaged in the business of issuing life insurance and annuities.

ING Life also is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), and is the investment adviser for ING Partners, Inc. ING Life is the depositor of Variable Annuity Account B, a separate account which is registered with the Commission as a unit investment trust.

3. ING USA Annuity and Life Insurance Company ("ING USA"). ING USA is an Iowa stock life insurance company which was originally organized in 1973 under the insurance laws of Minnesota. Through a January 1, 2004 merger ING USA's operations include the business of the former companies, Equitable Life Insurance Company of Iowa ("Equitable Life"), United Life and Annuity Insurance Company ("United Life and Annuity"), and USG Annuity and Life Company. Prior to January 1, 2004, ING USA was known as Golden American Life Insurance Company ("Golden"). ING USA is principally engaged in the business of issuing life insurance and annuities.

ING USA is the depositor of Separate Account B, Separate Account EQ and Separate Account U, separate accounts which are registered with the Commission as unit investment trusts.

4. ReliaStar Life Insurance Company ("ReliaStar"). ReliaStar is a stock life insurance company organized in 1885 and incorporated under the laws of the State of Minnesota. Through an October 1, 2002 merger ReliaStar's operations include the business of Northern Life Insurance Company ("Northern"). ReliaStar is principally engaged in the business of issuing life insurance, annuities, employee benefits and retirement contracts.

ReliaStar is the depositor of MFS ReliaStar Variable Account, ReliaStar Select Variable Account, Select*Life Variable Account and Separate Account N, separate accounts which are registered with the Commission as unit investment trusts.

5. ReliaStar Life Insurance Company of New York ("ReliaStar NY"). ReliaStar NY is a stock life insurance company which was incorporated under the laws of the State of New York in 1917. Through an April 1, 2002 merger ReliaStar NY's operations include the business of First Golden American Life Insurance Company of New York ("First Golden"). ReliaStar NY is principally engaged in the business of issuing life insurance and annuities.

ReliaStar NY is the depositor of Separate Account NY–B, Variable Annuity Funds M, P & Q and Variable Life Separate Account I, separate accounts which are registered with the Commission as unit investment trusts.

6. Security Life of Denver Insurance Company ("Security Life"). Security Life is a stock life insurance company organized under the laws of the State of Colorado in 1929. Through an October 1, 2004, merger Security Life's operations include the business of Southland Life Insurance Company ("Southland"). Security Life is principally engaged in the business of issuing life insurance and annuities.

Security Life is the depositor of Security Life Separate Account A1, Security Life Separate Account L1, Security Life Separate Account S–A1, and Security Life Separate Account S–L1, separate accounts which are registered with the Commission as unit investment trusts.

B. *The Accounts.* Each of the Accounts is a segregated asset account of the applicable Company, and is registered under the 1940 Act as a unit investment trust. Each of the respective Accounts is used by the Company of which it is a part to support the Contracts that it issues.

Each Account is administered and accounted for as part of the general business of the Company of which it is a part. The assets of each Account attributable to the Contracts issued through it are owned by each Company but are held separately from all other assets of that Company for the benefit of the owners of, and persons entitled to benefits under such Contracts. Pursuant to applicable state insurance law and to the extent provided in the Contracts, such assets are not chargeable with liabilities arising out of any other business that each Company may conduct. Income, if any, gains and losses, realized or unrealized, from each Account are credited to or charged against the assets of that Account, without regard to other income, gains or losses of its Company or any of its other segregated asset accounts. Each Account is a "separate account" as defined by Rule 0–1(e) under the 1940 Act.

Each Account is divided into subaccounts, each of which invests exclusively in shares of one investment company portfolio of ING Investors Trust, ING Partners, Inc., ING Variable Products Trust, a Replaced Fund or another mutual fund. Each investment company portfolio has its own distinct investment objective(s) and policies. Income, gains and losses, realized or unrealized, of a portfolio are credited to or charged against the corresponding subaccount of each Account without regard to any other income, gains or losses of the applicable Company. To the extent provided in the Contracts,

assets equal to the reserves and other contract liabilities with respect to an Account are not chargeable with liabilities arising out of any other business of the Company that is the depositor of the Account.

Each of the prospectuses for the Contracts discloses that the Companies reserve the right, subject to Commission approval and compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a subaccount of an Account whenever the Company, in its judgment, determines that a portfolio no longer suits the purpose of the Contract.

C. *The Substitute Funds.* Each of the Substitute Funds is a series of ING Investors Trust, ING Partners, Inc., or ING Variable Products Trust.

1. *ING Investors Trust.* ING Investors Trust, formerly known as the GCG Trust, was organized as a Massachusetts business trust on August 3, 1988. ING Investors Trust is registered under the 1940 Act as an open-end management investment company (File No. 811–5629). It is a series investment company as defined by Rule 18f–2 under the 1940 Act, and a separate series of shares of beneficial interest is issued in connection with each series. Each series is currently offered by prospectus dated April 29, 2005. ING Investors Trust has registered these shares under the Securities Act of 1933 on Form N–1A (File No. 033–23512) which was last updated in an amendment to the registration statement filed on January 27, 2005.

Overall management services are provided to ING Investors Trust and to each of its individual portfolios by Directed Services, Inc. ("DSI"). DSI is an investment adviser registered under the Advisers Act, and a broker-dealer registered under the Exchange Act. DSI, an indirect wholly owned subsidiary of ING, maintains its offices at 1475 Dunwoody Drive, West Chester, PA, 19380. Under the terms of an investment advisory agreement between ING Investors Trust and DSI (the "Trust Management Agreement"), which agreement first became effective on October 24, 1997, DSI manages the business and affairs of each of the several series of the ING Investors Trust, subject to the control and oversight of the ING Investors Trust Board of Trustees (the "Board"). Under the Trust Management Agreement, DSI is authorized to exercise full investment discretion and make all determinations with respect to the investment of the assets of the respective series, but may, at its own cost and expense, retain portfolio managers for the purpose of making investment decisions and research information available to the ING Investors Trust.

DSI delegates to subadvisers the responsibility for day-to-day management of the investments of each portfolio, subject to DSI's oversight. DSI also recommends the appointment of additional or replacement subadvisers to the Board. The ING Investors Trust and DSI have received exemptive relief from the Commission that permits the ING Investors Trust and DSI to add or terminate a subadviser without shareholder approval.

2. *ING Partners, Inc ("ING Partners").* ING Partners, formerly known as Portfolio Partners, Inc., was organized as a Maryland corporation in 1997 and commenced operations on November 28, 1997. ING Partners is registered under the 1940 Act as an open-end management investment company (File No. 811–08319). It is a series investment company as defined by Rule 18f–2 under the 1940 Act, and a separate series of shares of beneficial interest is issued in connection with each series. Each series is currently offered by prospectuses dated April 29, 2005. ING Partners has registered these shares under the Securities Act of 1933 on Form N–1A (File No. 333–32575) which was last updated in an amendment to the registration statement filed on April 1, 2005.

ING Life serves as the investment adviser for each ING Partners portfolio. ING Life is an investment adviser registered under the Advisers Act. ING Life maintains its offices at 151 Farmington Avenue, Hartford, Connecticut 06156.

ING Life delegates to sub-advisers the responsibility for day-to-day management of the investments of each portfolio, subject to the ING Life's oversight. ING Life also recommends the appointment of additional or replacement sub-advisers to the Board. ING Partners and ING Life have received exemptive relief from the Commission that permits ING Life and ING Partners to add or terminate a portfolio's sub-adviser without shareholder approval.

3. *ING Variable Products Trust.* ING Variable Products Trust, formerly known as the Northstar Variable Trust, was organized as a Massachusetts business trust in 1993. ING Variable Product Trust is registered under the 1940 Act as an open-end management investment company (File No. 811–08220). It is a series investment company as defined by Rule 18f–2 under the 1940 Act, and a separate series of shares of beneficial interest is issued in connection with each series. Each series is currently offered by prospectuses dated April 29, 2005. ING Variable Products Trust has registered these shares under the Securities Act of 1933 on Form N–1A (File No. 033–73140) which was last updated in an amendment to the registration statement filed on April 4, 2005.

ING Investments, LLC ("ING Investments"), an Arizona limited liability company and an SEC registered investment adviser, serves as the investment adviser to portfolio of the ING Variable Products Trust. ING Investments, subject to the direction of ING Variable Products Trust Board of Trustees (the "Board"), has overall responsibility for the management of the portfolios. ING Investments provides or oversees all investment advisory and portfolio management services for each portfolio and assists in managing and supervising all aspects of the general day-to-day business activities and operations of the portfolios, including custodial, transfer agency, dividend disbursing, accounting, auditing, compliance and related services.

ING Investments acts as a "manager-of-managers" for certain of the Substitute Funds. ING Investments delegates to the subadvisers of these Substitute Funds the responsibility for investment management, subject to ING Investment's oversight. From time to time ING Investments may recommend the appointment of additional or replacement subadvisers for these Substitute Funds to the portfolios' Board, and in reliance on and in accordance with the conditions of Commission relief granted to affiliates, with the approval of the Board, ING Investments may replace a non-affiliated subadviser as well as change the terms of a contract with a non-affiliated subadviser, without submitting the contract to a vote of the portfolios' shareholders.

D. *The Replaced Funds.* Each fund to be replaced with a Substitute Fund is a portfolio of the AIM Variable Insurance Funds, Alger American Fund, AllianceBernstein Variable Products Series Fund, Inc., Federated Insurance Series, ING Investors Trust, Janus Aspen Series, MFS Variable Insurance Trust, Premier VIT (prior to May 1, 2005 known as PIMCO Advisors VIT), Pioneer Variable Contracts Trust, The Prudential Series Fund, Inc., Putnam Variable Trust, UBS Series Trust, and Van Eck Worldwide Insurance Trust.

E. *The Contracts.* The Contracts are flexible premium variable annuity and variable life insurance contracts. The variable annuity Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the

accumulation period, and provide settlement or annuity payment options on a variable or fixed basis. The variable life insurance Contracts provide for the accumulation of values on a variable basis, fixed basis, or both throughout the insured's life and for a death benefit, upon the death of the insured. Under each of the prospectuses for the Contracts, each Company reserves the right to substitute shares of one fund or portfolio for shares of another.

A Contract owner may transfer all or any part of the Contract value from one subaccount to any other subaccount or a fixed account as long as the Contract remains in effect and at any time up to 30 days before the due date of the first annuity payment for variable annuity contracts. For many of the Contracts, the Company issuing the Contract reserves the right to limit the number of transfers during a specified period.

III. The Substitutions

A. *The Funds and the Accounts.* Subject to the approval of the Commission under Section 26(c) of the 1940 Act, Applicants propose, as set forth below, to substitute shares of each Substitute Fund for those of the applicable Replaced Fund and transfer cash or securities held by each Replaced Fund to the applicable Substitute Fund.

Replaced funds	Substitute funds	Accounts holding replaced fund assets
AIM V.I. Health Sciences Fund—Series I	ING Evergreen Health Sciences Portfolio—Class S.	ING USA B; ReliaStar NY B; Security Life L1
ING Evergreen Health Sciences Portfolio—Class A.		ING USA B
AIM V.I. Capital Appreciation Fund—Series I	ING Evergreen Omega Portfolio—Class I	ING LIfe B; ING USA U; Security Life L1
Alger American Leveraged AllCap Portfolio—Class O.		ING America 1; ING Life B; ReliaStar SL; ReliaStar Select VA ReliaStar Separate Account N; ReliaStar NY I; Security Life A1; Security Life L1; Security Life S–A1; Security Life S–L1
Putnam VT New Opportunities Fund—Class IA		ReliaStar SL; ReliaStar Select VA; ReliaStar NY I
Putnam VT New Opportunities Fund—Class IB		Security Life L1; Security Life S–L1
Putnam VT Voyager Fund—Class IA		ReliaStar SL; ReliaStar Select VA; ReliaStar NY I
Putnam VT Voyager Fund—Class IB		Security Life L1; Security Life S–L1
AIM V.I. Capital Appreciation Fund—Series II	ING Evergreen Omega Portfolio—Class S	ING USA B
Putnam VT Discovery Growth Fund—Class IB		ING USA B; ReliaStar NY B
AIM V.I. Growth Fund—Series I	ING FMR Earnings Growth Portfolio—Class I	ING Life B; ING USA U
Alger American Growth Portfolio—Class O		ING USA U; ReliaStar SL; ReliaStar Select VA; ReliaStar Separate Account N; ReliaStar NY I; Security Life A1; Security Life L1; Security Life S–A1; Security Life S–L1
Alger American Income & Growth Portfolio—Class O.		ING America I; ING Life B
AllianceBernstein VPSF Large Cap Growth Portfolio—Class A.		ING Life B
AIM V.I. Growth Fund—Series II	ING FMR Earnings Growth Portfolio—Class S	ING USA B; ReliaStar NY B
AllianceBernstein VPSF Large Cap Growth Portfolio—Class B.		ING USA B; ReliaStar NY B
AIM V.I. Small Company Growth Fund—Series I.	ING JP Morgan Small Cap Equity Portfolio—Class I.	Security Life L1
Alger American Small Capitalization Portfolio—Class O.		ReliaStar SL; ReliaStar Select VA; ReliaStar Separate Account N; ReliaStar NY I; Security Life A1; Security Life S–A1; Security Life S–L1
AllianceBernstein VPSF Small Cap Growth Portfolio—Class A.		ING Life B
Premier VIT OpCap Small Cap Portfolio		ReliaStar SL; ReliaStar Select VA; ReliaStar Separate Account N; ReliaStar NY I
AllianceBernstein VPSF Growth and Income Portfolio—Class A.	ING JP Morgan Value Opportunities Portfolio—Class I.	ING Life B; ReliaStar MP&Q
Putnam VT Growth and Income Fund—Class IA.		ReliaStar SL; ReliaStar Select VA; ReliaStar NY I
AllianceBernstein VPSF Growth and Income Portfolio—Class B.	ING JP Morgan Value Opportunities Portfolio—Class S.	ING USA B; ReliaStar NY B
AllianceBernsteain VPSF Value Portfolio—Class B.		ING USA B; ReliaStar NY B
Federated American Leaders Fund II—P Shares.		ING America I; ING Life B; ING USA U
Putnam VT Growth and Income Fund—Class IB.		ReliaStar NY B; ING USA B; Security Life L1; Security Life S–L1
AIM V.I. Premier Equity Fund—Series I	ING Legg Mason Value Portfolio—Class I	ING Life B
AIM V.I. Premier Equity Fund—Series II	ING Legg Mason Value Portfolio—Class S	ING USA B
Federated Prime Money Fund II—P Shares	ING Liquid Assets Portfolio—Class S	ING America I; ING Life B; ING USA U
Janus Aspen International Growth Portfolio—Institutional Shares.	ING Marsico International Opportunities Portfolio—Class I.	ReliaStar SL; ReliaStar Select VA; ReliaStar Separate Account N; ReliaStar NY I; Security Life S–A1; Security Life S–L1
Putnam VT International Equity Fund—Class IA		ReliaStar SL; ReliaStar Select VA;

Replaced funds	Substitute funds	Accounts holding replaced fund assets
AIM V.I. International Growth Fund—Series I	ING Marsico International Opportunities Portfolio—Class S.	ING USA U
Janus Aspen International Growth Portfolio—Service Shares.	.....	Security Life L1; Security Life S–L1
Prudential SP William Blair International Growth Portfolio—Class II.	....	ING Life B; ING USA B; ReliaStar NY B
AIM V.I. Dent Demographic Trends Fund—Series II.	ING Mercury Large Cap Growth Portfolio—Class S.	ING USA B; ReliaStar NY B
ING Mercury Large Cap Growth Portfolio—Class A.	.....	ING USA B
Prudential Jennison Portfolio—Class II Shares	.....	ING Life B; ING USA B; ING USA EQ; ReliaStar NY B
MFS VIT Total Return Series—Initial Class	ING MFS Total Return Portfolio—Class I	ING America I; ING Life B; ING USA U
MFS VIT Utilities Series—Initial Class	ING MFS Utilities Portfolio—Class I	ING USA U
Putnam VT Utilities Growth and Income Fund—Class IA.	.....	ReliaStar SL; ReliaStar Select VA
AIM V.I. Utilities Fund—Series I	ING MFS Utilities Portfolio—Class S	ING USA B; ReliaStar NY B; Security Life A1; Security Life L1; Security Life S–A1; Security Life S–L1
Premier VIT OpCap Global Equity Portfolio	ING Oppenheimer Global Portfolio—I Class ...	ReliaStar SL; ReliaStar Select VA; ReliaStar Separate Account N; ReliaStar NY I
AIM V.I. Diversified Income Fund—Series I	ING Oppenheimer Strategic Income Portfolio—S Class.	ING USA U
Van Eck Worldwide Bond Fund—Initial Class ...	.....	Security Life L1
Federated High Income Bond Fund II—P Shares.	ING PIMCO High Yield Portfolio—Class S	ING America I; ING Life B; ING USA U
Pioneer Mid Cap Value VCT Portfolio—Class I	ING Pioneer Mid Cap Value Portfolio—Class I	ReliaStar SL; ReliaStar NY I; Security Life L1; Security Life S–L1
Pioneer Mid Cap Value VCT Portfolio—Class II	ING Pioneer Mid Cap Value Portfolio—Class S.	ING USA B
AIM V.I. Core Equity Fund—Series I	ING Pioneer Fund Portfolio—Class I	ING Life B; ING USA U
AIM V.I. Core Equity Fund—Series II	ING Pioneer Fund Portfolio—Class S	ING USA B
Pioneer Fund VCT Portfolio—Class II	.....	ING USA B; ReliaStar NY B
Alger American MidCap Growth Portfolio—Class O.	ING T. Rowe Price Diversified Mid Cap Growth Portfolio—I Class.	ReliaStar SL; ReliaStar Select VA; ReliaStar Separate Account N; ReliaStar NY I; Security Life A1; Security Life L1; Security Life S–A1; Security Life S–L1
UBS Series Trust U.S. Allocation Portfolio—Class I.	ING UBS U.S. Allocation Portfolio—Class S ...	ING USA B; ReliaStar NY B
Premier VIT OpCap Equity Portfolio	ING UBS U.S. Large Cap Equity Portfolio—I Class.	ReliaStar SL; ReliaStar Select VA; ReliaStar Separate Account N; ReliaStar NY I
Alger American Balanced Portfolio—Class O	ING Van Kampen Equity and Income Portfolio—I Class.	ING America I; ING Life B
Federated Capital Income Fund II—P Shares ...	.....	ING America I; ING Life B; ING USA U
AIM V.I. Financial Services Fund—Series I	ING VP Financial Services Portfolio—Class S	ING USA B; ReliaStar NY B
AIM V.I. High Yield Fund—Series I	ING VP High Yield Bond Portfolio—Class I	Security Life A1; Security Life L1
Van Eck Worldwide Real Estate Fund—Initial Class.	ING VP Real Estate Portfolio—Class S	Security Life L1

Each Substitute Fund and Replaced Fund is registered as an open-end management investment company under the 1940 Act. Further, each is a series investment company as defined by Rule 18f–2 under the 1940 Act and issues separate series of shares of stock (for corporations) or of beneficial interest (for business trusts) in connection with each portfolio. The shares of each fund are registered under the 1933 Act on Form N–1A

B. *Investment Objectives and Policies.* With respect to each Replaced Fund, the Applicants have determined that the investment objective and the investment policies of the corresponding Substitute Fund are the same as, similar to or consistent with those of the Replaced Fund and therefore the essential objectives and risk expectations of those Contract owners with interests in subaccounts of each Replaced Fund will continue to be met after the Substitutions.

1. *The ING Evergreen Health Sciences Portfolio for the AIM V.I. Health Sciences Fund.* The primary investment objective of both the ING Evergreen Health Sciences Portfolio and the AIM V.I. Health Sciences Fund is capital growth. Each seeks to achieve this objective through substantially similar investment strategies focused on the healthcare sector.

Each fund normally invests at least 80% of its assets in equity securities of healthcare companies. Healthcare companies are similarly defined for each fund as companies deriving at least 50% of sales revenue from healthcare products and services, or comparable measures indicating that the primary business of the company is within the health sciences sector. Additionally, each of these funds is included in the same fund category by Morningstar, namely, Specialty—Health. Furthermore, each fund uses a similar index consistent with its primary investment objective as a benchmark.

2. *The ING Evergreen Health Sciences Portfolio—Class S for the ING Evergreen Health Sciences Portfolio—A Class.* This Substitute Fund is the same as the corresponding Replaced Fund with the exact same investment objective and policies and managed by the exact same investment adviser/sub-adviser, but with lower overall fees. This substitution is necessary to prevent

Contracts from offering two classes of shares of the same Substitute Fund and to ensure that no affected Contract Owner will have Contract values allocated to two different classes of shares of the same Substitute Fund after the effective date of the Substitutions ("Effective Date").

3. *The ING Evergreen Omega Portfolio for the AIM V.I. Capital Appreciation Fund.* The investment objective for the ING Evergreen Omega Portfolio is long-term capital growth. The investment objective for the AIM V.I. Capital Appreciation Fund is growth of capital. These investment objectives are essentially the same.

Additionally, the investment policies of these funds are the same as, similar to or consistent with each other. Each fund employs a growth style of equity management and looks for stocks with above-average, long-term growth in earnings and excellent growth prospects. Each fund has the same limit with respect to investments in foreign securities (25% of its assets at the time of purchase). Additionally, each fund may invest up to 100% of its assets in quality money market instruments in order to protect the fund from adverse economic, political or market conditions. Furthermore, each of these funds is included in the same fund category by Morningstar, namely, Large Cap Growth.

4. *The ING Evergreen Omega Portfolio for the Alger American Leveraged AllCap Portfolio.* The investment objective for the ING Evergreen Omega Portfolio is long-term capital growth. The investment objective for the Alger American Leveraged AllCap Portfolio is long-term capital appreciation. Although not articulated in exactly the same way, these investment objectives are essentially the same.

Additionally, the investment policies of the funds are the same as, similar to or consistent with each other. Both funds employ a growth style of equity management and look for stocks with excellent growth prospects and can invest in securities across all market capitalizations. Each fund has a similar limit on its investment in foreign securities (20% of its assets at the time of purchase for the Alger American Leveraged AllCap Portfolio and 25% for the ING Evergreen Omega Portfolio). Furthermore, each of these funds is included in the same fund category by Morningstar, namely, Large Cap Growth.

5. *The ING Evergreen Omega Portfolio for the Putnam VT Discovery Growth Fund.* The investment objective of the ING Evergreen Omega Portfolio is long-term capital growth. The investment objective of the Putnam VT Discovery Growth Fund is to seek long-term growth of capital. The investment objectives of the ING Evergreen Omega Portfolio and Putnam Discovery Growth Portfolio are essentially the same.

The investment policies of each of these funds are consistent with each other. Each fund invests primarily in stocks of U.S companies across all market capitalizations with a focus on a "growth" style of equity management. While each fund may invest in foreign securities (the ING Evergreen Omega Portfolio limits such investments to 25% of its assets at the time of purchase and the Putnam VT Discovery Growth Fund has no such limit), the amount of each fund's actual investment in foreign securities has been quite small. As of September 30, 2004, the ING Evergreen Omega Portfolio had 4% of its assets invested in foreign securities and the Putnam VT Discovery Growth Fund had 1% it assets invested in foreign securities. Furthermore, for both funds all investments in foreign securities as of September 30, 2004, were in securities listed on U.S. exchanges. Each of these funds is included in the same fund category by Morningstar, namely, Large Cap Growth.

6. *The ING Evergreen Omega Portfolio for the Putnam VT New Opportunities Fund.* The investment objective of the ING Evergreen Omega Portfolio is long-term capital growth. The investment objective of the Putnam VT New Opportunities Fund is long-term capital appreciation. Although not articulated in exactly the same way, these investment objectives are essentially the same.

Additionally the investment policies of each of these funds are the same as, similar to or consistent with each other. Each fund invests primarily in common stocks of U.S. companies across all market capitalizations. Each fund focuses on growth stocks in sectors of the economy that are believed to have high growth potential. While each fund may invest in foreign securities (the ING Evergreen Omega Portfolio limits such investments to 25% of its assets at the time of purchase and the Putnam VT New Opportunities Fund has no such limit), the amount of each fund's actual investment in foreign securities has been quite small. As of September 30, 2004, the ING Evergreen Omega Portfolio had 4% of its assets invested in foreign securities and the Putnam VT New Opportunities Fund had 2% of its assets invested in foreign securities. Furthermore, for both funds all investments in foreign securities as of September 30, 2004, were in securities listed on U.S. exchanges. Each fund is diversified and is included in the same fund category by Morningstar, namely, Large Cap Growth.

7. *The ING Evergreen Omega Portfolio for the Putnam VT Voyager Fund.* The investment objective of the ING Evergreen Omega Portfolio is long-term capital growth. The investment objective of the Putnam VT Voyager Fund is capital appreciation. Although not articulated in exactly the same way, these investment objectives are essentially the same.

Additionally the investment policies of each of these funds are the same as, similar to or consistent with each other. Each fund invests primarily in common stocks of U.S. companies across all market capitalizations. Each fund focuses on growth stocks. While each fund may invest in foreign securities (the ING Evergreen Omega Portfolio limits such investments to 25% of its assets at the time of purchase and the Putnam VT Voyager Fund has no such limit), the amount of each fund's actual investment in foreign securities has been quite small. As of September 30, 2004, the ING Evergreen Omega Portfolio had 4% of its assets invested in foreign securities and the Putnam VT Voyager Fund had 0% of its assets invested in foreign securities. Furthermore, each fund is diversified and is included in the same fund category by Morningstar, namely, Large Cap Growth.

8. *The ING FMR Earnings Growth Portfolio for the AIM V.I. Growth Fund.* The ING FMR Earnings Growth Portfolio is a large-cap stock fund with a growth emphasis that has as its investment objective to seek long-term capital appreciation. The investment objective of the AIM V.I. Growth Fund-Series I is to seek growth of capital. The investment objectives of the ING FMR Earnings Growth Portfolio and AIM V.I. Growth Fund are essentially the same.

Each of these funds is included in the same fund category by Morningstar, namely, Large Cap Growth. Additionally, the investment policies of each of these funds are consistent with each other. Each fund invests primarily in stocks of U.S companies who have a combination of growth, earnings momentum and attractive stock price.

9. *The ING FMR Earnings Growth Portfolio for the Alger American Growth Portfolio.* The ING FMR Earnings Growth Portfolio is a large-cap stock fund with a growth emphasis that has as its investment objective to seek long-term capital appreciation. The investment objective of the Alger American Growth Portfolio is to seek long-term capital appreciation. The investment objectives of the ING FMR Earnings Growth Portfolio and Alger

American Growth Portfolio are the same.

Each of these funds is included in the same fund category by Morningstar, namely, Large Cap Growth. Additionally, the investment policies of each of these funds are similar to each other. Each fund invests in large-cap stocks using a growth approach to investing.

10. *The ING FMR Earnings Growth Portfolio for the Alger American Income & Growth Portfolio.* The ING FMR Earnings Growth Portfolio has as its investment objective to seek long-term capital appreciation. The investment objective of the Alger American Income & Growth Portfolio is to seek to provide a high level of dividend income; its secondary goal is to provide capital appreciation. Although not articulated in exactly the same way, the investment objectives and practices of the ING FMR Earnings Growth Portfolio and Alger American Income & Growth Portfolio are similar to and consistent with each other.

Notwithstanding the fact that the Alger American Income & Growth Fund's name and investment objective allude to a significant income component of the fund, the way in which the fund has been managed is more oriented towards growth and is consistent with the way the ING FMR Earnings Growth Portfolio is managed. Both funds invest in large capitalization stocks, and both funds use a growth approach to investing stocks. Additionally, both funds use the Russell 1000 Growth Index as their performance benchmark. Consequently, both of these funds are included in the Large Cap Growth fund category by Morningstar.

Finally, the ING FMR Earnings Growth Portfolio has a significant income component to it. As of December 31, 2004, the FMR Earnings Growth composite (after which the ING FMR Earnings Growth Portfolio is patterned) held 72% of income producing assets. As of the same date, 83% of the Alger American Income & Growth Portfolio's assets were invested in income producing assets.

11. *The ING FMR Earnings Growth Portfolio for the AllianceBernstein VPSF Large Cap Growth Portfolio.* The ING FMR Earnings Growth Portfolio is a large-cap stock fund with a growth emphasis that has as its investment objective to seek long-term capital appreciation. The investment objective of the Alliance Bernstein Premier Growth Portfolio is to seek growth of capital by pursuing aggressive investment policies.

Each of these funds is included in the same fund category by Morningstar, namely, Large Cap Growth. Additionally, the investment policies of each of these funds are consistent with each other. Each fund invests primarily in stocks of U.S companies who have a combination of growth, earnings momentum and attractive stock price.

12. *The ING JP Morgan Small Cap Equity Portfolio for the AIM V.I. Small Company Growth Fund.* The ING JP Morgan Small Cap Equity Portfolio and the AIM V.I. Small Company Growth Fund seek long-term capital growth.

Each fund invests, under normal market conditions, at least 80% of its assets in small-cap companies. Each fund may also invest in securities of non-U.S. issuers (with a limit of 20% for the ING JP Morgan Small Cap Equity Portfolio and a limit of 25% for the AIM V.I. Small Company Growth Fund). The ING JP Morgan Small Cap Equity Portfolio combines growth and value investing styles by focusing on identifying attractively valued companies with positive business fundamentals. The AIM V.I. Small Company Growth Fund focuses on growth stocks, seeking investments in companies that have strong prospects for future earnings growth.

Each of these funds is included in the same fund category by Morningstar, namely, Small Cap Growth.

13. *The ING JP Morgan Small Cap Equity Portfolio for the Alger American Small Capitalization Portfolio.* The investment objective of the ING JP Morgan Small Cap Equity Portfolio is capital growth over the long term. The investment objective of the Alger American Small Capitalization Portfolio is long-term capital appreciation. Although not articulated in exactly the same way, both funds seek to achieve capital growth over the long term.

Furthermore, each fund pursues a primary investment strategy of investing in equity securities of small-cap companies. For each fund small-cap companies include those companies with market capitalizations equal to those within the universe of the S&P SmallCap 600 Index. The ING JP Morgan Small Cap Equity Portfolio combines growth and value investing styles by focusing on identifying attractively valued companies with positive business fundamentals. The Alger American Small Capitalization Portfolio focuses on growth stocks, seeking investments in companies that have strong prospects for future earnings growth.

14. *The ING JP Morgan Small Cap Equity Portfolio for the AllianceBernstein VPSF Small Cap Growth Portfolio.* Growth of capital is the common investment objective of each of these funds. The ING JP Morgan Small Cap Equity Portfolio seeks capital growth over the long term. The AllianceBernstein VPSF Small Cap Growth Portfolio seeks growth of capital by pursuing aggressive investment policies.

Each fund pursues a primary investment strategy of investing in equity securities of small-cap companies. For the ING JP Morgan Small Cap Equity Portfolio, small-cap companies include those companies with market capitalizations equal to those within the universe of the S&P SmallCap 600 Index. For the AllianceBernstein VPSF Small Cap Growth Portfolio small-cap companies are those at the time of investment fall within the lowest 20% of the total U.S. equity market capitalization (excluding companies with market capitalizations less than $410 million). The ING JP Morgan Small Cap Equity Portfolio combines growth and value investing styles by focusing on identifying attractively valued companies with positive business fundamentals. The AllianceBernstein VPSF Small Cap Growth Portfolio focuses on growth stocks, seeking investments in companies that have strong prospects for future earnings growth.

Both the ING JP Morgan Small Cap Equity Portfolio and the AllianceBernstein VPSF Small Cap Growth Portfolio may invest in foreign securities. Each fund is included in the same fund category by Morningstar, namely, Small Cap Growth.

15. *The ING JP Morgan Small Cap Equity Portfolio for the Premier VIT OpCap Small Cap Portfolio.* The ING JP Morgan Small Cap Equity Portfolio seeks capital growth over the long term. The PIMCO Advisers VIT Op Cap Small Cap Portfolio seeks capital appreciation. Although not articulated in exactly the same way, the objectives of these funds are essentially the same.

Each fund pursues a primary investment strategy of investing in equity securities of small-cap companies. The ING JP Morgan Small Cap Equity Portfolio combines growth and value investing styles by focusing on identifying attractively valued companies with positive business fundamentals. The PIMCO Advisers VIT OpCap Small Cap Portfolio applies the principles of value investing, employing an emphasis on companies that generate high returns on assets and free cash flow.

The funds may invest in foreign securities. The ING JP Morgan Small Cap Equity Portfolio may invest up to 20% of its total assets in foreign securities in the form of depositary

receipts. The PIMCO Advisers VIT Op Cap Small Cap Portfolio may also invest in foreign securities.

16. *The ING JP Morgan Value Opportunities Portfolio for the AllianceBernstein VPSF Growth and Income Fund.* The investment objective of the ING JP Morgan Value Opportunities Portfolio is to provide long-term capital appreciation. The investment objective of the AllianceBernstein VPSF Growth and Income Portfolio is to seek reasonable current income and reasonable opportunity for appreciation through investments primarily in dividend-paying common stocks of good quality companies. Although not articulated in exactly the same way, the investment objectives and practices of the ING JP Morgan Value Opportunities Portfolio and AllianceBernstein VPSF Growth and Income Portfolio are consistent with and similar to each other.

Notwithstanding the fact that the AllianceBernstein VPFS Growth and Income Fund's name and investment objective allude to a significant income component of the fund, the way in which the fund has been managed is more oriented towards growth and is consistent with the way the ING JP Morgan Value Opportunities Portfolio is managed. Both funds invest primarily in equity securities of mid- to large-sized U.S. companies which are judged to be undervalued or otherwise have the potential for capital growth. Both funds may also invest in foreign securities, debt securities and derivatives including options and futures. Furthermore, both funds use a similar value index consistent with their primary investment objective as a benchmark, and both funds are diversified and are included in the same fund category by Morningstar, namely, Large Cap Value.

Finally, the ING JP Morgan Value Opportunities Portfolio has a significant income component to it. As of December 31, 2004, the JP Morgan Value Opportunities Fund, the retail fund equivalent of the ING JP Morgan Value Opportunities Portfolio, held 95% of income producing assets. As of the same date, 85% of the AllianceBernstein VPFS Growth and Income Fund's assets were invested in income producing assets.

17. *The ING JP Morgan Value Opportunities Portfolio for the AllianceBernstein VPSF Value Portfolio.* The investment objective of the ING JP Morgan Value Opportunities Portfolio and the AllianceBernstein VPSF Value Portfolio are essentially the same. Specifically, the investment objective of the ING JP Morgan Value Opportunities Portfolio is to provide long-term capital appreciation and the investment objective of AllianceBernstein VPSF Value Portfolio is long-term growth of capital.

In addition, the investment policies of each of these funds are the same as, similar to or consistent with each other. The ING JP Morgan Value Opportunities Portfolio invests primarily in mid- to large-sized U.S. companies with potential for capital growth, but may also invest in foreign securities, debt securities and derivatives including options and futures. The AllianceBernstein VPSF Value Portfolio invests primarily in a diversified portfolio of equity securities of companies with relatively large market capitalizations that Alliance believes are undervalued. The AllianceBernstein VPSF Value Portfolio may invest up to 15% of its total assets in foreign securities. This is similar to the ING JP Morgan Value Opportunities Portfolio which limits the total investment in foreign securities to 20% of its assets. Both funds may use derivatives to achieve their investment objectives. Both funds may invest in the four principal types of derivatives: options; futures; forwards; and swaps. Furthermore, each of these funds is diversified, and both are included in the same fund category by Morningstar, namely Large Cap Value.

18. *The ING JP Morgan Value Opportunities Portfolio for the Federated American Leaders Fund II.* The investment objective of the ING JP Morgan Value Opportunities Portfolio is to provide long-term capital appreciation. The investment objective of the Federated American Leaders Fund is to seek long-term growth of capital. Although not articulated in the same way, each of these funds seeks to achieve long-term growth by investing primarily in equity securities of mid- and large-sized U.S. companies that are judged to be undervalued or otherwise have potential for capital growth.

Each fund invests primarily in mid- to large-sized U.S. companies with potential for capital growth, but may also invest in foreign securities, debt securities and derivatives including options and futures. Furthermore, each of these funds is diversified, and both are included in the same fund category by Morningstar, namely Large Cap Value.

19. *The ING JP Morgan Value Opportunities Portfolio for the Putnam VT Growth and Income Fund.* The investment objective of the ING JP Morgan Value Opportunities Portfolio is to provide long-term capital appreciation. The investment objective for Putnam VT Growth and Income Fund is to seek capital growth and current income. Although not articulated in exactly the same way, the investment objectives and practices of the ING JP Morgan Value Opportunities Portfolio and Putnam VT Growth and Income Fund are consistent with and similar to each other.

Notwithstanding the fact that the Putnam VT Growth and Income Fund's name and investment objective allude to an income component of the fund, the way in which the fund has been managed is more oriented towards growth and is consistent with the way the ING JP Morgan Value Opportunities Portfolio is managed. Each fund seeks to achieve long-term growth by investing primarily in equity securities of mid- to large-sized U.S. companies that are judged to be undervalued or otherwise have potential for capital growth. Each fund may also invest in foreign securities, debt securities and derivatives including options and futures. Each fund uses a similar value index consistent with its primary investment objective as a benchmark. Furthermore, each of these funds is diversified, and both are included in the same fund category by Morningstar, namely Large Cap Value.

Finally, the ING JP Morgan Value Opportunities Portfolio has a significant income component to it. As of December 31, 2004, the JP Morgan Value Opportunities Fund, the retail fund equivalent of the ING JP Morgan Value Opportunities Portfolio, held 95% of income producing assets. As of the same date, 96% of the Putnam VT Growth and Income Portfolio's assets were invested in income producing assets.

20. *The ING Legg Mason Value Portfolio for the AIM V.I. Premier Equity Fund.* The investment objectives of the ING Legg Mason Value Portfolio and the AIM V.I. Premier Equity Fund are essentially the same. Specifically, the investment objective of the ING Legg Mason Value Portfolio is long-term growth of capital. The investment objective of the AIM V.I. Premier Equity Fund is long-term growth of capital with income as a secondary objective.

Additionally, the investment policies of each of these funds are the same as, similar to or consistent with each other. Each fund seeks to meets it investment objective by investing primarily in equity securities. The ING Legg Mason Value Portfolio follows a value discipline in selecting securities, and therefore seeks to purchase securities at large discounts to the portfolio manager's assessment of their intrinsic value. The AIM V.I. Premier Equity Fund investment policies also focus on

undervalued equity securities. Furthermore, each of these funds is included in the same fund category by Morningstar, namely, Large Cap Blend.

21. *The ING Liquid Assets Portfolio for the Federated Prime Money Fund II.* The investment objective of the ING Liquid Assets Portfolio is a high level of current income consistent with preservation of capital and liquidity. The investment objective of the Federated Prime Money Fund II is to provide current income consistent with stability of principal and liquidity. Each of these money market funds strives to maintain a stable net asset value of $1.00 per share by investing in high quality fixed income securities issued by banks, corporations and the U.S. government.

22. *The ING Marsico International Opportunities Portfolio for the AIM V.I. International Growth Fund.* Long-term growth of capital is the common investment objective of each of these funds.

Additionally, each fund pursues its investment objective by following a strategy of investing in equity securities of foreign companies. Each fund seeks to invest in more than one foreign country. The AIM V.I. International Growth Fund may invest up to 20% of its total assets in securities of issuers located in developing (emerging) countries. The ING Marsico International Growth Portfolio does not have a stated limit on emerging market investments, but states in the prospectus that "[f]rom time to time the fund may invest in common stocks of companies operating in emerging markets." As of September 30, 2004 the AIM V.I. Fund and the Marsico International Opportunities (the retail fund after which this Substitute Fund is patterned) had 11% and 9%, respectively invested in emerging market countries. Each of the funds is diversified. Furthermore, each fund is included in the same fund category by Morningstar, namely, Foreign Large Cap Growth.

23. *The ING Marsico International Opportunities Portfolio for the Janus Aspen International Growth Portfolio.* The investment objectives of these two funds are the same; each fund seeks long-term growth of capital.

Additionally, each fund has the principal investment strategy of investing the majority of its assets (at least 80% for the Janus Aspen International Growth Portfolio and at least 65% for the ING Marsico International Opportunities Portfolio) in common stocks of foreign companies. Each fund may invest in common stocks of companies operating in emerging markets.

The funds are included in similar fund categories by Morningstar (Foreign Large Cap Growth category for the ING Marsico International Opportunities Portfolio and the Foreign Stock category for the Janus Aspen Series International Growth Portfolio). Each of the funds is diversified.

24. *The ING Marsico International Opportunities Portfolio for the Prudential SP William Blair International Growth Portfolio.* Long-term growth of capital is the common investment objective of each of these funds.

Each fund pursues its investment objective by following a strategy of investing in equity securities of foreign companies. Each fund requires a minimum level of foreign investment (at least 65%). Each fund seeks to invest in more than one foreign country (generally at least five in the case of the Prudential SP William Blair International Growth Portfolio and at least three in the case of the ING Marsico International Opportunities Portfolio). Neither fund restricts the amount of its assets that may be invested in emerging market countries. However, as of September 30, 2004, the Prudential SP William Blair International Growth Portfolio and the Marsico International Opportunities Fund (the retail fund after which this Substitute Fund is patterned) had 8% and 9%, respectively invested in emerging market countries.

Additionally, each of the funds is diversified. Furthermore, each of these funds is included in the same fund category by Morningstar, namely, Foreign Large Cap Growth category.

25. *The ING Marsico International Opportunities Portfolio for the Putnam VT International Equity Fund.* The investment objectives of these funds are substantially similar, with the ING Marsico International Opportunities Portfolio seeking long-term growth of capital and the Putnam VT International Equity Fund seeking capital appreciation.

Each fund has the principal investment strategy of investing the majority of its assets (at least 80% for the Putnam VT International Equity Fund, and at least 65% for the ING Marsico International Opportunities Portfolio) in common stocks of foreign companies. Each fund may invest in common stocks of companies operating in emerging markets. Each of these funds is diversified and each is included in the same fund category by Morningstar, namely, Foreign Large Cap Growth.

26. *The ING Mercury Large Cap Growth Portfolio for the AIM V.I. Dent Demographic Trends Fund.* The investment objective of each of these funds is identical. Specifically, the investment objective of the ING Mercury Large Cap Growth Portfolio and the AIM V.I. Dent Demographics Fund is long-term growth of capital.

Additionally, the investment policies of each of these funds are the same as, similar to or consistent with each other. Each fund employs a growth style of equity management and looks for stocks of companies that it believes have the potential for above-average, long-term growth in earnings. Each fund can also invest in foreign securities. Furthermore, each of these funds is included in the same fund category by Morningstar, namely, Large Cap Growth.

27. *The ING Mercury Large Cap Growth Portfolio—Class S for the ING Mercury Large Cap Growth Portfolio—A Class.* This Substitute Fund is the same as the corresponding Replaced Fund with the exact same investment objective and policies and managed by the exact same investment adviser/sub-adviser, but with lower overall fees. This substitution is necessary to prevent Contracts from offering two classes of shares of the same Substitute Fund, and to ensure that no affected Contract Owner will have Contract values allocated to two different classes of shares of the same Substitute Fund after the Effective Date.

28. *The ING Mercury Large Cap Growth Portfolio for the Prudential Jennison Portfolio.* The investment objective of each of these funds is identical. Specifically, the investment objective of the ING Mercury Large Cap Growth Portfolio and the Prudential Jennison Portfolio is long-term growth of capital.

Additionally, the investment policies of each of these funds are the same as, similar to or consistent with each other. Each fund employs a growth style of equity management and looks for stocks of companies that it believes have the potential for above-average, long-term growth. Each fund can also invest in foreign securities. Furthermore, each of these funds is included in the same fund category by Morningstar, namely, Large Cap Growth.

29. *The ING MFS Total Return Portfolio for the MFS VIT Total Return Series.* The ING MFS Total Return Portfolio is patterned after the MFS Total Return Fund which in turn is patterned after the MFS VIT Total Return Fund. Each of these funds has the same investment objective, namely, above-average income (compared to a portfolio entirely invested in equity securities) consistent with the prudent employment of capital. The secondary

investment objective of each fund is the reasonable opportunity for growth of capital and income. Additionally, the investment adviser for the MFS VIT Total Return Fund is the sub-adviser to the ING MFS Total Return Portfolio and will manage each fund similarly.

Additionally, both funds are "balanced funds," and each invests in a combination of equity and fixed income securities. Under normal market conditions, each fund invests at least 40%, but not more than 75%, of its net assets in equity securities and at least 25% but no more than 60% in the case of the ING MFS VIT Total Return Series, of their respective assets in non-convertible fixed income securities. Furthermore, each of these funds is diversified and each is included in the same fund category by Morningstar, namely, Moderate Allocation.

30. *The ING MFS Utilities Portfolio for the AIM V.I. Utilities Fund.* The investment objectives of each of these funds are essentially the same. Specifically, the investment objective of the ING MFS Utilities Portfolio is capital growth and current income above that available from a portfolio invested entirely in equity securities. The investment objective of the AIM V.I. Utilities Fund is to seek capital growth and current income.

Under normal conditions, each fund invests at least 80% of its assets in stocks and bonds of companies in the utilities industry. The ING MFS Utilities Portfolio considers a company to be in the utilities industry if a substantial portion of the company's assets or revenues is derived from one or more utilities. The AIM V.I. Utilities Fund considers a company to be in the utilities industry if it meets one of the following tests: (a) At least 50% of the company's gross income or its net sales come from activities in the utilities sector; (b) at least 50% of its assets are devoted to producing revenues from the utilities sector; or (c) based on other information, the adviser determines that the company's primary business is within the utilities sector. Both funds use a "bottom-up" approach to investment, and both funds may depart from their principal investment strategy by temporarily investing for defensive purposes when necessary.

Each of these funds is non-diversified and each is included in the same fund category by Morningstar, namely, Specialty-Utilities. Furthermore, each fund uses the S&P 500 Utilities Index as one of its benchmark indices.

31. *The ING MFS Utilities Portfolio for the MFS VIT Utilities Series.* The ING MFS Utilities Portfolio is patterned after the MFS VIT Utilities Portfolio and these two funds have the same investment objective and policies. Specifically, the investment objective for each of these funds is capital growth and current income above that available from a portfolio invested entirely in equity securities. Additionally, the investment adviser for the MFS VIT Utilities Series is the sub-adviser to the ING MFS Utilities Portfolio and will manage the two funds in the same way.

32. *The ING MFS Utilities Portfolio for the Putnam VT Utilities Growth and Income Fund.* The investment objective of each of these funds is essentially the same. Specifically, the investment objective of the ING MFS Utilities Portfolio is capital growth and current income above that available from a portfolio invested entirely in equity securities. The investment objective of the Putnam VT Utilities Growth and Income Fund is capital growth and current income.

Under normal conditions, each fund invests at least 80% of its assets in stocks and bonds of companies in the utilities industry. The ING MFS Utilities Portfolio considers a company to be in the utilities industry if a substantial portion of the company's assets or revenues are derived from one or more utilities. The Putnam VT Utilities Growth and Income Fund considers a company to be in the utilities industry if it derives at least 50% of its assets, revenues or profits from producing or distributing utilities.

Additionally, each of these funds is non-diversified and each is included in the same fund category by Morningstar, namely, Specialty-Utilities. Furthermore, each fund uses the S&P 500 Utilities Index as one of its benchmark indices.

33. *The ING Oppenheimer Global Portfolio for the Premier VIT OpCap Global Equity Portfolio.* The investment objective of the ING Oppenheimer Global Portfolio and the Premier VIT OpCap Global Equity Portfolio is essentially the same. Specifically, the investment objective of the ING Oppenheimer Global Portfolio is capital appreciation. The investment objective of the Premier VIT OpCap Global Equity Portfolio is long-term capital appreciation through the pursuit of a global investment strategy primarily involving equity securities.

The investment policies of the ING Oppenheimer Global Portfolio and the Premier VIT OpCap Global Equity Portfolio are the same as, similar to or consistent with each other. The ING Oppenheimer Global Portfolio invests primarily in common stocks and related equity securities such as preferred stock, convertible securities and depositary receipts. It seeks to achieve its investment objectives by investing in securities of companies worldwide growing at rates expected to be well above the growth rate of the overall U.S. economy. Normally, the ING Oppenheimer Global Portfolio invests in equity securities derived from three distinct market sectors: (a) U.S. emerging growth companies; (b) foreign growth companies; and (c) emerging market securities. The Premier VIT OpCap Global Equity Portfolio invests primarily in equity securities of companies located throughout the world which it believes are undervalued in the marketplace. The Premier VIT OpCap Global Equity Portfolio applies principles of value investing, although the individual portfolio managers may implement these principles differently. Neither fund has any restrictions on the amount of its assets that can be invested in emerging market securities. As of September 30, 2004, the Premier VIT OpCap Global Equity Portfolio held approximately 2% of its assets in emerging market securities. The ING Oppenheimer Global Portfolio began operations in November 2004, so no similar figures are available for this fund. Likewise, neither fund has a restriction on the amount of investment in emerging growth companies. Furthermore, each of these funds is diversified, and each is included in the same fund category by Morningstar, namely, World Stock.

34. *The ING Oppenheimer Strategic Income Portfolio for the AIM V.I. Diversified Income Fund.* The investment objective of the ING Oppenheimer Strategic Income Portfolio is to seek a high level of current income principally from interest on debt securities. The investment objective of the AIM V.I. Diversified Income Fund is to seek a high a level of current income. These objectives are substantially identical, in that both funds seek primarily to achieve a high level of current income, and each fund's investment strategy focuses on investing in income-producing debt securities.

The ING Oppenheimer Strategic Income Portfolio seeks to meet its objective by investing primarily in: (a) Domestic and foreign corporate debt securities; (b) U.S. Government securities, including U.S. Government agency mortgage-backed securities; (c) securities issued by foreign governments, their agencies or instrumentalities, and (d) low-quality debt securities ("junk bonds") of U.S. and foreign companies. The AIM V.I. Diversified Income fund seeks to meet its objective by investing primarily in debt securities of issuers in three market

sectors: (a) Foreign governments and companies; (b) U.S. Government securities; and (c) lower grade high-yield securities of U.S. and foreign companies. Neither fund has any restrictions on the amount of assets that can be invested in one sector (*i.e.* "junk bonds"). Accordingly, each fund may invest up to 100% of its assets in "junk bonds," but as stated in both prospectuses "under normal market conditions" the funds will invest in three or four fixed income sectors. Although not identical, there is significant overlap between the types of securities invested in by each fund.

Both funds are also diversified, and both funds use the Lehman Brothers U.S. Aggregate Bond Index as one of their benchmark indices.

35. *The ING Oppenheimer Strategic Income Portfolio for the Van Eck Worldwide Bond Fund.* The investment objective of the ING Oppenheimer Strategic Income Portfolio is to seek a high level of current income principally from interest on debt securities. The investment objective of the Van Eck Worldwide Bond Fund is to seek high total return—income plus capital appreciation—by investing globally, primarily in a variety of debt securities.

The ING Oppenheimer Strategic Income Portfolio seeks to meet its objective by investing primarily in: (a) Domestic and foreign corporate debt securities; (b) U.S. Government securities, including U.S. Government agency mortgage-backed securities; (c) securities issued by foreign governments, their agencies or instrumentalities, and (d) low-quality debt securities ("junk bonds") of U.S. and foreign companies. The Van Eck Worldwide Bond Fund seeks to meet its objective by investing at least 80% of its assets in debt securities rated B or better by Standard & Poor's or Moody's Investors Service, or unrated securities that are of comparable quality in the adviser's opinion. The fund intends to invest no more than 20% of assets in lower-rated "junk bonds", and then only in lower-rated debt issued by governments or government agencies.

Both the ING Oppenheimer Strategic Income Portfolio and the Van Eck Worldwide Bond Fund invest in similar fixed income sectors: (a) Foreign government and companies; (b) U.S. Government securities; and (c) lower grade high-yield securities. The primary difference in the investment strategies of the funds is that the Van Eck Worldwide Bond Fund intends to invest no more than 20% of assets in lower rated debt ("junk bonds") while the ING Oppenheimer Strategic Income Portfolio may invest all of its assets in "junk bonds", but intends to reduce risk by diversifying the portfolio's investments in three or four fixed income sectors.

Both funds use the Citigroup World Government Bond Index as one of their benchmark indices.

36. *The ING PIMCO High Yield Portfolio for the Federated High Income Bond Fund II.* The primary investment objective of the ING PIMCO High Yield Portfolio is to obtain maximum total return consistent with preservation of capital and prudent investment management. The investment objective of the Federated High Income Bond Fund II is to achieve a high level of current income. While not articulated in exactly the same way, each of these funds seeks to achieve high returns by investing in a diversified portfolio of high yield debt securities.

The investment policies of each of these funds are substantially the same. Each invests the substantial majority of its assets in non-investment grade debt securities, *i.e.*, "junk bonds." Each of the funds may also invest in derivative instruments. Each fund uses a similar index consistent with its primary investment objective as a benchmark. Each of these funds is diversified and is included in the same fund category by Morningstar, namely, High Yield Bond.

37. *The ING Pioneer Mid Cap Value Portfolio for the Pioneer Mid Cap Value VCT Portfolio.* The ING Pioneer MidCap Value Portfolio is patterned after the Pioneer Mid Cap Value VCT Portfolio and these two funds have the same investment objectives and policies. The investment objective of both funds is capital appreciation by investing in a diversified portfolio of securities consisting primarily of common stocks. Additionally, the investment adviser for the Pioneer Mid Cap Value VCT Portfolio will be the sub-adviser to the ING Pioneer MidCap Value Portfolio and will manage the two funds in the same way.

38. *The ING Pioneer Fund Portfolio for the AIM V.I. Core Equity Fund.* The investment objective for the ING Pioneer Fund Portfolio is reasonable income and capital growth. The investment objective for the AIM V.I. Core Equity Fund is growth of capital.

Each fund seeks to achieve its goals through substantially similar policies. Each fund seeks to meet its objectives by investing the major portion of its assets in equity securities, including convertible securities, of U.S. issuers, that are undervalued by the market or otherwise have potential for growth in value. Each fund uses a similar index consistent with its primary investment objective as a benchmark, namely the S&P 500 index. Each fund is diversified, and each is included in the same fund category by Morningstar, namely, Large Cap Blend.

39. *The ING Pioneer Fund Portfolio for the Pioneer Fund VCT Portfolio.* The ING Pioneer Fund Portfolio is patterned after the Pioneer Fund VCT Portfolio, and these two funds have the same investment objectives and policies. The investment objective of both funds is reasonable income and capital growth. Additionally, the investment adviser for the Pioneer Fund VCT Portfolio is the sub-adviser to the ING Pioneer Fund Portfolio and will manage the two funds in the same way.

40. *The ING T. Rowe Price Diversified Mid Cap Growth Portfolio for the Alger American MidCap Growth Portfolio.* The investment objectives of the ING T. Rowe Price Diversified Mid Cap Growth Portfolio and the Alger American Mid Cap Growth Portfolio are identical. Long-term capital appreciation is the objective of each fund. Both funds pursue their objectives through a primary investment strategy focused on investing in U.S. equity securities.

Each of these funds invests primarily in the equity securities of companies having a market capitalization within the range of companies in the Russell Mid Cap Growth Index or the S&P Small Cap 600 Index. Each of the funds is diversified, and each is included in the same fund category by Morningstar, namely, Mid Cap Growth.

41. *The ING UBS U.S. Allocation Portfolio for the UBS Series Trust U.S. Allocation Portfolio.* The investment objective of the ING UBS U.S. Allocation Portfolio is to maximize total return over the long term by allocating its assets among stocks, bonds, short-term instruments and other investments. The investment objective of the UBS Series Trust U.S. Allocation Portfolio is to seek total return, consisting of long-term capital appreciation and current income. Although not articulated in exactly the same way, the investment objectives of each of these two funds are essentially the same.

Furthermore, the investment policies of each of these funds are similar. Both funds invest in a combination of high quality bonds, short-term fixed income securities and stocks of any capitalization class. Each of these funds is included in the same fund category by Morningstar, namely, Large Cap Blend.

42. *The ING UBS U.S. Large Cap Equity Portfolio for the Premier VIT OpCap Equity Portfolio.* The investment objectives of the ING UBS U.S. Large Cap Equity Portfolio and the Premier VIT OpCap Equity Portfolio are essentially the same. Specifically, the investment objective of the ING UBS

U.S. Large Cap Equity Portfolio is long-term growth of capital and future income. The investment objective of the Premier VIT OpCap Equity Portfolio is long-term capital appreciation through investment in a diversified portfolio of equity securities selected on the basis of a value approach to investing.

Both funds invest at least 80% of their net assets (plus the amount of any borrowings for investment purposes) in equity securities. The ING UBS U.S. Large Cap Equity Portfolio invests the majority of its assets in equity securities of U.S. large-cap companies and investments may include dividend-paying securities, common stock and preferred stock. It may also hold small- and intermediate-cap stocks and may use options, futures and other derivatives as part of its investment strategy or to help manage portfolio risks. The Premier VIT OpCap Equity Portfolio invests the majority of it assets in equity securities of companies it believes are undervalued in the marketplace. Normally, the Premier VIT OpCap Equity Portfolio invests in equity securities listed on the New York Stock Exchange and on other U.S. or foreign securities exchanges or traded in the U.S. or foreign over-the-counter markets. The Premier VIT OpCap Equity Portfolio applies principles of value investing, although the individual portfolio managers may implement these principles differently. OpCap Advisors uses fundamental analysis to select securities. The Premier VIT OpCap Equity Portfolio may also use derivatives including futures contracts, options on futures, forward foreign currency contracts, covered calls, uncovered calls and puts, option on stock indices, and swaps as part of its investment strategy.

Each of these funds is diversified. The ING UBS U.S. Large Cap Equity Portfolio is categorized as a Large Cap Blend fund by Morningstar. The Premier VIT OpCap Equity Portfolio is categorized by Morningstar as a Large Cap Value fund. Even though these funds currently fall in different Morningstar categories, their investment styles are similar.

43. *The ING Van Kampen Equity and Income Portfolio for the Alger American Balanced Portfolio.* The investment objective of the ING Van Kampen Equity and Income Portfolio is total return consisting of long-term capital appreciation and current income. The investment objective of the Alger American Balanced Portfolio is to seek current income and long-term capital appreciation. Although not stated in the same way, both funds seek to achieve a balance of income and long-term growth.

The ING Van Kampen Equity and Income Portfolio invests at least 80% of its net assets (plus any borrowings for investment purposes) in equity and income securities at the time of investment. It seeks to achieve its investment objective by investing primarily in income-producing equity instruments (including common stocks, preferred stocks and convertible securities) and investment grade quality debt instruments. Under normal market conditions, the ING Van Kampen Equity and Income Portfolio invests at least 65% of its total assets in income-producing equity securities. It may also invest up to 25% of its total assets in securities of foreign issuers.

The Alger American Balanced Portfolio also invests primarily in equity securities, such as common or preferred stock. It focuses on securities of companies with growth potential and on fixed income securities, especially those with the potential for capital appreciation. Ordinarily, at least 25% of its assets are invested in fixed income securities.

The investment strategies of the ING Van Kampen Equity and Income Portfolio and the Alger American Balanced Portfolio are the same as, similar to or consistent with each other. Furthermore, each fund is included in the same fund category by Morningstar, namely, Moderate Allocation.

44. *The ING Van Kampen Equity and Income Portfolio for the Federated Capital Income Fund II.* The investment objective of the ING Van Kampen Equity and Income Portfolio is total return consisting of long-term capital appreciation and current income. The investment objective of the Federated Capital Income Fund II is to achieve high current income and moderate capital appreciation. Although not articulated in exactly the same way, each fund seeks to achieve current income and capital appreciation.

The ING Van Kampen Equity and Income Portfolio invests at least 80% of its net ssets (plus any borrowings for investment purposes) in equity and income securities at the time of investment. It seeks to achieve its investment objective by investing primarily in income-producing equity instruments (including common stocks, preferred stocks and convertible securities) and investment grade quality debt instruments. Under normal market conditions, the ING Van Kampen Equity and Income Portfolio invests at least 65% of its total assets in income-producing equity securities. It may also invest up to 25% of its total assets in securities of foreign issuers.

The Federated Capital Income Fund II invests in both equity and fixed income securities that have high relative income potential. The Federated Capital Income Fund II investment adviser pursues the Fund's investment objectives by attempting to identify mature, high-quality mid- to large-cap companies with high relative dividend yields that are likely to maintain or increase their dividends. The investment adviser elects fixed income investments that offer high current yields.

Each of these funds is diversified. Morningstar categorizes the ING Van Kampen Equity and Income Portfolio as Moderate Allocation and the Federated Capital Income Fund II as Conservative Allocation. Notwithstanding the differences in Morningstar's categorization of the two funds, the investment policies of each of these funds are the same as, similar to or consistent with each other. In categorizing mutual funds Morningstar looks back to see how a fund has been managed over an extended period of time, and Morningstar can change a categorization at any time. Currently the ING Van Kampen Equity and Income Portfolio is more conservative due to the credit quality of the fund's bond holdings. The Van Kampen Equity and Income Portfolio generally invests in only investment grade bonds, although it may invest up to 5% of its assets in medium quality bonds or unrated bonds determined by Van Kampen to be of comparable quality. As of December 31, 2003 and June 30, 2004, the Van Kampen Equity and Income Portfolio held only investment grade bonds. If the ING Van Kampen Equity and Income Portfolio's manager continues to hold a more conservative allocation of bonds, it can be expected that Morningstar will change the categorization of this funds to "conservative."

45. *The ING VP Financial Services Portfolio for the AIM V.I. Financial Services Fund.* The investment objectives of these funds are substantially similar, with the ING VP Financial Services Portfolio seeking long-term capital appreciation and the AIM V.I. Financial Services Fund seeking capital growth.

Additionally, the investment strategies of each of these funds is the same in as much as each fund invests, under normal market conditions, at least 80% of its net assets in equity securities and equity related instruments of companies engaged in the financial services industry. Furthermore, each fund is included in the same fund

category by Morningstar, namely, Specialized Financial Services.

46. *The ING VP High Yield Bond Portfolio for the AIM V.I. High Yield Fund.* The investment objective of the ING VP High Yield Bond Portfolio is to provide investors with a high level of current income and total return. The investment objective of the AIM VI High Yield Fund is to achieve a high level of current income. While not articulated in exactly the same way, each of these funds seeks to achieve high returns by investing in a diversified portfolio of high yield debt securities.

Each of these funds seeks to achieve its investment objective by investing, under normal market conditions, at least 80% of its net assets in non-investment grade debt securities, *i.e.*, "junk bonds." Each of the funds may also invest in derivative instruments. Each also uses the Lehman Brothers High Yield Bond Index as one of its performance benchmarks. Furthermore, each fund is included in the same fund category by Morningstar, namely, High Yield Bond.

47. *The ING VP Real Estate Portfolio for the Van Eck Worldwide Real Estate Fund.* The investment objectives of each of these two funds are essentially the same. The ING VP Real Estate Portfolio seeks total return by investing, under normal market conditions, at least 80% of its assets in common and preferred stocks of U.S. real estate investment trusts (REITs) and real estate companies. The Van Eck Worldwide Real Estate Fund seeks to maximize return by investing, under normal market conditions, at least 80% of its assets in equity securities of domestic and foreign companies that own significant real estate assets or that are principally engaged in the real estate industry.

The investment policies of each of these funds are the same as, similar to or consistent with each other. Additionally, each of these funds is non-diversified and each is included in the same fund category by Morningstar, namely, Specialized—Real Estate.

The primary difference between the funds is that the Van Eck Worldwide Real Estate Portfolio will normally invest in companies from at least three countries, including the United States, while the ING VP Real Estate Portfolio will normally invest only in United States companies. The ING VP Real Estate Portfolio may hold foreign investments if the fund's advisor deems them to be attractive for the fund. As of December 31, 2004, the Van Eck Portfolio was about 55% invested in United States companies and 37% in companies located outside the United States. The ING VP Portfolio was 96% invested in companies in the United States and 0% in foreign investments.

C. Fees and Expenses. As is detailed below, the overall expenses of the Substitute Funds are lower than or equal to those of the Replaced Funds. Applicants believe that, because each Substitute Fund will be offered over a substantially larger asset base than the applicable Replaced Fund, there is a potential that Contract owners will, over time, realize the benefits from additional economies of scale with respect to the advisory fees. The fees and expenses for each Substitute Fund are those which will be in effect before the Effective Date of the Substitutions. The fees and expenses of the Replaced Funds are as of December 31, 2004, but have been updated to reflect any subsequent fee reductions and/or expense waiver or reimbursement arrangements.

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	Management Fees	Distribution (12b-1) Fees	Other Expenses	Total Annual Expenses	Expense Waivers	Net Annual Expenses
Substitute Fund • ING Evergreen Health Sciences Portfolio – Class S [1, 2]	0.75%	--	0.25%	1.00%	--	1.00%
Replaced Fund • AIM V.I. Health Sciences Fund – Series I	0.75%	--	0.36%	1.11%	0.01%	1.10%
Replaced Fund • ING Evergreen Health Sciences Portfolio – Class A	0.75%	0.25%	0.25%	1.25%	--	1.25%
Substitute Fund • ING Evergreen Omega Portfolio – Class I [1]	0.60%	--	--	0.60%	--	0.60%
Replaced Fund • AIM V.I. Capital Appreciation Fund – Series I	0.61%	--	0.30%	0.91%	--	0.91%
Replaced Fund • Alger American Leveraged AllCap Portfolio – Class O	0.85%	--	0.12%	0.97%	--	0.97%
Replaced Fund • Putnam VT New Opportunities Fund – Class IA	0.60%	--	0.09%	0.69%	--	0.69%
Replaced Fund • Putnam VT New Opportunities Fund – Class IB	0.60%	0.25%	0.09%	0.94%	--	0.94%
Replaced Fund • Putnam VT Voyager Fund – Class IA	0.56%	--	0.08%	0.64%	--	0.64%
Replaced Fund • Putnam VT Voyager Fund – Class IB	0.56%	0.25%	0.08%	0.89%	--	0.89%
Substitute Fund • ING Evergreen Omega Portfolio – Class S [1, 2]	0.60%	--	0.25%	0.85%	--	0.85%
Replaced Fund • AIM V.I. Capital Appreciation Fund – Series II	0.61%	0.25%	0.30%	1.16%	--	1.16%
Replaced Fund • Putnam VT Discovery Growth – Class IB	0.70%	0.25%	0.38%	1.33%	--	1.33%
Substitute Fund • ING FMR Earnings Growth Portfolio – Class I	0.62%	--	0.15%	0.77%	0.02%	0.75%
Replaced Fund • AIM V.I. Growth Fund – Series I	0.63%	--	0.28%	0.91%	--	0.91%
Replaced Fund • Alger American Growth Portfolio – Class O	0.75%	--	0.10%	0.85%	--	0.85%
Replaced Fund • Alger American Income & Growth Port. – Class O	0.625%	--	0.155%	0.78%	--	0.78%
Replaced Fund • AllianceBernstein VPSF Large Cap Growth Portfolio – Class A	0.75%	--	0.06%	0.81%	--	0.81%
Substitute Fund • ING FMR Earnings Growth Portfolio – Class S [2]	0.62%	--	0.40%	1.02%	0.02%	1.00%
Replaced Fund • AIM V.I. Growth Fund – Series II	0.63%	0.25%	0.28%	1.16%	--	1.16%
Replaced Fund • AllianceBernstein VPSF Large Cap Growth Portfolio – Class B	0.75%	0.25%	0.06%	1.06%	--	1.06%

[1] This Substitute Fund is subject to a unified fee arrangement.
[2] The "Other Expenses" of this portfolio includes a Shareholder Services Fee of 0.25%.

	Management Fees	Distribution (12b-1) Fees	Other Expenses	Total Annual Expenses	Expense Waivers	Net Annual Expenses
Substitute Fund • ING JP Morgan Small Cap Equity Portfolio – Class I [1]	0.90%	--	--	0.90%	--	0.90%
Replaced Fund • AIM V.I. Small Company Growth Fund – Series I	0.75%	--	0.61%	1.36%	0.16%	1.20%
Replaced Fund • Alger American Small Capitalization Portfolio – Class O	0.85%	--	0.12%	0.97%	--	0.97%
Replaced Fund • AllianceBernstein VPSF Small Cap Growth Port. – Class A	0.75%	--	0.39%	1.14%	--	1.14%
Replaced Fund • Premier VIT OpCap Small Cap Portfolio	0.80%	--	0.11%	0.91%	--	0.91%
Substitute Fund • ING JP Morgan Value Opportunities Port. – Class I	0.40%	--	0.15%	0.55%	0.02%	0.53%
Replaced Fund • AllianceBernstein VPSF Growth and Income Portfolio – Class A	0.55%	--	0.05%	0.60%	--	0.60%
Replaced Fund • Putnam VT Growth and Income Fund – Class IA	0.48%	--	0.06%	0.54%	--	0.54%
Substitute Fund • ING JP Morgan Value Opportunities Port. – Class S [2]	0.40%	--	0.40%	0.80%	0.02%	0.78%
Replaced Fund • AllianceBernstein VPSF Growth and Income Portfolio – Class B	0.55%	0.25%	0.05%	0.85%	--	0.85%
Replaced Fund • AllianceBernstein VPSF Value Portfolio – Class B	0.55%	0.25%	0.17%	0.97%	--	0.97%
Replaced Fund • Federated American Leaders Fund II – P Shares	0.75%	--	0.40%	1.15%	--	1.15%
Replaced Fund • Putnam VT Growth and Income Fund – Class IB	0.48%	0.25%	0.06%	0.79%	--	0.79%
Substitute Fund • ING Legg Mason Value Portfolio – Class I[1]	0.80%	--	0.01%	0.81%	--	0.81%
Replaced Fund • AIM V.I. Premier Equity Fund – Series I	0.61%	--	0.30%	0.91%	0.02%	0.89%
Substitute Fund • ING Legg Mason Value Portfolio – Class S [1, 2, 3]	0.80%	--	0.26%	1.06%	--	1.06%
Replaced Fund • AIM V.I. Premier Equity Fund – Series II	0.61%	0.25%	0.30%	1.16%	0.02%	1.14%
Substitute Fund • ING Liquid Assets Portfolio – Class S [1, 2]	0.27%	--	0.27%	0.54%	--	0.54%
Replaced Fund • Federated Prime Money Fund II – P Shares	0.50%	--	0.55%	1.05%	--	1.05%
Substitute Fund • ING Marsico International Opportunities Port. – Class I	0.54%	--	0.17%	0.71%	0.03%	0.68%
Replaced Fund • Janus Aspen International Growth Port. – Institutional Shares	0.64%	--	0.04%	0.68%	--	0.68%

[3] The Shareholder Services Fee that is included in the "Other Expenses" of this portfolio is permanently capped at 0.25%. Other expenses in excess of this Shareholder Services Fee, if any, cover operating expenses such as the cost of the Trustees who are not interested persons of Directed Services, Inc. (including the cost of the Trustees and Officers Errors and Omissions Liability Insurance coverage) and any taxes paid by the portfolios. The portfolios also bear any extraordinary expenses.

	Management Fees	Distribution (12b-1) Fees	Other Expenses	Total Annual Expenses	Expense Waivers	Net Annual Expenses
Replaced Fund • Putnam VT International Equity Fund – Class IA	0.75%	--	0.19%	0.94%	--	0.94%
Substitute Fund • ING Marsico International Opportunities Port. – Class S [2]	0.54%	--	0.42%	0.96%	0.03%	0.93%
Replaced Fund • AIM V.I. International Growth Fund – Series I	0.74%	--	0.40%	1.14%	--	1.14%
Replaced Fund • Janus Aspen International Growth Portfolio – Service Shares	0.64%	0.25%	0.04%	0.93%	--	0.93%
Replaced Fund • Prudential SP William Blair International Growth Portfolio – Class II	0.85%	0.25%	0.32%	1.42%	--	1.42%
Substitute Fund • ING Mercury Large Cap Growth Port. – Class S [1, 2, 3, 4]	0.80%	--	0.25%	1.05%	0.05%	1.00%
Replaced Fund • AIM V.I. Dent Demographic Trends Fund – Series II	0.77%	0.25%	0.37%	1.39%	0.13%	1.26%
Replaced Fund • ING Mercury Large Cap Growth Portfolio – Class A	0.80%	0.25%	0.26%	1.31%	--	1.31%
Replaced Fund • Prudential Jennison Portfolio – Class II Shares	0.60%	0.25%	0.19%	1.04%	--	1.04%
Substitute Fund • ING MFS Total Return Portfolio – Class I [1]	0.64%	--	--	0.64%	--	0.64%
Replaced Fund • MFS VIT Total Return Series – Initial Class	0.75%	--	0.08%	0.83%	--	0.83%
Substitute Fund • ING MFS Utilities Portfolio - Class I	0.60%	--	0.15%	0.75%	--	0.75%
Replaced Fund • MFS VIT Utilities Series – Initial Class	0.75%	--	0.14%	0.89%	--	0.89%
Replaced Fund • Putnam VT Utilities Growth and Income Fund – Class IA	0.70%	--	0.15%	0.85%	--	0.85%
Substitute Fund • ING MFS Utilities Portfolio – Class S [2]	0.60%	--	0.40%	1.00%	--	1.00%
Replaced Fund • AIM V.I. Utilities Fund – Series I	0.60%	--	0.41%	1.01%	--	1.01%
Substitute Fund • ING Oppenheimer Global Portfolio – I Class	0.60%	--	0.06%	0.66%	--	0.66%
Replaced Fund • Premier VIT OpCap Global Equity Portfolio	0.80%	--	0.46%	1.26%	--	1.26%

[4] Fund management has agreed to a permanent expense cap so that beginning on the Effective Date of the Substitutions the total Net Annual Expenses for the Class S shares of the ING Mercury Large Cap Growth Portfolio will never exceed 1.04%.

	Management Fees	Distribution (12b-1) Fees	Other Expenses	Total Annual Expenses	Expense Waivers	Net Annual Expenses
Substitute Fund • ING Oppenheimer Strategic Income Port. – S Class	0.50%	--	0.29%	0.79%	0.04%	0.75%
Replaced Fund • AIM V.I. Diversified Income Fund – Series I	0.60%	--	0.41%	1.01%	0.26%	0.75%
Replaced Fund • Van Eck Worldwide Bond Fund – Initial Class	1.00%	--	0.27%	1.27%	--	1.27%
Substitute Fund • ING PIMCO High Yield Portfolio – Class S [1, 2]	0.49%	--	0.25%	0.74%	--	0.74%
Replaced Fund • Federated High Income Bond Fund II – P Shares	0.60%	--	0.39%	0.99%	--	0.99%
Substitute Fund • ING Pioneer Mid Cap Value Portfolio – Class I [1]	0.64%	--	0.01%	0.65%	--	0.65%
Replaced Fund • Pioneer Mid Cap Value VCT Portfolio – Class I	0.65%	--	0.07%	0.72%	--	0.72%
Substitute Fund • ING Pioneer Mid Cap Value Portfolio – Class S [1, 2, 3]	0.64%	--	0.26%	0.90%	--	0.90%
Replaced Fund • Pioneer Mid Cap Value VCT Portfolio – Class II	0.65%	0.25%	0.07%	0.97%	--	0.97%
Substitute Fund • ING Pioneer Fund Portfolio – Class I [1]	0.75%	--	0.01%	0.76%	0.05%	0.71%
Replaced Fund • AIM V.I. Core Equity Fund – Series I	0.61%	--	0.30%	0.91%	--	0.91%
Substitute Fund • ING Pioneer Fund Portfolio – Class S [1, 2, 3]	0.75%	--	0.26%	1.01%	0.05%	0.96%
Replaced Fund • AIM V.I. Core Equity Fund – Series II	0.61%	0.25%	0.30%	1.16%	--	1.16%
Replaced Fund • Pioneer Fund VCT Portfolio – Class II	0.65%	0.25%	0.06%	0.96%	--	0.96%
Substitute Fund • ING T. Rowe Price Diversified Mid Cap Growth Port. – I Class	0.64%	--	0.02%	0.66%	--	0.66%
Replaced Fund • Alger American MidCap Growth Portfolio – Class O	0.80%	--	0.12%	0.92%	--	0.92%
Substitute Fund • ING UBS U.S. Allocation Portfolio – Class S [1, 2, 3]	0.75%	--	0.26%	1.01%	0.02%	0.99%
Replaced Fund • UBS Series Trust U.S. Allocation Portfolio – Class I	0.50%	0.25%	0.30%	1.05%	--	1.05%

	Management Fees	Distribution (12b-1) Fees	Other Expenses	Total Annual Expenses	Expense Waivers	Net Annual Expenses
Substitute Fund • ING UBS U.S. Large Cap Equity Portfolio – I Class	0.70%	--	0.15%	0.85%	--	0.85%
Replaced Fund • Premier VIT OpCap Equity Portfolio	0.80%	--	0.23%	1.03%	0.02%	1.01%
Substitute Fund • ING Van Kampen Equity and Income Portfolio – I Class	0.55%	--	0.02%	0.57%	--	0.57%
Replaced Fund • Alger American Balanced Portfolio – Class O	0.75%	--	0.12%	0.87%	--	0.87%
Replaced Fund • Federated Capital Income Fund II – P Shares	0.75%	--	0.67%	1.42%	--	1.42%
Substitute Fund • ING VP Financial Services Portfolio – Class S	0.75%	--	0.40%	1.15%	0.10%	1.05%
Replaced Fund • AIM V.I. Financial Services Fund – Series I	0.75%	--	0.37%	1.12%	--	1.12%
Substitute Fund • ING VP High Yield Bond Portfolio – Class I	0.62%	--	0.25%	0.87%	0.07%	0.80%
Replaced Fund • AIM V.I. High Yield Fund – Series I	0.62%	--	0.42%	1.04%	0.09%	0.95%
Substitute Fund • ING VP Real Estate Portfolio – Class S	0.80%	--	0.70%	1.50%	0.20%	1.30%
Replaced Fund • Van Eck Worldwide Real Estate Fund – Initial Class	1.00%	--	0.45%	1.45%	--	1.45%

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No brokerage commissions, fees or other remuneration will be paid by any Replaced Fund or any Substitute Fund or Contract owner in connection with the Substitutions.

D. *Expense Ratios and Total Returns.* The following chart shows the expense ratio (ratio of operating expenses as a percentage of average net assets) for each Substitute Fund and Corresponding Replaced Fund. It also shows the total return figures for each Substitute Fund, the corresponding Replaced Fund and a Comparable Fund as of December 31, 2004. The expense ratios for the Substitute Funds in the table are based on the fees and expenses which will be in place before the Effective Date of the Substitutions. For the Replaced Funds the expense ratios are based on net assets as of December 31, 2004. Expense ratios reflect all applicable contractual expense limitations. Expenses since inception are only shown if the inception date is more recent than the applicable 3, 5 or 10 year period.

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	Expense Ratio	1 Year	3 Years	5 Years	10 Years	Since Inception
Substitute Fund • ING Evergreen Health Sciences Portfolio – Class S	1.00%	--	--	--	--	--
Replaced Fund • AIM V.I. Health Sciences Fund – Series I	1.10%	7.57%	1.27%	3.45%	--	9.24%
Replaced Fund • ING Evergreen Health Sciences Portfolio – Class A	1.25%	--	--	--	--	--
Comparable Fund • Evergreen Health Care Fund – Class A	--	8.20%	7.04%	22.37%	--	23.37%
Substitute Fund • ING Evergreen Omega Portfolio – Class I	0.60%	--	--	--	--	--
Replaced Fund • AIM V.I. Capital Appreciation Fund – Series I	0.91%	6.63%	1.47%	(6.51%)	8.35%	--
Replaced Fund • Alger American Leveraged AllCap Portfolio – Class O	0.97%	8.19%	(1.24%)	(9.45%)	14.98%	--
Replaced Fund • Putnam VT New Opportunities Fund – Class IA	0.69%	10.57%	0.75%	(11.95%)	8.17%	--
Replaced Fund • Putnam VT New Opportunities Fund – Class IB	0.94%	10.31%	(0.50%)	(12.15%)	7.99%	--
Replaced Fund • Putnam VT Voyager Fund – Class IA	0.64%	5.34%	(0.97%)	(8.79%)	9.58%	--
Replaced Fund • Putnam VT Voyager Fund – Class IB	0.89%	5.03%	(1.22%)	(8.99%)	9.38%	--
Comparable Fund • Evergreen Omega Fund – Class A	--	6.35%	2.71%	(4.60%)	10.65%	--
Substitute Fund • ING Evergreen Omega Portfolio – Class S	0.85%	--	--	--	--	--
Replaced Fund • AIM V.I. Capital Appreciation Fund – Series II	1.16%	6.33%	1.21%	--	--	1.66%
Replaced Fund • Putnam VT Discovery Growth Fund – Class IB	1.33%	7.58%	0.00%	--	--	(15.25%)
Comparable Fund • Evergreen Omega Fund – Class A	--	6.35%	2.71%	(4.60%)	10.65%	--
Substitute Fund • ING FMR Earnings Growth Portfolio – Class I	0.75%	--	--	--	--	--
Replaced Fund • AIM V.I. Growth Fund – Series I	0.91%	8.23%	(0.66%)	(12.41%)	6.56%	--
Replaced Fund • Alger American Growth Portfolio – Class O	0.85%	5.50%	(1.51%)	(6.41%)	10.70%	--
Replaced Fund • Alger American Income & Growth Portfolio– Class O	0.78%	7.85%	(1.19%)	(3.98%)	12.99%	--
Replaced Fund • AllianceBernstein VPSF Large Cap Growth Port. – Class A	0.81%	8.19%	(3.54%)	(11.36%)	9.81%	--
Comparable Fund • FMR Earnings Growth Composite	--	3.48%	(0.47%)	(4.96%)	10.53%	--

	Expense Ratio	1 Year	3 Years	5 Years	10 Years	Since Inception
Substitute Fund • ING FMR Earnings Growth Portfolio – Class S	1.00%	--	--	--	--	--
Replaced Fund • AIM V.I. Growth Fund – Series II	1.16%	8.00%	(0.88%)	--	--	2.62%
Replaced Fund • AllianceBernstein VPSF Large Cap Growth Port. – Class B	1.06%	7.41%	(4.27%)	(12.02%)	9.20%	--
Comparable Fund • FMR Earnings Growth Fund Composite	--	3.48%	(0.47%)	(4.96%)	10.53%	--
Substitute Fund • ING JP Morgan Small Cap Equity Portfolio – Class I	0.90%	26.09%	--	--	--	11.60%
Replaced Fund • AIM V.I. Small Company Growth Fund – Series I	1.20%	13.90%	1.54%	(6.23%)	--	6.58%
Replaced Fund • Alger American Small Capitalization Portfolio – Class O	0.97%	16.57%	6.97%	(8.88%)	5.71%	--
Replaced Fund • AllianceBernstein VPSF Small Cap Growth Port. – Class A	1.14%	14.55%	10.36%	0.69%	--	3.60%
Replaced Fund • Premier VIT OpCap Small Cap Portfolio	0.91%	17.88%	9.63%	15.53%	11.88%	--
Comparable Fund • JP Morgan Small Cap Equity Fund – Class A	--	26.16%	12.47%	8.78%	15.39%	--
Substitute Fund • ING JP Morgan Value Opportunities Portfolio – Class I	0.53%	--	--	--	--	--
Replaced Fund • AllianceBernstein VPSF Growth and Income Portfolio – Class A	0.60%	11.46%	4.81%	5.64%	14.41%	--
Replaced Fund • Putnam VT Growth and Income Fund – Class IA	0.54%	11.37%	4.92%	3.22%	11.01%	--
Comparable Fund • JP Morgan Value Opportunities Fund – Class A	--	17.14%	10.76%	--	--	10.75%
Substitute Fund • ING JP Morgan Value Opportunities Portfolio – Class S	0.78%	--	--	--	--	--
Replaced Fund • AllianceBernstein VPSF Growth and Income Port. – Class B	0.85%	11.22%	4.55%	5.39%	--	5.15%
Replaced Fund • AllianceBernstein VPSF Value Portfolio – Class B	0.97%	13.37%	8.23%	--	--	6.88%
Replaced Fund • Federated American Leaders Fund II – P Shares	1.15%	9.78%	3.80%	1.87%	11.46%	--
Replaced Fund • Putnam VT Growth and Income Fund – Class IB	0.79%	11.11%	4.67%	2.98%	10.81%	--
Comparable Fund • JP Morgan Value Opportunities Fund – Class A	--	17.14%	10.76%	--	--	10.75%
Substitute Fund • ING Legg Mason Value Portfolio – Class I	0.81%	14.03%	4.03%	--	--	0.39%
Replaced Fund • AIM V.I. Premier Equity Fund – Series I	0.89%	5.77%	(2.65%)	(7.19%)	8.67%	--
Comparable Fund • Legg Mason Value Trust	--	11.96%	9.22%	1.88%	18.58%	--
Substitute Fund • ING Legg Mason Value Portfolio – Class S	1.06%	13.87%	3.99%	--	--	0.36%
Replaced Fund • AIM V.I. Premier Equity Fund – Series II	1.14%	5.49%	(2.88%)	--	--	1.24%
Comparable Fund • Legg Mason Value Trust	--	11.96%	9.22%	1.88%	18.58%	--
Substitute Fund • ING Liquid Assets Portfolio – Class S	0.54%	0.92%	1.04%	2.59%	3.83%	--
Replaced Fund • Federated Prime Money Fund II – P Shares	1.05%	0.82%	0.97%	2.50%	3.69%	--

	Expense Ratio	1 Year	3 Years	5 Years	10 Years	Since Inception
Substitute Fund • ING Marsico International Opportunities Port. – Class I	0.68%	--	--	--	--	--
Replaced Fund • Janus Aspen International Growth Port. – Institutional Shares	0.68%	18.95%	6.10%	(5.08%)	12.47%	--
Replaced Fund • Putnam VT International Equity Fund – Class IA	0.94%	16.23%	7.31%	(2.05%)	10.39%	10.21%
Comparable Fund • Marsico International Opportunities Fund – Class A	--	17.51%	15.33%	--	--	5.04%
Substitute Fund • ING Marsico International Opportunities Port. – Class S	0.93%	--	--	--	--	--
Replaced Fund • AIM V.I. International Growth Fund – Series I	1.14%	24.00%	10.51%	(5.35%)	7.43%	--
Replaced Fund • Janus Aspen International Growth Portfolio – Service Shares	0.93%	18.69%	5.83%	(5.31%)	12.29%	--
Replaced Fund • Prudential SP William Blair International Growth Portfolio – Class II	1.42%	16.12%	7.63%	--	--	(8.29%)
Comparable Fund • Marsico International Opportunities Fund – Class A	--	17.51%	15.33%	--	--	5.04%
Substitute Fund • ING Mercury Large Cap Growth Portfolio – Class S	1.00%	11.10%	--	--	--	4.88%
Replaced Fund • AIM V.I. Dent Demographic Trends Fund – Series II	1.26%	7.90%	0.12%	--	--	1.58%
Replaced Fund • ING Mercury Large Cap Growth Portfolio – Class A	1.31%	10.93%	--	--	--	4.72%
Replaced Fund • Prudential Jennison Portfolio – Class II Shares	1.04%	9.22%	(0.86%)	--	--	(9.40%)
Comparable Fund • Merrill Lynch Large Cap Growth – Class A	--	10.21%	3.08%	(2.58%)	--	--
Substitute Fund • ING MFS Total Return Portfolio – Class I	0.64%	11.45%	7.35%	7.69%	11.07%	--
Replaced Fund • MFS VIT Total Return Series – Initial Class	0.83%	11.32%	7.09%	7.39%	--	11.33%
Comparable Fund • MFS VIT Total Return Series – Initial Class	--	11.32%	7.09%	7.39%	--	11.33%
Substitute Fund • ING MFS Utilities Portfolio - Class I	0.75%	--	--	--	--	--
Replaced Fund • MFS VIT Utilities Series – Initial Class	0.89%	30.20%	10.10%	1.61%	--	13.35%
Replaced Fund • Putnam VT Utilities Growth and Income Fund – Class IA	0.85%	21.87%	5.08%	1.23%	8.88%	--
Comparable Fund • MFS VIT Utilities Series – Initial Class	--	30.20%	10.10%	1.61%	--	13.35%
Substitute Fund • ING MFS Utilities Portfolio – Class S	1.00%	--	--	--	--	--
Replaced Fund • AIM V.I. Utilities Fund – Series I	1.01%	23.56%	4.96%	(3.82%)	--	6.45%
Comparable Fund • MFS VIT Utilities Series – Initial Class	--	30.20%	10.10%	1.61%	--	13.35%

	Expense Ratio	1 Year	3 Years	5 Years	10 Years	Since Inception
Substitute Fund • ING Oppenheimer Global Portfolio – I Class	0.66%	14.13%	--	--	--	9.74%
Replaced Fund • Premier VIT OpCap Global Equity Portfolio	1.26%	12.53%	6.93%	1.98%	--	9.61%
Comparable Fund • Oppenheimer Global Fund – Class A	--	18.67%	9.61%	3.86%	13.68%	--
Substitute Fund • ING Oppenheimer Strategic Income Portfolio – S Class	0.75%	--	--	--	--	--
Replaced Fund • AIM V.I. Diversified Income Fund – Series I	0.75%	5.03%	5.49%	4.13%	5.96%	--
Replaced Fund • Van Eck Worldwide Bond Fund – Initial Class	1.27%	9.15%	16.20%	8.69%	6.86%	--
Comparable Fund • Oppenheimer Strategic Income Fund – A Shares	--	9.62%	11.89%	8.19%	8.24%	--
Substitute Fund • ING PIMCO High Yield Portfolio – Class S	0.74%	--	--	--	--	--
Replaced Fund • Federated High Income Bond Fund II – P Shares	0.99%	10.46%	11.03%	4.77%	7.59%	--
Comparable Fund • Premier VIT High Yield Fund – Admin Class	--	9.17%	10.04	6.74%	8.63%	--
Substitute Fund • ING Pioneer Mid Cap Value Portfolio – Class I	0.65%	--	--	--	--	--
Replaced Fund • Pioneer Mid Cap Value VCT Portfolio – Class I	0.72%	22.12%	14.23%	13.37%	--	13.31%
Comparable Fund • Pioneer Mid Cap Value VCT Portfolio – Class I	--	22.12%	14.23%	13.37%	--	13.31%
Substitute Fund • ING Pioneer Mid Cap Value Portfolio – Class S	0.90%	--	--	--	--	--
Replaced Fund • Pioneer Mid Cap Value VCT Portfolio – Class II	0.97%	21.77%	13.94%	13.37%	--	12.50%
Comparable Fund • Pioneer Mid Cap Value VCT Portfolio – Class II	--	21.77%	13.94%	13.37%	--	12.50%
Substitute Fund • ING Pioneer Fund Portfolio – Class I	0.71%	--	--	--	--	--
Replaced Fund • AIM V.I. Core Equity Fund – Series I	0.91%	8.97%	4.60%	(5.47%)	10.07%	--
Comparable Fund • Pioneer Fund VCT Portfolio – Class I	--	11.25%	3.69%	0.12%	--	6.31%
Substitute Fund • ING Pioneer Fund Portfolio – Class S	0.96%	--	--	--	--	--
Replaced Fund • AIM V.I. Core Equity Fund – Series II	1.16%	8.67%	4.35%	--	--	6.16%
Replaced Fund • Pioneer Fund VCT Portfolio – Class II	0.96%	10.93%	3.40%	(0.02%)	--	6.13%
Comparable Fund • Pioneer Fund VCT Portfolio – Class II	--	10.93%	3.40%	(0.02%)	--	6.13%

	Expense Ratio	1 Year	3 Years	5 Years	10 Years	Since Inception
Substitute Fund						
• ING T. Rowe Price Diversified Mid Cap Growth Portfolio – I Class [5]	0.66%	9.05%	3.45%	--	--	3.66%
Replaced Fund						
• Alger American MidCap Growth Portfolio – Class O	0.92%	13.04%	5.59%	3.74%	14.39%	--
Comparable Fund						
• Advance Capital I Equity Growth Fund – Class I	--	14.45%	6.77%	1.98%	13.89%	--
Substitute Fund						
• ING UBS U.S. Allocation Portfolio – Class S	1.01%	10.93%	3.72%	--	--	(0.44%)
Replaced Fund						
• UBS Series Trust U.S. Allocation Portfolio – Class I	1.05%	10.38%	2.70%	(1.50%)	--	1.59%
Comparable Fund						
• UBS U.S. Allocation Fund – Class A	--	10.70%	9.18%	7.29%	--	8.12%
Substitute Fund						
• ING UBS U.S. Large Cap Equity Portfolio – I Class [6]	0.85%	14.76%	2.50%	(4.03%)	--	2.83%
Replaced Fund						
• Premier VIT OpCap Equity Portfolio	1.01%	11.93%	4.18%	2.94%	11.13%	--
Comparable Fund						
• UBS U.S. Large Cap Equity Fund – Class A	--	13.06%	6.93%	5.04%	--	5.94%
Substitute Fund						
• ING Van Kampen Equity and Income Portfolio – I Class	0.57%	10.25%	2.67%	--	--	2.31%
Replaced Fund						
• Alger American Balanced Portfolio – Class O	0.87%	4.57%	2.97%	0.81%	11.63%	--
Replaced Fund						
• Federated Capital Income Fund II – P Shares	1.42%	9.92%	0.29%	(4.55%)	4.88%	--
Comparable Fund						
• Van Kampen Equity and Income Fund – Class A	--	11.77%	7.77%	8.03%	13.66%	--
Substitute Fund						
• ING VP Financial Services Portfolio – Class S	1.05%	--	--	--	--	--
Replaced Fund						
• AIM V.I. Financial Services Fund – Series I	1.12%	8.68%	6.22%	6.15%	--	7.93%
Comparable Fund						
• ING Financial Services Fund – Class A	--	13.06%	8.94%	13.00%	17.72%	--
Substitute Fund						
• ING VP High Yield Bond Portfolio – Class I [7]	0.80%	7.96%	8.60%	2.37%	5.00%	--
Replaced Fund						
• AIM V.I. High Yield Fund – Series I	0.95%	11.25%	10.28%	0.63%	--	0.79%
Substitute Fund						
• ING VP Real Estate Portfolio – Class S	1.30%	--	--	--	--	--
Replaced Fund						
• Van Eck Worldwide Real Estate Fund – Initial Class	1.45%	36.21%	20.51%	16.95%	--	11.53%
Comparable Fund						
• ING Real Estate Fund – Class A	--	33.38%	23.66%	21.86%	--	--

[5] Prior to November 8, 2004, the T. Rowe Price Diversified Mid Cap Growth Portfolio was known as the ING Alger Aggressive Growth Portfolio and was managed by Fred Alger Management, Inc. Accordingly, the performance shown for this substitute fund reflects the efforts of the prior manager. The comparable fund, the Advance Capital I Equity Growth Fund, has been managed throughout the periods by the current manager of the ING T. Rowe Price Diversified Mid Cap Growth Portfolio.

[6] UBS took over management of the ING UBS U.S. Large Cap Equity Portfolio on May 1, 2003. Prior to that the portfolio was sub-advised by a different manager and performance prior to May 1, 2003, is attributable to that former manager. The comparable fund, the UBS U.S. Large Cap Equity Fund has been managed throughout the periods by the current manager of the ING UBS U.S. Large Cap Equity Portfolio.

[7] The investment style of the ING VP High Yield Portfolio focuses on a higher credit quality spectrum of the non-investment grade bond universe than does the AIM V.I. High Yield Fund. However, the most distressed end of the high yield market has delivered higher returns recently, leading to the 1 and 3 year out-performance by the AIM V.I. High Yield Fund. Focusing on the most distressed end of the high yield bond market is riskier over the long term, as evidenced by the AIM V.I. High Yield Fund's standard deviation of 8.43. The standard deviation for the ING VP High Yield Portfolio is 6.69.

E. Estimated Net Assets after the Substitutions. The following chart shows the estimated size (in net assets) for each Substitute Fund immediately following the Effective Date.

Substitute Funds	Estimated Total Net Assets
ING Evergreen Health Sciences Portfolio – Class S	$122,895,264
ING Evergreen Omega Portfolio – Class I	$266,053,684
ING Evergreen Omega Portfolio – Class S	$6,162,570
ING FMR Earnings Growth Portfolio – Class I	$211,853,823
ING FMR Earnings Growth Portfolio – Class S	$9,211,602
ING JP Morgan Small Cap Equity Portfolio – Class I	$148,491,797
ING JP Morgan Value Opportunities Portfolio – Class I	$122,304,845
ING JP Morgan Value Opportunities Portfolio – Class S	$151,910,976
ING Legg Mason Value Portfolio – Class I	$40,457,487
ING Legg Mason Value Portfolio – Class S	$324,897,426
ING Liquid Assets Portfolio – Class S	$664,588,312
ING Marsico International Opportunities Portfolio – Class I	$60,498,167
ING Marsico International Opportunities Portfolio – Class S	$123,637,836
ING Mercury Large Cap Growth Portfolio – Class S	$157,917,913
ING MFS Total Return Portfolio – Class I	$5,126,920
ING MFS Utilities Portfolio - Class I	$4,801,037
ING MFS Utilities Portfolio – Class S	$90,942,808
ING Oppenheimer Global Portfolio – I Class	$856,070,535
ING Oppenheimer Strategic Income Portfolio – S Class	$31,134,218
ING PIMCO High Yield Portfolio – Class S	$689,609,971
ING Pioneer Mid Cap Value Portfolio – Class I	$22,591,151
ING Pioneer Mid Cap Value Portfolio – Class S	$485,775,947
ING Pioneer Fund Portfolio – Class I	$31,305,665
ING Pioneer Fund Portfolio – Class S	$83,712,657
ING T. Rowe Price Diversified Mid Cap Growth Portfolio – I Class	$622,198,731
ING UBS U.S. Allocation Portfolio – Class S	$117,162,230
ING UBS U.S. Large Cap Equity Portfolio – I Class	$273,846,208
ING Van Kampen Equity and Income Portfolio – I Class	$566,216,620
ING VP Financial Services Portfolio – Class S	$69,860,388
ING VP High Yield Bond Portfolio – Class I	$51,247,162
ING VP Real Estate Portfolio – Class S	$42,645,898

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IV. Implementation

A. Applicants will effect the Substitutions as soon as practicable following the issuance of the requested order. As of the Effective Date of the Substitutions, shares of each Replaced Fund will be redeemed for cash or in-kind. The Companies, on behalf of each Replaced Fund subaccount of each relevant Account, will simultaneously place a redemption request with the Replaced Fund and a purchase order with the corresponding Substitute Fund so that the purchase of Substitute Fund shares will be for the exact amount of the redemption proceeds. Thus, Contract values will remain fully invested at all times. The proceeds of such redemptions will then be used to purchase the appropriate number of shares of the applicable Substitute Fund.

B. The Substitutions will take place at relative net asset value (in accordance with Rule 22c–1 under the 1940 Act) with no change in the amount of any affected Contract owner's account value or death benefit, or in the dollar value of his or her investment in the applicable Account. Any in-kind redemption of shares of a Replaced Fund or in-kind purchase of shares of the corresponding Substitute Fund will, except as noted below, take place in substantial compliance with the conditions of Rule 17a–7 under the 1940 Act. No brokerage commissions, fees or other remuneration will be paid by either the Replaced Fund or the corresponding Substitute Fund or by affected Contract owners in connection with the Substitutions. The transactions comprising the Substitutions will be consistent with the policies of each investment company involved and with the general purposes of the 1940 Act.

C. Affected Contract owners will not incur any fees or charges as a result of the Substitutions nor will their rights or the Companies' obligations under the

Contracts be altered in any way. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses, and other fees and expenses. In addition, the Substitutions will not impose any tax liability on affected Contract owners. The Substitutions will not cause the Contract fees and charges currently being paid by affected Contract owners to be greater after the Substitutions than before the Substitutions. Also, as described more fully below, after notification of the Substitutions and for 30 days after the Substitutions, affected Contract owners may reallocate to any other investment options available under their Contract the subaccount value of the Replaced Fund without incurring any administrative costs or allocation (transfer) charges.

D. Before the Effective Date of the Substitutions, all affected Contract owners will be notified of the Substitutions by means of supplements to the Contract prospectuses. Among other information regarding the Substitutions, the supplements will inform affected Contract owners that beginning on the date of the first supplement the Companies will not exercise any rights reserved by them under the Contracts to impose restrictions or fees on transfers from the Replaced Funds (other than restrictions related to frequent or disruptive transfers) until at least 30 days after the Effective Date of the Substitutions. Following the date the order requested by the Application is issued, but before the Effective Date, affected Contract owners will receive a second supplement to the Contract prospectus or prospectus summary, as applicable, setting forth the Effective Date and advising affected Contract owners of their right, if they so choose, at any time prior to the Effective Date, to reallocate or withdraw accumulated value in the relevant Replaced Fund subaccounts under their Contracts or otherwise terminate their interest therein in accordance with the terms and conditions of their Contracts. If affected Contract Owners reallocate account value prior to the Effective Date or within 30 days after the Effective Date, there will be no charge for the reallocation of accumulated value from each Replaced Fund subaccount and the reallocation will not count as a transfer when imposing any applicable restriction or limit under the Contract on transfers. The Companies will not exercise any right they may have under the Contracts to impose additional restrictions or fees on transfers from the Replaced Funds under the Contracts (other than restrictions related to frequent or disruptive transfers) for a period of at least 30 days following the Effective Date of the Substitutions. Additionally, all current Contract Owners will be sent prospectuses of the Substitute Funds before the Effective Date. Alternatively, ING America and ING Life may determine to send to Participants summaries of the prospectuses of the Substitute Funds.

E. Within five (5) business days after the Effective Date, affected Contract Owners will be sent a written confirmation ("Post-Substitution Confirmation") indicating that shares of the Replaced Funds have been redeemed and that the shares of Substitute Funds have been substituted. The Post-Substitution Confirmation will show how the allocation of the Contract Owner's account value before and immediately following the Substitutions have changed as a result of the Substitutions and detail the transactions effected on behalf of the respective affected Contract Owner because of the Substitutions.

V. Applicant's Legal Analysis

A. Section 26(c) of the 1940 Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Prior to the enactment of this provision in 1970, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted fund, recommended that the 1940 Act be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval.

B. Each of the prospectuses for the Contracts expressly disclose the reservation of the Companies the right, subject to compliance with applicable law, to substitute shares of another open-end management investment company for shares of an open-end management investment company held by a subaccount of an Account.

C. The Companies reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of its separate accounts and to afford the opportunity to replace such shares where to do so could benefit the Contract owners and Companies.

D. Applicants maintain that Contract owners will be better served by the proposed Substitutions. Applicants anticipate that the replacement of certain Replaced Funds will result in a Contract that is administered and managed more efficiently, and one that is more competitive with other variable products in both wholesale and retail markets. For all of the proposed substitutions, each Substitute Fund (or sub-adviser managing a similar fund for those Substitute Funds without a performance history) generally has had comparable or more consistent investment performance than the corresponding Replaced Fund that it would replace. Moreover, each Substitute Fund has fees that are the same as or less than the corresponding Replaced Fund. Applicants state that for all of the proposed substitutions, the investment objective and policies of each Substitute Fund are the same as, similar to, or consistent with the investment objective and policies of the corresponding Replaced Fund.

E. In addition to the foregoing, Applicants generally submit that the proposed Substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

F. Applicants anticipate that Contract owners will be at least as well off with the proposed array of subaccounts to be offered after the proposed substitutions as they have been with the array of subaccounts offered before the substitutions. The proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer accumulated values and contract values between and among the remaining subaccounts as they could before the proposed substitutions.

G. Applicants assert that each of the proposed substitutions is not the type of substitution which Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer contract values into other

subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the subaccounts which invest in the Replaced Funds into any of the remaining subaccounts without cost or other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(c) was designed to prevent.

H. Applicants maintain that the proposed substitutions also are unlike the type of substitution which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific types of insurance coverages offered by the various Companies under the Contracts as well as numerous other rights and privileges set forth in each Contract. Contract owners may also have considered the size, financial condition, type, and reputation of ING and the various Companies. These factors will not change because of the proposed substitutions.

I. Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

J. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company. Section 17(b) of the 1940 Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and records filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

K. Applicants maintain that the terms of the Substitutions, including the consideration to be paid and received by each Replaced Fund or Substitute Fund, are reasonable, fair and do not involve overreaching principally because the transactions do not cause owners' interests under a Contract to be diluted, and because the transactions will conform with the principal conditions enumerated in Rule 17a–7. The proposed transactions will take place at relative net asset value with no change in the amount of any Contract owner's Contract or cash value, accumulation value or death benefit or in the dollar value of his or her investment in any of the Accounts.

L. Applicants submit that the Substitutions by the Companies are consistent with the policies of each Substitute Fund and each Replaced Fund, as recited in the current registration statements and reports filed by each under the 1940 Act. Applicants also submit that the proposed substitutions are consistent with the general purposes of the Act.

M. Applicants submit that, to the extent that the Substitutions are deemed to involve principal transactions between affiliates, the procedures and terms and descriptions described in the Application demonstrate that neither the Replaced Funds, the Substitute Funds, the Accounts nor any other Applicant will be participating in the Substitutions on a basis less advantageous than that of any other participant. Even though the Applicants may not rely on Rule 17a–7, Applicants believe that the Rule's conditions outline the type of safeguards that result in transactions that are fair and reasonable to registered investment company participants and preclude overreaching in connection with an investment company by its affiliated persons.

N. The boards of trustees or directors, as applicable of each Replaced Fund and ING Investors Trust, ING Partners, Inc. and ING Variable Products Trust have adopted procedures, as required by paragraph (e)(1) of Rule 17a–7, pursuant to which the portfolios or funds of each may purchase and sell securities to and from their affiliates. The Companies and the investment advisers will carry out the Substitutions in conformity with the principal conditions of Rule 17a–7 and each Replaced Fund's and the Substitute Fund's procedures thereunder. Nevertheless, the circumstances surrounding the Substitutions will be such as to offer the same degree of protection to each Substitute Fund and each Replaced Fund from overreaching that Rule 17a–7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business. In particular, because of the circumstances surrounding the Substitutions, no investment manager to a replaced Portfolio could "dump" undesirable securities on the corresponding Substitute Fund or retain its desirable securities for other portfolios or have them transferred to its other advisory clients. Nor can the Companies (or any of the affiliates of each) effect the proposed transactions at a price that is disadvantageous to any Substitute Fund or Replaced Fund. Although the transaction may not be entirely for cash, it will be effected based upon: (1) The independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7; and (2) the net asset value per share of each Substitute Fund and the corresponding Replaced Fund valued in accordance with the procedures disclosed in the registration statements for each Substitute Fund and as required by Rule 22c–1 under the 1940 Act. No brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. In addition, the applicable ING Investors Trust, ING Partners, Inc. and ING Variable Products Trust Board will subsequently review the Substitutions and make the determinations required by paragraph (e)(3) of Rule 17a–7.

O. Except as noted below, applicants state that the Substitutions will take place in accordance with the requirements enumerated in Rule 17a–7 under the 1940 Act and with the approval of the applicable Board of ING Investors Trust, ING Partners, Inc. and ING Variable Products Trust, except that the Substitutions may be effected in cash or in-kind. Among other things, Rule 17a–7 requires, in relevant part, that:

> (a) The transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available;
>
> (b) The transaction is effected at the independent current market price of the security. For purposes of this paragraph the "current market price" shall be: * * * (4) * * * the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry;
>
> (c) The transaction is consistent with the policy of each registered investment company and separate series of a registered investment company participating in the transaction, as recited in its registration statement and reports filed under the [1940] Act;
>
> (d) No brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with the transaction;

(e) The board of directors of the investment company, including a majority of the directors who are not interested persons of such investment company, (1) adopts procedures pursuant to which such purchase or sales transactions may be effected for the company, which are reasonably designed to provide that all of the conditions of this section in paragraphs (a) through (d) have been complied with, (2) makes and approves such changes as the board deems necessary, and (3) determines no less frequently than quarterly that all such purchases or sales made during the preceding quarter were effected in compliance with such procedures;

(f) The board of directors of the investment company satisfies the fund governance standards defined in Section 270.0–1(a)(7); [and]

(g) The investment company (1) maintains and preserves permanently in an easily accessible place a written copy of the procedures (and modifications thereto) described in paragraph (e) of this section, and (2) maintains and preserves for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in a readily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determination described in paragraph (e)(3) of this section were made.

In addition, Applicants further submit that the Substitutions are consistent with the investment policy of each Replaced Fund and each Substitute Fund, as recited in the current prospectuses relating to each.

P. With regard to the Substitutions involving in-kind transfers, the investment adviser of each Substitute Fund and the investment adviser to the corresponding Replaced Fund intend to value securities selected for transfer between the two funds in a manner that is consistent with the current methodology used to calculate the daily net asset value of the Replaced Fund. Where a Replaced Fund's investment adviser employs certain third party, independent pricing services to value securities held by the Replaced Fund ("Vendor Pricing"), the investment adviser of each Substitute Fund and the corresponding Replaced Fund's investment adviser intend to employ Vendor Pricing to value securities held by the Replaced Fund that are selected for transfer to the Substitute Fund. Vendor Pricing may be used in each of the Substitutions. Generally, the redemption of securities from the Replaced Fund and subsequent transfer to the Substitute Fund will be done on a pro-rata basis. In the event that a Replaced Fund holds illiquid or restricted securities or assets that are not otherwise readily distributable or if a pro-rata transfer of securities would result in the parties holding odd lots, the investment advisers may agree to have a Replaced Fund transfer to the Substitute Fund an equivalent amount of cash instead of securities.

Q. After the assets have been contributed to the Substitute Fund, responsibility for valuation of the securities held by the Substitute Fund will shift to the valuation committee of the applicable Board of ING Investors Trust, ING Partners, Inc., or ING Variable Products Trust. At the end of the first trading following the transfer, the applicable valuation agent and custodian for ING Investors Trust, ING Partners, Inc., or ING Variable Products Trust will value the securities held by the Substitute Fund. The foregoing notwithstanding, the applicable Board of ING Investors Trust, ING Partners, Inc., and ING Variable Products Trust will retain ultimate responsibility for valuation decisions.

R. The Applicants believe that the use of neutral, third party vendor prices will ensure that both portfolios utilize unbiased evaluations in determining respective security and, ultimately, portfolio market values. In the event that independent pricing services do not provide valuations for a specific security selected for transfer, the Substitute Fund's investment adviser and the corresponding Replaced Fund's investment adviser, in accordance with paragraph (b)(4) of Rule 17a–7 under the 1940 Act, will rely on the "average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry * * *" in valuing any such security.

S. The Substitutions are consistent with the general purposes of the 1940 Act, as enunciated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. The proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent. Moreover, the proposed transactions will be effected in a manner consistent with the public interest and the protection of investors, as required by Section 6(c) of the 1940 Act. Contract owners will be fully informed of the terms of the Substitutions through the supplements and the Post-Substitution Confirmation and will have an opportunity to withdraw from the Replaced Fund through reallocation to another subaccount or otherwise terminate their interest thereof in accordance with the terms and conditions of their Contract prior to the Effective Date.

VI. Applicant's Conditions

For purposes of the approval sought pursuant to Section 26(c) of the 1940 Act, the substitutions described in the application will not be completed unless all of the following conditions are met:

A. The Commission shall have issued an order: (1) Approving the Substitutions under Section 26(c) of the 1940 Act; and (2) exempting the in-kind redemptions from the provisions of Section 17(a) of the 1940 Act as necessary to carry out the transactions described in this Application.

B. A registration statement for each Substitute Fund is effective and the investment objectives and policies and fees and expenses for each of the Substitute Funds as described herein have been implemented.

C. The permanent 0.25% cap on the Shareholder Services Fee that is included in the "Other Expenses" of the Class S shares of certain ING Investors Trust Substitute Funds as described herein has been implemented.

D. Each Affected Contract Owner will have been sent a copy of: (1) A supplement to the Contract prospectus informing shareholders of this Application; (2) a prospectus for the appropriate Substitute Fund; and (3) a second supplement to the Contract prospectus setting forth the Effective Date and advising Affected Contract Owners of their right to reconsider the Substitutions and, if they so choose, any time prior to the Effective Date, and to reallocate or withdraw amounts under their affected Contract or otherwise terminate their interest therein in accordance with the terms and conditions of their Contract.

E. The Companies shall have satisfied themselves, that: (1) The Contracts allow the substitution of investment company shares in the manner contemplated by the Substitutions and related transactions described herein; (2) the transactions can be consummated as described in this Application under applicable insurance laws; and (3) that any regulatory requirements in each jurisdiction where the Contracts are qualified for sale, have been complied with to the extent necessary to complete the transactions.

F. Within five business days of the Effective Date of the Substitutions, the Applicants will send to Affected Contract Owners a Post-Substitution Confirmation.

VII. Conclusion

Applicants assert that for the reasons summarized above the proposed substitutions and related transactions

meet the standards of Section 26(c) of the 1940 Act and are consistent with the standards of Section 17(b) of the 1940 Act and that the requested orders should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52167; File No. 4–429]

Joint Industry Plan; Notice of Filing of Amendment No. 15 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to a "Trade and Ship" Exception to the Definition of "Trade-Through" and a "Book and Ship" Exception to the Locked Markets Provision

July 29, 2005.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on April 13, 2005, April 22, 2005, April 26, 2005, April 27, 2005, May 5, 2005, and June 2, 2005, the International Securities Exchange ("ISE"), the American Stock Exchange LLC ("Amex"), the Chicago Board Options Exchange, Incorporated ("CBOE"), the Pacific Exchange, Inc. ("PCX"), the Boston Stock Exchange, Inc. ("BSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, "Participants"), respectively, filed with the Securities and Exchange Commission ("Commission") an amendment ("Joint Amendment No. 15") to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan").[3] In Joint Amendment No. 15, the Participants propose to add a "trade and ship" exception to the definition of "Trade-Through"[4] and a "book and ship" exception to the locked markets provision of the Linkage Plan.[5] The Commission is publishing this notice to solicit comments from interested persons on proposed Joint Amendment No. 15.

I. Description and Purpose of the Proposed Amendment

The purpose of Joint Amendment No. 15 is to provide that (i) a Participant may trade an order at a price that is one minimum quoting increment inferior to the national best bid or offer ("NBBO") if a Linkage Order[6] is transmitted contemporaneously to the NBBO market(s) to satisfy all interest at the NBBO price (this is the "trade and ship" concept); and (ii) a Participant may book an order that would lock another Participant if a Linkage Order is sent contemporaneously to such other Participant to satisfy all interest at the lock price (this is the "book and ship" concept). Under the trade and ship proposal, any execution received from the NBBO market must (pursuant to agency obligations) be reassigned to the customer order underlying the Linkage Order that would be transmitted to trade with the NBBO market. The following examples illustrate the applications of these concepts.

Trade and Ship Example. Participant A is disseminating an offer of $2.00 for 100 contracts. Participant B is disseminating the national best offer of $1.95 for 10 contracts. No other market is at $1.95. Participant A receives a 100-contract customer buy order to pay $2.00.

Under the trade and ship proposal, Participant A could execute 90 contracts (or 100 contracts) of the customer order at $2.00, provided that Participant A simultaneously transmits a 10-contract Principal Acting as Agent ("P/A") Order[7] to Participant B to pay $1.95. Assuming an execution was obtained from Participant B, the customer would receive the 10-contract fill at $1.95 and 90 contracts at $2.00 (if the customer order was originally filled in its entirety at $2.00, an adjustment would be required to provide the customer with the $1.95 price for 10 contracts to reflect the P/A Order execution). As proposed, this would not be deemed a Trade-Through.

Book and Ship Example. Participant A is disseminating a $1.85–$2.00 market. Participant B is disseminating a $1.80–$1.95 market. The $1.95 offer is for 10 contracts. No other market is at $1.95. Participant A receives a customer order to buy 100 contracts at $1.95. Under the book and ship proposal, Participant A could book 90 contracts of the customer buy order at $1.95, provided that Participant A simultaneously transmitted a 10-contract P/A Order to Participant B to pay $1.95. Assuming an execution was obtained from Participant B, the customer would receive the 10-contract fill, and the rest of the customer's order would be displayed as a $1.95 bid on Participant A. The national best offer would likely be $2.00. As proposed, this would not be deemed a "locked" market for purposes of the Linkage Plan.

II. Implementation of the Proposed Amendment

The Participants intend to make proposed Joint Amendment No. 15 effective when the Commission approves Joint Amendment No. 15.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether proposed Joint Amendment No. 15 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 4–429 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 Number 4–429. 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

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[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, upon separate requests by Phlx, PCX, and BSE, the Commission issued orders to permit these exchanges to participate in the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004). On June 27, 2001, May 30, 2002, January 29, 2003, June 18, 2003, January 29, 2004, June 15, 2004, June 17, 2004, July 2, 2004, October 19, 2004, and May 19, 2005, the Commission approved joint amendments to the Linkage Plan. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003); 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003); 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004); 49863 (June 15, 2004), 69 FR 35081 (June 23, 2004); 49885 (June 17, 2004), 69 FR 35397 (June 24, 2004); 49969 (July 2, 2004), 69 FR 41863 (July 12, 2004); 50561 (October 19, 2004), 69 FR 62920 (October 28, 2004); and 51721 (May 19, 2005), 70 FR 30498 (May 26, 2005).

[4] *See* Section 2(29) of the Linkage Plan.

[5] Specified in Section 7(a)(i)(C) of the Linkage Plan.

[6] *See* Section 2(16) of the Linkage Plan.

[7] *See* Section 2(16) of the Linkage Plan.

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 proposed Joint Amendment No. 15 that are filed with the Commission, and all written communications relating to proposed Joint Amendment No. 15 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 filings also will be available for inspection and copying at the principal offices of Amex, BSE, CBOE, ISE, PCX and Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number 4–429 and should be submitted on or before August 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4271 Filed 8–8–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 8, 2005:

A Closed Meeting will be held on Thursday, August 11, 2005 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (9)(B), and (10) and 17 CFR 200.402(a) (3), (5), (6), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

[8] 17 CFR 200.30–3(a)(29).

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session and that no earlier notice thereof was possible.

The subject matters of the Closed Meeting scheduled for Thursday, August 11, 2005, will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and an

Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: August 5, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–15792 Filed 8–5–05; 11:26 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28012]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 3, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 29, 2005, to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 29, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Georgia Power Company et al. (70–10300)

Georgia Power Company ("Georgia Power"), 241 Ralph McGill Boulevard, NE., Atlanta, Georgia 30308 and Savannah Electric and Power Company ("Savannah Electric" and together, "Applicants"), 600 East Bay Street, Savannah, Georgia 31401, both public utility company subsidiaries of The Southern Company ("Southern"), a registered holding company under the Act have filed an application ("Application") under sections 9(a), 10 and 12(d) of the Act and rule 54 under the Act.

Georgia Power owns an approximate 84% undivided interest in the plant under construction known as Plant McIntosh Combined Cycle Units 10 and 11 ("Project") in Effingham County, Georgia ("County"). Savannah Electric owns an approximate 16% undivided interest in the Project. Georgia Power and Savannah Electric purchased the Project from Southern Power Company, an affiliate of Georgia Power and Savannah Electric, in May 2004.

Georgia Power and Savannah Electric completed construction of the Project and the Project became operational in June 2005. As a result, the Project is deemed to be a "utility asset" under the Act. Georgia Power and Savannah Electric expect to enter into the "sale/leaseback" transaction described below. Georgia Power and Savannah Electric, therefore, now request approval of the transfer of the Project to the Effingham County Industrial Development Authority ("Authority") in connection with the "sale/leaseback" transaction described below.

Under a tax abatement agreement ("Tax Abatement Agreement"), the County (acting by and through its Board of Commissioners), the Board of Tax Assessors of Effingham County, the Authority, Georgia Power and Savannah Electric have agreed to a reduced amount of property taxes due from Georgia Power and Savannah Electric to the County over a period of approximately 20 years ("Abatement"). The Abatement will be achieved as follows:

(a) Georgia Power and Savannah Electric will sell an interest in the Project to the Authority in an amount not to exceed $65,000,000 ("Sale

Price"). To raise the money for the Sale Price, the Authority will issue and sell its revenue bonds ("Revenue Bonds") to Georgia Power and Savannah Electric (or their assignees), *pro rata* in accordance with Georgia Power and Savannah Electric's respective ownership interests ("Leased Interests"), in the aggregate amount of the Sale Price.[1] Applicants state that since the Sale Price equals the cost of the Revenue Bonds, no money will be exchanged among Georgia Power, Savannah Electric and the Authority.

(b) Simultaneously with the sale of the Project to the Authority, Georgia Power and Savannah Electric will lease, *pro rata* in accordance with their Leased Interests, the Project back from the Authority for a term of approximately 20 years (the estimated useful life of the Project) under a lease agreement ("Agreement"). The Agreement provides for lease payments to be made by Georgia Power and Savannah Electric, *pro rata* in accordance with the Leased Interests, at times and in amounts which correspond to the payments with respect to the principal of and interest on the Revenue Bonds whenever and in whatever manner the Revenue Bonds shall become due, whether at stated maturity, upon redemption or declaration or otherwise.

(c) The Agreement provides for lease payments to be deposited with a trustee ("Trustee") under an indenture between the Authority and the Trustee ("Trust Indenture") under which the Revenue Bonds will be issued and secured. Applicants state that since Georgia Power and Savannah Electric will make lease payments in the same amounts and at the same times that the Trustee will pay interest and principal on the Revenue Bonds to Georgia Power and Savannah Electric, no lease payments or Revenue Bond payments actually will be paid by or to Georgia Power and Savannah Electric. The Trust Indenture will provide for the specific terms of the Revenue Bonds, including a final maturity of January 1, 2025 and an interest rate of 5.00%. The Trust Indenture will also specify the term and details of the Revenue Bonds and will contain various provisions, covenants and agreements to protect the security of the bondholders, including the following: (a) Pledging and assigning the rents, revenues and receipts of the Authority derived from the Project to secure the payment of the Revenue Bonds; (b) describing the redemption provisions and other features of the Revenue Bonds; (c) setting forth the form of the Revenue Bonds; (d) establishing the various funds and accounts to handle the Revenue Bonds proceeds and revenues of the Project and setting forth covenants regarding the administration and investment of these funds and accounts by the Trustee; (e) setting forth the duties of the Trustee; (f) defining events of default and provisions for enforcing the rights and remedies of the bondholders in those events and (g) restricting the issuance of additional bonds and the terms upon which the same may be issued and secured. The Agreement obligates Georgia Power and Savannah Electric to pay, *pro rata* in accordance with the Leased Interests, the fees and charges of the Trustee.

(d) The Agreement permits Georgia Power and Savannah Electric (or their assignees), *pro rata* in accordance with their Leased Interests, to buy the Project back from the Authority for a nominal purchase price at the expiration (or earlier termination) of the Agreement.

(e) Accordingly, Georgia Power and Savannah Electric are treated as the owners of the Project for financial accounting purposes and federal income tax purposes, and Georgia Power and Savannah Electric are in fact the beneficial owners of, with full control over, the Project. Applicants state that the Tax Abatement Agreement obligates Georgia Power and Savannah Electric, *pro rata* in accordance with their Leased Interests, to make level property tax payments on the lease payments, plus a fee to the County and the Authority.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4304 Filed 8–8–05; 8:45 am]

BILLING CODE 8010–01–P

[1] In December 2003, the Authority issued $350,000,000 in Revenue Bonds. In December 2004, the Authority issued $160,000,000 in Revenue Bonds. After the Commission's approval, the Authority will issue up to $65,000,000 in Revenue Bonds. The aggregate amount of the Revenue Bonds previously issued and the Revenue Bonds contemplated hereby will not exceed $575,000,000 and will equal the approximate total cost of the Project.

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Divedepot.com, Inc., GS Telecom Ltd., Rocky Mountain Financial Enterprises, Inc., US Data Authority, Inc.; Order of Suspension of Trading

August 5, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Divedepot.com, Inc., because it is delinquent in its periodic filing obligations under section 13(a) of the Securities Exchange Act of 1934, having not filed a periodic report since the period ending September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GS Telecom Ltd., because it is delinquent in its periodic filing obligations under section 13(a) of the Securities Exchange Act of 1934, having not filed a periodic report since the period ending March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rocky Mountain Financial Enterprises, Inc., because it is delinquent in its periodic filing obligations under section 13(a) of the Securities Exchange Act of 1934, having not filed a periodic report since the period ending September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of US Data Authority, Inc., because it is delinquent in its periodic filing obligations under section 13(a) of the Securities Exchange Act of 1934, having not filed a periodic report since the period ending March 31, 2003.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, *it is ordered*, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies is suspended for the period from 9:30 a.m. e.d.t. on August 5, 2005, through 11:59 p.m. e.d.t. on August 18, 2005.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 05–15791 Filed 8–5–05; 11:30 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52130]

Self-Regulatory Organizations; Declaration of Effectiveness of American Stock Exchange LLC Plan for the Implementation of Parts II and IIA of Form X–17A–5 Financial and Operational Combined Uniform Single Report ("FOCUS Report") and Schedule I Thereunder as Amended

July 27, 2005.

On September 17, 2004,[1] the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") an amended FOCUS Filing Plan ("Amended Plan") pursuant to Rule 17a–5(a)(4)[2] under the Securities Exchange Act of 1934 ("Act").[3] The Amended Plan[4] supersedes and replaces the Exchange's current FOCUS Filing Plan improving the efficiency of filing the FOCUS reports and the delivery to the Commission.[5]

The Amended Plan supersedes all such plans previously submitted by the Exchange, and sets forth (i) the FOCUS Report filing requirements applicable to Exchange sole members and member organizations and to Exchange members and member organizations designated to the Exchange pursuant to Rule 17d–1 under the Act for examination for compliance with applicable financial responsibility rules; (ii) the provisions and procedures relating to the maintenance of records containing the information required to be filed with the Exchange; and (iii) the provisions and procedures relating to transmitting this information to the Commission.

The Exchange believes that the Amended Plan complies with the requirements of Rule 17a–5(a)(4). Among its other features, the Amended Plan eliminates the FOCUS Part I filing requirement. This standardizes the Exchange's requirements with those of other self-regulatory organizations while also reducing the filing burden on Amex members. In addition, the Amended Plan covers electronic filing of FOCUS Reports.[6]

The Commission has reviewed the Amended Plan and, having due regard for the fulfillment of the Commission's duties and responsibilities under the provisions of the Act, declares the Amended Plan to be effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

Exhibit A[8]—American Stock Exchange LLC Plan for the Implementation of Parts II and IIA of Form X–17A–5 Financial and Operational Combined Uniform Single Report ("FOCUS Report") and Schedule I Thereunder as Amended

1. The American Stock Exchange LLC (the "Exchange") hereby files pursuant to Rule 17a–5(a)(4) under the Securities Exchange Act of 1934 (the "Act") a plan ("Plan") implementing Parts II and IIA of Securities and Exchange Commission ("Commission") Form X–17A–5. This Plan, which supersedes all such plans previously submitted by the Exchange, sets forth (i) the FOCUS Report (Form X–17A–5) filing requirements (the "Requirements") applicable to Exchange sole members and member organizations and to Exchange members and member organizations designated to the Exchange pursuant to Rule 17d–1 under the Act for examination for compliance with applicable financial responsibility rules; (ii) the provisions and procedures relating to the maintenance of records containing the information (the "Information") required to be filed with the Exchange in accordance with the Requirements; and (iii) the provisions and procedures relating to the transmittal of the Information by the Exchange to the Commission.

2. Every member or member organization that clears transactions or carries customer accounts shall file with the Exchange a FOCUS Part II Report each month, on or before the 17th business day of the next month.

3. Every member or member organization that does not clear transactions nor carry customer accounts, except for such members or member organizations that are covered by paragraphs (b)(1) or (b)(2) of Rule 15c3–1 under the Act, shall file with the Exchange a FOCUS Part IIA Report each calendar quarter, on or before the 17th business day of the next month following the end of the calendar quarter.

4. Every member or member organization that does not file with the Exchange pursuant to paragraphs 2 or 3 of this Plan shall file FOCUS Part IIA (Short Form) each calendar quarter on or before the 17th business day of the next month following the end of the calendar quarter.

5. Whenever the Commission or the Exchange shall require, every member or member organization subject to the above reporting requirements shall file Part II or Part IIA of Form X–17A–5 and such other financial or operational information as the Commission or the Exchange shall specify in writing. Such filing shall be made on or before the 17th business day of each month or as otherwise specified by the Commission or the Exchange in writing.

6. Every member or member organization that is subject to the provisions of paragraph (d) of Rule 17a–5 providing for the annual filing of audited financial statements shall file an additional FOCUS Part II or Part IIA Report, as applicable, with the Exchange within seventeen (17) business days after the date selected for the annual audit whenever such date is other than a calendar quarter.

7. Upon written application by a member or member organization to the Exchange, the Exchange may extend the time for filing the information required by the above paragraphs. The Exchange will maintain a record of each request granted, in accordance with Rule 17a–1 under the Act.

8. For the quarter ending December 31st of each year, every member or member organization shall file with the Exchange Schedule I of Form X–17A–5 with the Exchange within 17 business days following the end of the calendar quarter. Such schedules shall be filed jointly with the member or member organization's normal quarterly filing of Part II, Part IIA or Part IIA (Short Form) of Form X–17A–5 for the same period ending date.

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[1] *See* letter from Glen P. Barrentine, Senior Vice President and Chief Regulatory Officer, Amex, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation ("Division"), Commission, dated September 16, 2004. This filing superseded the original filing to amend the FOCUS plan filed by Amex on March 26, 2004, which was filed in response to comments from Commission staff. *See* letter from Glen P. Barrentine, Senior Vice President and Chief Regulatory Officer, Amex, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation ("Division"), Commission, dated March 25, 2004.

[2] 17 CFR 240.17a–5(a)(4).

[3] 15 U.S.C. 78a *et. seq.*

[4] Attached hereto as Exhibit A.

[5] Amex agreed to minor revisions by Commission Staff made to the first paragraph. E-mail correspondence between William Curran, Regulatory Counsel, Exchange, and E. David Hwa, Special Counsel, Division of Market Regulation, Commission (July 26, 2005).

[6] The Amex intends to continue the process that is currently in place, whereby the NASD generates and submits the FOCUS information data electronically to the Commission on behalf of the Amex.

[7] 17 CFR 200.30–3(a)(30).

[8] The Commission requested that the Exchange make a technical change to the Amended Plan language concerning the specific paragraph numbers referenced in paragraph 11. E-mail correspondence between William Curran, Regulatory Counsel, Exchange, and Sheila D. Swartz, Special Counsel, Division of Market Regulation, Commission (December 7, 2004).

9. Members and member organizations shall file Part II, Part IIA, or Part IIA (Short Form) electronically, in accordance with such instructions as the Exchange shall provide from time-to-time.

10. The information supplied the Exchange on Part II, Part IIA or Part IIA (Short Form) of Form X–17A–5 by members and member organizations participating in this Plan which are also members of one or more national securities exchanges or registered national securities association shall be furnished by the Exchange to such other exchange, exchanges or registered national securities association in a format and on a schedule which shall be mutually agreed upon.

11. The Information supplied the Exchange on reports filed on a quarterly basis by members or member organizations pursuant to paragraphs 2, 3, and 4 shall be furnished to the Commission on a quarterly basis on a date not later than 60 calendar days following the quarter-ending reporting date; and the Information supplied the Exchange on reports filed by members or member organizations pursuant to paragraph 8 of the Plan shall be furnished to the Commission on a quarterly basis on a date not later than 100 calendar days following the quarter-ending reporting date. The Exchange will deem confidential all Information supplied to the Exchange. Such Information shall be supplied to the Commission in such format as requested by the Commission from time-to-time.

12. From time-to-time, the Exchange may enter into agreements with another national securities exchange or registered national securities association for the purpose of providing or receiving data processing services related hereto. Without limitation, such services may include providing a means to file required reports, the maintenance of the information provided thereby, and the provision of such information to the Commission.

[FR Doc. E5–4273 Filed 8–8–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52197; File No. SR–Amex–2004–62]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto Relating To Listing and Trading of Shares of the xtraShares Trust

August 2, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On March 4, 2005, the Exchange amended its proposal.[3] On May 9, 2005, the Exchange filed an additional amendment.[4] The Exchange filed a third amendment on August 1, 2005.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 411 ("Duty to Know and Approve Customers") and Rule 1000A ("Index Fund Shares") and related Commentary .02 to accommodate the listing of Index Fund Shares that seek to provide investment results that exceed the performance of a securities index by a specified percentage or that seek to provide investment results that correspond to the inverse or opposite of the index's performance. The proposed rule change will accommodate listing on the Exchange of the following eight (8) funds of the xtraShares Trust (the "Trust"): Ultra500 Fund; Ultra100 Fund; Ultra30 Fund; UltraMid-Cap 400 Fund; Short500 Fund; Short100 Fund; Short30 Fund; and ShortMid-Cap 400 Fund (the "Funds").

The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 411.

Duty To Know and Approve Customers

Rule 411. Every member or member organization shall use due diligence to learn the essential facts relative to every customer and to every order or account accepted. No member or member organization shall make any transaction for the account of or with a customer unless, prior to or promptly after the completion thereof, the member, a general partner, an officer or a trustee of the member organization shall specifically approve the opening of such account, provided, however, that in the case of a branch office the opening of an account for a customer may be approved by the manager of such branch office but the action of such branch office manager shall within a reasonable time be approved by a general partner or an officer of the member organization. The member, general partner, officer or trustee approving the opening of an account shall, prior to giving his approval, be personally informed as to the essential facts relative to the customer and to the nature of the proposed account and shall indicate his approval in writing on a document which will become part of the permanent records of his office organization.

Supervision of Accounts

Every member is required either personally or through a general partner, an officer or trustee of his organization to supervise diligently all accounts handled by an employee.

Commentary

.01–.04 No Change

.05 Members, member organizations or registered employees thereof shall in recommending to any customer any transaction for the purchase, sale or exchange of an Index Fund Share listed pursuant to Rule 1000A(b)(2) that seeks to provide investment results that either exceed the performance of a specified foreign or domestic stock index by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified foreign or domestic index by a specified multiple, have reasonable grounds for believing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1, dated March 4, 2005 ("Amendment No. 1"). In Amendment No. 1, the Exchange modified the proposed rule text and accompanying description. Amendment No. 1 replaced Amex's original submission in its entirety.

[4] *See* Amendment No. 2, dated May 6, 2005 ("Amendment No. 2"). In Amendment No. 2, the Exchange clarified the portfolio investment methdology and made certain other clarifications to the description of the proposal.

[5] *See* Amendment No. 3, dated August 1, 2005 ("Amendment No. 3"). In Amendment No. 3, the Exchange provided additional details regarding the disclosure of the portfolio holdings of the Fund Shares and made certain other minor corrections to the rule text and proposal. Amendment No. 3 replaced Amex's earlier the submissions in their entirety.

that the recommendation is suitable for such customer upon the basis of the information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, customer's tax status, financial situation and needs, and any other information known by such member, member organization or registered employee.

* * * * *

Rule 1000A

Index Fund Shares

(a) Applicability—The Rules in this Section are applicable only to Index Fund Shares. Except to the extent specific Rules in this Section govern or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article I, Section 3(i) of the Constitution, Index Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange. In addition, pursuant to the provisions of Article IV, Section 1(b)(4) of the Constitution, Index Fund Shares are included within the definition of "derivative products" as that term is used in the Constitution and Rules of the Exchange.

(b) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(1) Index Fund Share. The term "Index Fund Share" means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks or fixed income securities that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income securities; (b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, or specified portfolio of fixed income securities and/or a cash amount, with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash or fixed income securities and/or cash, with a value equal to the next determined net asset value.

(2) *(i) The term "Index Fund Share" includes a security issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified foreign or domestic stock index by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified foreign or domestic index by a specified multiple. Such a security is issued in a specified aggregate number in return for a deposit of a specified number of shares of stocks, cash and/or Financial Instruments as defined in subparagraph (b)(2)(ii) of this rule with a value equal to the next determined net asset value. When aggregated in the same specified minimum number, Index Fund Shares may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock, cash and/or Financial Instruments, with a value equal to the next determined net asset value.*

(ii) In order to achieve the investment result that it seeks to provide, such an investment company may hold a combination of financial instruments, including, but not limited to, stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; and repurchase agreements (the "Financial Instruments"), but only to the extent and in the amounts or percentages as set forth in the registration statement for such Index Fund Shares.

(iii) Any open-end management investment company which issues Index Fund Shares referenced in this subparagraph (b)(2) shall not be approved by the Exchange for listing and trading pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934. (See Commentary .02)

(3) [(2)] Reporting Authority. The term "Reporting Authority" in respect of a particular series of Index Fund Shares means the Exchange, a subsidiary of the Exchange, or an institution or reporting service designated by the Exchange or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Index Fund Shares.

Commentary

.01 Nothing in paragraph (b)[(2)]*(3)* of this Rule shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange. The term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

.02 The Exchange may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied, *and provided further, that the Exchange may not so approve a series of Index Fund Shares that has the characteristics described in Rule 1000A(b)(2)*:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares *pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934*, each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria:

(1) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least $75 million;

(2) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(3) The most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(4) The underlying index or portfolio must include a minimum of 13 stocks.

(5) All securities in an underlying index or portfolio must be listed on a national securities exchange or the Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b)–(g) No change.

.03–.05 No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rules 1000A *et seq.* provide standards for the listing of Index Fund Shares, which are securities issued by an open-end management investment company for exchange trading. These securities are registered under the Investment Company Act of 1940 ("1940 Act"), as well as the Exchange Act. Index Fund Shares are defined in Rule 1000A as securities based on a portfolio of stocks or fixed income securities that seek to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index. The Exchange is proposing to amend Rule 1000A and related Commentary .02 to accommodate the listing of Index Fund Shares that seek to provide investment results that exceed the performance of a specified stock index by a specified percentage (*e.g.*, 110 percent or 200 percent) or that seek to provide investment results that correspond to the inverse or opposite of the index's performance.

The Exchange proposes to list, under amended Rule 1000A, the shares of the Funds. Four of the Funds—the Ultra500, Ultra100, Ultra30, and UltraMid-Cap400 Funds (the "Bullish Funds")—seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Standard and Poor's 500® Index ("S&P 500"), the Nasdaq-100® Index ("Nasdaq 100"), the Dow Jones Industrial Average℠ ("DJIA"), and the S&P MidCap400™ Index ("S&P MidCap"), respectively. (These indexes are referred to herein as "Underlying Indexes".) [6] Each of these Funds, if successful in meeting its objective, should gain, on a percentage basis, approximately twice as much as the Fund's Underlying Index when the prices of the securities in such Index increase on a given day, and should lose approximately twice as much when such prices decline on a given day. In addition, four other Funds—the Short500, Short100, Short30, and ShortMid-Cap400 Funds (the "Bearish Funds")—seek daily investment results, before fees and expenses, which correspond to the inverse or opposite of the daily performance (−100%) of the S&P 500, Nasdaq-100, DJIA, and S&P MidCap, respectively.[7] If each of these Funds is successful in meeting its objective, the net asset value (the "NAV") [8] of shares of each Fund should increase approximately as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately as much as the respective Index gains when the prices of the securities in the index rise on a given day.

ProFunds Advisors LLC is the investment adviser (the "Advisor") to each Fund. The Advisor is registered under the Investment Advisers Act of 1940.[9] While the Advisor will manage each Fund, the Trust's Board of Trustees (the "Board") will have overall responsibility for the Funds' operations. The composition of the Board is, and will be, in compliance with the requirements of Section 10 of the 1940 Act, and the Funds will comply with Rule 10A–3 of the Exchange Act.

SEI Investments Distribution Company (the "Distributor" or "SEI") a broker-dealer registered under the Exchange Act, will act as the distributor and principal underwriter of the Shares.

JPMorgan Chase Bank will act as the Index Receipt Agent for the Trust, for which it will receive fees. The Index Receipt Agent will be responsible for transmitting the Deposit List (as defined below) to National Securities Clearing Corporation ("NSCC") and for the processing, clearance and settlement of purchase and redemption orders through the facilities of Depository Trust Company ("DTC") and NSCC on behalf of the Trust. The Index Receipt Agent will also be responsible for the coordination and transmission of files and purchase and redemption orders between the Distributor and NSCC.[10]

Shares of the Funds issued by the Trust [11] will be a class of exchange-traded securities that represent an interest in the portfolio of a particular Fund (the "Shares"). Shares will be registered in book-entry form only, and the Trust will not issue individual share certificates. The DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

Investment Objective of the Funds

Each Bullish Fund will seek investment results that correspond, before fees and expenses, to twice (200%) the daily performance of an Underlying Index and will invest its assets, according to the Exchange, based upon the same strategies as conventional index funds. Rather than holding positions in equity securities (the "Equity Securities") and financial instruments intended to create exposure to 100% of the daily performance of an Underlying Index, these Funds will hold Equity Securities and financial instruments positions designed to create exposure equal to twice (200%), before fees and expenses, of the daily performance of an Underlying Index. These Bullish Funds generally will hold at least 85% of their assets in the component Equity Securities of the relevant Underlying Index. The remainder of assets will be devoted to financial instruments (as defined below) that are intended to create the additional needed exposure to such Underlying Index necessary to pursue the Fund's investment objective.

The Bearish Funds will seek daily investment results, before fees and expenses, of the inverse or opposite

[6] Exchange-traded funds ("ETFs") based on each of the Underlying Indexes are listed and traded on the Exchange. *See* Securities Exchange Act Release Nos. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (S&P 500 SPDR); 39143 (September 29, 1997), 62 FR 51917 (October 3, 1997) (DIAMONDS); 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (QQQ) and 35689 (May 8, 1995), 60 FR 26057 (May 16, 1995) (S&P MidCap 400). The Statement of Additional Information ("SAI") for the Funds discloses that each Fund reserves the right to substitute a different Index. Substitution could occur if the Index becomes unavailable, no longer serves the investment needs of shareholders, the Fund experiences difficulty in achieving investment results that correspond to the Index, or for any other reason determined in good faith by the Board. In such instances, the substitute index will attempt to measure the same general market as the current index. Shareholders will be notified (either directly or through their intermediary) in the event a Fund's current index is replaced. In the event a Fund substitutes a different index, the Exchange will file a new Rule 19b–4 filing with the Commission.

[7] *Id.*

[8] The NAV of each Fund is calculated and determined each business day at the close of regular trading, typically 4 p.m. EST.

[9] The Trust, Advisor, and Distributor ("Applicants") have filed with the Commission an Application for an Order under Sections 6(c) and 17(b) of the 1940 Act (the "Application") for the purpose of exempting the Funds of the Trust from various provisions of the 1940 Act. (File No. 812–12354). The Exchange states that the information provided in this Rule 19b–4 filing relating to the Funds is based on information included in the Application, which contains additional information regarding the Trust and Funds.

[10] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 2, 2005 (as to Index Receipt Agent).

[11] The Fund is also registered as a business trust under the Delaware Corporate Code. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

(−100%) of the Underlying Index. Each of these Funds will not invest directly in the component securities of the relevant Underlying Index, but instead, will create short exposure to such Index. Each Bearish Fund will rely on establishing positions in financial instruments (as defined below) that provide, on a daily basis, the inverse or opposite of the investment results of the relevant Underlying Index. Normally 100% of the value of the portfolios of each Bearish Fund will be devoted to such financial instruments and money market instruments, including U.S. government securities and repurchase agreements [12] (the "Money Market Instruments").

The financial instruments to be held by any of the Bullish or Bearish Funds may include stock index futures contracts, options on futures contracts, options on securities and indices, equity caps, collars and floors as well as swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), and Money Market Instruments. The Advisor may invest in such Money Market Instruments and Financial Instruments, rather than in Equity Securities, when it would be more efficient or less expensive for the Funds.

While the Advisor will attempt to minimize any "tracking error" between the investment results of a particular Fund and the performance or inverse performance (and specified multiple thereof) of its Underlying Index, certain factors may tend to cause the investment results of a Fund to vary from such relevant Underlying Index or specified multiple thereof.[13] The Bullish Funds are expected to be highly correlated to each respective Underlying Index and investment objective (0.95 or greater), while the Bearish Funds are expected to be highly inversely correlated to each Underlying Index and investment objective (−0.95 or greater).[14] Thus, in each case, the Funds are expected to have a daily tracking error of less than 5% [15] (500 basis points) relative to the specified (inverse) multiple of the performance of the relevant Underlying Index.

The Portfolio Investment Methodology

The Advisor seeks to establish investment exposure for each Bullish and Bearish Fund corresponding to each Fund's investment objective based upon its portfolio investment methodology (the "Methodology"). The Exchange states that this Methodology is a mathematical model based on well-established principles of finance that the Advisor understands are widely used by investment practitioners.

According to the Exchange, the Methodology is designed to determine, for each Fund, the portfolio investments needed to achieve its stated investment objective. The Methodology takes into account a variety of specified criteria and data (the "Inputs"), the most important of which are: (a) Net assets (taking into account creations and redemptions) in each Fund's portfolio at the end of each trading day; (b) the amount of exposure required to the Underlying Index and (c) the positions in Equity Securities, Financial Instruments and/or Money Market Instruments at the beginning of each trading day. The Advisor, pursuant to the Methodology, will then mathematically determine the end-of-day positions to establish the solution (the "Solution"), which may consists of Equity Securities, Financial Instruments, and Money Market Instruments. The difference between the start-of-day positions and the required end-of-day positions is the actual amount of Equity Securities, Financial Instruments, and/or Money Market Instruments that must be bought or sold for the day. The Solution accordingly represents the required exposure and is converted into an order or orders, as applicable, to be filled that same day.

Generally, portfolio trades effected pursuant to the Solution are reflected in the NAV on the first business day (T+1) after the date the relevant trades are made. Thus, the NAV calculated for a Fund on any given day reflects the trades executed pursuant to the prior day's Solution. For example, trades pursuant to the Solution calculated on a Monday afternoon are executed on behalf of the Fund in question on that day. These trades will then be reflected in the NAV for that Fund that is calculated as of 4 p.m. on Tuesday.

The timeline for the Methodology is as follows. Authorized Participants ("APs") have a 3 p.m. cut-off for orders submitted by telephone, facsimile, and other electronic means of communication and a 4 p.m. cut-off for orders received via mail. AP orders by mail are exceedingly rare. Orders are received by the Distributor and relayed to the Advisor within ten (10) minutes. The Advisor will know by 3:10 p.m. the number of creation/redemption orders by APs for that day. The Advisor, taking into account creation and redemption orders for that day, then places orders, consistent with the Solution, at approximately 3:40 p.m. as market-on-close (MOC) orders. At 4 p.m., the Advisor will again look at the exposure to make sure that these orders placed are consistent with the Solution, and as described above, the Advisor will execute any other transactions in Financial Instruments to assure that the Fund's exposure is consistent with the Solution.

Description of Investment Techniques

As stated, a Fund may invest its assets in Equity Securities, Money Market Instruments, and/or certain Financial Instruments (collectively, the "Portfolio Investments"). The Bullish Funds will hold between 85–100% of their total assets in the Equity Securities contained in the relevant Underlying Index. The remainder of assets, if any, will be devoted to Financial Instruments and Money Market Instruments that are intended to create additional needed exposure to such Underlying Index necessary to pursue the Bullish Funds investment objectives. The Bearish Funds generally will not invest in Equity Securities but rather will hold only Financial Instruments and Money Market Instruments. To the extent,

[12] Money market funds operating pursuant to Rule 2a–7 of the 1940 Act may invest in short-term repurchase agreements that meet the definition of "Eligible Securities" in the rule. 17 CFR 270.2a–7. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 2, 2005.

[13] Several factors may cause a Fund to vary from the relevant Underlying Index and investment objective including: (1) A Fund's expenses, including brokerage (which may be increased by high portfolio turnover) and the cost of the investment techniques employed by that Fund; (2) less than all of the securities in the benchmark index being held by a Fund and securities not included in the benchmark index being held by a Fund; (3) an imperfect correlation between the performance of instruments held by a Fund, such as futures contracts, and the performance of the underlying securities in the cash market; (4) bid-ask spreads (the effect of which may be increased by portfolio turnover); (5) holding instruments traded in a market that has become illiquid or disrupted; (6) a Fund's share prices being rounded to the nearest cent; (7) changes to the benchmark index that are not disseminated in advance; (8) the need to conform a Fund's portfolio holdings to comply with investment restrictions or policies or regulatory or tax law requirements; and (9) early and unanticipated closings of the markets on which the holdings of a Fund trade, resulting in the inability of the Fund to execute intended portfolio transactions.

[14] Correlation is the strength of the relationship between (1) the change in a Fund's NAV and (2) the change in the benchmark index (investment objective). The statistical measure of correlation is known as the "correlation coefficient." A correlation coefficient of +1 indicates a high direct correlation, while a value of −1 indicates a strong inverse correlation. A value of zero would mean that there is no correlation between the two variables.

[15] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 1, 2005 (as to removal of terminology "in absolute return").

applicable, each Fund will comply with the requirements of the 1940 Act with respect to "cover" for Financial Instruments and thus may hold a significant portion of its assets in liquid instruments in segregated accounts.

Each Fund may engage in transactions in futures contracts on designated contract markets where such contracts trade and will only purchase and sell futures contracts traded on a U.S. futures exchange or board of trade. Each Fund will comply with the requirements of Rule 4.5 of the regulations promulgated by the Commodity Futures Trading Commission (the "CFTC").[16]

Each Fund may enter into swap agreements and forward contracts for the purposes of attempting to gain exposure to the Equity Securities of its Underlying Index without actually purchasing such securities. The Exchange states that the counterparties to the swap agreements and/or forward contracts will be major broker-dealers and banks. The creditworthiness of each potential counterparty is assessed by the Advisor's credit committee pursuant to guidelines approved by the Board. Existing counterparties are reviewed periodically by the Board. Each Fund may also enter into repurchase and reverse repurchase agreements with terms of less than one year and will only enter into such agreements with (i) members of the Federal Reserve System, (ii) primary dealers in U.S. government securities, or (iii) broker-dealers. Each Fund may also invest in Money Market Instruments, in pursuit of its investment objectives, as "cover" for Financial Investments, as described above, or to earn interest.

The Trust will adopt certain fundamental policies consistent with the 1940 Act, and each Fund will be classified as "non-diversified" under the 1940 Act. Each Fund, however, intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a "regulated investment company" ("RIC") for purposes of the Internal Revenue Code (the "Code"), in order to relieve the Trust and the Funds of any liability for Federal income tax to the extent that its earnings are distributed to shareholders.[17]

[16] CFTC Rule 4.5 provides an exclusion for investment companies registered under the 1940 Act from the definition of the term "commodity pool operator" upon the filing of a notice of eligibility with the National Futures Association. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

[17] In order for a Fund to qualify for tax treatment as a RIC, it must meet several requirements under the Code. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (i) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other RICs, and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851 (b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or businesses or related trades or business (other than U.S. government securities or the securities of other regulated investment companies). Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

Availability of Information about the Shares and Underlying Indexes

The Trust or Advisor's Web site and/or that of the Exchange, which is and will be publicly accessible at no charge, will contain the following information for each Fund's Shares: (a) The prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV;[18] (b) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the reported closing price and NAV, and the magnitude of such premiums and discounts, (c) its Prospectus and Product Description and (d) other quantitative information such as daily trading volume. The Product Description for each Fund will inform investors that the Advisor's Web site has information about the premiums and discounts at which the Fund's Shares have traded.[19]

[18] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 1, 2005 (as to removal of language regarding Web site disclosure of the "mid-point of the bid-asked spread at the time that the Fund's NAV is calculated" and substitution of Web site disclosure of the "reported closing price").

[19] *See* "Prospectus Delivery" below regarding the Product Description. The Application requests relief from Section 24(d) of the 1940 Act, which would permit dealers to sell Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Additionally, Commentary .03 of Amex Rule 1000A requires that Amex members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time of confirmation of the first transaction in such series is delivered to such purchaser. Also, any sales material must reference the availability of such circular and the prospectus. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

The Amex will disseminate for each Fund on a daily basis by means of Consolidated Tape Association ("CTA") and CQ High Speed Lines information with respect to an Indicative Intra-Day Value (the "IIV") (defined and discussed below under "Dissemination of Indicative Intra-Day Value (IIV)"), recent NAV, shares outstanding, estimated cash amount, and total cash amount per Creation Unit (defined below). The Exchange will make available on its Web site daily trading volume, closing price, the NAV, and final dividend amounts, if any, to be paid for each Fund. The closing prices of the Deposit Securities (defined below) are readily available from, as applicable, exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Each Fund's total portfolio composition will be disclosed on the Web site of the Trust (*http://www.profunds.com*) and/or the Exchange (*http://www.amex.com*). The Trust expects that Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the names and number of shares held of each specific Equity Security, the specific types of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund will coincide with the disclosure by the Advisor of the "IIV File" (described below) and the "PCF File" (described below). Therefore, the same portfolio information (including accrued expenses and dividends) will be provided on the public Web site as well as in the IIV File and PCF File provided to APs. The format of the public Web site disclosure and the IIV and PCF Files will differ because the public Web site will list all portfolio holdings, while the IIV and PCF Files will similarly provide the portfolio holdings but in a format appropriate for APs, *i.e.*, the exact components of a Creation Unit (defined below). Accordingly, all investors will have access to the current portfolio composition of each Fund through the Trust Web site at *http://www.profunds.com* and/or the Exchange's Web site at *http://www.amex.com*.[20]

[20] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005 (as regarding daily disclosure to the public of the portfolio composition

Beneficial owners of Shares ("Beneficial Owners") will receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws. They will receive, for example, annual and semi-annual fund reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of fund distributions, and Form 1099-DIVs. Some of these documents will be provided to Beneficial Owners by their brokers, while others will be provided by the Fund through the brokers.

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index will be publicly available on various Web sites, *e.g.*, *http://www.bloomberg.com*. Data regarding each Underlying Index is also available from the respective index provider to subscribers. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both securities and index levels and vendors displaying index levels only). The value of each Underlying Index will be updated intra-day on a real time basis as its individual component securities change in price. These intra-day values of each Underlying Index will be disseminated every 15 seconds throughout the trading day by the Amex or another organization authorized by the relevant Underlying Index provider.

Creation and Redemption of Shares

Each Fund will issue and redeem Shares only in initial aggregations of at least 50,000 ("Creation Units"). Purchasers of Creation Units will be able to separate the Units into individual Shares. Once the number of Shares in a Creation Unit is determined, it will not change thereafter (except in the event of a stock split or similar revaluation). The initial value of a Share for each of the Bullish Funds and Bearish Funds is expected to be in the range of $50–$250.

At the end of each business day, the Trust will prepare the list of names and the required number of shares of each Deposit Security (as defined below) to be included in the next trading day's Creation Unit for each Bullish Fund. The Trust will then add to the Deposit List (as defined below), the cash information effective as of the close of business on that business day and create a portfolio composition file ("PCF") for each Fund, which it will transmit (via the Index Receipt Agent) to NSCC before the open of business the next business day. The information in the PCF will be available to all participants in the NSCC system.

Because the NSCC's system for the receipt and dissemination to its participants of the PCF is not currently capable of processing information with respect to Financial Instruments, the Advisor has developed an "IIV File," which it will use to disclose the Funds" holdings of Financial Instruments.[21] The IIV File will contain, for each Bullish Fund (to the extent that it holds Financial Instruments) and Bearish Fund, information sufficient by itself or in connection with the PCF File and other available information for market participants to calculate a Fund's IIV and effectively arbitrage the Fund.

For example, the following information would be provided in the IIV File for a Bullish Fund holding Equity Securities and Bearish Fund holding swaps and futures contracts (and Bullish Fund to the extent it holds such financial instruments): (a) The total value of the Equity Securities held by such Fund (Bullish Fund only); (b) the notional value of the swaps held by the Fund (together with an indication of the index on which such swap is based and whether the Fund's position is long or short); (c) the most recent valuation of the swaps held by the Fund; (d) the nctional value of any futures contracts (together with an indication of the index on which such contract is based, whether the Fund's position is long or short and the contact's expiration date); (e) the number of futures contracts held by the Fund (together with an indication of the index on which such contract is based, whether the Fund's position is long or short, and the contact's expiration date); (f) the most recent valuation of the futures contracts held by the Fund; (g) the Fund's total assets and total shares outstanding; and (h) a "net other assets" figure reflecting expenses and income of the Fund to be accrued during and through the following business day and accumulated gains or losses on the Fund's Financial Instruments through the end of the business day immediately preceding the publication of the IIV File. To the extent that any Bullish or Bearish Fund holds cash or cash equivalents about which information is not available in a PCF File, information regarding such Fund's cash and cash equivalent positions will be disclosed in the IIV File for such Fund.

The information in the IIV File will be sufficient for participants in the NSCC system to calculate the IIV for Bearish Funds and, together with the information on Equity Securities contained in the PCF, will be sufficient for calculation of IIV for Bullish Funds, during such next business day.[22] The IIV File, together with the applicable information in the PCF in the case of Bullish Funds, will also be the basis for the next business day's NAV calculation.

Under normal circumstances, the Bearish Funds will be created and redeemed entirely for cash. The IIV File published before the open of business on a business day will, however, permit NSCC participants to calculate (by means of calculating the IIV) the amount of cash required to create a Creation Unit Aggregation, and the amount of cash that will be paid upon redemption of a Creation Unit Aggregation, for each Bearish Fund for that business day.

For the Bullish Funds, the PCF File will be prepared by the Trust after 4 p.m. and transmitted by the Index Receipt Agent to NSCC by 6:30 p.m. All NSCC participants (such as Authorized Participants) and the Exchange will have access to the Web site containing the IIV File. The IIV File will reflect the trades made on behalf of a Fund that business day and the creation/redemption orders for that business day. Accordingly, by 6:30 p.m., Authorized Participants will know the composition of the Fund's portfolio for the next trading day.

The Cash Balancing Amount (defined below) will also be determined shortly after 4:00 p.m. each business day. Although the Cash Balancing Amount for most exchange-traded funds is a small amount reflecting accrued dividends and other distributions, for both the Bullish and Bearish Funds it is expected to be larger due to changes in the value of the Financial Instruments, *i.e.*, daily mark-to-market. For example, assuming a Deposit Basket[23] of $5

that will be used to calculate the Fund's NAV later that day).

[21] The Trust or the Advisor will post the IIV File to a password-protected Web site before the opening of business on each business day, and all NSCC participants and the Exchange will have access to the password and the Web site containing the IIV File. However, the Fund will disclose to the public identical information, but in a format appropriate to public investors, as the same time the Fund discloses the IIV and PCF files to industry participants. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 2, 2005.

[22] As noted below in "Dissemination of Indicative Intra-Day Value (IIV)," the Exchange will disseminate through the facilities of the CTA, at regular intervals (currently anticipated to be 15 second intervals) during the Exchange's regular trading hours, the IIV on a per Fund Share basis.

[23] The "Deposit Basket" for the Bullish Funds will, on any given day, be comprised of a basket of Equity Securities, consisting of some or all of the

Continued

million for a Bullish Fund, if the market increases 10%, the Deposit Basket will now be equal to $5.5 million at 4:00 p.m. The Fund Shares will have increased in value by 20% or $1 million to equal $6 million total. With the Deposit Basket valued at $5.5 million, the Cash Balancing Amount would be $500,000. The next day's Deposit Basket and Cash Balancing Amount are announced between 5:30 p.m. and 6 p.m. each business day.

Creation of the Bullish Funds. Persons[24] purchasing Creation Units from a Bullish Fund must make an in-kind deposit of a basket of securities (the "Deposit Securities") consisting of the securities selected by the Advisor from among those securities contained in the Fund's portfolio, together with an amount of cash specified by the Advisor (the "Cash Balancing Amount"), plus the applicable transaction fee (the "Transaction Fee"). The Deposit Securities and the Cash Balancing Amount collectively are referred to as the "Creation Deposit." The Cash Balancing Amount is a cash payment designed to ensure that the value of a Creation Deposit is identical to the value of the Creation Unit it is used to purchase. The Balancing Amount is an amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.[25] As stated, the Balancing Amount may, at times, represent a significant portion of the aggregate purchase price (or in the case of redemptions, the redemption proceeds) because the mark-to-market value of the Financial Instruments held by the Funds is included in the Balancing Amount. The Transaction Fee is a fee imposed by the Funds on investors purchasing (or redeeming) Creation Units.

As stated above, the Trust will make available through the NSCC or the Distributor on each business day,[26] prior to the opening of trading on the Exchange, a list of names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Bullish Fund.[27] The Trust also will make available on a daily basis information about the Cash Balancing Amount, calculated shortly after 4:00 p.m. on the prior business day.

The Bullish Funds reserve the right to permit or require a purchasing investor to substitute an amount of cash or a different security to replace any prescribed Deposit Security.[28] Substitution might be permitted or required, for example, because one or more Deposit Securities may be unavailable, or may not be available in the quantity needed to make a Creation Deposit. Brokerage commissions incurred by a Fund to acquire any Deposit Security not part of a Creation Deposit are expected to be immaterial, and in any event the Advisor may adjust the relevant transaction fee to ensure that the Fund collects the extra expense from the purchaser.

Orders to create or redeem Shares of the Bullish Funds must be placed through an AP, which is either (1) a broker-dealer or other participant in the continuous net settlement system of the NSCC or (2) a DTC participant, and which has entered into a participant agreement with the Distributor.[29]

Redemption of the Bullish Funds. Bullish Fund Shares in Creation Unit-Size Aggregations will be redeemable on any day on which the New York Stock Exchange (the "NYSE") is open in exchange for a basket of securities ("Redemption Securities"). As it does for Deposit Securities, the Trust will make available to APs on each business day prior to the opening of trading a list of the names and number of shares of Redemption Securities for each Fund. The Redemption Securities given to redeeming investors in most cases will be the same as the Deposit Securities required of investors purchasing Creation Units on the same day.[30] Depending on whether the NAV of a Creation Unit is higher or lower than the market value of the Redemption Securities, the redeemer of a Creation Unit will either receive from or pay to the Fund a cash amount equal to the difference. (In the typical situation where the Redemption Securities are the same as the Deposit Securities, this cash amount will be equal to the Balancing Amount described above in the creation process.) The redeeming investor (*e.g.*, an AP) also must pay to the Fund a transaction fee to cover transaction costs.[31]

A Fund has the right to make redemption payments in cash, in kind or a combination of each, provided that the value of its redemption payments equals the NAV of the Shares tendered for redemption and the Balancing Amount. The Advisor currently contemplates that Creation Units of each Bullish Fund will be redeemed principally in kind with respect to the Redemption Securities, along with a Balancing Amount in cash largely resulting from the value of the Financial Instruments included in the Fund. Also, a Fund may make redemptions partly or wholly in cash in lieu of transferring one or more Redemption Securities to a redeeming investor if the Fund determines, in its discretion, that such alternative is warranted due to unusual circumstances. This could happen if the redeeming investor is unable, by law or policy, to own a particular Redemption Security.

In order to facilitate delivery of Redemption Securities, each redeeming AP, acting on behalf of such Beneficial Owner or a DTC Participant, must have arrangements with a broker-dealer, bank, or other custody provider in each jurisdiction in which any of the Redemption Securities are customarily traded. If the redeeming AP does not have such arrangements, and it is not otherwise possible to make other arrangements, the Fund may in its discretion redeem the Shares for cash.

Creation and Redemption of the Bearish Funds. As stated, the Bearish Funds will be purchased and redeemed entirely for cash ("All-Cash Payments").

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securities in the relevant underlying Index or the equivalent Equity Securities selected by the Advisor (to correspond to the performance of each Index) that APs must deposit with the Trust to form a Creation Unit.

[24] APs are the only persons that may place orders to create and redeem Creation Units. APs must be registered broker-dealers or other securities market participants, such as banks and other financial institutions, which are exempt from registration as broker-dealers to engage in securities transactions, who are participants in DTC.

[25] While not typical, if the market value of the Deposit Securities is greater than the NAV of a Creation Unit, then the Balancing Amount will be a negative number, in which case the Balancing Amount will be paid by the Bullish Fund to the purchaser, rather than vice-versa.

[26] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 2, 2005 (as to NSCC).

[27] In accordance with the Advisor's Code of Ethics, personnel of the Advisor with knowledge about the composition of a Creation Deposit will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public.

[28] In certain instances, a Fund may require a purchasing investor to purchase a Creation Unit entirely for cash. For example, on days when a substantial rebalancing of a Fund's portfolio is required, the Advisor might prefer to receive cash rather than in-kind stocks so that it has liquid resources on hand to make the necessary purchases.

[29] Participants other than broker-dealers that accept orders must have an exemption from broker-dealer registration. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

[30] There may be circumstances, however, where the Deposit and Redemption Securities could differ. For example, if ABC stock were replacing XYZ stock in a Fund's Underlying Index at the close of today's trading session, today's prescribed Deposit Securities might include ABC but not XYZ, while today's prescribed Redemption Securities might include XYZ but not ABC.

[31] Redemptions in which cash is substituted for one or more Redemption Securities may be assessed a higher transaction fee to offset the transaction cost to the fund of selling those particular Redemption Securities.

The use of an All-Cash Payment for the purchase and redemption of Creation Unit Aggregations of the Bearish Funds is due to the limited transferability of Financial Instruments.

The Exchange believes that Bearish Fund Shares will not trade at a material discount or premium to the underlying securities held by a Fund based on potential arbitrage opportunities. The arbitrage process, which provides the opportunity to profit from differences in prices of the same or similar securities, increases the efficiency of the markets and serves to prevent potentially manipulative efforts. If the price of a Share deviates enough from the Creation Unit, on a per share basis, to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy Shares at a discount, immediately cancel them in exchange for the Creation Unit and sell the underlying securities in the cash market at a profit, or sell Shares short at a premium and buy the Creation Unit in exchange for the Shares to deliver against the short position. In both instances the arbitrageur locks in a profit and the markets move back into line.[32]

Placement of Creation Unit Aggregation Purchase and Redemption Orders

Payment with respect to Creation Unit Aggregations of the Bullish Funds placed through the Distributor generally will be made by In-Kind Payments and cash, while All-Cash Payments will be accepted in the case of the Bearish Funds and certain other cases.

In the case of Creation Unit Aggregations for Bullish Funds, APs will make In-Kind Payments by a deposit with the Trust on the third business day following the date on which the request was made (T+3) of (i) a Deposit Basket and (ii) the appropriate Transaction Fee.[33] In addition, as described above, a Cash Balancing Amount may be required to be paid to the Trust. The Balancing Amount will be paid to the Trust after such Creation Unit Aggregation has been created and the next NAV has been calculated, but by the third business day (T+3) following the creation order request.

In the case of the Creation Unit Aggregations for Bearish Funds, the AP will make a cash payment by 12:00 p.m. ET on the third business day following the date on which the request was made (T+3). Purchasers of both the Bullish and Bearish Funds in Creation Unit Aggregations must satisfy certain creditworthiness criteria established by the Advisor and approved by the Board, as provided in the Participation Agreement between the Trust and APs.

Subject to the conditions specified in the Application, Creation Unit Aggregations of any Bullish Fund will generally be redeemable on any business day in exchange for an In-Kind Payment, which will be comprised of the Equity Securities contained in the Redemption List (as described above), and the Balancing Amount in effect on the date a request for redemption is made, plus any Transaction Fee. The Trust will transfer the Equity Securities comprising the In-Kind Payment plus any Balancing Amount, if any, owed to the redeeming AP in all cases no later than the third business day (T+3) next following the date on which request for redemption is made.

Creation Unit Aggregations of the Bearish Funds will be redeemable for an All-Cash Payment equal to the NAV less the transaction fee. As with the Bullish Funds, redemptions of Bearish Funds will be cleared and settled will be on a T+3 basis.

The Bullish Fund has the right to make redemption payments in cash (due to unusual circumstances such as when an investor is unable by law or policy to own a Redemption Security), in kind, or a combination of each, provided that the value of its redemption payments equals the NAV of the Shares tendered for redemption.[34] The Adviser, however, currently contemplates that Creation Units of the Bullish Funds will be redeemed by a combination of In-Kind Payment and cash, while the Bearish Funds will be redeemed solely in cash. As stated, the Adviser represents that it may adjust the Transaction Fee imposed on a redemption wholly or partly in cash to take into account any additional brokerage or other transaction costs incurred by the Fund.

Dividends

Dividends, if any, from net investment income will be declared and paid at least annually by each Fund in the same manner as by other open-end investment companies. Certain Funds may pay dividends on a semi-annual or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year.

Dividends and other distributions on the Shares of each Fund will be distributed, on a pro rata basis, to Beneficial Owners of such Shares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with proceeds received from each Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the "Dividend Reinvestment Service") available for use by Beneficial Owners for reinvestment of their cash proceeds but certain individual brokers may make a Dividend Reinvestment Service available to Beneficial Owners. The Statement of Additional Information ("SAI") will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of such a service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the service, and such investors should ascertain from their broker such necessary details. Shares acquired pursuant to such service will be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of Shares. Brokerage commissions charges and other costs, if any, incurred in purchasing Shares in the secondary market with the cash from the distributions generally will be an expense borne by the individual beneficial owners participating in reinvestment through such service.

Dissemination of Indicative Intra-Day Value (IIV)

In order to provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem

[32] In their 1940 Act Application, the Applicants stated that they do not believe that All-Cash Payments will affect arbitrage efficiency. This is because Applicants believe it makes little difference to an arbitrageur whether Creation Unit Aggregations are purchased in exchange for a basket of securities or cash. The important function of the arbitrageur is to bid the share price of any Fund up or down until it converges with the NAV. Applicants note that this can occur regardless of whether the arbitrageur is allowed to create in cash or with a Deposit Basket. In either case, the arbitrageur can effectively hedge a position in a Fund in a variety of ways, including the use of market-on-close contracts to buy or sell the underlying Equity Securities and/or Financial Instruments.

[33] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 2, 2005.

[34] In the event an AP has submitted a redemption request in good order and is unable to transfer all or part of a Creation Unit-size aggregation for redemption, a Fund may nonetheless accept the redemption request in reliance on the AP's undertaking to deliver the missing Fund Shares as soon as possible, which undertaking shall be secured by the AP delivery and maintenance of collateral. The Authorized Participant Agreement will permit the Fund to buy the missing Shares at any time and will subject the AP to liability for any shortfall between the cost to the Fund of purchasing the Shares and the value of the collateral.

Shares, the Exchange will disseminate through the facilities of the CTA: (i) Continuously throughout the trading day, the market value of a Share, and (ii) every 15 seconds throughout the trading day, a calculation of the Indicative Intra-Day Value or "IIV" [35] as calculated by a third party calculator (the "IIV Calculator") currently expected to be the Exchange.[36] Comparing these two figures helps an investor to determine whether, and to what extent, the Shares may be selling at a premium or a discount to NAV.

The IIV Calculator will calculate an IIV for each Fund, including those Funds that do not hold Equity Securities, in the manner discussed below. The IIV is designed to provide investors with a reference value that can be used in connection with other related market information. The IIV may not reflect the value of all securities included in the Underlying Index. In addition, the IIV does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the IIV on a per Share basis disseminated during Amex trading hours, should not be viewed as a real time update of the NAV of a particular Fund, which is calculated only once a day. While the IIV that will be disseminated by the Amex is expected to be close to the most recently calculated Fund NAV on a per share basis, it is possible that the value of the portfolio of securities held by a Fund may diverge from the value of the Deposit Securities during any trading day. In such case, the IIV will not precisely reflect the value of the Fund portfolio.

IIV Calculation For the Bullish Funds holding Equity Securities and Financial Instruments. The IIV Calculator will disseminate the IIV throughout the trading day for Funds holding Equity Securities and Financial Instruments. The IIV Calculator will determine such IIV by: (i) Calculating the estimated current value of Equity Securities held by such Fund by (a) calculating the percentage change in the value of the Deposit List (as provided by the Trust) and applying that percentage value to the total value of the Equity Securities in the Fund as of the close of trading on the prior trading day (as provided by the Trust) or (b) calculating the current value of all of the Equity Securities held by the Fund (as provided by the Trust); (ii) calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values of the swap contracts, if any, held by such Fund (which previous day's notional value will be provided by the Trust); (iii) calculating the mark-to-market gains or losses from futures, options, and other Financial Instrument positions by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions; (iv) adding the values from (i), (ii), and (iii) above to an estimated cash amount provided by the Trust (which cash amount will include the swap costs) to arrive at a value; and (v) dividing that value by the total shares outstanding (as provided by the Trust) to obtain the current IIV.

IIV Calculation for the Bearish Funds. The IIV Calculator will disseminate the IIV throughout the trading day for the Bearish Funds. The IIV Calculator will determine such IIV by: (i) Calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values of the swap contracts, if any, held by such Fund (which previous day's notional value will be provided by the Trust); (ii) calculating the mark-to-market gains or losses from futures, options, and other Financial Instrument positions by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions; (iii) adding the values from (i) and (ii) above to an estimated cash amount provided by the Trust (which cash amount will include the swap costs), to arrive at a value; and (iv) dividing that value by the total shares outstanding (as provided by the Trust) to obtain current IIV.

Criteria for Initial and Continued Listing

The Shares are subject to the criteria for initial and continued listing of Index Fund Shares in Rule 1002A. It is anticipated that a minimum of two Creation Units (100,000 Shares) will be required to be outstanding at the start of trading. This minimum number of Shares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares. As stated, the initial price of a Share is expected to be in the range of $50–$250.

The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity.

Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of the Funds is $5,000 for each Fund. In addition, the annual listing fee applicable to the Funds under Section 141 of the Amex Company Guide will be based upon the year-end aggregate number of outstanding shares in all Funds of the Trust listed on the Exchange.

Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i-v). The Exchange has designated Index Fund Shares, including the Shares, as eligible for this treatment.[37]

Rule 190

Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including the Shares. Commentary .04 states that nothing in Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

Prospectus Delivery

The Exchange, in an Information Circular to Exchange members and member organizations, prior to the commencement of trading, will inform members and member organizations, regarding the application of Commentary .03 to Rule 1000A the Funds. The Information Circular will further inform members and member organizations of the prospectus and/or Product Description delivery requirements that apply to the Funds.

[35] The IIV is also referred to by other issuers as an "Estimated NAV," "Underlying Trading Value," "Indicative Optimized Portfolio Value (IOPV)," and "Intra-day Value" in various places such as the prospectus and marketing materials for different exchange-traded funds.

[36] Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

[37] *See* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c).

The Application included a request that the exemptive order also grant relief from Section 24(d) of the 1940 Act. Any Product Description used in reliance on Section 24(d) exemptive relief will comply with all representations and conditions set forth in the Application.

Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. (See Amex Rule 918C). In the case of any Financial Instruments held by a Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the Advisor is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. This notification from the Advisor will be through phone, e-mail and/or fax. The Exchange would then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Shares. Trading in shares of the Funds will also be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular to its members and member organizations providing guidance with regard to member firm compliance responsibilities (including suitability obligations) when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares as well as applicable Exchange rules. This Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Specifically, the Information Circular will remind members of their obligations in recommending transactions in the Shares so that members have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member; and (2) that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (a) The customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

Purchases and Redemptions in Creation Unit Size

In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of Shares in Creation Unit Size are described in each Fund's prospectus and SAI, and that Shares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, the Amex will rely on its existing surveillance procedures governing Index Fund Shares, which have been deemed adequate under the Exchange Act. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Hours of Trading/Minimum Price Variation

The Funds will trade on the Amex until 4:15 p.m. (New York time) each business day. Shares will trade with a minimum price variation of $.01.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Exchange Act [38] in general and furthers the objectives of section 6(b)(5) [39] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

[38] 15 U.S.C. 78f(b).

[39] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange 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–Amex–2004–62 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 Number SR–Amex–2004–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–62 and should be submitted on or before August 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[40]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4303 Filed 8–8–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52200; File No. SR–CHX–2005–20]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Participant Fees and Credits

August 3, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX, pursuant under Rule 19b–4 of the Act, proposes to amend its Participant Fee Schedule ("Fee Schedule") to eliminate, retroactive to January 1, 2005, the assignment fee for listed securities that are not assigned in competition.

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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its Fee Schedule to eliminate, retroactive to January 1, 2005, the assignment fee for listed securities that were not assigned in competition. Under the Fee Schedule that was in effect from January 1, 2005 through May 2, 2005, the Exchange charged a fee to a specialist that received the assignment of a listed security when other firms were not competing for the assignment.[3] To encourage firms to trade additional listed securities by reducing their costs of doing so, the Exchange eliminated the assignment fee for securities assigned without competition on an on-going basis, effective May 2, 2005.[4] The Exchange now seeks to confirm that the fee should be eliminated for all periods in 2005, thus consistently assessing assignment fees for listed securities assigned without competition throughout the year and avoiding any confusion, among the Exchange's participants, of the assignment fees that should have been charged.[5] The Exchange believes that this fee change is an appropriate and fair allocation of fees among its participants because of its ability to reduce confusion and enhance the consistency of the fees that participants are charged.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or 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 (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, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2005–20 on the subject line.

[40] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange also has charged, and will continue to charge, specialist assignment fees with respect to securities that are assigned to a specialist firm in competition with other firms, reflecting the increased administrative costs associated with allocating stocks in competition.

[4] *See* Securities Exchange Act Release No. 51763 (May 31, 2005), 70 FR 33230 (June 7, 2005). The Exchange previously had waived this fee on a temporary basis, through the end of 2004. *See* Securities Exchange Act Release No. 50657 (November 12, 2004), 69 FR 67615 (November 18, 2004).

[5] This change is consistent with the Exchange's decision not to charge assignment fees charged with respect to Nasdaq/NM securities that are not assigned in competition. *See* Securities Exchange Act Release No. 50616 (November 1, 2004), 69 FR 64608 (November 5, 2004).

[6] 15 U.S.C. 78f(b)(4).

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 Number SR–CHX–2005–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office 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–2005–20 and should be submitted on or before August 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4275 Filed 8–8–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52191; File No. SR–NASD–2004–183]

Self-Regulatory Organizations; National Association of Securities Dealers Inc.; Notice of Extension of the Comment Period for the Proposed Rule and Amendment No. 1 Thereto Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities

August 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule, and Amendment No. 1 thereto, relating to sales practice standards and supervisory requirements for transactions in deferred variable annuities. A description of the proposed rule and the amendments thereto is found in the notice of filing, which was published in the **Federal Register** on July 21, 2005.[3] The comment period expires on August 11, 2005.

To give the public additional time to comment on the proposed rule, the Commission has decided to extend the comment period pursuant to Section 19(b)(2) of the Act.[4] Accordingly, the comment period shall be extended until September 19, 2005.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–183 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 Number SR–NASD–2004–183. 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 that are filed with the Commission, and all written communications relating to the proposed rule between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–183 and should be submitted on or before September 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4269 Filed 8–8–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52046A (July 19, 2005); 70 FR 42126 (July 21, 2005).

[4] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52183; File No. SR–NASD–2005–063]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Amend NASD Rule 7010(k) Relating to TRACE Transaction Data Fees

August 1, 2005.

I. Introduction

On May 12, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[5] 17 CFR 200.30–3(a)(12).

("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 7010(k) by adding an enterprise fee structure and lowering another fee for real-time transaction data of the Transaction Reporting and Compliance Engine ("TRACE"). The Commission published the proposed rule change for comment in the **Federal Register** on June 24, 2005.[3] The Commission received one comment letter on the proposal.[4] On July 26, 2005, NASD filed a response to the comment letter.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

NASD proposes to amend NASD Rule 7010(k)(3)(A)(i), the Bond Trade Dissemination Service ("BTDS") Professional Real-Time Data Display Fee, to enable an enterprise such as a broker-dealer to display real-time TRACE transaction data within the enterprise on an unlimited number of internal display devices for a fee of $7,500 per month. NASD also proposes to amend NASD Rule 7010(k)(1)(A), Web Browser Access, to lower the fee for Level II Full Service Web Browser Access, so that the charge for the first user ID obtained for such access would be $50 per month rather than the current $80 per month.

Proposed "Enterprise" Fee

Currently, NASD charges a subscriber $60 per month, per terminal (the BTDS Professional Real-Time Data Display Fee) to display real-time TRACE transaction data. NASD is proposing to amend NASD Rule 7010(k)(3)(A)(i) to provide subscribers the option of paying a flat enterprise fee of $7,500 per month instead of $60 per terminal. NASD believes that the proposed rule change would benefit subscribers that have a large staff of potential internal data users who desire access to real-time TRACE transaction data. Instead of paying multiple $60 fees, a subscriber would have the option to pay a flat fee of $7,500 per month to display real-time TRACE transaction data on an unlimited number of internal terminals/workstations.

The proposed $7,500 monthly enterprise fee option would lower the fees paid by subscribers that currently pay to display real-time TRACE transaction data on more than 125 terminals. In addition, the $7,500 fee option may encourage certain subscribers that currently pay to display real-time TRACE transaction data on fewer than 125 terminals to pay the proposed $7,500 flat fee and broaden distribution of real-time TRACE transaction data within their organizations.

The proposed amendment to NASD Rule 7010(k)(3)(A)(i) would apply only to a subscriber's internal display of real-time TRACE transaction data and would be independent of access method or data vendor. The $7,500 enterprise fee option would include unlimited terminal display use for individual access for all of a subscriber's employees and the employees of certain of its corporate affiliates.[6]

Level II Full Service Web Browser Access Fee

NASD also proposes to amend NASD Rule 7010(k)(1)(A) to reduce fees paid by subscribers that receive real-time TRACE transaction data through Level II Full Service Web Browser Access. Such smaller subscribers are unlikely to benefit directly from NASD's enterprise pricing proposal.

Currently, the implicit cost for the portion of Level II Full Service Web Browser Access for real-time TRACE transaction data is $60 per month (per user ID).[7] NASD proposes to reduce the cost of the first user ID per subscriber to receive Level II Full Service Web Browser Access from $80 per month to $50 per month. This change would reduce a subscriber's marginal cost for the data portion of Level II Full Service Web Browser Access for the first user ID by 50%, to $30 per month. The proposal would reduce the costs of acquiring real-time TRACE transaction data for current subscribers, and NASD believes it might encourage some smaller professional market participants not currently obtaining real-time TRACE transaction data through any service to obtain it through the Level II Full Service Web Browser Access.

Finally, NASD no longer refers to itself using its full corporate name, "the Association," or "the NASD." Instead, NASD uses the name "NASD" unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces, as a technical change, several references to "the Association" in Rule 7010 with the name "NASD."

III. Summary of Comments Received and NASD Response

The Commission received one comment letter on the proposal.[8] The commenter states that the proposed $7,500 enterprise fee "would benefit very few users" and "is not in the best interest of the industry as a whole."[9] The commenter also states that "NASD fails to address what possible benefits are derived from a firm distributing the transaction data more widely within the organization."[10] In response, NASD states that it believes that broadening the distribution of real-time TRACE transaction data "will benefit the investing public and market professionals, * * * will facilitate its use, for example, by persons who provide brokerage and/or advisory services to retail investors, and will provide such professionals with an additional tool to better serve and inform retail investors."[11] In addition, the commenter suggests that NASD modify the TRACE fee structure so that "firms submitting fewer than 1,000 trades per month are charged nothing to access the system."[12] In response, NASD states that it believes that lowering "the monthly fee for the first user within a member or other organization of the Level II Full Service Web Browser Access, by lowering the portion of that fee attributable to Real-Time TRACE transaction data access, is a fair and balanced approach by NASD, and provides for the equitable allocation of reasonable fees among members and other persons desiring access to TRACE market data."[13]

IV. Discussion

After carefully considering the proposed rule change, the comment submitted, and NASD's response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 51874 (June 17, 2005), 70 FR 36681.

[4] *See* letter from Stephen Tenison to Jonathan G. Katz, Secretary, Commission, dated July 6, 2005 ("Tenison Letter").

[5] *See* letter from James L. Eastman, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 26, 2005 ("NASD Letter").

[6] A subscriber wishing to take advantage of this option would enter into an agreement directly with NASD, which in turn would notify the data vendors with which the subscriber does business to provide blanket permission for use of real-time TRACE transaction data to any user within that organization.

[7] Level II Full Service Web Browser Access today costs $80 per month. However, Level II Full Service Web Browser Access also grants users Level I Web Trade Report Only Browser Access (for trade reporting), which otherwise would cost an additional $20 per month, per user ID. Therefore, today the marginal cost of Level II Full Service Web Browser Access is $60 per month, per user ID.

[8] Tenison Letter, *supra* note 4.

[9] *Id.*

[10] *Id.*

[11] NASD Letter, *supra* note 5.

[12] *Id.*

[13] *Id.*

and regulations thereunder that are applicable to a national securities association.[14] In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[15] which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(5) of the Act,[16] which requires, among other things, that rules of an association provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or system which the association operates or controls. The Commission believes that eliminating the marginal cost of accessing real-time TRACE transaction data beyond a certain number of terminals within a subscriber's organization should encourage wider distribution of such data. Furthermore the Commission believes that reducing by $30 the fee for the first user ID per subscriber to receive Level II Full Service Web Browser Access is reasonable and consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NASD–2005–063) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4270 Filed 8–8–05; 8:45 am]

BILLING CODE 8010–01–P

[14] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78o–3(b)(6).

[16] 15 U.S.C. 78o–3(b)(5).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52192; File No. SR–NASD–2005–006]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto To Require Semi-Annual Financial Reporting by Foreign Private Issuers

August 2, 2005.

On January 18, 2005, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), 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 require semi-annual financial reporting by foreign private issuers. Nasdaq submitted Amendment No. 1 to its proposed rule change on February 4, 2005 and submitted Amendment No. 2 to its proposed rule change on June 6, 2005. The proposed rule change, as amended, was published for comment in the **Federal Register** on June 29, 2005.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The proposed rule change is designed to create a uniform standard, applicable to all Nasdaq-listed foreign private issuers, to provide investors with access to more recent financial information. The proposal accomplishes this by requiring that foreign private issuers provide, in a press release that would also be submitted on a Form 6–K, an interim balance sheet and semi-annual income statement, not later than six months following the end of the issuer's second quarter. Under the proposed rule, the information provided would be required to be translated into English, but would not have to be reconciled to U.S. Generally Accepted Accounting Principles ("GAAP").

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 association[4] and, in particular, the requirements of Section 15A of the Act.[5] Specifically, the Commission finds the proposal to be consistent with Section 15A(b)(6) and 15A(b)(9) of the Act[6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes the proposed rule will provide useful disclosure to investors regarding foreign private issuers that trade on Nasdaq.

In order to allow sufficient time for foreign private issuers to modify any necessary practices regarding the preparation of interim financial reports, Nasdaq suggests that the proposed rule become effective for interim periods ending after January 1, 2006 and the Commission believes that this is reasonable.[7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2005–006), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4277 Filed 8–8–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51905 (June 29, 2005), 70 FR 37456.

[4] 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).

[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78o–3(b)(6) and (b)(9).

[7] Nasdaq has indicated that, for example, in the case of a foreign private issuer with a fiscal year-end of December 31st, the rule first would be applicable for the semi-annual interim period ending June 30, 2006. Under the proposed rule, such an issuer would be required to provide an interim balance sheet and semi-annual income statement on a press release and Form 6–K not later than six months thereafter (December 31, 2006). Telephone conversation between Nasdaq staff and Division Staff on July 27, 2005.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52195; File No. SR–NASD–2005–084]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amendments to the Rule Regarding Supervisory Control Systems, Rule 3012, To Require Notification of Reliance on "Limited Size and Resources" Exception

August 3, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. On July 8, 2005, NASD filed amendment No. 1 to the proposed rule.[3] On July 27, 2005, NASD filed amendment No. 2 to the proposed rule.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend the rule regarding supervisory control systems, Rule 3012, to require members relying on the "limited size and resources" exception to Rule 3012's general supervisory requirement for conducting producing managers' supervisory reviews to report electronically to NASD their reliance on the exception. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 3012 Supervisory Control System

(a) No Change.

(1) No Change.

(2) The establishment, maintenance, and enforcement of written supervisory control policies and procedures pursuant to paragraph (a) shall include:

(A) Procedures that are reasonably designed to review and supervise the customer account activity conducted by the member's branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function.

(i) *General Supervisory Requirement.* A person who is either senior to, or otherwise independent of, the producing manager must perform such supervisory reviews. For purposes of this Rule, an "otherwise independent" person: May not report either directly or indirectly to the producing manager under review; must be situated in an office other than the office of the producing manager; must not otherwise have supervisory responsibility over the activity being reviewed (including not being directly compensated based in whole or in part on the revenues accruing for those activities); and must alternate such review responsibility with another qualified person every two years or less.

(ii) *"Limited Size and Resources" Exception.* If a member is so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the producing manager to conduct the reviews pursuant to (i) above (e.g., a member has only one office or an insufficient number of qualified personnel who can conduct reviews on a two-year rotation), the reviews may be conducted by a principal who is sufficiently knowledgeable of the member's supervisory control procedures, provided that the reviews are in compliance with (i) to the extent practicable.

(iii) Notification Requirement. If a member determines that it must rely on the "limited size and resources" exception set forth in (ii) above to conduct any of its producing managers' supervisory reviews, the member must notify NASD through an electronic process (or any other process prescribed by NASD) within 30 days of the date on which the member first relies on the exception,[5] and annually thereafter.[6] If a member subsequently determines that it no longer needs to rely on the exception to conduct any of its producing managers' supervisory reviews, the member must, within 30 days of ceasing to rely on the exception, notify NASD by using the electronic process or any other process prescribed by NASD.

[(iii)]*(iv) Documentation Requirement.* A member relying on (ii) above must document in its supervisory control procedures the factors used to determine that complete compliance with all of the provisions of (i) is not possible and that the required supervisory systems and procedures in place with respect to any producing manager comply with the provisions of (i) above to the extent practicable.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 3012 (Supervisory Control System) requires members to have a system of supervisory control policies and procedures that tests and verifies that a member's supervisory procedures are reasonably designed with respect to the activities of the member and its registered representatives and associated persons to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules, and to amend those supervisory procedures when the testing and verification demonstrate a need to do so. Rule 3012 also requires that a member's supervisory control policies and procedures include, among other things, procedures that are reasonably designed to review and supervise the customer account activity conducted by a member's producing managers.

Generally, only a person senior to or "otherwise independent" of a producing manager may conduct the producing manager's reviews. However, Rule 3012 provides a limited exception for any member firm that is so limited in size and resources (the "limited size and resources" exception) that the member

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The amendment clarified the rule's text.

[4] Amendment No. 2 replaced and superseded Amendment No. 1. Amendment No. 2 further clarified the rule's text.

[5] *The "limited size and resources" exception became effective on January 31, 2005, prior to the effective date of the notification requirement set forth in this subparagraph (iii). In the event a member is already relying on the "limited size and resources" exception (or determines to rely on the exception prior to the effective date of the notification requirement), the member must notify NASD of such reliance within 30 days of the effective date of the notification requirement.*

[6] *Members must ensure that each ensuing annual notification is effected no later than on the anniversary date of the previous year's notification.*

does not have associated persons who can conduct the required supervisory reviews. In such situations, a member may have the reviews conducted by a principal who is sufficiently knowledgeable of the member's supervisory control procedures.

In its Order approving Rule 3012, the SEC specified that NASD must notify the SEC of those members that elect to rely on Rule 3012's "limited size and resources" exception.[7] To fulfill this obligation, NASD will need to identify those members relying on the exception. Accordingly, NASD is filing this rule change requiring firms that rely on the "limited size and resources" exception to notify NASD of their reliance on the exception. In Notice to Members 04–71 (October 2004), the Notice announcing the SEC's approval of the Supervisory Control Amendments, NASD advised its members of its intent to file this rule change.

The proposed rule change will require a member that has determined that it must rely on the "limited size and resources" exception to Rule 3012 to conduct any of its producing managers' supervisory reviews, to notify NASD electronically (or through any other process prescribed by NASD) within thirty (30) days of the date on which the member first relies on the exception.[8] Afterwards, the member will need to notify NASD of its continued reliance on the exception on an annual basis. Members must ensure that each ensuing annual notification is effected no later than on the anniversary date of the previous year's notification. If a member determines that it no longer needs to rely on the "limited size and resources" exception to Rule 3012 to conduct any of its producing managers' supervisory reviews, the member must notify NASD electronically (or through any other process prescribed by NASD) within thirty (30) days of ceasing to rely on the exception.

NASD has recently designed an electronic reporting system that will enable members to notify NASD of their reliance on the exception. Members will be able to access this reporting system on the effective date of this proposed rule change.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Notice to Members* announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes this notification requirement will help ensure that NASD members have in place supervisory controls policies and procedures that are reasonably designed to prevent fraudulent and manipulative acts, thereby protecting investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–084 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 Number SR–NASD–2005–084. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2005–084 and should be submitted on or before August 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4302 Filed 8–8–05; 8:45 am]

BILLING CODE 8010–01–P

[7] *See* Exchange Act Release No. 50477 (Sept. 30, 2004), 69 FR 59972 (Oct. 6, 2004) (SR–NASD–2004–116).

[8] Because the "limited size and resources" exception became effective on January 31, 2005, a member may already be relying on the exception prior to the effective date of the proposed rule change and, consequently, will be unable to comply with the rule change's requirement that NASD be notified within thirty (30) days of the date on which the member first relies on the exception. In such instance, the proposed rule change requires the member to notify NASD within thirty (30) days of the rule change's effective date.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52178; File No. SR–NYSE–2005–41]

Self–Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to iShares(r) MSCI EAFE Growth Fund and iShares MSCI EAFE Value Fund

July 29, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 16, 2005 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 29, 2005, NYSE filed Amendment No. 1 to the proposed rule filing.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to list and trade the iShares® MSCI EAFE Value Index Fund and iShares MSCI EAFE Growth Index Fund (collectively, the "Funds"),[4] both exchange traded funds, which are a type of Investment Company Unit ("ICU").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III, below, and is set forth in Sections A, B, and C below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified and supplemented certain aspects of its proposal. Amendment No. 1 supplements the information provided in various sections, as indicated, of the Exchange's Form 19b–4.

[4] iShares is a registered trademark of Barclays Global Investors, N.A.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has adopted listing standards applicable to ICUs which are consistent with the listing criteria currently used by other national securities exchanges, and trading standards pursuant to which the Exchange may either list and trade ICUs, or trade such ICUs on the Exchange on an unlisted trading privileges ("UTP") basis.[5]

The Exchange now proposes to list and trade under Section 703.16 of the NYSE Listed Company Manual ("Manual") and NYSE Rule 1100 *et seq.* shares of the Funds, each a series of the iShares Trust (the "Trust").[6] Because the Funds invest in non-U.S. securities not listed on a national securities exchange or the Nasdaq Stock Market, the Funds do not meet the "generic" listing requirements of Section 703.16 of the Manual applicable to listing of ICUs (permitting listing in reliance upon Rule 19b–4(e) under the Act and cannot be listed without a filing pursuant to Rule 19b–4 under the Act).[7] Therefore, to list the Funds (or trade pursuant to UTP), the Exchange must file, and obtain Commission approval of, a proposed rule change pursuant to Rule 19b–4 under the Act.[8]

As set forth in detail below, the Funds will hold certain securities ("Component Securities") selected to correspond generally to the performance of the MSCI EAFE Value Index and the MSCI EAFE Growth Index (the "Underlying Indexes").[9] Each Fund intends to qualify as a "regulated investment company" (a "RIC") under the Internal Revenue Code (the "Code"). Barclays Global Fund Advisors (the "Advisor" or "BGFA") is the investment advisor to the Funds. The Advisor is registered under the Investment Advisers Act of 1940.[10] The Advisor is the wholly owned subsidiary of Barclays Global Investors, N.A. ("BGI"), a national banking association. BGI is an indirect subsidiary of Barclays Bank PLC of the United Kingdom. SEI Investments Distribution Co. ("SEI" or "Distributor"), a Pennsylvania corporation and broker-dealer registered under the Act, is the principal underwriter and distributor of Creation Unit Aggregations of iShares (see "Issuance of Creation Units Aggregations," below.) The Distributor is not affiliated with the Exchange or the Advisor. The Trust has appointed Investors Bank & Trust Co. ("IBT") to act as administrator ("Administrator"), custodian, fund accountant, transfer agent, and dividend disbursing agent for the Funds. The Exchange expects that performance of the Administrator's duties and obligations will be conducted within the provisions of the Investment Company Act and the rules thereunder. There is no affiliation between the Administrator and the Trust, the Advisor or the Distributor. MSCI, the sponsor and compiler of the Underlying Indexes, is not affiliated

[5] In 1996, the Commission approved Section 703.16 of the NYSE Listed Company Manual ("Manual"), which sets forth the rules related to the listing of ICUs. *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR–NYSE–95–23). In 2000, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of ICUs under Section 703.16 of the Manual and NYSE Rule 1100. *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (SR–NYSE–00–46).

[6] The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act"). On April 15, 2005, the Trust filed with the Commission a Registration Statement for the Funds on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the Investment Company Act relating to the Funds (File Nos. 333–92935 and 811–09729) (as amended, the "Registration Statement").

On March 3, 2004, the Trust filed with the Commission an Amended and Restated Application for an Amended Order under Sections 6(c) and 17(b) of the Investment Company Act and on September 8, 2004, the Trust filed with the Commission a Second Amended and Restated Application to Amend Orders under Sections 6(c) and 17(b) of the Investment Company Act, for the purpose of exempting the Fund from various provisions of the Investment Company Act and the rules thereunder (the "Application"). Applicants requested that the Commission amend a prior order received by the Advisor, the Trust and the Distributor on August 15, 2001, as amended (the "Prior Order"). On October 5, 2004, the SEC acted on the Application by approving an order amending certain prior orders under Section 6(c) of the Investment Company Act for an exemption from Sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Investment Company Act and Rule 22c–1 under the Investment Company Act, and under Sections 6(c) and 17(b) of the Investment Company Act for an exemption from Sections 17(a)(1) and (a)(2) thereof. Investment Company Act Release No. 26626 (October 5, 2004) ("Amended Order"). *See also* In the Matter of iShares Trust, *et al.*, Investment Company Act Release No. 25111 (August 15, 2001) as amended by *In the Matter of iShares, Inc., et al.*, Investment Company Act Release No. 25623 (June 25, 2002) and *In the Matter of iShares Trust, et al.*, Investment Company Act Release No. 26006 (April 15, 2003). The Amended Order permits the Trust to offer the Funds and permits the Funds to invest in certain depositary receipts.

[7] 17 CFR 240.19b–4.

[8] *Id.*

[9] Each Underlying Index for the MSCI EAFE Value and Growth Index Fund is a subset of the MSCI EAFE Index. The MSCI EAFE Index is an Underlying Index of an index fund of the Trust subject to the Prior Order. At present, the iShares MSCI EAFE Index Fund trades on the Exchange pursuant to UTP. Securities Exchange Act Release No. 50142 (August 3, 2004), 69 FR 48539 (August 10, 2004) (SR–NYSE–2004–27).

[10] 15 U.S.C. 80b.

with the Trust, the Administrator, the Distributor, or with the Advisor or its affiliates. The Funds are not sponsored, offered, or sold by MSCI.

(a) *Operation of the Funds.*[11] The investment objective of the Funds will be to provide investment results that correspond generally to the price and yield performance of the Underlying Index. In seeking to achieve their investment objective, the Funds will utilize "passive" indexing investment strategies. The Funds may fully replicate their respective Underlying Index, but currently intend to use a "representative sampling" strategy to track the applicable Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the Component Securities of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index. The Application states that the representative sampling techniques that will be used by the Advisor to manage the Funds do not differ from the representative sampling techniques it uses to manage the funds that were the subject of the Prior Order. (*See* note 6, *supra.*)

From time to time, adjustments may be made in the portfolio of the Funds in accordance with changes in the composition of the Underlying Indexes or to maintain compliance with requirements applicable to a RIC under the Code.[12] For example, if at the end of a calendar quarter, a Fund would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status.

The Exchange states that an index is a theoretical financial calculation while each Fund is an actual investment portfolio. The performance of the Funds and the Underlying Indexes will vary somewhat due to transaction costs, market impact, corporate actions (such as mergers and spin-offs) and timing variances. As stated in the Application, it is expected that, over time, the correlation between each Fund's performance and that of its respective Underlying Index, before fees and expenses, will be 95% or better. A figure of 100% would indicate perfect correlation. Any correlation of less than 100% is called "tracking error." Thus, the Funds are expected to have a tracking error relative to the performance of the applicable Underlying Index of no more than 5%.[13] The Funds' investment objectives, policies and investment strategies will be fully disclosed in their prospectus ("Prospectus") and statement of additional information ("SAI"). The Funds" board of directors reviews the tracking error of the Funds on a quarterly basis and, based upon its review, will consider whether any action might be appropriate.

The Funds will not concentrate their investments (*i.e.*, hold 25% or more of their assets) in a particular industry or group of industries, except that the Funds will concentrate their investments to approximately the same extent that the respective Underlying Index is so concentrated. For purposes of this limitation, securities of the U.S. Government (including its agencies and instrumentalities), repurchase agreements collateralized by U.S. Government securities, and securities of the United States government and their political subdivisions are not considered to be issued by members of any industry.

Each of the MSCI EAFE Value and Growth Index Funds (i) will invest at least 90% of its assets in Component Securities of its respective Underlying Index and in Depositary Receipts (defined below) representing such securities and (ii) may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents, including money market mutual funds advised by BGFA,[14] other exchange-traded funds, including other iShares Funds,[15] and stocks not included in the Underlying Index but which the Advisor believes will help the Fund track its Underlying Index. For example, each of these Funds may invest in securities not included in the relevant Underlying Index in order to reflect prospective changes in the relevant Underlying Index (such as future corporate actions and index reconstitutions, additions, and deletions).

To the extent the Funds invest in American Depositary Receipts,[16] they will be listed on a national securities exchange or Nasdaq, and to the extent the Funds invest in other Depositary Receipts, they will be listed on a foreign exchange. The Funds will not invest in any unlisted Depositary Receipts or any listed Depositary Receipts that the Advisor deems to be illiquid or for which pricing information is not readily available. In addition, all Depositary Receipts must be sponsored (with the exception of certain pre-1984 ADRs that are listed and unsponsored because they are grandfathered).

The Exchange believes that these requirements and policies prevent the Funds from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in the Funds could become a surrogate for trading in unregistered securities.

(b) *Description of the Funds and the Underlying Indexes. Index Description.* The Funds' Underlying Indexes, the MSCI EAFE Growth Index and MSCI EAFE Value Index, are subsets of the

[11] The Exchange states that the information provided herein is based on information included in the Application, Prior Order and the Prior Application. (*See* note 6, supra.) While the Advisor would manage the Funds, the Funds' Board of Directors would have overall responsibility for the Funds' operations. The composition of the Board is, and would be, in compliance with the requirements of Section 10 of the Investment Company Act. The Funds are subject to and must comply with Section 303A.06 of the Manual, which requires that the Funds have an audit committee that complies with SEC Rule 10A–3, 17 CFR 240.10A–3.

[12] In order for the Funds to qualify for tax treatment as a RIC, they must meet several requirements under the Code. Among these is a requirement that, at the close of each quarter of the Funds' taxable year, (i) at least 50% of the market value of the Funds' total assets must be represented by cash items, U.S. government securities, securities of other RICs and other securities, with such other securities limited for the purpose of this calculation with respect to any one issuer to an amount not greater than 5% of the value of the Funds' assets and not greater than 10% of the outstanding voting securities of such issuer; and (ii) not more than 25% of the value of their total assets may be invested in securities of any one issuer, or two or more issuers that are controlled by the Funds (within the meaning of Section 851(b)(4)(B) of the Code) and that are engaged in the same or similar trades or business (other than U.S. government securities of other RICs).

Compliance with the above referenced RIC asset diversification requirements are monitored by the Advisor, and any necessary adjustments to portfolio issuer weights will be made on a quarterly basis or as necessary to ensure compliance with RIC requirements. When an iShares Fund's Underlying Index itself is not RIC compliant, the Advisor generally employs a representative sampling indexing strategy (as described in the Funds' prospectus) in order to achieve the Fund's investment objective. The Funds' prospectus also gives the Funds additional flexibility to comply with the requirements of the Code and other regulatory requirements and to manage future corporate actions and index changes in smaller markets by investing a percentage of fund assets in securities that are not included in the Fund's Underlying Index or in American Depositary Receipts and Global Depositary Receipts representing such securities.

[13] The Web site for the Funds, *www.iShares.com*, contains detailed information on the performance and the tracking error for each Fund.

[14] *In the Matter of Master Investment Portfolio, et al.*, Investment Company Act Release No. 25158 (September 18, 2001).

[15] The Fund, as well as any existing iShares Fund, is permitted to invest in shares of another iShares Fund to the extent that such investment is consistent with the Fund's investment objective, its Registration Statement, and any applicable investment restrictions.

[16] For the purposes of this proposed rule filing, "Depositary Receipts" are American Depositary Receipts ("ADRs"), Global Depositary Receipts ("GDRs"), and Euro Depositary Receipts ("EDRs") (collectively, "Depositary Receipts"). Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on July 7, 2005.

MSCI EAFE Index. The MSCI EAFE Index, in turn, is a composite of certain MSCI single country equity indices.[17]

Constituents of the MSCI EAFE Index include securities from Europe, Australasia (Australia and Asia), and the Far East. Each Underlying Index generally represents approximately 50% of the free float-adjusted market capitalization of the MSCI EAFE Index and consists of those securities classified by MSCI as most representing the growth or value style, respectively. Securities classified as growth style generally tend to have higher forecasted growth rates, lower book value to price ratios, lower forward earnings to price ratios and lower dividend yields than securities representing the value style. Securities classified as value style generally tend to have higher book value to price ratios, higher forward earnings to price ratios, higher dividend yields and lower forecasted growth rates than securities representing the growth style. MSCI uses a specialized framework to attribute both value and growth style characteristics to each security within the MSCI EAFE Index. Each security is evaluated based on certain value factors and growth factors, which are then used to calculate a value score and growth score. Based upon these two scores, MSCI determines the extent to which each security is assigned to the value or growth style. It is possible for a single security to have representation in both the value and growth style indices; however, no more than 100% of a security's float-adjusted market capitalization will be included within the combined style framework.[18]

Therefore, the combined market capitalization of the value and growth style indices would be equivalent to the market capitalization of the MSCI EAFE.[19] The Funds' top portfolio holdings can be found at *http://www.iShares.com*.

MSCI defines the free float of a security as the proportion of shares outstanding that are deemed to be available for purchase in the public equity markets by international investors. In practice, limitations on free float available to international investors include: (i) Strategic and other shareholdings not considered part of available free float; and (ii) limits on share ownership for foreigners.

As of March 31, 2005, the MSCI EAFE Growth Index's top three holdings were the Vodafone Group, GlaxoSmithKline, Novartis. Its top three industries were Financials, Energy and Consumer Discretionary.

As of March 31, 2005, the MSCI EAFE Growth Index components had a total market capitalization of approximately $4.4 trillion.[20] The average total market capitalization was approximately $7.3 billion. The 10 largest constituents represented approximately 21.2% of the index weight. The five highest weighted stocks, which represented 13.2% of the Index weight, had an average daily trading volume in excess of 347 million shares during the past two months. 99.3% of the component stocks traded at least 250,000 shares in each of the previous six months.

As of March 31, 2005, the MSCI EAFE Value Index's top three holdings were HSBC Holdings (GB), BP and Nestle. Its top three industries were Financials, Energy, and Consumer Discretionary.

As of March 31, 2005, the MSCI EAFE Value Index components had a total market capitalization of approximately $4.5 trillion. The average total market capitalization was approximately $7.5 billion. The ten largest constituents represented approximately 21.2% of the index weight. The five highest weighted stocks, which represented 13.6% of the Index weight, had an average daily trading volume in excess of 191 million shares during the past two months. 99.9% of the component stocks traded at least 250,000 shares in each of the previous six months.

Additional information regarding the Funds' holdings is available at *http://www.iShares.com*.[21]

(c) *Changes to the Underlying Indexes for the Funds.* As described in the SAI for the Funds, overall index maintenance can be described by three broad categories of implementation of changes: (i) Annual full country index reviews, conducted on a fixed annual timetable, that systematically re-assess the various dimensions of the equity universe for all countries; (ii) quarterly index reviews, aimed at promptly reflecting other significant market events; and (iii) ongoing event-related changes, such as mergers and acquisitions, which generally are rapidly implemented in the indices as they occur.[22]

Potential changes in the status of countries (stand-alone, emerging, or developed) follow their own separate timetables. These changes are normally implemented in one or more phases at the regular annual full country index review and quarterly index review dates.

The annual full country index review for all the MSCI single country standard equity indices is carried out once every 12 months and implemented as of the close of the last business day of May. The implementation of changes resulting from a quarterly index review occurs only on three dates throughout the year: as of the close of the last business day of February, August, and November. Any single country indices may be impacted at the quarterly index review. MSCI Index additions and deletions due to quarterly index rebalancings are announced at least two weeks in advance.

[17] Thus, the Underlying Indexes are subsets of various MSCI single country equity indices, each representing approximately 50% of the free float adjusted market capitalization of each underlying single country equity index and consists of those securities classified by MSCI as most representing the value style or growth style, respectively. The MSCI single country standard equity indices target an 85% free float-adjusted market representation level within each industry group, within each country. According to MSCI, the security selection process within each industry group is based on the careful analysis of (i) each company's business activities and the diversification that its securities would bring to the index, (ii) the size (based on free float-adjusted market capitalization) and liquidity of the securities of the company; and (iii) the estimated free float for the company and its individual share classes. MSCI targets for inclusion the most sizable and liquid securities in an industry group. MSCI generally does not consider securities with inadequate liquidity, and/or securities that do not have an estimated free float greater than 15%. Exceptions to this general rule are made only in significant cases, where exclusion of a security of a large company would compromise the index's ability to fully and fairly represent the characteristics of the underlying market.

[18] The Underlying Indexes are compiled by Morgan Stanley Capital International ("MSCI"). MSCI is a partially owned subsidiary of Morgan Stanley. When a broker-dealer, or a broker-dealer's affiliate such as MSCI, is involved in the development and maintenance of a stock index upon which a product such as iShares is based, the broker-dealer or its affiliate should have procedures designed specifically to address the improper sharing of information. The Exchange states that MSCI has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the MSCI EAFE Value and Growth Indices and has provided Commission staff with a letter filed under the Freedom of Information Act, 5 U.S.C. 552, describing such procedures. Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on July 7, 2005.

[19] Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on July 7, 2005. Additionally, the MSCI EAFE Index is a capitalization-weighted index that aims to capture 85% of the publicly available, total market capitalization of European, Australian, and Far Eastern markets. *Id.*, on July 29, 2005.

[20] As of June 30, 2005, both the MSCI EAFE Value and Growth Indices continued to each have a total market capitalization of over $4.4 trillion, and both Indices each contained over 600 component securities. *See* Exhibit A to Amendment No. 1.

[21] Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on July 7, 2005.

[22] See MSCI Standard Index Series Methodology, available at *http://www.msci.com*.

(d) *Issuance of Creation Unit Aggregations*

The Exchange notes that, according to the Application, the issuance and redemption of Creation Unit Aggregations will operate in a manner identical to that of the funds that are the subject of the Prior Order.[23]

(i) *In General.* Shares of the Funds (the "iShares") will be issued on a continuous offering basis in groups of 400,000 iShares, or multiples thereof.[24] These "groups" of shares are called "Creation Unit Aggregations." The Funds will issue and redeem iShares only in Creation Unit Aggregations.[25]

As with other open-end investment companies, iShares will be issued at the net asset value ("NAV") per share next determined after an order in proper form is received. The anticipated price at which the iShares will initially trade is approximately $50.

The NAV per share of the Funds is determined as of the close of the regular trading session on the Exchange on each day that the Exchange is open. The Trust sells Creation Unit Aggregations of the Funds only on business days at the next determined NAV of the Funds. Creation Unit Aggregations generally will be issued by the Funds in exchange for the in-kind deposit of equity securities designated by the Advisor to correspond generally to the price and yield performance of the Fund's Underlying Index (the "Deposit Securities") and a specified cash payment. Creation Unit Aggregations generally will be redeemed by the Fund in exchange for portfolio securities of the Fund ("Fund Securities") and a specified cash payment. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.

All orders to purchase iShares in Creation Unit Aggregations must be placed through an Authorized Participant. An Authorized Participant must be either a "Participating Party," *i.e.*, a broker-dealer or other participant in the clearing process through the National Securities Clearing Corporation ("NSCC") Continuous Net Settlement System (the "Clearing Process"), a clearing agency that is registered with the SEC, or a Depository Trust Company ("DTC") participant, and in each case, must enter into a Participant Agreement. The Funds impose a transaction fee in connection with the issuance and redemption of iShares to offset transfer and other transaction costs. The transaction fee in connection with the issuance and redemption of Creation Unit Aggregations of the Funds are estimated to be approximately between $10,000 and $15,000.

(ii) *In-Kind Deposit of Portfolio Securities.* Payment for Creation Unit Aggregations will be made by the purchasers generally by an in-kind deposit with the applicable Fund of the Deposit Securities together with an amount of cash ("Balancing Amount") specified by the Advisor in the manner described below. The Balancing Amount is an amount equal to the difference between (1) the NAV (per Creation Unit Aggregation) of the Fund and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such value referred to herein as the "Deposit Amount"). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount. The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a "Fund Deposit." The Advisor will make available to the market through the NSCC on each business day, prior to the opening of trading on the Exchange (currently 9:30 a.m. Eastern Time), the list of the names and the required number of shares of each Deposit Security included in the current Fund Deposit (based on information at the end of the previous business day) for each Fund. The Fund Deposit will be applicable to the relevant Fund (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of such Fund until such time as the next-announced Fund Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Fund Deposit for each Fund will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting or composition of the Component Securities in the Underlying Index. In addition, the Trust reserves the right to permit or require the substitution of an amount of cash—*i.e.*, a "cash in lieu" amount—to be added to the Balancing Amount to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not otherwise be eligible for transfer. The Trust also reserves the right to permit or require a "cash in lieu" amount where the delivery of the Deposit Security by the Authorized Participant would be restricted under the securities laws or where the delivery of the Deposit Security to the Authorized Participant would result in the disposition of the Deposit Security by the Authorized Participant becoming restricted under the securities laws, or in certain other situations. The adjustments described above will reflect changes known to the Advisor on the date of announcement to be in effect by the time of delivery of the Fund Deposit, in the composition of the applicable Underlying Index or resulting from certain corporate actions.

(e) *Redemption of iShares.* Creation Unit Aggregations of the Funds will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of the Funds generally will be redeemed in-kind, together with a balancing cash payment (although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of the Funds' redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of Fund shares. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the Fund. Redemption orders must be placed by or through an Authorized Participant. Creation Unit Aggregations of the Funds generally will be redeemable on any business day in exchange for applicable Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund ("Creation List") and which a redeemer will receive from the Funds ("Redemption List"). The Creation List is identical to the list of the names and the required numbers of shares of each Deposit Security included in the current Fund Deposit.

In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the Funds, the Trust will also deliver to the

[23] *See supra* note 6.

[24] The Exchange notes that, while this Creation Unit size is significantly larger than that of most other iShares Funds, the iShares Trust recently implemented a split for a number of iShares Funds, which began trading on a split-adjusted basis on June 9, 2005. The iShares MSCI EAFE Index Fund, for example, implemented a 3-for-1 split, and the size of a Creation Unit for that Fund increased from 200,000 iShares to 600,000 iShares as of June 9, 2005, in order to provide for a comparable post-split Creation Unit dollar value. The Exchange does not expect that the Creation Unit size for the Funds will adversely impact arbitrage opportunities and that the potential for arbitrage should keep the market price of shares of the Funds comparable to their net asset values.

[25] Each Creation Unit Aggregation will have an estimated initial value of approximately $20,000,000.

redeeming beneficial owner in cash the "Cash Redemption Payment." The Cash Redemption Payment on any given business day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day.[26] To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming beneficial owner to the applicable Fund. The Trust may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities on a redeeming investment banking firm's restricted list.

(f) *Availability of Information Regarding iShares and the Underlying Index.* On each business day, the list of names and amount of each security constituting the current Deposit Securities of the Fund Deposit and the Balancing Amount effective as of the previous business day, per outstanding share of each Fund, will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per iShare basis (the "Intra-day Optimized Portfolio Value" or "IOPV") will be calculated by an independent third party (the "IOPV Calculator"), such as Bloomberg L.P., every 15 seconds during the Exchange's regular trading hours and disseminated every 15 seconds on the Consolidated Tape.

The IOPV reflects the current value of the Deposit Securities and the Balancing Amount. The IOPV also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.[27]

Since the Funds will utilize a representative sampling strategy, the IOPV may not reflect the value of all securities included in the Underlying Indexes. In addition, the IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by the Funds at a particular point in time. Therefore, the IOPV on a per-Fund-share basis disseminated during the Exchange's trading hours should not be viewed as a real time update of the NAV of the Fund, which is calculated only once a day.

While the IOPV disseminated by the Exchange at 9:30 a.m. New York Time is expected to be generally very close to the most recently calculated Fund NAV on a per-Fund-share basis, it is possible that the value of the portfolio of securities held by each Fund may diverge from the Deposit Securities values during any trading day. In such case, the IOPV will not precisely reflect the value of each Fund's portfolio. However, during the trading day, the IOPV can be expected to closely approximate the value per Fund share of the portfolio of securities for each Fund, except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in a Fund at the same time by the Advisor).

The Exchange believes that dissemination of the IOPV based on the Deposit Securities provides additional information regarding the Funds that is not otherwise available to the public and is useful to professionals and investors in connection with Fund shares trading on the Exchange or the creation or redemption of Fund shares.

There is an overlap in trading hours between the foreign and U.S. markets with respect to the Funds. Therefore, the IOPV Calculator will update the applicable IOPV every 15 seconds to reflect price changes in the applicable foreign market or markets and convert such prices into U.S. dollars based on the currency exchange rate. When the foreign market or markets are closed but U.S. markets are open, the IOPV will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign market closes. The IOPV will also include the applicable cash component for each Fund.

In addition, there will be disseminated a value for the Underlying Indexes once each trading day, based on closing prices in the relevant exchange market. In each MSCI Index, the prices used to calculate the MSCI Indices are the official exchange closing prices or those figures accepted as such. MSCI reserves the right to use an alternative pricing source on any given day.

To convert the foreign exchange closing price into U.S. dollars, MSCI uses the FX rates published by WM/Reuters at 4 p.m. London time. MSCI uses WM/Reuters rates for all developed and emerging markets. Exchange rates are taken daily at 4 p.m. London time by the WM Company and are sourced whenever possible from multi-contributor quotes on Reuters. Representative rates are selected for each currency based on a number of "snapshots" of the latest contributed quotations taken from the Reuters service at short intervals around 4 p.m. WM Reuters provides closing bid and offer rates. MSCI uses these rates to calculate the mid-point to 5 decimal places.

The NAV for the Fund will be calculated and disseminated daily. The Funds' NAV will be calculated by IBT. IBT will disseminate the information to BGI, SEI and others, including the NYSE. The Funds' NAV will be published in a number of places, including *http://www.iShares.com* and on the Consolidated Tape.[28]

The Exchange states that closing prices of the Funds' Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

(g) *Dividends and Distributions.* The Exchange notes that dividends are accrued daily from net investment income and will be declared and paid to beneficial owners of record at least annually by the Funds. Distributions of realized securities gains, if any, generally will be declared and paid once a year, but the Funds may make distributions on a more frequent basis to comply with the distribution requirements of the Code and consistent with the Investment Company Act.

Dividends and other distributions on iShares of the Funds will be distributed on a pro rata basis to beneficial owners of such iShares. Dividend payments will

[26] *See* discussion under Section II.A.1(d)(ii) "In-Kind Deposit of Portfolio Securities," above.

[27] The IOPV ticker is available at *www.iShares.com* and Intra-day IOPV is publicly available utilizing this ticker through various financial Web sites such as *http://finance.yahoo.com*. Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on July 7, 2005.

[28] In addition, the Web site for the Trust, *http://www.iShares.com*, which will be publicly accessible at no charge, will contain the following information, such as: (i) The prior business day's NAV and the mid-point of the bid-ask price at the time of calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (ii) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

be made through the DTC and the DTC Participants to beneficial owners then of record with amounts received from the Fund.

The Trust currently does not intend to make the DTC book-entry Dividend Reinvestment Service ("Service") available for use by beneficial owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested beneficial owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. The Funds acquired pursuant to the Service will be held by the beneficial owners in the same manner, and subject to the same terms and conditions, as for original ownership of the Funds.

Beneficial owners of the Funds will receive all of the statements, notices, and reports required under the Investment Company Act and other applicable laws. They will receive, for example, annual and semi-annual reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of distributions, IRS Form 1099-DIVs, etc. Because the Trust's records reflect ownership of iShares by DTC only, the Trust will make available applicable statements, notices, and reports to the DTC Participants who, in turn, will be responsible for distributing them to the beneficial owners.

(h) Other Issues

(i) *Criteria for Initial and Continued Listing.* The Funds are subject to the criteria for initial and continued listing of ICUs in Section 703.16 of the Manual. A minimum of one Creation Unit (400,000 iShares) will be required to be outstanding at the start of trading. This minimum number of shares of each Fund required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously traded series of ICUs.

The Exchange believes that the proposed minimum number of shares of each Fund outstanding at the start of trading is sufficient to provide market liquidity and to further each Fund's investment objective to seek to provide investment results that correspond generally to the price and yield performance of its Underlying Index.

(ii) *Original and Annual Listing Fees.* The original listing fees applicable to the Funds for listing on the Exchange is $5,000 for each Fund, and the annual continuing listing fees will be $2,000 for each Fund.

(iii) *Stop and Stop Limit Orders.* Commentary .30 to NYSE Rule 13 provides that stop and stop limit orders in an ICU shall be elected by a quotation, but specifies that if the electing bid on an offer is more than 0.10 points away from the last sale and is for the specialist's dealer account, prior Floor Official approval is required for the election to be effective. This rule applies to ICUs generally.

(iv) *Rule 460.10.* Rule 460.10 generally precludes certain business relationships between an issuer and the specialist or its affiliates in the issuer's securities.[29] Exceptions in the Rule permit specialists in Fund shares to enter into Creation Unit transactions through the Distributor to facilitate the maintenance of a fair and orderly market. A specialist Creation Unit transaction may only be effected on the same terms and conditions as any other investor, and only at the net asset value of the Fund shares. A specialist may acquire a position in excess of 10% of the outstanding issue of the Funds' shares, provided, however, that a specialist registered in a security issued by an investment company may purchase and redeem the investment company unit or securities that can be subdivided or converted into such unit, from the investment company as appropriate to facilitate the maintenance of a fair and orderly market in the subject security in accordance with the terms of Rule 460.10.[30]

(v) *Prospectus Delivery.* The Commission has granted the Trust an exemption from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act.[31] Any product description used in reliance on the Section 24(d) exemptive order will comply with all representations made therein and all conditions thereto. The Exchange, in an Information Memo to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or product description delivery requirements applicable to the Funds and will refer members and member organizations to NYSE Rule 1100(b). The Information Memo will also advise members and member organizations that delivery of a prospectus to customers in lieu of a product description would satisfy the requirements of Rule 1100(b).

(vi) *Information Memo.* The Exchange will distribute an Information Memo to its members in connection with the trading of the Funds. The Memo will discuss the special characteristics and risks of trading this type of security. Specifically, the Memo, among other things, will discuss what the Funds are, how the Funds' shares are created and redeemed, the requirement that members and member firms deliver a prospectus or product description to investors purchasing shares of the Funds prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, dissemination information, trading information and the applicability of suitability rules (including NYSE Rule 405). The memo will also discuss exemptive, no-action and interpretive relief granted by the Commission from Section 11(d)(1) and certain rules under the Act.

(vii) *Trading Halts.* In order to halt the trading of the Funds, the Exchange may consider, among other things, factors such as the extent to which trading is not occurring in underlying security(s) and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Funds' shares is subject to trading halts caused by extraordinary market volatility pursuant to NYSE Rule 80B.

(viii) *Due Diligence.* The Exchange represents that the Information Memo to members will note, for example, Exchange responsibilities including that before an Exchange member, member organization, or employee thereof recommends a transaction in the Funds, a determination must be made that the recommendation is in compliance with all applicable Exchange and federal rules and regulations, including due diligence obligations under NYSE Rule 405 (Diligence as to Accounts).

(ix) *Purchases and Redemptions in Creation Unit Size.* In the Memo referenced above, members and member organizations will be informed that procedures for purchases and redemptions of shares of the Funds in Creation Unit Size are described in the Funds' Prospectus and SAI, and that shares of the Funds are not individually redeemable but are redeemable only in

[29] Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on July 7, 2005.

[30] Telephone conversation between Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, and Michael Cavalier, Assistant General Counsel, NYSE, on July 29, 2005 (as to specific terms of Rule 460.10).

[31] 15 U.S.C. 80a–24. *See In the Matter of iShares, Inc., et al.*, Investment Company Act Release No. 25623 (June 25, 2002).

Creation Unit size aggregations or multiples thereof.

(x) *Surveillance.* The Exchange will utilize its existing surveillance procedures applicable to ICUs to monitor trading in the Funds. The Exchange believes that these procedures are adequate to monitor Exchange trading of the Funds.

The Exchange states that its surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other ICUs currently trading on the Exchange. The Exchange represents that its surveillance procedures, which the Exchange has filed with the Commission, are adequate to properly monitor the trading of the Funds. The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in both the Fund shares and the component securities through NYSE members, in connection with such members' proprietary or customer trades, on any relevant market on which such members may trade; in addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.

(xi) *Hours of Trading/Minimum Price Variation.* The Funds will trade on the Exchange until 4:15 p.m. (Eastern time) each business day. The minimum price variation for quoting will be $.01.

1. Statutory Basis

NYSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act [32] requiring that an exchange have rules that are designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, 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.

[32] 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–41 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–NYSE–2005–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–41 and should be submitted on or before August 30, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[33] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [34] and will promote just and equitable principles of trade, and facilitate transactions in securities, and, in general, protect investors and the public interest.

The Commission believes that the NYSE's proposal should advance the public interest by providing investors with increased flexibility in satisfying their investment needs and by allowing them to purchase and sell Fund shares at negotiated prices throughout the business day that generally track the price and yield performance of the targeted Underlying Index.[35]

Furthermore, the Commission believes that the proposed rule change raises no issues that have not been previously considered by the Commission. The Fund is similar in structure and operation to exchange-traded index funds that the Commission has previously approved for listing and trading on national securities exchanges under Section 19(b)(2) of the Act.[36] Further, with respect to each of the following key issues, the Commission believes that the Fund satisfies established standards.

A. Fund Characteristics

Similar to other previously-approved, exchange-listed index fund shares, the Commission believes that the proposed Funds are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the performance of the respective Underlying Index and will provide investors with an alternative to trading a range of securities on an individual basis. The estimated cost of individual shares in the Fund, approximately $50,

[33] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[34] 15 U.S.C. 78f(b)(5).

[35] The Commission notes that, as is the case with similar previously approved exchange traded funds, investors in the Fund can redeem shares in Creation-Unit-size aggregations only. *See, e.g.,* Securities Exchange Act Release Nos. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (File No. SR–NYSE–00–46); 50505 (October 8, 2004), 69 FR 61280 (October 15, 2004) (File No. SR–NYSE–2004–55); 50189 (August 12, 2004), 69 FR 51723 (August 20, 2004) (File No. SR–Amex–2004–05).

[36] 15 U.S.C. 78s(b)(2).

should make them attractive to individual retail investors who wish to hold a security representing the performance of a portfolio of stocks. In addition, investors will be able to trade shares in the Fund continuously throughout the business day in secondary market transactions at negotiated prices.[37] Accordingly, the proposed Fund will allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transaction costs for trading a portfolio of securities.

Moreover, the Commission finds that, although the value of the Fund's shares will be derived from and based on the value of the securities and cash held in the Fund, the Fund is not leveraged. Accordingly, the level of risk involved in the purchase or sale of Fund shares is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for shares in the Fund is based on a portfolio of securities.

The Commission notes that the MSCI EAFE Value and Growth Index Funds (i) will invest at least 90% of its assets in Component Securities of its respective Underlying Index and in Depositary Receipts (defined above) representing such securities and (ii) may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents, including money market mutual funds advised by BGFA,[38] other exchange-traded funds, including other iShares Funds,[39] and stocks not included in the Underlying Index but which the Advisor believes will help the Fund track its Underlying Index.[40] It is expected that the Fund will have a tracking error relative to the performance of its Underlying Index of no more than 5%. As described above, each Index generally represents approximately 50% of the free float-adjusted market capitalization of the MSCI EAFE Index, itself consisting of various MSCI EAFE country indices, and consists of those securities classified by MSCI as most representing the growth or value style.

Given the market capitalization and liquidity of the Underlying Indexes and Funds' Component Securities, the Commission does not believe that the Fund shares should be susceptible to manipulation.[41]

The Exchange further represents that the Fund will not concentrate its investments in any particular industry or group of industries, except to the extent that the Underlying Index concentrates in the stocks of a particular industry or industries. Because each Fund's Underlying Index is broad-based and well diversified, the Commission does not believe that the Fund will be so highly concentrated such that it becomes a surrogate for trading unregistered foreign securities on the Exchange.

While the Commission believes that these requirements should help to reduce concerns that the Fund could become a surrogate for trading in a single or a few unregistered stocks, if the Fund's characteristics changed materially from the characteristics described herein, the Fund would not be in compliance with the listing and trading standards approved herein, and the Commission would expect the NYSE to file a proposed rule change pursuant to Rule 19b–4 of the Act.

B. Disclosure

The Exchange represents that it will circulate an information memo detailing applicable prospectus and product description delivery requirements. The memo will also discuss exemptive, no-action and interpretive relief granted by the Commission from certain rules under the Act. The memo also will address NYSE members' responsibility to deliver a prospectus or product description to all investors (in accordance with NYSE Rule 1100(b)) and highlight the characteristics of the Funds. The memo will also remind members of their suitability obligations, including NYSE Rule 405 (Diligence as to Accounts).[42] For example, the information memo will also inform members and member organizations that Fund shares are not individually redeemable, but are redeemable only in Creation-Unit-size aggregations or multiples thereof as set forth in the Fund Prospectus and SAI.[43] The Commission believes that the disclosure included in the information memo is appropriate and consistent with the Act.

C. Dissemination of Fund Information

With respect to pricing, once each day, the NAV for the Fund will be calculated and disseminated by IBT, to various sources, including the NYSE, and made available on *http://www.iShares.com* and the Consolidated Tape.[44] Also, during the Exchange's regular trading hours, the IOPV Calculator will determine and disseminate every 15 seconds the IOPV for each Fund. The IOPV will reflect price changes in the applicable foreign market or markets and changes in currency exchange rates.

The Commission notes that a variety of additional information about each Fund will be readily available. Information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Exchange. In addition, the Web site for the Trust, *http://www.iShares.com*, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for the Fund: (1) The prior business day's NAV and the mid-point of the bid-ask price[45] at the time of calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar

[37] Because of the potential arbitrage opportunities, the Commission believes that Fund shares will not trade at a material discount or premium in relation to their NAV.

[38] *In the Matter of Master Investment Portfolio, et al.*, Investment Company Act Release No. 25158 (September 18, 2001).

[39] The Fund, as well as any existing iShares Fund, is permitted to invest in shares of another iShares Fund to the extent that such investment is consistent with the Fund's investment objective, registration statement, and any applicable investment restrictions.

[40] The Commission notes that the Funds may invest in sponsored ADRs and other Depositary Receipts, but will not invest in any unlisted depositary receipts or any listed depositary receipts that the Advisor deems to be illiquid or for which pricing information is not readily available. *See* note 16 *supra*.

[41] The Exchange states that as of March 31, 2005, the ten largest constituents represented approximately 21.2% of the index weight for both the MSCI EAFE Growth Index and the MSCI EAFE Value Index. The 5 highest weighted stocks, which represented 13.2% of the MSCI EAFE Growth Index weight and 13.6% of the MSCI EAFE Value Index weight, had an average daily trading volume in excess of 347 million shares and 191 million, respectively, during the past two months. 99.3% of the MSCI EAFE Growth Index and 99.9% of the MSCI EAFE Value Index of the component stocks traded at least 250,000 shares in each of the previous 6 months. Both Indices each contain over 600 component securities.

[42] NYSE Rule 405 generally requires that members use due diligence to learn the essential facts relative to every customer, order or account accepted.

[43] See discussion under Section II.A.1(a) "Operation of Fund," above. The Exchange has represented that the information memo will also discuss exemptive, no-action, and interpretive relief granted by the Commission from certain rules under the Act.

[44] The index currently uses the Reuters foreign exchange rate at the close of the index (4 p.m. London Time) to compute final index values. The Fund intends to use Reuters/WM foreign exchange rates at 4:00 p.m. London Time.

[45] The Bid-Ask Price of the Fund is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of the Fund's NAV.

quarters. Also, the closing prices of the Fund's Deposit Securities are available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in the relevant country, or on-line information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

Based on the representations made in the NYSE proposal, the Commission believes that pricing and other important information about the Fund is adequate and consistent with the Act.

D. Listing and Trading

The Commission finds that adequate rules and procedures exist to govern the listing and trading of the Fund's shares. Fund shares will be deemed equity securities subject to NYSE rules governing the trading of equity securities, including, among others, rules governing trading halts,[46] responsibilities of the specialist, account opening and customer suitability requirements,[47] and the election of stop and stop limit orders.

In addition, the Exchange states that iShares are subject to the criteria for initial and continued listing of ICUs in Section 703.16 of the NYSE Manual. The Commission believes that the listing and delisting criteria for Fund shares should help to ensure that a minimum level of liquidity will exist in the Fund to allow for the maintenance of fair and orderly markets. Accordingly, the Commission believes that the rules governing the trading of Fund shares provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest.

As noted above, the NYSE expects to require that a minimum of one Creation Units (400,000 iShares) will be required to be outstanding at the start of trading. The Commission believes that this minimum number is sufficient to help to ensure that a minimum level of liquidity will exist at the start of trading.[48]

E. Surveillance

The Commission finds that NYSE's surveillance procedures are reasonably designed to monitor the trading of the proposed iShares, including concerns with specialists purchasing and redeeming Creation Units. The NYSE represents that its surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other ICUs currently trading on the Exchange. The Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Funds. The Exchange is also able to obtain information regarding trading in both the Fund shares and the Component Securities by its members on any relevant market; in addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.

As stated, when a broker-dealer, or a broker-dealer's affiliate such as MSCI, is involved in the development and maintenance of a stock index upon which a product such as iShares is based, the broker-dealer or its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that MSCI has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the MSCI EAFE Value and Growth Indices. The Commission believes that the information barrier procedures put in place by MSCI address the unauthorized transfer and misuse of material, non-public information.

F. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[49] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposal is consistent with the listing and trading standards in NYSE Rule 703.16 (ICUs), and the Commission has previously approved similar products based on foreign indices.[50] The Funds are substantially identical in structure to other iShares Funds based on foreign stock indexes, including the iShares MSCI EAFE Index Fund, which have an established and active trading history on the NYSE and other exchanges. The Commission does not believe that the proposed rule change, as amended, raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility afforded by trading these products as soon as possible.

Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[51] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2005–41), is hereby approved on an accelerated basis.[52]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[53]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4274 Filed 8–8–05; 8:45 am]

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[46] In order to halt the trading of the Fund, the Exchange may consider, among others, factors including: (i) The extent to which trading is not occurring in stocks underlying the index; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Fund shares is subject to trading halts caused by extraordinary market volatility pursuant to NYSE Rule 80B.

[47] Prior to commencement of trading, the Exchange states that it will issue an Information Memo informing members and member organizations of the characteristics of the Fund and of applicable Exchange rules, as well as of the requirements of NYSE Rule 405 (Diligence as to Accounts).

[48] This minimum number of shares required to be outstanding at the start of trading is comparable to requirements that have been applied to previously listed series of ICUs.

[49] 15 U.S.C. 78s(b)(2).

[50] *See supra* note 35. *See also, e.g.,* Securities Exchange Act Release Nos. 44990 (October 25, 2001), 66 FR 56869 (November 13, 2001) (SR–Amex–2001–45); 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (SR–Amex–98–49); and 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996) (SR–Amex–95–43).

[51] 15 U.S.C. 78s(b)(5).

[52] 15 U.S.C. 78s(b)(2).

[53] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52188; File No. SR–NYSE–2005–53]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend for Additional Six Months the Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Provided Portable Telephone on the Exchange Floor

August 1, 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 July 22, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to extend its pilot program that amends NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the Exchange ("Pilot") for an additional six months, until January 31, 2006. The last extension of the Pilot was in effect on a four-month pilot basis expiring on July 31, 2005.[3] The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission originally approved the Pilot to be implemented as a six-month pilot[4] beginning no later than June 23, 2003.[5] Since the inception of the Pilot, the Exchange has extended the Pilot four times, with the current Pilot expiring on July 31, 2005.[6] In addition, the Exchange has filed a proposed rule change to permanently approve the Pilot.[7] The Exchange represents that no regulatory actions or administrative or technical problems, other than routine telephone maintenance issues, have resulted from the Pilot over the past few months.[8] Therefore, the Exchange seeks to extend the Pilot for an additional six months, until January 31, 2006.

NYSE Rule 36 governs the establishment of telephone or electronic communications between the Exchange's Trading Floor and any other location. Prior to the Pilot, NYSE Rule 36.20 prohibited the use of portable telephone communications between the Trading Floor and any off-Floor location, and the only way that voice communication could be conducted by Floor brokers between the Trading Floor and an off-Floor location was by means of a telephone located at a broker's booth. These communications often involved a customer calling a broker at the booth for "market look" information. Prior to the Pilot, a broker could not use a portable phone at the point of sale in the trading crowd to speak with a person located off the Floor.

The Exchange proposes to extend the Pilot for an additional six months, expiring on January 31, 2006. The Pilot would amend NYSE Rule 36 to permit a Floor broker to use an Exchange authorized and issued portable telephone on the Floor. Thus, with the approval of the Exchange, a Floor broker would be permitted to engage in direct voice communication from the point of sale to an off-Floor location, such as a member firm's trading desk or the office of one of the broker's customers. Such communications would permit the broker to accept orders consistent with Exchange rules, provide status and oral execution reports as to orders previously received, as well as "market look" observations as have historically been routinely transmitted from a broker's booth location. Use of a portable telephone on the Exchange Floor other than one authorized and issued by the Exchange would continue to be prohibited.

Furthermore, both incoming and outgoing calls would continue to be allowed, provided the requirements of all other Exchange rules have been met. Under NYSE Rule 123(e), a broker would not be permitted to represent and execute any order received as a result of such voice communication unless the order was first properly recorded by the member and entered into the Exchange's Front End Systemic Capture ("FESC") electronic database.[9] In addition, Exchange rules require that any Floor broker receiving orders from the public over portable phones must be properly qualified to engage in such direct access business under NYSE Rules 342 and 345, among others.[10]

Furthermore, orders in Investment Company Units (as defined in Section 703.16 of Listed Company Manual), also known as Exchange-Traded Funds ("ETFs"), would also be subject to the same FESC requirements as orders in any other security listed on the Exchange.[11] As a result, the Pilot would continue to allow for the use of portable phones for orders in ETFs.

In addition, NYSE Rule 36.20, both prior to the Pilot, and as proposed to be amended, would not apply to specialists who are prohibited from speaking from the post to upstairs trading desks or customers. The Exchange notes that specialists are subject to separate restrictions in NYSE Rule 36 on their ability to engage in voice communications from the specialist post to an off-Floor location.[12]

The Exchange believes that an extension of the Pilot for an additional

[3] *See* Securities Exchange Act Release No. 51464 (March 31, 2005), 70 FR 17746 (April 7, 2005) (SR–NYSE–2005–20).

[4] *See* Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) (SR–NYSE–2002–11) ("Original Order").

[5] *See* Securities Exchange Act Release No. 47992 (June 5, 2003), 68 FR 35047 (June 11, 2003) (SR–NYSE–2003–19) (delaying the implementation date for portable phones from on or about May 1, 2003 to no later than June 23, 2003).

[6] *See* Securities Exchange Act Release Nos. 48919 (December 12, 2003), 68 FR 70853 (December 19, 2003) (SR–NYSE–2003–38) (extending the Pilot for an additional six months ending on June 16, 2004); 49954 (July 1, 2004), 69 FR 41323 (July 8, 2004) (SR–NYSE–2004–30) (extending the Pilot for an additional five months ending on November 30, 2004); 50777 (December 1, 2004), 69 FR 71090 (December 8, 2004) (SR–NYSE–2004–67) (extending the Pilot for an additional four months ending March 31, 2005); and 51464, *supra* note 3.

[7] *See* SR–NYSE–2004–52, pending with the Commission.

[8] The Exchange notes that it has received incoming telephone records for the period of June 5, 2005 through July 4, 2005, and will continue to receive monthly updates. Telephone conversation between Jeff Rosenstrock, Senior Special Counsel, NYSE, and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, on July 27, 2005.

[9] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR–NYSE–98–25). *See also* Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001) (SR–NYSE–2001–39) (discussing certain exceptions to FESC, such as orders to offset an error or a bona fide arbitrage, which may be entered within 60 seconds after a trade is executed).

[10] *See* Information Memos 01–41 (November 21, 2001), 01–18 (July 11, 2001) (available on *http://www.nyse.com/regulation.html*) and 91–25 (July 8, 1991) for more information regarding Exchange requirements for conducting a public business on the Exchange Floor.

[11] Previously, under an exception to NYSE Rule 123(e), orders in ETFs could first be executed and then entered into FESC. However, in SR–NYSE–2003–09, the Exchange eliminated the exception to NYSE Rule 123(e) for ETFs, and, as part of its proposal in SR–NYSE–2002–11, allowed the use of portable phones for orders in ETFs. *See* Securities Exchange Act Release No. 47667 (April 11, 2003), 68 FR 19063 (April 17, 2003). NYSE Rule 123(e) provides that all orders in any security traded on the Exchange be entered into FESC before they can be represented in the Exchange's auction market.

[12] *See* Securities Exchange Act Release No. 46560 (September 26, 2002), 67 FR 62088 (October 3, 2002) (SR–NYSE–00–31) (discussing restrictions on specialists' communications from the post).

six months would enable the Exchange to provide more direct, efficient access to its trading crowds and customers, increase the speed of transmittal of orders and the execution of trades, and provide an enhanced level of service to customers in an increasingly competitive environment.[13] By enabling customers to speak directly to a Floor broker in a trading crowd on an Exchange authorized and issued portable telephone, the Exchange believes that the proposed rule change would expedite and make more direct the free flow of information which, prior to the Pilot, had to be transmitted somewhat more circuitously via the broker's booth.

Pilot Program Results. Since the Pilot's inception, the Exchange represents that there have been approximately 800 portable phone subscribers. In addition, with regard to portable phone usage, for a sample week of June 20, 2005 through June 24, 2005, an average of 12,156 calls per day were originated from portable phones, and an average of 5,624 calls per day were received on portable phones. Of the calls originated from portable phones, an average of 8,816 calls per day were internal calls to the booth, and 3,340 calls per day were external calls. Thus, approximately 73% of the calls originated from portable phones were internal calls to the booth. With regard to received calls, of the 5,624 average calls per day received, an average of 2,781 calls per day were external calls, and an average of 2,843 calls per day were internal calls received from the booth. Thus, approximately 51% of all received calls were internally generated, and 49% were calls from the outside.

Therefore, the Exchange believes that the Pilot appears to be successful in that there is a reasonable degree of usage of portable phones, but as noted above, there have been no regulatory, administrative, or other technical problems identified with their usage. The Exchange believes that the Pilot appears to facilitate communication on the Floor without any corresponding drawbacks. Therefore, the Exchange believes it is appropriate to extend the Pilot for an additional six months, expiring on January 31, 2006.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[14] in general, and further the objectives of Section 6(b)(5) of the Act[15] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the amendment to NYSE Rule 36 would support the mechanism of free and open markets by providing for increased means by which communications to and from the Floor of the Exchange could take place.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange requests that the Commission waive the five-day pre-filing period and 30-day operative period under Rule 19b–4(f)(6)(iii).[18] The Exchange believes that the continuation of the Pilot is in the public interest as it will avoid inconvenience and interruption to the public. The Commission has waived the five-day pre-filing requirement for this proposed rule change. In addition, the Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective upon filing on July 22, 2005.[19] The Commission believes that the waiver of the 30-day operative delay will allow the Exchange to continue, without interruption, the existing operation of its Pilot until January 31, 2006.

The Commission notes that proper surveillance is an essential component of any telephone access policy to an Exchange Trading Floor. Surveillance procedures should help to ensure that Floor brokers who are interacting with the public on portable phones are authorized to do so, as NYSE Rule 36 requires,[20] and that orders are being handled in compliance with NYSE rules. The Commission expects the Exchange to actively review these procedures and address any potential concerns that have arisen during the extension of the Pilot. In this regard, the Commission notes that the Exchange should address whether telephone records, including incoming telephone records, are adequate for surveillance purposes.

The Commission also requests that the Exchange report any problems, surveillance, or enforcement matters associated with the Floor brokers' use of an Exchange authorized and provided portable telephone on the Floor. As stated in the Original Order, the NYSE should also address whether additional surveillance would be needed because of the derivative nature of the ETFs. Furthermore, in any future additional filings on the Pilot, the Commission would expect that the NYSE submit information documenting the usage of the phones, any problems that have occurred, including, among other things, any regulatory actions or

[13] *See, e.g.*, Securities Exchange Act Release Nos. 43493 (October 30, 2000), 65 FR 67022 (November 8, 2000) (SR–CBOE–00–04) (expanding the Chicago Board Options Exchange, Inc.'s existing policy and rules governing the use of telephones at equity option trading posts by allowing for the receipt of orders over outside telephone lines from any source, directly at equity trading posts) and 43836 (January 11, 2001), 66 FR 6727 (January 22, 2001) (SR–PCX–00–33) (discussing and approving the Pacific Exchange, Inc.'s proposal to remove current prohibitions against Floor brokers' use of cellular or cordless phones to make calls to persons located off the trading floor).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] *See* note 10 *supra* and accompanying text for other NYSE requirements that Floor brokers be properly qualified before doing public customer business.

concerns, and any advantages or disadvantages that have resulted.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–9303.

All submissions should refer to File Number SR-NYSE–2005–53. 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 will also be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–53 and should be submitted on or before August 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4276 Filed 8–8–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52187; File No. SR–Phlx–2005–32]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Participation Guarantees for Floor Brokers Representing Crossing and Facilitation Orders

August 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 22, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1064 concerning the guaranteed participation to which a Floor Broker is entitled with respect to equity options when seeking to execute crossing and facilitation transactions. Under the current rule, after requesting a market from the trading crowd, a Floor Broker seeking to cross an order for equity options that he or she is holding with another order, or, in the case of a public customer order, with a facilitation order from the firm from which the public customer order originated, is entitled to a guaranteed participation of 20% when the order trades at a price that matches the price given by the trading crowd in response to the initial request for a market, and 40% when the order trades at a price that improves upon that price. The proposed rule change would entitle the Floor Broker to a 40% guarantee in both cases. The proposed rule change would also clarify that the corresponding guaranteed participation to which a specialist is entitled would continue to be a percentage that, combined with the percentage that the Floor Broker crossed, is no more than 40% of the original order. The text of amended Exchange Rule 1064 is set forth below. Brackets indicate deletions; *italics* indicate new text.

Crossing, Facilitation and Solicited Orders

Rule 1064. (a)–(d) No change.

Commentary:

.01 No change.

.02 Firm Participation Guarantees.

(i)–(ii) No change.

(iii) The percentage of the order which a Floor Broker is entitled to cross, after all public customer orders that were (1) on the limit order book and then (2) represented in the trading crowd at the time the market was established have been satisfied, is determined as follows:

(A) With respect to orders for equity options, [: (i) 2] 40% of the remaining contracts in the order if the order is traded at or between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market [; or (ii) 40% of the remaining contracts in the order if the order is traded between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market].

(B) With respect to orders for index options, 20% of the remaining contracts in the order. (iv)–(v) No change.

(vi) If a trade pursuant to this Commentary occurs when the specialist is on parity with one or more controlled accounts, then the Enhanced Specialist Participation which is established pursuant to Exchange Rule 1014(g)(ii)–(iv) shall apply only to the number of contracts remaining after the following orders have been satisfied: Those public customer orders which trade ahead of the cross transaction, and any portion of an order being crossed against the original order being represented by the Floor Broker.

(A) Respecting orders for index options, [T] *t*he Enhanced Specialist Participation may only be 20% of the original order after customer orders have been executed for orders crossed pursuant to this paragraph *(vi)* unless

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

the Floor Broker has chosen to cross less than its 20% entitlement, in which case the Enhanced Specialist Participation will be a percentage that combined with the percentage the firm crossed is no more than 40% of the original order.

(B) Respecting orders for equity options, the specialist shall not be entitled to receive the Enhanced Specialist Participation after customer orders have been executed for orders crossed pursuant to this paragraph (vi) unless the Floor Broker has chosen to cross less than its 40% entitlement, in which case the Enhanced Specialist Participation will be a percentage that combined with the percentage the firm crossed is no more than 40% of the original order.

If the trade occurs at a price other than the specialist's disseminated bid or offer, the specialist is entitled to no guaranteed participation.

(vii)–(x) No change.

.03 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to enable the Exchange to remain competitive with other exchanges by revising the current participation guarantee applicable to Exchange Floor Brokers that engage in crossing and facilitation transactions in equity options traded on the Exchange. Currently, Exchange Rule 1064, Commentary .02(iii) provides that, respecting orders for equity options, a Floor Broker is entitled to a participation guarantee of 20% of the remaining contracts (after all public customer orders that were on the limit order book and represented in the trading crowd at the time the market was established have been satisfied) if the order is traded at the best bid or offer ("BBO") given by the crowd in response to the Floor Broker's initial request for a market, or 40% of the remaining contracts if the order is traded between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market.

The proposal would provide that, respecting orders for equity options, the Floor Broker is entitled to cross, after all public customer orders that were on the limit order book and represented in the trading crowd at the time the market was established have been satisfied, 40% of the remaining contracts in the order if the order is traded at or between the best bid or offer given by the crowd in response to the Floor Broker's initial request for a market.

Current Commentary .02(vi) to Rule 1064 entitles the specialist to an Enhanced Specialist Participation [5] with respect to orders for equity options of 20% of the original order size when the Floor Broker crosses 20% of the order at the trading crowd's price. If the Floor Broker improves upon the crowd's price and takes its 40% entitlement, the specialist is not entitled to an Enhanced *Specialist Participation*. The proposed amendments to Commentary .02(vi) to the rule would clarify that the specialist also may not be entitled to an Enhanced Specialist Participation if the Floor Broker crosses the order at the trading crowd's price, and that, respecting orders for both index and equity options, the Enhanced Specialist Participation when combined with the amount of the order the Floor Broker crosses may not exceed 40%.

Respecting index options, the Enhanced Specialist Participation would remain unchanged. The specialist would, in most instances, be entitled to receive an Enhanced Specialist Participation of 20%,[6] because the Floor Broker may only cross 20% of the order regardless of the price.[7] Respecting equity options, the effect of the proposed rule change would be that specialists are generally not entitled to the Enhanced Specialist Participation (because the Floor Broker typically would take its 40% guaranteed amount) unless the Floor Broker crosses less than 40% of the order. The proposed rule text would clearly indicate this limitation.

The Exchange believes that the proposed rule change will enable the Exchange to compete for order flow in crossing and facilitation orders with other options exchanges that currently have similar rules in place.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by providing Floor Brokers and Exchange crowd participants with rules setting forth guidelines regarding the percentage of crossing and facilitation orders in equity and index options to which Floor Brokers are entitled.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The

[5] Exchange Rules 1014(g)(ii)–(iv) establish the Enhanced Specialist Participation.

[6] *See* current Exchange Rule 1064, Commentary .02(vi) and proposed Exchange Rule 1064, Commentary .02(vi)(A).

[7] *See* Exchange Rule 1064, Commentary .02(iii)(B).

[8] *See* Chicago Board Options Exchange, Incorporated Rule 6.74(d), American Stock Exchange LLC Rule 950(d), Commentary .02, and Pacific Exchange, Inc. Rule 6.47(b).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *Id.*

Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to remain competitive with other exchanges that currently have similar rules in effect. For the reasons stated above, the Commission designates the proposal to become operative immediately.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–32 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–Phlx–2005–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–32 and should be submitted on or before August 30, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–4272 Filed 8–8–05; 8:45 am]

BILLING CODE 8010–01–P

[15] For purposes only of waiving the pre-operative delay for this proposal, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10135 and # 10136]

Alabama Disaster Number AL–00001

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1593–DR), dated 07/10/2005.

Incident: Hurricane Dennis.

Incident Period: 07/10/2005 and continuing.

DATES: *Effective Date:* 07/11/2005.

Physical Loan Application Deadline Date: 09/08/2005.

EIDL Loan Application Deadline Date: 04/10/2006.

ADDRESSES: Submit completed loan applications to: U.S. 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 Presidential disaster declaration for the State of Alabama, dated 07/10/2005, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Escambia

Contiguous Counties:

Alabama: Conecuh, Covington;

Florida: Okaloosa, Santa Rosa.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–15715 Filed 8–8–05; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice 5152]

Determination and Certification Related To Colombian Armed Forces Under Section 563 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Division D, Consolidated Appropriations Act, 2004 (Pub. L. 108–199) and Section 556 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Division D, Consolidated Appropriations Act, 2005 (Pub. L. 108–447)

Pursuant to the authority vested in me as Secretary of State, including under section 563 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act (FOAA), 2004 (Division D, Pub. L. 108–199), and section 556 of the FOAA, 2005 (Division D, Pub. L. 108–447), I hereby determine and certify that the Colombian Armed Forces and the Colombian Government, as applicable, are:

(i) In accordance with the conditions contained in section 563(a)(3) of the FY 2004 FOAA, continuing to meet the conditions contained in (A) through (E) below and are conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerilla organizations; and (ii) in accordance with the conditions contained in section 556(a)(2) of the FY 2005 FOAA are meeting the conditions contained in (A) through (E) below.

The above-mentioned conditions are that: (A) The Commander General of the Colombian Armed Forces is suspending from the Armed Forces those members, of whatever rank who, according to the Minister of Defense or the Procuraduria General de la Nacion, have been

credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations; (B) The Colombian Government is vigorously investigating and prosecuting those members of the Colombian Armed Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations, and is promptly punishing those members of the Colombian Armed Forces found to have committed such violations of human rights or to have aided or abetted paramilitary organizations; (C) The Colombian Armed Forces have made substantial progress in cooperating with civilian prosecutors and judicial authorities in such cases (including providing requested information, such as the identity of persons suspended from the Armed Forces and the nature and cause of the suspension, and access to witnesses, relevant military documents, and other requested information); (D) The Colombian Armed Forces have made substantial progress in severing links (including denying access to military intelligence, vehicles, and other equipment or supplies, and ceasing other forms of active or tacit cooperation) at the command, battalion, and brigade level, with paramilitary organizations, especially in regions where these organizations have a significant presence; (E) The Colombian Armed Forces, and the Colombian Government, are dismantling paramilitary leadership and financial networks by arresting commanders and financial backers, especially in regions where these networks have a significant presence.

The Department of State has consulted with internationally recognized human rights organizations regarding the Colombian Armed Forces' progress in meeting the abovementioned conditions as provided in sections 563(c) and 556(c), of the FY 2004 and FY 2005 FOAAs, respectively.

This Determination shall be published in the **Federal Register** and copies shall be transmitted to the appropriate committees of Congress.

Dated: August 1, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–15722 Filed 8–8–05; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 5153]

Statutory Debarment Under the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to Section 127.7(c) of the International Traffic in Arms Regulations ("ITAR") (22 CFR parts 120 to 130) on persons convicted of violating or conspiring to violate Section 38 of the Arms Export Control Act ("AECA") (22 U.S.C. 2778).

DATES: Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778, prohibits licenses and other approvals for the export of defense articles or defense services to be issued to persons, or any party to the export, who have been convicted of violating certain statues, including the AECA.

In implementing this section of the AECA, the Assistant Secretary for Political-Military Affairs is authorized by Section 127.7 of the ITAR to prohibit any person who has been convicted of violating or conspiring to violate the AECA from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or other approval is required. This prohibition is referred to as "statutory debarment."

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment proceedings outlined in Section 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. At the end of the debarment period, licensing privileges may be reinstated only at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by Section 38(g)(4) of the AECA. It should be noted, however, that unless licensing privileges are reinstated, the person/entity remains debarred.

Department of State policy permits debarred persons to apply to the Director of Defense Trade Controls Compliance for an exception from the period of debarment beginning one year after the date of the debarment, in accordance with Section 38(g)(4) of the AECA and Section 127.11(b) of the ITAR. Any decision to grant an exception can be made only after the statutory requirements under Section 38(g)(4) of the AECA have been satisfied. Even if the exception is granted, the debarment continues until the end of the three-year period and subsequent reinstatement. In addition, the Department will not consider exceptions for those individuals or entities convicted of serious violations of the AECA and ITAR.

Exceptions may be made to this debarment determination on a case-by-base basis at the discretion of the Directorate of Defense Trade Controls. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns.

Pursuant to Section 38 of the AECA and Section 127.7 of the ITAR, the Assistant Secretary of State for Political-Military Affairs has statutorily debarred the following persons for a period of three years following the date of their AECA conviction:

(1) Mexpar International, Inc. a/k/a "Pasadena Aerospace" and "Aviation Logistics and Supply," July 30, 2004, U.S. District Court, Central District of California (Los Angeles), Case #: 03–CR–170–ALL.

(2) Ahmad Nahardani a/k/a "Alex Nahardani," August 9, 2004, U.S. District Court, Central District of California (Los Angeles), Case #: 03–170–AHM.

(3) Gabriela de Brea a/k/a "Gabriela Brea" and "Gabriela Lopez-Sosa," September 10, 2004, U.S. District Court, Central District of California (Los Angeles), Case #: 03–170–AHM.

As noted above, at the end of the three-year period, the above named persons/entities remain debarred unless licensing privileges are reinstated.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see *e.g.*, sections 120.1(c) and (d), and 127.11(a)). The Department of State will not consider applications for licenses or requests for approvals that involve any person who has been convicted of violating or of conspiring to violate the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for Arms Control and International Security for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision, in accordance with 22 CFR 127.7(d) and 128.13(a).

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Court, Central District of California (Los Angeles) citing the court case number where provided.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

Rose M. Likins,

Acting Assistant Secretary for Political-Military Affairs, Department of State.

[FR Doc. 05–15721 Filed 8–8–05; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Petition Under Section 302 on China's Currency Valuation; Decision Not To Initiate Investigation

AGENCY: Office of the United States Trade Representative.

ACTION: Decision not to initiate investigation.

SUMMARY: The United States Trade Representative (USTR) has determined not to initiate an investigation under section 302 of the Trade Act of 1974 with respect to a petition addressed to China's currency valuation policies because initiation of an investigation would not be effective in addressing the issues raised in the petition.

DATES: Effective May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Terrence McCartin, Senior Director of Monitoring and Enforcement for China, (202) 395–3900; or William Busis, Associate General Counsel and Chairman of the Section 301 Committee, (202) 395–3150.

SUPPLEMENTARY INFORMATION: On April 20, 2005, the Congressional China Currency Action Coalition filed a petition pursuant to section 302(a)(1) of the Trade Act of 1974, as amended (the Trade Act), alleging that certain acts, policies and practices of the Government of China with respect to the valuation of China's currency deny and violate international legal rights of the United States, are unjustifiable, and burden or restrict U.S. commerce. In particular, the petition alleged that China's acts, policies and practices that maintain a fixed exchange rate vis a vis the U.S. dollar have resulted in a significant undervaluation of China's currency. The petition alleged that these acts, policies and practices amount: To a prohibited export subsidy under the Agreement on Subsidies and Countervailing Measures and articles VI and XVI of the General Agreement on Tariffs and Trade 1994 (GATT 1994); to exchange action under article XV of the GATT 1994 that frustrates the intent of articles I, II, III, and XI of the GATT 1994; and to subsidies that are inconsistent with China's obligations under articles 3, 9, and 10 of the Agreement on Agriculture. The petition also alleged that these acts, policies and practices of China violate international legal rights of the United States under articles IV and VIII of the Articles of Agreement of the International Monetary Fund, and that they burden or restrict U.S. commerce by, among other things, suppressing U.S. manufacturing for domestic consumption and the growth in U.S. exports.

On May 27, 2005, the USTR determined not to initiate an investigation under section 302 of the Trade Act because, among other reasons, an investigation would not be effective in addressing the acts, policies, and practices covered in the petition. The Administration is currently involved in efforts to address with the Government of China the currency valuation issues raised in the petition. The USTR believes that initiation of an investigation under section 302 would hamper, rather than advance, Administration efforts to address China's currency valuation policies.

William Busis,

Chairman, Section 301 Committee.

[FR Doc. 05–15674 Filed 8–8–05; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval of the new collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on April 20, 2004 on page 21179.

DATES: Comments must be submitted on or before September 8, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. Title: Survey of Airman Satisfaction with Aeromedical Certification Services.

Type of Request: Approval of a new collection.

OMB Control Number: 2120–xxxx.

Form(s): FAA Pilot Medical Certification Survey.

Affected Public: A total of 4,800 airmen.

Abstract: This survey assesses airman opinion of key dimensions of service quality. These dimensions. identified by the OMB Statistical Policy Office, are courtesy, competence, reliability, and communication.

Estimated Annual Burden Hours: An estimated 1,200 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW.,

Washington, DC 20503, Attention: FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on August 2, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 05–15652 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement and Hold Scoping Meetings for Sacramento International Airport, Sacramento, CA

AGENCY: Federal Aviation Administration.

ACTION: Notice to hold one (1) public scoping meeting and one (1) Governmental/Public agency scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) will be prepared for proposed development included in the Sacramento County Airport Systems (SCAS) Master Plan (Master Plan) for Sacramento International Airport (SMF), Sacramento, California. To ensure that all significant issues related to the proposed action are identified, one (1) public scoping meeting and one (1) governmental and public agency scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: Camille Garibaldi, Environmental Protection Specialist, SFO–613, Planning and Programming Section, Federal Aviation Administration, Western-Pacific Region, San Francisco Airports District Office, 831 Mitten Road, Suite 210, Burlingame, California 94010–1303, telephone: (650) 876–2778 ext. 613; fax: (650) 876–2733. Comments on the scope of the EIS should be submitted to the address or fax above and must be received no later than 5 p.m. Pacific daylight time, Friday, September 23, 2005.

SUPPLEMENTARY INFORMATION: Sacramento International Airport (SMF) is a commercial service airport located within a metropolitan area in the northwest corner of Sacramento County and is operated by SCAS. SMF currently has two parallel 8,600 feet long and 150 feet wide runways oriented in a north/ south direction. In February of 2004, the Sacramento County Board of Supervisors recommended the SMF Master Plan for environmental review. The SMF Master Plan includes proposed improvements to be implemented at the airport in two phases. SCAS subsequently submitted a revised airport layout plan (ALP), reflecting the proposed first phase of development to the Federal Aviation Administration (FAA) for approval.

A joint EIS/EIR will be developed by FAA and SCAS that identifies and analyzes the potential significance of impacts of the proposed improvements in accordance with federal and state law. As the lead federal agency, FAA will prepare an Environmental Impact Statement for first phase projects included in the ALP. The need to prepare an EIS is based on the procedures described in section 501 of FAA Order 1050.1E, Environmental Impacts: Policies and Procedures and FAA Order 5050.4A, Airport Environmental Handbook. The federal actions that cause the FAA to prepare an EIS are the approval for the ALP depicting the proposed development and the further processing of an application for federal funding or passenger facility charges to finance the proposed projects by Sacramento County. In making this decision, the FAA based the need for an EIS on its preliminary review of possible noise, wetland and endangered species impacts the proposed action could cause.

In addition, the County of Sacramento, Department of Environmental Review and Assessment (DERA), as the lead state agency, will prepare an Environmental Impact Report (EIR) for both phases of the recommended Master Plan improvements, pursuant to the California Environmental Quality Act of 1970 (CEQA).

The proposed Phase I projects include:

Airfield Improvements

- Extension of Runway 16L34R from 8,600 feet wide to 11,000 feet long by 159 feet wide.
- Establishment of a new Instrument Landing System (ILS) for Runway 34R and relocation of the ILS for Runway 16L.
- Construction of a new south crossfield Taxiway Y.
- Construction of Air Cargo Improvements and Terminal Apron.
- Airport Traffic Control Tower Relocation.
- Construction of a new Passenger Terminal Apron.

Land Side and Airport Support Improvements

- New Passenger Terminal.
- On-airport and access road improvements.
- Construction of passenger facilities such as a Hotel, Parking Garage, and Rental Car facilities.
- Construction of maintenance facility improvements, such as a new General Services Building and Equipment Maintenance Building.

Land Acquisition

- Acquire 707 acres for approach protection and future airport growth.

Alternatives: The alternatives being considered in the EIS/EIR include the No-Action Alternative; the Proposed Action Alternative; various physical configurations of proposed improvements, such as the extension of Runway 16R/34L rather than 16L/34R; and use of other existing airports.

During scoping, FAA and SCAS will seek comments and input from Federal, State and local agencies, and other interested parties to ensure the EIS/EIR addresses a full range of issues related to the proposed projects and alternatives. Written comments and suggestions concerning the scope of the EIS may be mailed or faxed to the FAA contact listed above and must be received no later than 5 p.m. Pacific daylight time, Friday, September 23, 2005.

Public Scoping Meeting: The FAA will hold one (1) public and one (1) governmental agency scoping meeting to solicit input from the public and various Federal, State, and local agencies having jurisdiction by law or having specific expertise with respect to any environmental impacts associated with the proposed projects. the public scoping meeting will be held on Thursday, September 8, 2005, at Public Television station KVIE's OSE Community Room, 2595 Capital Oaks Drive, Sacramento, California 95833.

The meeting will be held from 5 p.m. to 7 p.m. Pacific daylight time (P.d.t.). A scoping meeting will be held specifically for governmental and public agencies on Thursday, September 8, 2005, from 2 p.m. to 4 p.m. P.d.t. in the same location as the public scoping meeting.

Issued in Hawthorne, California on July 28, 2005.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region, AWP-600.

[FR Doc. 05–15650 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) for review and comment. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on October 21, 2004 (69 FR 61901). We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by September 8, 2005.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald Bessmer, (202) 366–2037, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* Evaluate the Effects of Appraisal Waivers.

Abstract: The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), provides that "real property shall be appraised before the initiation of negotiations, and that the owner, or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value." The appraisal waiver policy is based on the premise that administrative costs, particularly appraisal costs, should not be a high proportion, or exceed the value of the actual real property to be acquired. The procedure to waive the appraisal is specified in 49 CFR 24.102(c) and allows agencies acquiring real property to "* * * determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at $2,500 or less, based on a review of available data." The FHWA has previously expanded this policy by issuing a rule on January 4, 2005 that revised 49 CFR part 24, to allow the State Departments of Transportation, to establish an appraisal waiver threshold to a maximum of $10,000 and with an approval from the Federal agency increase the threshold up to a maximum of $25,000 provided certain conditions were applied. Prior to issuing the revised rule the FHWA had already expanded the appraisal waiver threshold through 49 CFR 24.7, Federal agency waiver of regulations, to allow State Departments of Transportation to request an increase in the threshold. Therefore, the FHWA will conduct a survey to determine the effectiveness and impact of its appraisal waiver policy on the acquisition of real property. The survey will assess whether the use of appraisal waivers is successful in: (1) Securing agreements with owners, (2) reducing the necessity for litigation (eminent domain), (3) providing for consistent treatment of owners, and (4) maintaining public confidence in Federal land acquisition practices. Also, the FHWA will seek to determine whether there are any impacts on the State DOTs' operations from the use of the FHWA's appraisal waiver procedures. The information will be evaluated and "best practices" will be identified. The information will be shared with agencies operating under URA for their use in developing and enhancing effective use of their appraisal waiver policies.

Respondents: 50 State Departments of Transportation, the District of Columbia and Puerto Rico (Right-of-Way Department).

Frequency: This one-time survey will be conducted in two parts.

Estimated Total Annual Burden Hours: The goal of part one is to obtain information from the 52 agencies indicated above. In order to clarify and expand on gathered information, the goal of part two is to conduct follow-up interviews with approximately 15 agencies. The estimated average burden for the initial survey is 3 hours per respondent. The follow-up interviews will require on average 1 hour to complete. The estimated total burden for this one time study is 171 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: August 3, 2005.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 05–15690 Filed 8–8–05; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Rio Tinto Iron & Titanium (WB973–7/25/2005) for permission to use certain data from the Board's 2003 Carload Waybill Sample. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 05–15727 Filed 8–8–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Fair Housing Home Loan Data System Regulation—12 CFR 27." The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments by September 8, 2005.

ADDRESSES: You should direct your comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0159, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to Mark Menchik, OMB Desk Officer, 1557–0159, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503. Electronic mail address is *mmenchik@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend for three years OMB approval of the following information collection:

Title: Fair Housing Home Loan Data System Regulation—12 CFR 27.

OMB Number: 1557–0159.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection, other than the number of institutions. The OCC requests only that OMB extend its approval of the information collection.

The Fair Housing Act (42 U.S.C. 3605) prohibits discrimination in the financing of housing on the basis of race, color, religion, sex, or national origin. The Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of income from public assistance, or exercise of any right under the Consumer Credit Protection Act. The information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

On May 12, 2005, the OCC published in the **Federal Register** (70 FR 25157) a notice on the proposed clarifications to this information collection. The comment period expired on July 11, 2005. The OCC received no public comments and is now submitting its request to OMB for approval of this information collection.

The information collection requirements in 12 CFR part 27 are as follows: Section 27.3 requires a national bank that is required to collect data on home loans under 12 CFR part 203 to present the data on Federal Reserve Form FR HMDA–LAR, or in automated format in accordance with the HMDA–LAR instructions, and to include one additional item (the reason for denial) on the HMDA–LAR. Section 27.3 also lists exceptions to the HMDA–LAR recordkeeping requirements. Section 27.3 further lists the information banks should obtain from an applicant as part of a home loan application, and states information that a bank must disclose to an applicant.

Section 27.4 states that the OCC may require a national bank to maintain a Fair Housing Inquiry/Application Log if there is reason to believe that the bank is engaging in discriminatory practices or if analysis of the data compiled by the bank under the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*) and 12 CFR part 203 indicates a pattern of significant variation in the number of home loans between census tracts with similar incomes and home ownership levels differentiated only by race or national origin.

Section 27.5 requires a national bank to maintain the information for 25 months after the bank notifies the applicant of action taken on an application, or after withdrawal of an application.

Section 27.7 requires a national bank to submit the information to the OCC upon its request, prior to a scheduled examination.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,908.

Estimated Total Annual Responses: 1,908.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 3,764 hours.

Written comments are invited on:

a. Whether the information collection is necessary for the proper performance of the Agency's functions, and how the instructions can be clarified so that information gathered has more practical utility;

b. The accuracy of the Agency's estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of 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.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 05–15666 Filed 8–8–05; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Proposed Collection; Comment Request

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 Bureau of Engraving and Printing within the Department of the Treasury is soliciting comments concerning the Owner's Affidavit of Partial Destruction of Mutilated Currency.

DATES: Written comments should be received on or before October 8, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Department of Treasury, Bureau of Engraving and Printing, Pamela V. Grayson, 14th & C Streets, SW., Washington, DC 20228, (202) 874–2212.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Department of Treasury, Bureau of Engraving and Printing, Lorraine Robinson, 14th & C Streets, SW., Washington, DC 20228, (202) 874–2532.

SUPPLEMENTARY INFORMATION:

Title: Owner's Affidavit of Partial Destruction of Mutilated Currency.

OMB Number: 1520–0001.

Form Number: BEP 5283.

Abstract: The Office of Currency Redemption and Destruction Standards, Bureau of Engraving and Printing, requests owners of partially destroyed U.S. currency to complete a notarized affidavit (form BEP 5283) for each claim submitted when substantial portions of notes are missing.

Type of Review: Reinstatement (without change).

Affected Public: Individuals or households.

Estimated Number of Respondents: 150.

Estimated Total Annual Burden Hours: 90.

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. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Date: August 4, 2005.

Pamela V. Grayson,

Management Analyst.

[FR Doc. 05–15686 Filed 8–8–05; 8:45 am]

BILLING CODE 4840–01–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Proposed Collection; Comment Request

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 Bureau of Engraving and Printing within the Department of the Treasury is soliciting comments concerning the Claim for Amounts Due in the Case of a Deceased Owner of Mutilated Currency.

DATES: Written comments should be received on or before October 8, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Department of Treasury, Bureau of Engraving and Printing, Pamela V. Grayson, 14th & C Streets, SW., Washington, DC 20228, (202) 874–2212.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Department of Treasury, Bureau of Engraving and Printing, Lorraine Robinson, 14th & C Streets, SW., Washington, DC 20228, (202) 874–2532.

SUPPLEMENTARY INFORMATION:

Title: Claim for Amounts in the Case of a Deceased Owner of Mutilated Currency.

OMB Number: 1520–0002.

Form Number: BEP 5287.

Abstract: Treasury is required to determine ownership in cases of a deceased owner of damaged or mutilated currency.

Type of Review: Reinstatement (without change).

Affected Public: Individuals or households, business or other for-profit/not-for-profit institutions and State, local or tribal government.

Estimated Number of Respondents: 120.

Estimated Total Annual Burden Hours: 110.

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. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection request.

Dated: August 4, 2005.

Pamela V. Grayson,

Management Analyst.

[FR Doc. 05–15687 Filed 8–8–05; 8:45 am]

BILLING CODE 4840–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on CARES Business Plan Studies; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on CARES Business Plan Studies will meet as indicated below. The meetings are open to the public.

Location	Date	Time
Canandaigua VA Medical Center, Building 5, Auditorium, 400 Fort Hill Avenue, Canandaigua, NY 14424.	Tuesday, August 30, 2005	11 a.m. until 6:30 p.m.
Montogomery Museum of Fine Arts, Wilson Auditorium, One Museum Way, Montgomery, Alabama 36123.	Thursday September 1, 2005	10 a.m. until 5 p.m.
Howard College Dorothy Garret Coliseum, 1001 Birdwell Lane, Big Spring, TX 79720.	Thursday, September 1, 2005	8 a.m. until 6 p.m.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on proposed business plans at those VA facility sites identified in May 2004 as requiring further study by the Capital Asset

Realignment for Enhanced Services (CARES) Decision document.

The agenda at each meeting will include a discussion of the potential CARES Business Plan options for each site. The options have been developed by the VA contractor. The agenda will provide time for public comments on the options and for discussion of which options should be considered by the Secretary for further analysis and development in the next stage of the Business Plan Option development process.

Interested persons may attend and present oral or written statements to the Committee. For additional information regarding the meetings, please contact Mr. Jay Halpern, Designated Federal Officer, (00CARES), 810 Vermont Avenue, NW., Washington, DC 20024, by phone at (202) 273–5994, or by e-mail at *jay.halpern@va.gov*.

Dated: August 2, 2005.

By Direction of the Secretary.

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. 05–15663 Filed 8–8–05; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has scheduled a meeting on August 26, 2005, at the Shriners Almas Temple (adjacent to the Hamilton Crowne Plaza Hotel), 1315 K Street, NW., Washington, DC 20005. The meeting will begin at 8:30 a.m. and conclude at 4:30 p.m. and is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

On August 26, 2005, the Commission will engage in panel discussions with current and former employees or the Department of Veterans Affairs, the Department of Defense, and the House Committees on Armed Services and Veterans' Affairs with knowledge and expertise in programs to assist and compensate disabled retirees and veterans and their survivors. The agenda will also include briefings by the Department of Veterans Affairs and the Department of Defense to provide the Commission with an understanding of programs to intervene, diagnose, treat, and assess post-traumatic stress disorder (PTSD).

Interested persons may attend and present oral statements to the Commission. Interested parties may provide written comments for review by the Commission at any time to Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004, or by e-mail at *vetscommission@va.gov*.

Information on the Commission may be found at *http://www.va.gov/vetscommision*.

Dated: August 2, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–15664 Filed 8–8–05; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 70, No. 152
Tuesday, August 9, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AH61

Revision of Fee Schedules; Fee Recovery for FY 2005

Correction

In rule document 05–10062 beginning on page 30526 in the issue of Thursday, May 26, 2005, make the following correction:

On page 30552, at the bottom of the page, in the first column, delete the first "(e) The activities comprising the surcharge are as follows: (1) LLW disposal generic activitie ".

[FR Doc. C5–10062 Filed 8–8–05; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
August 9, 2005

Part II

Department of the Treasury

Privacy Act of 1974; Systems of Records; Notice

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; Systems of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Departmental Offices (DO) is publishing its Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, the Department has completed a review of its Privacy Act systems of records notices to identify minor changes that will more accurately describe these records. Such changes throughout the document are editorial in nature and consist principally of changes to system locations and system manager addresses, and revisions to organizational titles. Other changes include the deletion of a routine use from DO .144-General Counsel Litigation Referral and Reporting System, and the title of DO .060 being changed from "Correspondence Files and Records on Employee Complaints and/or Dissatisfaction" to "Correspondence Files and Records on Dissatisfaction."

This publication also incorporates the amendments to several systems of records maintained by the Departmental Offices that were published on October 4, 2002, and March 31, 2003, at 67 FR 62290 and 68 FR 15555 respectively.

Twelve systems of records have been added to the Department's inventory of Privacy Act notices since February 19, 2002, as follows:

DO .214–D.C. Pensions Retirement Records (October 9, 2002, at 67 FR 63012).

DO .311–TIGTA Office of Investigations Files (May 22, 2003, at 68 FR 28046).

On September 22, 2003, systems of records for the Treasury Inspector General for Tax Administration (TIGTA) were published beginning at 68 FR 55086:

DO .301–TIGTA General Personnel and Payroll,

DO .302–TIGTA—Medical Records,

DO .303–TIGTA—General Correspondence,

DO .304–TIGTA—General Training,

DO .305–TIGTA—Personal Property Management Records,

DO .306–TIGTA—Recruiting and Placement Records,

DO .307–TIGTA—Employee Relations Matters, Appeals, Grievances, and Complaint Files,

DO .308–TIGTA—Data Extracts,

DO .309–TIGTA—Chief Counsel Case Files,

DO .310–TIGTA—Chief Counsel Disclosure Section.

Prior to October 26, 2001, The Financial Crimes Enforcement Network (FinCEN) was an office located within the Departmental Offices of the Department of the Treasury. Pursuant to Section 361 of the USA Patriot Act, Pub. L. 107–56, FinCEN was established as a separate Treasury bureau. The following systems of records were transferred to FinCEN and renumbered on November 25, 2003, (see 68 FR 66159):

DO .200—FinCEN Data Base

DO .212—Suspicious Activity Reporting System (SARS)

DO .213—Bank Secrecy Act Reports System

The following systems of records are being removed from the Department's inventory of Privacy Act notices:

DO .183—Private Relief Tax Bill Files

DO .201—Fitness Center Records

The systems notices are reprinted in their entirety following the Table of Contents.

This notice covers all systems of records adopted up to July 1, 2005.

Dated: July 28, 2005.

Nicholas Williams,

Deputy Assistant Secretary for Headquarters Operations.

Table of Contents

TREASURY/DO .003

SYSTEM NAME:

Law Enforcement Retirement Claims Records—Treasury/DO.

SYSTEM LOCATION:

These records are located in the Office of Human Resources Strategy and Solutions, Suite 1200, 1750 Pennsylvania Avenue, NW., Department of the Treasury, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted claims for law enforcement retirement coverage (claims) with their bureaus in accordance with 5 U.S.C. 8336(c)(1) and 5 U.S.C. 8412(d).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to claims filed by current and former Treasury employees under 5 U.S.C. 8336(c)(1) and 5 U.S.C. 8412(d). These case files contain all documents related to the claim including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decision, and related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8336(c)(1), 8412(d), 1302, 3301, and 3302; E.O. 10577; 3 CFR 1954–1958 Comp., p. 218 and 1959–1963 Comp., p. 519; and E.O. 10987.

PURPOSE(S):

The purpose of the system is to make determinations concerning requests by Treasury employees that the position he or she holds qualifies as a law enforcement position for the purpose of administering employment and retirement benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

(1) To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) To disclose information to any source from which additional information is requested in the course of processing a claim, to the extent necessary to identify the individual whose claim is being adjudicated, inform the source of the purpose(s) of the request, and identify the type of information requested;

(3) To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to requesting the agency's decision on the matter;

(4) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) To disclose information which is necessary and relevant to the Department of Justice or to a court when the Government is party to a judicial proceeding before the court;

(6) To provide information to the National Archives and Records Administration for use in records management inspections conducted under authority of 44 U.S.C. 2904 and 2908;

(7) To disclose information to officials of the Merit Systems Protection Board, the Office of the Special Counsel, the Federal Labor Relations Authority, the Equal Employment Opportunity Commission, or the Office of Personnel Management when requested in performance of their authorized duties;

(8) To disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing Counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings; and

(9) To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and electronic media.

RETRIEVABILITY:

By the names of the individuals on whom they are maintained.

SAFEGUARDS:

Lockable metal filing cabinets to which only authorized personnel have access. Automated databases are password protected.

RETENTION AND DISPOSAL:

Disposed of after closing of the case in accordance with General Records Schedule 1, Civilian Personnel Records, Category 7d.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Office of Human Resources Strategy and Solutions, Suite 1200, 1750 Pennsylvania Avenue, NW., Department of the Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

It is required that individuals submitting claims be provided a copy of the record under the claims process. They may, however, contact the agency personnel or designated office where the action was processed, regarding the existence of such records on them. They must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD ACCESS PROCEDURES:

It is required that individuals submitting claims be provided a copy of the record under the claims process. However, after the action has been closed, an individual may request access to the official copy of the claim file by contacting the system manager. Individuals must provide the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the agency ruling on the case, and will not include a review of the merits of the action, determination, or finding. Individuals wishing to request amendment to their records to correct factual errors should contact the system manager. Individuals must furnish the following information for their records to be located and identified: (1) Name, (2) date of birth, (3) approximate date of closing of the case and kind of action taken, (4) organizational component involved.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided: (1) By the individual on whom the record is maintained, (2) by testimony of witnesses, (3) by agency officials, (4) from related correspondence from organizations or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .007

SYSTEM NAME:

General Correspondence Files—Treasury/DO.

SYSTEM LOCATION:

Departmental Offices, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Components of this record system are in the following offices within the Departmental Offices:

1. Office of Foreign Assets Control.
2. Office of Tax Policy.
3. Office of International Affairs.
4. Office of the Executive Secretariat.
5. Office of Legislative Affairs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress, U.S. Foreign Service officials, officials and employees of the Treasury Department, officials of municipalities and state governments, and the general public, foreign nationals, members of the news media, businesses, officials and employees of other Federal Departments and agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming correspondence and replies pertaining to the mission, function, and operation of the Department, tasking sheets, and internal Treasury memorandum.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The manual systems and/or electronic databases (*e.g.*, Treasury Automated Document System (TADS)) used by the system managers are to manage the high volume of correspondence received by the Departmental Offices and to accurately respond to inquiries, suggestions, views and concerns expressed by the writers of the correspondence. It also provides the Secretary of the Treasury with sentiments and statistics on various topics and issues of interest to the Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(2) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(3) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(4) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(5) Provide information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(6) Provide information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, file folders and magnetic media.

RETRIEVABILITY:

By name of individual or letter number, address, assignment control number, or organizational relationship.

SAFEGUARDS:

Access is limited to authorized personnel with a direct need to know. Rooms containing the records are locked after business hours. Some folders are stored in locked file cabinets in areas of limited accessibility except to employees. Others are stored in electronically secured areas and vaults. Access to electronic records is by password.

RETENTION AND DISPOSAL:

Some records are maintained for three years, then destroyed by burning. Other records are updated periodically and maintained as long as needed. Some electronic records are periodically updated and maintained for two years after date of response; hard copies of those records are disposed of after three months in accordance with the NARA schedule. Paper records of the Office of the Executive Secretary are stored indefinitely at the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESSES:

1. Director, Office of Foreign Assets Control, U.S. Treasury Department, Room 2233, Treasury Annex, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

2. Freedom of Information Act Officer, Office of Tax Policy, U.S. Treasury Department, Room 5037G–MT, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

3. Manager, International Affairs Business Office, U.S. Treasury Department, Room 4456–MT, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

4. Director, VIP Correspondence, Office of the Executive Secretariat, U.S. Treasury Department, Room 3419–MT, Washington, DC 20220.

5. Deputy to the Assistant Secretary, Office of Legislative Affairs, U.S. Treasury Department, Room 3464–MT, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Individuals must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Director, Disclosure Services (see "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Members of Congress or other individuals who have corresponded with the Departmental Offices, other governmental agencies (Federal, state and local), foreign individuals and official sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .010

SYSTEM NAME:

Office of Domestic Finance, Actuarial Valuation System—Treasury/DO.

SYSTEM LOCATION:

Departmental Offices, Office of Government Financing, Office of Policy and Legislative Review, 1120 Vermont Avenue, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants and beneficiaries of the Foreign Service Retirement and Disability System and the Foreign Service Pension System. Covered employees are located in the following agencies: Department of State, Department of Agriculture, Agency for International Development, Peace Corps, and the Department of Commerce.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system is as follows: Active Records: Name; social security number; salary; category-grade; pay-plan; department-class; year of entry into system; service computation date; year of birth; year of resignation or year of death, and refund if any.

Retired Records: Same as actives; annuity; year of separation; cause of separation (optional, disability, deferred, etc.); years and months of service by type of service; marital status; spouse's year of birth; annuitant type; principal's year of death; number of children on annuity roll; children's years of birth and annuities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 4058 and 22 U.S.C. 4071h.

PURPOSE(S):

22 U.S.C. 4058 and 22 U.S.C. 4071h require that the Secretary of the Treasury prepare estimates of the

annual appropriations required to be made to the Foreign Service Retirement and Disability Fund. The Secretary of the Treasury is also required, at least every five years, to prepare valuations of the Foreign Pension System and the Foreign Service Retirement and Disability System. In order to satisfy this requirement, participant data must be collected so that liabilities for the Foreign Service Retirement and Disability System and the Foreign Service Pension System can be actuarially determined.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data regarding specific individuals is released only to the contributing agency for purposes of verification.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is stored electronically.

RETRIEVABILITY:

Alphabetically.

SAFEGUARDS:

Access is restricted to select employees of the Office of Government Financial Policy. Passwords are required to access the data.

RETENTION AND DISPOSAL:

Records are retained on a multiple year basis in order to perform actuarial experience studies.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Policy and Legislative Review, Departmental Offices, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Assistant Director, Disclosure Services (see "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Data for actuarial valuation are provided by organizations responsible for pension funds and pay records, namely the Department of State and the National Finance Center.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .015

SYSTEM NAME:

Political Appointee Files—Treasury/DO.

SYSTEM LOCATION:

Department of the Treasury, Departmental Offices, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who may possibly be appointed to political positions in the Department of the Treasury, consisting of Presidential appointees requiring Senate confirmation; non-career Senior Executive Service appointees; and Schedule C appointees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files may consist of the following: Referral letters; White House clearance letters; information about an individual's professional licenses (if applicable); IRS results of inquiries; notation of National Agency Check (NAC) results (favorable or otherwise); internal memoranda concerning an individual; Financial Disclosure Statements (Standard Form 278); results of inquiries about the individual; Questionnaire for National Security Positions Standard Form 86; Personal Data Statement and General Counsel Interview sheets; published works including books, newspaper and magazine articles, and treatises by the individual; newspaper and magazine articles written about or referring to the individual; and or articles containing quotes by the individual, and other correspondence relating to the selection and appointment of political appointees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301, 3302 and E.O. 10577.

PURPOSE(S):

These records are used by authorized personnel within the Department to determine a potential candidate's suitability for appointment to non-career positions within the Department of the Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed to:

(1) The Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, and General Accounting Office for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(2) A Federal, state, local or foreign agency maintaining civil, criminal or other relevant enforcement information or other pertinent information which has requested information relevant to or necessary to the requesting agency's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(4) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(6) Appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violation of, or for implementing a statute, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Correspondence and forms in file folders. Records are also maintained in electronic media.

RETRIEVABILITY:

Information accessed by last name of individual and Social Security Number.

SAFEGUARDS:.

Building employs security guards. Data is kept in locked file cabinets and is accessible to authorized personnel only. Electronic media is password protected.

RETENTION AND DISPOSAL:

Records are destroyed at the end of the Presidential administration during which the individual is hired. For non-selectees, records of individuals who are not hired are destroyed one year after the file is closed, but not later than the end of the Presidential administration during which the individual is considered.

SYSTEM MANAGER(S) AND ADDRESS:

White House Liaison, Department of the Treasury, Rm 3024, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be informed if they are named in this system or gain access to records maintained in the system must submit a written, signed request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment, or similar information). Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See "Record Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Record Notification procedure" above.

RECORD SOURCE CATEGORIES:

Records are submitted by the individuals and compiled from interviews with those individuals seeking non-career positions. Additional sources may include The White House, Office of Personnel Management, Internal Revenue Service, Department of Justice and international, state, and local jurisdiction law enforcement components for clearance documents, and other correspondence and public record sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .060

SYSTEM NAME:

Correspondence Files and Records on Dissatisfaction—Treasury/DO.

SYSTEM LOCATION:

Office of Human Resources Strategy and Solutions, Suite 1200, 1750 Pennsylvania Avenue, NW., Department of the Treasury, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former and current Department employees who have submitted complaints to the Office of Human Resources Strategy and Solutions (HRSS) or whose correspondence concerning a matter of dissatisfaction has been referred to HRSS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence dealing with former and current employee complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C..301.

PURPOSE(S):

To maintain a record of correspondence related to inquiries filed with the Departmental Office of Human Resources Strategy and Solutions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, state, and local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential civil or criminal law or regulation;

(2) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(3) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(4) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, file cabinets.

RETRIEVABILITY:

By bureau and employee name.

SAFEGUARDS:

Maintained in filing cabinet and released only to Office of Personnel staff or other Treasury officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with Department of the Treasury Directive 25–02, "Records Disposition Management Program" and the General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources Strategy and Solutions, Department of the Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Persons inquiring as to the existence of a record on themselves may contact: Director, Office of Human Resources Strategy and Solutions, Suite 1200, 1750 Pennsylvania Avenue, NW., Department of the Treasury, Washington, DC 20220. The inquiry must include the individual's name and employing bureau.

RECORD ACCESS PROCEDURES:

Persons seeking access to records concerning themselves may contact: Office of Human Resources Strategy and Solutions, Suite 1200, 1750 Pennsylvania Avenue, NW., Department of the Treasury, Washington, DC 20220. The inquiry must include the individual's name and employing bureau.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment to their records to correct factual error should contact the Director, Office of Human Resources Strategy and Solutions at the address shown in Access, above. They must furnish the following information: (a) Name; (b) employing bureau; (c) the information being contested; (d) the reason why they believe information is untimely, inaccurate, incomplete, irrelevant, or unnecessary.

RECORD SOURCE CATEGORIES:

Current and former employees, and/or representatives, employees' relatives, general public, Congressmen, the White House, management officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .111

SYSTEM NAME:

Office of Foreign Assets Control Census Records—Treasury/DO.

SYSTEM LOCATION:

Office of Foreign Assets Control Treasury Annex, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Although most reporters in the Census in this system of records are not individuals, such censuses reflect some small number of U.S. individuals as

holders of assets subject to U.S. jurisdiction which are blocked under the various sets of Treasury Department regulations involved.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of several censuses of U.S.-based, foreign-owned assets which have been blocked at any time since 1940 under Treasury Department regulations found under 31 CFR part 1, subpart B, Chapter V.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C., App. 5(b); 22 U.S.C. 2370(a); 50 U.S.C. 1701 et seq.; and 31 CFR Ch. V.

PURPOSE(S):

This system of records is used to identify and administer assets of blocked foreign governments, groups or persons. Censuses are undertaken at various times for specific sanction programs to identify the location, type, and value of property frozen under OFAC administered programs. The information is obtained by requiring reports from all U.S. holders of blocked property subject to the reporting requirements. The reports normally contain information such as the name of the U.S. holder, the foreign account party, location of the property and a description of the type and value of the asset. In some instances, adverse claims by U.S. persons against the blocked property are also reported.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to appropriate state agencies which are concerned with or responsible for abandoned property;

(2) Disclose information to foreign governments in accordance with formal or informal international agreements;

(3) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(5) Provide certain information to appropriate senior foreign-policy-making officials in the Department of State.

(6) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses, in the course of civil discovery, litigation, or settlement negotiations in response to a subpoena or in connection with criminal law proceedings when the United States or any agency or subdivision thereof is a party to any of the above proceedings and such information is determined to be arguably relevant to the proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records stored on magnetic media and/or as hard copy documents.

RETRIEVABILITY:

By name of holder or custodian or owner of blocked property.

SAFEGUARDS:

Locked room, or in locked file cabinets located in areas in which access is limited to Foreign Assets Control employees. Computerized records are password-protected.

RETENTION AND DISPOSAL:

Records are periodically updated and maintained as long as needed. When no longer needed, records are retired to Federal Records Center or destroyed in accordance with established procedures.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Foreign Assets Control, Department of the Treasury, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in the system, must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and type of record sought; and (3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Director, Disclosure Services (See "Record access procedures" below.)

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Custodians or other holders of blocked assets.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .114

SYSTEM NAME:

Foreign Assets Control Enforcement Records—Treasury/DO.

SYSTEM LOCATION:

Office of Foreign Assets Control, Treasury Annex, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have engaged in or who are suspected of having engaged in transactions and activities prohibited by Treasury Department regulations found at 31 CFR Part 1, subpart B, Chapter V.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents related to suspected or actual violations of relevant statutes and regulations administered by the Office of Foreign Assets Control.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C., App. 5(b); 50 U.S.C. 1701 et. seq.; 22 U.S.C. 287(c); 22 U.S.C. 2370(a); and 31, CFR, Chapter V; Pub. L. 99–440, 100 Stat. 1086, as amended by Pub. L. 99–631, 100 Stat. 3515.

PURPOSE(S):

This system of records is used to document investigation and administrative action taken with respect to individuals and organizations suspected of violating statutes and regulations administered and enforced by the Office of Foreign Assets Control. Possible violations may relate to financial, commercial or other transactions with foreign governments, entities or special designated nationals. Suspected criminal violations are investigated primarily by the U.S. Customs Service. Non-criminal cases are pursued administratively for civil penalty consideration. This system is also used to generate statistical information on the number of investigative, criminal and civil cases upon which action has been taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to appropriate Federal agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license;

(2) Disclose information to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement or other pertinent information, which has requested information relevant to or necessary to the requesting agency's official functions;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in response to a subpoena or in connection with criminal law proceedings when the United States or any agency or subdivision thereof is a party to any of the above proceedings and such information is determined to be arguably relevant to the proceeding;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and magnetic media.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Folders in locked file cabinets are located in areas of limited accessibility. Computerized records are password-protected.

RETENTION AND DISPOSAL:

Records are periodically updated and are maintained as long as necessary. When no longer needed, records are retired to Federal Records Center or destroyed in accordance with established procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Foreign Assets Control, U.S. Treasury Department, Washington, DC 20220.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection or for contest of content of records.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

From the individual, from the Office of Foreign Assets Control investigations, and from other federal, state or local agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

TREASURY/DO .118

SYSTEM NAME:

Foreign Assets Control Licensing Records—Treasury/DO.

SYSTEM LOCATION:

Office of Foreign Assets Control, Treasury Annex, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for permissive and authorizing licenses under Treasury Department regulations found at 31 CFR part 1 subpart B, Chapter V.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for Treasury licenses—together with related and supporting documentary material and copies of licenses issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C., App. 5(b); 22 U.S.C. 2370(a); 22 U.S.C. 287(c); 50 U.S.C. 1701 *et seq.* 31 CFR, Chapter V; Pub. L. 99–440, 100 Stat. 1086, as amended by Pub. L. 99–631, 100 Stat. 3515.

PURPOSE(S):

This system of records contains requests from U.S. and foreign persons or entities for licenses to engage in commercial transactions, travel to foreign countries, to unblock property and bank accounts or to engage in other activities otherwise prohibited under economic sanctions administered by the Office of Foreign Assets Control. This system is also used during enforcement investigations, when applicable, and to generate information used in required reports to the Congress by the President on the number and types of licenses granted or denied under particular sanction programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to appropriate Federal, state, local, or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(2) Disclose information to the Department of State, Commerce, Defense or other federal agencies, in connection with Treasury licensing policy or other matters of mutual interest or concern;

(3) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement or other pertinent information, which has requested information relevant to or necessary to the requesting agency's official functions;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to opposing counsel or witnesses, in the course of civil discovery, litigation, or settlement negotiations in response to a subpoena or in connection with criminal law proceedings when the United States or any agency or subdivision thereof is a party to any of the above proceedings and such information is determined to be arguably relevant to the proceeding;

(5) Disclose information to foreign governments in accordance with formal or informal international agreements;

(6) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and magnetic media.

RETRIEVABILITY:

The records are retrieved by license or letter number.

SAFEGUARDS:

Folders in locked filed cabinets are located in areas of limited accessibility. Computerized records are password-protected.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and maintained as long as needed. When no longer needed, records are retired to Federal Records Center or destroyed in accordance with established procedures.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in the system of records, must submit a written request containing the following elements: (1)

Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Director, Disclosure Services (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Applicants for Treasury Department licenses under regulations administered by the Office of Foreign Assets Control.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .144

SYSTEM NAME:

General Counsel Litigation Referral and Reporting System—Treasury/DO.

SYSTEM LOCATION:

U.S. Department of the Treasury, Office of the General Counsel, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are parties, plaintiff or defendant, in civil litigation or administrative proceedings involving or concerning the Department of the Treasury or its officers or employees. The system does not include information on every civil litigation or administrative proceeding involving the Department of the Treasury or its officers and employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records consists of a computer data base containing information related to litigation or administrative proceedings involving or concerning the Department of the Treasury or its officers or employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 301.

PURPOSE(S):

The purposes of this system are: (1) To record service of process and the receipt of other documents relating to litigation or administrative proceedings involving or concerning the Department of the Treasury or its officers or employees, and (2) to respond to inquiries from Treasury personnel, personnel from the Justice Department and other agencies, and other persons concerning whether service of process or other documents have been received by the Department in a particular litigation or proceeding.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, or foreign agencies responsible for investigating or prosecuting the violations of, or for implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a subpoena or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The computerized records are maintained in computer data banks. Printouts of the data may be made.

RETRIEVABILITY:

The computer information is accessible by the name of the non-government party involved in the case, and case number and docket number (when available).

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel.

RETENTION AND DISPOSAL:

The computer information is maintained for up to ten years or more after a record is created.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) An identification of the record system; and (2) an identification of the category and type of records sought. This system contains records that are exempt under 31 CFR 1.36; 5 U.S.C. 552a(j)(2); and (k)(2). Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Treasury Department Legal Division. Department of Justice Legal Division.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(d), (e)(1), (e)(3), (e)(4)(G), (H), (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

TREASURY/DO .149

SYSTEM NAME:

Foreign Assets Control Legal Files—Treasury/DO

SYSTEM LOCATION:

U.S. Department of the Treasury, Room 3133-Annex, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are or who have been parties in litigation or other matters

involving the Office of Foreign Assets Control or involving statutes and regulations administered by the agency found at 31 CFR part 1 subpart B, chapter V.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information and documents relating to litigation and other matters involving the Office of Foreign Assets Control or statutes and regulations administered by the agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 301; 50 U.S.C. App. 5(b); 50 U.S.C. 1701 et seq; 22 U.S.C. 278(c); and other statutes relied upon by the President to impose economic sanctions.

PURPOSE(S):

These records are maintained to assist in providing legal advice to the Office of Foreign Assets Control and the agency regarding issues of compliance, enforcement, investigation, and implementation of matters related to the Office of Foreign Assets Control and the statutes and regulations administered by the agency. These records are also maintained to assist in litigation related to the Office of Foreign Assets Control and the statutes and regulations administered by the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Prosecute, defend, or intervene in litigation related to the Office of Foreign Assets Control and statutes and regulations administered by the agency,

(2) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order or license;

(3) Disclose information to a Federal, State, or local agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's official functions;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Folders in file cabinets and magnetic media.

RETRIEVABILITY:

By name of private plaintiff or defendant.

SAFEGUARDS:

Folders are in lockable file cabinets located in areas of limited public accessibility. Where records are maintained on computer hard drives, access to the files is password-protected.

RETENTION AND DISPOSAL:

Records are periodically updated and maintained as long as needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Foreign Assets Control, U.S. Treasury Department, 1500 Pennsylvania Ave., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information).

RECORD ACCESS PROCEDURES:

Address inquiries to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Pleadings and other materials filed during course of a legal proceeding, discovery obtained pursuant to applicable court rules; materials obtained by Office of Foreign Assets Control investigation; material obtained pursuant to requests made to other Federal agencies; orders, opinions, and decisions of courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .190

SYSTEM NAME:

Investigation Data Management System—Treasury/DO.

SYSTEM LOCATION:

Office of Inspector General (OIG), Assistant Inspector General for Investigations, 740 15th St., NW., Suite 500, Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current and former employees of the Department of the Treasury and persons whose association with current and former employees relate to the alleged violations of the rules of ethical conduct for employees of the Executive Branch, the Department's supplemental standards of ethical conduct, the Department's rules of conduct, merit system principles, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of Treasury. The names of individuals and the files in their names may be: (1) Received by referral; or (2) initiated at the discretion of the Office of the Inspector General in the conduct of assigned duties.

(B) Individuals who are: Witnesses; complainants; confidential or non-confidential informants; suspects; defendants; parties who have been identified by the Office of the Inspector General, constituent units of the Department of Treasury, other agencies, or members of the general public in connection with the authorized functions of the Inspector General.

(C) Current and former senior Treasury and bureau officials who are the subject of investigations initiated and conducted by the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) Letters, memoranda, and other documents citing complaints of alleged criminal or administrative misconduct.

(B) Investigative files which include: (1) Reports of investigations to resolve allegations of misconduct or violations of law with related exhibits, statements, affidavits, records or other pertinent documents obtained during investigations; (2) transcripts and documentation concerning requests and approval for consensual (telephone and consensual non-telephone) monitoring; (3) reports from or to other law enforcement bodies; (4) prior criminal or noncriminal records of individuals as they relate to the investigations; and (5) reports of actions taken by management personnel regarding misconduct and reports of legal actions resulting from violations of statutes referred to the Department of Justice for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C.A. App.3; 5 U.S.C. 301; 31 U.S.C. 321.

PURPOSE(S):

The records and information collected and maintained in this system are used to (a) receive allegations of violations of the standards of ethical conduct for employees of the Executive Branch (5 CFR part 2635), the Treasury Department's supplemental standards of ethical conduct (5 CFR part 3101), the Treasury Department's rules of conduct (31 CFR part 0), the Office of Personnel Management merit system principles, or any other criminal or civil law; and to (b) prove or disprove allegations which the OIG receives that are made against Department of the Treasury employees, contractors and other individuals associated with the Department of the Treasury.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation;

(2) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a subpoena or in connection with criminal law proceedings;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(8) Provide information to the Office of Inspector General of the Department of Justice with respect to investigations involving the Bureau of Alcohol, Tobacco and Firearms; and to the Office of Inspector General of the Department of Homeland Security with respect to investigations involving the Secret Service, Customs Service, and Federal Law Enforcement Training Center, for such OIGs' use in carrying out their obligations under the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3 and other applicable laws; and

(9) Provide information to other OIGs, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of Treasury OIG's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file jackets are maintained in a secured locked room. Electronic records are password protected; backup media are maintained in a locked room.

RETRIEVABILITY:

Paper: Alphabetically by name of subject or complainant, by case number, and by special agent name and/or employee identifying number. Electronic: by complainant, subject, victim, or witness case number, and by special agent name.

SAFEGUARDS:

Paper records and word processing disks are maintained in locked safes and all access doors are locked when offices are vacant. Building has guard; entrance to building, elevators, and other spaces are all keycard-controlled. Automated records are controlled by computer security programs which limit access to authorized personnel who have a need for such information in the course of their duties. The records are available to Office of Inspector General personnel who have an appropriate security clearance on a need-to-know basis.

RETENTION AND DISPOSAL:

Investigative files are stored on-site for 3 years at which time they are retired to the Federal Records Center, Suitland, Maryland, for temporary storage. In most instances, the files are destroyed when 10 years old. However, if the files have significant or historical value, they are retained on-site for 3 years, then retired to the Federal Records Center for 22 years, at which time they are transferred to the National Archives and Records Administration for permanent retention. In addition, an automated investigative case tracking system is maintained on-site; the case information deleted 15 years after the case is closed, or when no longer needed, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, 740 15th St., NW.. Suite 500, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Pursuant to 5 U.S.C. 552a(j)(2) and (k)(2), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual, or for contesting the contents of a record.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

See "Categories of individuals" above. This system contains investigatory material for which sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(C), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/DO .191

SYSTEM NAME:

Human Resources and Administrative Records System.

SYSTEM LOCATION:

Office of Inspector General (OIG), all headquarters, and field offices. (See appendix A.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Office of Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Personnel system records contain OIG employee name, positions, grade and series, salaries, and related information pertaining to OIG employment; (2) Tracking records contain status information on audits,

investigations and other projects; (3) Timekeeping records contain hours worked and leave taken;

(4) Equipment inventory records contain information about government property assigned to employees; (5) Travel records contain information regarding dates, locations, costs, and purpose of official travel conducted by employees; (6) Training records contain information about dates, locations, subjects, and costs of training provided to employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended; (5 U.S.C. Appendix 3) 5 U.S.C. 301; and 31 U.S.C. 321.

PURPOSE(S):

The purpose of the system is to: (1) Manage effectively OIG resources and projects; (2) capture accurate statistical data for mandated reports to the Secretary of the Treasury, the Congress, the Office of Management and Budget, the General Accounting Office, the President's Council on Integrity and Efficiency and other Federal agencies; and (3) provide accurate information critical to the OIG's daily operation, including employee performance and conduct.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) A record from the system of records, which indicates, either by itself or in combination with other information, a violation or potential violation of law, whether civil or criminal, and whether arising by statute, regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local, or foreign agency or other public authority that investigates or prosecutes or assists in investigation or prosecution of such violation, or enforces or implements or assists in enforcement or implementation of the statute, rule, regulation or order.

(2) A record from the system of records may be disclosed to a Federal, State, local, or foreign agency or other public authority, or to private sector (*i.e.*, non-Federal, State, or local government) agencies, organizations, boards, bureaus, or commissions, which maintain civil, criminal, or other relevant enforcement records or other pertinent records, such as current licenses in order to obtain information relevant to an agency investigation, audit, or other inquiry, or relevant to a decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action. Disclosure to the private sector may be made only when the records are properly constituted in accordance with agency requirements; are accurate, relevant, timely and complete; and the disclosure is in the best interest of the Government.

(3) A record from the system of records may be disclosed to a Federal, State, local, or foreign agency or other public authority, or private sector (i.e., non-Federal, State, or local government) agencies, organizations, boards, bureaus, or commissions, if relevant to the recipient's hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, the issuance of a license, grant or other benefit, the establishment of a claim, or the initiation of administrative, civil, or criminal action. Disclosure to the private sector may be made only when the records are properly constituted in accordance with agency requirements; are accurate, relevant, timely and complete; and the disclosure is in the best interest of the Government.

(4) A record from the system of records may be disclosed to any source, private or public, to the extent necessary to secure from such source information relevant to a legitimate agency investigation, audit, or other inquiry.

(5) A record from the system of records may be disclosed to the Department of Justice when the agency or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(6) A record from the system of records may be disclosed in a proceeding before a court or adjudicative body, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(7) A record from the system of records may be disclosed to a Member of Congress from the record of an individual in response to an inquiry from the Member of Congress made at the request of that individual.

(8) A record from the system of records may be disclosed to the Department of Justice and the Office of Government Ethics for the purpose of obtaining advice regarding a violation or possible violation of statute, regulation, rule or order or professional ethical standards.

(9) A record from the system of records may be disclosed to the Office of Management and Budget for the purpose of obtaining its advice regarding agency obligations under the Privacy Act, or in connection with the review of private relief legislation.

(10) A record from the system of records may be disclosed in response to a subpoena issued by a Federal agency having the power to subpoena records of other Federal agencies if, after careful review, the OIG determines that the records are both relevant and necessary to the requesting agency's needs and the purpose for which the records will be used is compatible with the purpose for which the records were collected.

(11) A record from the system of records may be disclosed to a private contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records subject to the same limitations applicable to U.S. Department of Treasury officers and employees under the Privacy Act.

(12) A record from the system of records may be disclosed to a grand jury agent pursuant either to a Federal or State grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury provided that the Grand Jury channels its request through the cognizant U.S. Attorney, that the U.S. Attorney has been delegated the authority to make such requests by the Attorney General, that she or he actually signs the letter specifying both the information sought and the law enforcement purpose

served. In the case of a State Grand Jury subpoena, the State equivalent of the U.S. Attorney and Attorney General shall be substituted.

(13) A record from the system of records may be disclosed to a Federal agency responsible for considering suspension or debarment action where such record would be relevant to such action.

(14) A record from the system of records may be disclosed to an entity or person, public or private, where disclosure of the record is needed to enable the recipient of the record to take action to recover money or property of the United States Department of the Treasury, where such recovery will accrue to the benefit of the United States, or where disclosure of the record is needed to enable the recipient of the record to take appropriate disciplinary action to maintain the integrity of the programs or operations of the Department of the Treasury.

(15) A record from the system of records may be disclosed to a Federal, state, local or foreign agency, or other public authority, for use in computer matching programs to prevent and detect fraud and abuse in benefit programs administered by an agency, to support civil and criminal law enforcement activities of any agency and its components, and to collect debts and over payments owed to any agency and its components.

(16) A record from the system of records may be disclosed to a public or professional licensing organization when such record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

(17) A record from the system of records may be disclosed to the Office of Management and Budget, the General Accounting Office, the President's Council on Integrity and Efficiency and other Federal agencies for mandated reports.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debtor information may also be furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e) to consumer reporting agencies to encourage repayment of an overdue debt.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

Most files are accessed by OIG employee name, employee identifying number, office, or cost center. Some records may be accessed by entering equipment or project information.

SAFEGUARDS:

Access is limited to OIG employees who have a need for such information in the course of their work. Offices are locked. A central network server is password protected by account name and user password. Access to records on electronic media is controlled by computer passwords. Access to specific system records is further limited and controlled by computer security programs limiting access to authorized personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and are retained as long as necessary.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management, 740 15th St. NW., Suite 510, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system may inquire in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix A. Individuals must submit a written request containing the following elements: (1) Identify the record system; (2) identify the category and type of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identifying number, dates of employment or similar information). Address inquiries to Director, Disclosure Services (see "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORDS PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

Current and former employees of the OIG.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix A—Addresses of OIG Offices

Headquarters:

Department of the Treasury, Office of Inspector General, Office of the Assistant Inspector General for Management Services, 740 15th Street, NW., Suite 510, Washington, DC 20220.

Field Locations:

Contact System Manager for addresses.

Department of the Treasury, Office of Inspector General, Office of Audit, San Francisco, CA 94105.

Department of the Treasury, Office of Inspector General, Office of Audit, Boston, MA 02110–3350.

TREASURY/DO .193

SYSTEM NAME:

Employee Locator and Automated Directory System—Treasury/DO.

SYSTEM LOCATION:

Main Treasury Building, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information on all employees of the Department is maintained in the system if the proper locator card is provided.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, office telephone number, bureau, office symbol, building, room number, home address and phone number, and person to be notified in case of emergency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The Employee Locator and Automated Directory System is maintained for the purpose of providing current locator and emergency information on all DO employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures are not made outside of the Department.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy and magnetic media.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

All records, including computer system and all terminals are located within secure space. Only authorized personnel have access.

RETENTION AND DISPOSAL:

Records are kept as long as needed, updated periodically and destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Telephone Operator Services Branch, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

See "System manager" above.

RECORD ACCESS PROCEDURES:

See "System manager" above.

CONTESTING RECORD PROCEDURES:

See "System manager" above.

RECORD SOURCE CATEGORIES:

Information is provided by individual employees. Necessary changes made if requested.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .194

SYSTEM NAME:

Circulation System—Treasury.

SYSTEM LOCATION:

Department of the Treasury, Library, Room 1318–MT, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who borrow library materials or receive library materials on distribution. The system also contains records concerning interlibrary loans to local libraries which are not subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of items borrowed from the Treasury Library collection and patron records are maintained on central computer. Records are maintained by name of borrower, office locator information, and title of publication.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Track circulation of library materials and their borrowers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media.

RETRIEVABILITY:

Data can be retrieved from the system by borrower name or bar code number and publication title or its associated bar code number.

SAFEGUARDS:

Access to the system requires knowledge of password identification codes and protocols for calling up the data files. Access to the records is limited to staff of the Readers Services Branch who have a need-to-know the information for the performance of their duties.

RETENTION AND DISPOSAL:

Only current data are maintained on-line. Records for borrowers are deleted when employee leaves Treasury.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Librarian, Department of the Treasury, Room 1318–MT, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Inquiries should be addressed to: Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington DC 20220.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Patron information records are completed by borrowers and library staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .196

SYSTEM NAME:

Security Information System—Treasury/DO.

SYSTEM LOCATION:

Components of this system are located in the following offices within the Departmental Offices: Office of Security, Room 3180 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Department of the Treasury officials who classify documents with a national security classification, *i.e.*, Top Secret, Secret, or Confidential.

(2) Each Department of the Treasury official, by name and position title, who has been delegated the authority to downgrade and declassify national security information and who is not otherwise authorized to classify a document at its present classification level.

(3) Each Department of the Treasury official, by name and position title, who has been delegated the authority for original classification of national security information, exclusive of officials specifically authorized original classification authority by Treasury Order 102–10.

(4) An alphabetical listing of Department of the Treasury employees who have valid security violations as a result of the improper handling, safeguarding, or storage of classified national security and sensitive but unclassified information.

(5) Department of the Treasury personnel concerned with classified national security and sensitive but unclassified use information who have participated in a security orientation program regarding the salient features of the security requirements and procedures for the handling and safeguarding of such information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The following records are maintained by the Director of Security Programs: (1) Report of Authorized Downgrading and Declassification Officials, (2) Report of Authorized Classifiers, (3) Record of Security Violation, and (4) the Security Orientation Acknowledgment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order No. 12958 as amended, dated April 17, 1995, as amended, and Office of Security Manual, TDP 71–10.

PURPOSE(S):

The system is designed to (1) oversee compliance with Executive Order No. 12958 as amended and Departmental programming and implementation, (2) ensure proper classification of national security information, (3) record details of valid security violations and (4) assist in determining the effectiveness of information security programs affecting classified and sensitive but unclassified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records may be used to disclose information to appropriate Federal agencies and for enforcing or

implementing a statute, rule, regulation or order.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard Copy paper files.

RETRIEVABILITY:

Manually filed and indexed by office or bureau, date, name of official and position title, where appropriate.

SAFEGUARDS:

Secured in security equipment to which access is limited to personnel with the need to know.

RETENTION AND DISPOSAL:

With the exception of the Record of Security Violation, which is maintained for a period of two years, and the Security Orientation Acknowledgment, the remaining records are destroyed and/or updated on an annual basis. Destruction is effected by shredding or other comparable means.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Security Programs, 3180 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access to records maintained in this system, must submit a written request containing the following elements: (1) Identify the record system; (2) Identify the category and types of records sought; and (3) provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information) to the Director, Disclosure Services. (See "Record access procedures" below).

RECORD ACCESS PROCEDURES:

Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

CONTESTING RECORD PROCEDURES:

See "Record access procedures" above.

RECORD SOURCE CATEGORIES:

The sources of the information are office and bureau employees of the Department of the Treasury. The information concerning any security violation is reported by Department of the Treasury security officials and Department of State security officials as concerns Treasury personnel attached to U.S. diplomatic posts or missions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .202

SYSTEM NAME:

Drug-Free Workplace Program Records—Treasury/DO.

SYSTEM LOCATION:

Records are located within the Office of Human Resources for Departmental Offices Advisory Services. Room 5224–MT, Department of the Treasury, Departmental Offices, 1500 Pennsylvania Ave., NW., Washington, DC 20220

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of Departmental Offices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to selection, notification, testing of employees, drug test results, and related documentation concerning the administration of the Drug-Free Workplace Program within Departmental Offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 100–71; 5 U.S.C. 7301 and 7361; 21 U.S.C. 812; Executive Order 12564, "Drug-Free Federal Workplace".

PURPOSE(S):

The system has been established to maintain records relating to the selection, notification, and testing of Departmental Offices' employees for use of illegal drugs and drugs identified in Schedules I and II of 21 U.S.C. 812.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

These records may be disclosed to a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records consist of paper records maintained in file folders and magnetic media.

RETRIEVABILITY:

Records are retrieved by name of employee, position, title, social security number, I.D. number (if assigned), or any combination of these.

SAFEGUARDS:

Records will be stored in secure containers, *e.g.*, safes, locked filing cabinets, etc. Access to such records is restricted to individuals having direct responsibility for the administration of the agency's Drug-Free Workplace Program. Procedural and documentary requirements of Pub. L. 100–71 and the Department of Health and Human Services Guidelines will be followed.

RETENTION AND DISPOSAL:

Records are retained for two years and then destroyed by shredding, burning, or, in case of magnetic media, erasure. Written records and test results may be retained up to five years or longer when necessary due to challenges or appeals of adverse action by the employee.

SYSTEM MANAGER(S) AND ADDRESS:

Departmental Offices, Office of Human Resources for Departmental Offices, Department of the Treasury, 1500 Pennsylvania Ave., NW., Room 5224–MT, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the attention of the Director, Disclosure Services, Departmental Offices, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Individuals must furnish their full name, Social Security Number, the title, series, and grade of the position they occupied, the month and year of any drug test(s) taken, and verification of identity as required by 31 CFR part 1, subpart C, appendix A.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the attention of the Director, Disclosure Services, Departmental Offices, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Individuals must furnish their full name, Social Security Number, the title, series, and grade of the position they occupied, the month and year of any drug test(s) taken, and verification of identity as required by 31 CFR part 1, subpart C, appendix A.

CONTESTING RECORD PROCEDURES:

The Department of the Treasury rules for accessing records, for contesting contents, and appealing initial determinations by the individual concerned are published in 31 CFR part 1, subpart A, appendix A.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual to whom the record pertains; Departmental Offices employees involved in the selection and notification of individuals to be tested;

contractor laboratories that test urine samples for the presence of illegal drugs; Medical Review Officers; supervisors and managers and other Departmental Offices official engaged in administering the Drug-Free Workplace Program; the Employee Assistance Program, and processing adverse actions based on drug test results.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .207

SYSTEM NAME:

Waco Administrative Review Group Investigation—Treasury/DO.

SYSTEM LOCATION:

(a) Department of the Treasury, 1500 Pennsylvania Ave., NW. Washington, DC 20220.

(b) Bureau of Alcohol, Tobacco, Firearms And Explosives (ATFE), 650 Massachusetts Avenue, NW., Washington, DC 20226.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Individuals who were employees or former employees of the Department of the Treasury and its bureaus and persons whose associations with current and former employees relate to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas on February 28, 1993, or any other criminal or civil misconduct, which affects the integrity or facilities of the Department of the Treasury. The names of individuals and the files in their names may be: (1) Received by referral; or (2) developed in the course of the investigation.

(B) Individuals who were: Witnesses; complainants; confidential or non-confidential informants; suspects; defendants who have been identified by the former Office of Enforcement, constituent units of the Department of the Treasury, other agencies, or members of the general public in connection with the authorized functions of the former Office of Enforcement.

(C) Members of the general public who provided information pertinent to the investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

(A) Letters, memoranda, and other documents citing complaints of alleged criminal misconduct pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993.

(B) Investigative files that include:

(1) Reports of investigations to resolve allegations of misconduct or violations of law and to comply with the President's specific directive for a fact finding report on the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, with related exhibits, statements, affidavits, records or other pertinent documents obtained during investigation;

(2) Transcripts and documentation concerning requests and approval for consensual telephone and consensual nontelephone monitoring;

(3) Reports from or to other law enforcement bodies;

(4) Prior criminal or noncriminal records of individuals as they relate to the investigations;

(5) Reports of actions taken by management personnel regarding misconduct and reports of legal actions resulting from violations of statutes referred to the Department of Justice for prosecution;

(6) Videotapes of events pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions;

(7) Audiotapes with transcripts of events pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions;

(8) Photographs and blueprints pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions; and

(9) Drawings, sketches, models portraying events pertinent to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, or to the Department of Justice criminal prosecutions.

PURPOSE(S):

The purpose of the system of records was to implement a data base containing records of investigation conducted by the Waco Administrative Review Group, and other relevant information with regard to the events leading to the former Bureau of Alcohol, Tobacco & Firearms execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993, and, where appropriate, to disclose information to other law enforcement agencies that have an interest in the information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to:

(1) Disclose information to the Department of Justice in connection with actual or potential criminal prosecution or civil litigation;

(2) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, or where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Disclose information to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information that has requested information relevant to or necessary to the requesting agency's hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a subpoena, where relevant and necessary, or in connection with criminal law proceedings;

(5) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(6) Provide a report to the President and the Secretary of the Treasury detailing the investigation and findings concerning the events leading to the former Bureau of Alcohol, Tobacco & Firearms' execution of search and arrest warrants at the Branch Davidian compound, near Waco, Texas, on February 28, 1993.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in binders and file jackets and all multi-source media information are maintained in locked offices with access, through the administrative documents and records control personnel for the Department, available to personnel with a need to know. Records will be maintained in locked offices during non-business hours. Records will be maintained in the Departmental Offices, in the main Treasury building and ATFE Headquarters which are subject to 24-hour security.

RETRIEVABILITY:

Alphabetically by name, and or by number, or other alpha-numeric identifiers.

SAFEGUARDS:

Records and word processing disks are maintained by administrative documents and records control personnel of the Treasury Department and ATFE. All access doors are locked when office is vacant. The records are available on a need-to-know basis to Treasury personnel and the ATFE Office of Chief Counsel personnel upon verification of the substance and propriety of the request.

RETENTION AND DISPOSAL:

Investigative files are stored on-site for six years and indices to those files are stored on-site for ten years. The word processing disks will be retained indefinitely, and to the extent required they will be updated periodically to reflect changes and will be purged when the information is no longer required. Upon expiration of their respective retention periods, the investigative files and their indices are transferred to the Federal Records Center, Suitland, Maryland, for Storage and in most instances destroyed by burning, maceration or pulping when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

(a) Department of the Treasury official prescribing policies and practices: Office of the Under Secretary for Enforcement, Room 4312–MT, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

(b) Official maintaining records at the ATFE: Chief Counsel, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATFE), 650 Massachusetts Avenue, NW., Washington, DC 20226.

NOTIFICATION PROCEDURE:

Individuals seeking access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart c, appendix A. Inquiries should be directed to the Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Individuals who were witnesses; complainants; confidential or non-confidential informants; suspects; defendants, constituents of the Department of the Treasury, other Federal, State or local agencies and members of the public.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .209

SYSTEM NAME:

Personal Services Contracts (PCSs)—Treasury/DO.

SYSTEM LOCATION:

(1) Office of Technical Assistance, Department of the Treasury, 740 15th Street, NW., Washington, DC 20005.

(2) Procurement Services Division, Department of the Treasury, Mail stop: 1425 New York Ave, Suite 2100, 1500 Pennsylvania Ave, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been candidates or who have been awarded a personal services contract (PSC) with the Department of the Treasury.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, demographic data, education, contracts, supervisory notes, personnel related information, financial, payroll and medical data and documents pertaining to the individual contractors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Support for Eastern European Democracy (SEED) Act of 1989 (Pub. L. 101–179). Freedom Support Act (Pub. L. 102–511), Executive Order 12703.

PURPOSE(S):

To maintain records pertaining to the awarding of personal services contracts to individuals for the provision of technical services in support of the SEED Act and the FSA, and which establish an employer/employee relationship with the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose:

(1) Pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority, responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(3) Information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged, and

(5) Information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on electronic media.

RETRIEVABILITY:

Retrieved by name of the individual contractor and contract number.

SAFEGUARDS:

Records are maintained in a secured vault with locked file cabinets with access limited to authorized personnel. Offices are locked during non-working hours with security provided on a 24-hour basis. Electronic media is password protected.

RETENTION AND DISPOSAL:

Records are periodically updated when a contract is modified. Contract records, including all biographical or other personal data, are retained for the contract period, with disposal after contract completion in accordance with the Federal Acquisition Regulation 4.805. Other records are retained for two years then are destroyed when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Director, Office of Technical Assistance, Department of the Treasury, 740 15th Street, NW., Washington, DC 20005.

(2) Director, Procurement Services Division, Department of the Treasury, Mail stop: 1425 New York Ave, Suite 2100, 1500 Pennsylvania Ave, NW., Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or to gain access or seek to contest its contents, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Inquiries should be addressed to the Director, Disclosure Services, Departmental Offices, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedures" above.

RECORD SOURCE CATEGORIES:

Information is provided by the candidate, individual Personal Services Contractor, and Treasury employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .214

SYSTEM NAME:

DC Pensions Retirement Records.

SYSTEM LOCATION:

Office of DC Pensions, Department of the Treasury, Metropolitan Square, Washington, DC 20220. Certain records pertaining to Federal benefit payments are located with contractors engaged by the Department of the Treasury (Department), bureaus of the Department, and the government of the District of Columbia (District).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Former District teachers, police officers and firefighters who performed service subject to the District's retirement plans for teachers, and police officers and firefighters, on or before June 30, 1997.

b. Former District judges, regardless of their dates of service.

c. Current District teachers, police officers, firefighters, who have performed service prior to July 1, 1997:

(1) That may make them eligible to receive Federal benefit payments;

(2) Who have filed a designation of beneficiary for Federal benefit payments; or

(3) Who have filed a service credit application in connection with former Federal service; or

(4) Who have filed an application for disability retirement with the District or the Secretary of the Treasury (Secretary) and who are waiting for a final decision, whose disability retirement application has been approved by the District or the Secretary, or whose disability retirement application has been disapproved by the District or the Secretary, and who will receive or would have received Federal benefit payments if their applications are or had been approved.

d. Current District judges;

e. Former District teachers, police officers, firefighters, and judges who died entitled to or while receiving Federal benefit payments, or their surviving spouses, and/or children and/or dependent parents.

f. Former spouses of District teachers, police officers, firefighters, and judges, who have received or are receiving Federal benefit payments, or who have filed a court order awarding future benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system comprises retirement service history records of employee service in the District, the Federal Government, and other entities upon which Federal benefit payments may be based. Also included in the system are current personnel data pertaining to active District teachers, police officers, firefighters, and judges who, by virtue of the Act, may be eligible for Federal benefit payments. It also contains information concerning health benefit and group life insurance enrollment/change in enrollment. Also included are medical records and supporting evidence for disability retirement applications, and documentation regarding their acceptance or rejection. Consent forms and other records related to the withholding of State income tax from annuitant payments, whether physically maintained by the State or the Department, are included in this system.

These records contain the following information:

a. Documentation of District service subject to the retirement plans for District teachers, police officers, firefighters, and judges.

b. Documentation of service credit and refund claims made by District teachers, police officers, firefighters, and judges under their retirement plans who are potentially eligible for Federal benefit payments.

c. Documentation of retirement contributions made by eligible teachers, police officers, firefighters, and judges.

d. Retirement and death claims files applicable to Federal benefit payments, including documents supporting the retirement application, health benefits, and life insurance eligibility, medical records supporting disability claims, and designations of beneficiary.

e. Enrollment and change in enrollment information under the Federal Employees Health Benefits Program, the employee health benefits program for District employees, the Federal Employee Group Life Insurance Program and the employee group life insurance program for District employees.

f. Court orders submitted by former spouses of District teachers, police officers, firefighters, and judges in support of claims for Federal benefit payments.

g. Records relating to overpayments of Federal benefit payments and other debts arising from the Federal Government's responsibility to administer the retirement plans for District judges, police officers, firefighters, and teachers, and records relating to other Federal debts owed by recipients of Federal benefit payments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title XI, Subtitle A, chapters 1 through 9, and Subtitle C, chapter 4, subchapter B of the Balanced Budget Act of 1997, Pub. L. 105–33.

PURPOSE(S):

These records provide information on which to base determinations of: Eligibility for, and computation of, Federal benefit payments; eligibility and premiums for health insurance and group life insurance; and withholding of State income taxes from annuities. These records also may be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used:

1. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Department becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

2. To disclose information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a suitability or security investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

3. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

5. To disclose information to the National Archives and Records Administration for use in records management inspections.

6. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when:

(A) The Department, or any component thereof;

(B) Any employee of the Department in his or her official capacity;

(C) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee;

(D) The United States, when the Department determines that litigation is likely to affect the Department or any of its components; or

(E) The Federal funds established by the Act to pay Federal benefit payments; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Department is deemed by the Department of Justice or the Department to be relevant and necessary to the litigation provided, however, that the disclosure is compatible with the purpose for which records were collected.

7. To disclose information to contractors, subcontractors, financial agents, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Department, including the District.

8. To disclose, to the following recipients, information needed to adjudicate a claim for Federal benefit payments under the retirement plans for District teachers, police officers, firefighters, and judges, or information needed to conduct an analytical study of benefits being paid under such programs as: Social Security Administration's Old Age, Survivor and Disability Insurance and Medical Programs, military retired pay programs; and Federal civilian employee retirement programs (Civil Service Retirement System, Federal Employees Retirement System, and other Federal retirement systems).

9. To disclose to the U.S. Office of Personnel Management (OPM) and to the District information necessary to verify the election, declination, or waiver of regular and/or optional life insurance coverage.

10. To disclose to health insurance carriers contracting with OPM to provide a health benefits plan under the Federal Employees Health Benefits Program or health insurance carriers contracting with the District to provide a health benefits plan under the health benefits program for District employees, Social Security Numbers and other information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts.

11. To disclose to any inquirer, if sufficient information is provided to assure positive identification of an individual on whom the Department maintains records, the fact that an individual is or is not on the retirement rolls, and if so, the type of annuity (employment or survivor, but not retirement on disability) being paid, or if not, whether a refund has been paid.

12. When an individual to whom a record pertains dies, to disclose to any person possibly entitled in the applicable order of precedence for lump-sum benefits, information in the individual's record that might properly be disclosed to the individual, and the name and relationship of any other person whose claim for benefits takes precedence or who is entitled to share the benefits payable.

13. To disclose information to any person who is legally responsible for the care of an individual to whom a record pertains, or who otherwise has an existing, facially-valid Power of Attorney, information necessary to assure payment of Federal benefit payments to which the individual is entitled.

14. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of a Federal benefit payments annuitant or survivor, or a former employee entitled to deferred Federal benefit payments, for enforcing child support obligations of such individual.

15. In connection with an examination ordered by the District or the Secretary of the Treasury under

(A) Medical examination procedures; or

(B) Involuntary disability retirement procedures to disclose to the representative of an employee, notices, decisions, other written communications, or any other pertinent medical evidence other than medical evidence about which a prudent physician would hesitate to inform the individual; such medical evidence will be disclosed only to a licensed physician, designated in writing for that purpose by the individual or his or her representative. The physician must be capable of explaining the contents of the medical record(s) to the individual and be willing to provide the entire record(s) to the individual.

16. To disclose information to any source from which the Department seeks additional information that is relevant to a determination of an individual's eligibility for, or entitlement to, coverage under the applicable retirement, life insurance, and health benefits program, to the extent necessary to obtain the information requested.

17. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

18. To disclose to a Federal agency, in response to its request, the address of an annuitant or applicant for refund of retirement deductions, if the agency requires that information in connection with the collection of a debt due the United States.

19. To disclose to a State agency responsible for the collection of State

income taxes the information required by an agreement authorized by law to implement voluntary State income tax withholdings from Federal benefit payments.

20. To disclose to the Social Security Administration the names and Social Security Numbers of Federal benefit payment annuitants when necessary to determine: (1) Their vital status as shown in the Social Security Master Records; and (2) whether retirees receiving Federal benefit payments under the District's retirement plan for police officers and firefighters with post-1956 military service credit are eligible for or are receiving old age or survivors benefits under section 202 of the Social Security Act based upon their wages and self-employment income.

21. To disclose to Federal, State, and local government agencies information about retirees and survivors under the retirement plans administered by the Department pursuant to the Act, including name, Social Security Number, date of birth, sex, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code, to help eliminate fraud and abuse in a benefits program administered by a requesting Federal, State, or local government agency, to ensure compliance with Federal, State, and local government tax obligations by persons receiving Federal benefits payments under such retirement plans, and to collect debts and overpayments owed to the requesting Federal, State, or local government agency.

22. To disclose to a Federal agency, or a person or an organization under contract with a Federal agency to render collection services for a Federal agency as permitted by law, in response to a written request from the head of the agency or his designee, or from the debt collection contractor, the following data concerning an individual owing a debt to the Federal Government: (A) The debtor's name, address, Social Security Number, and other information necessary to establish the identity of the individual; and (B) the amount, status, and history of the debtor's Federal benefit payments.

23. To disclose, as permitted by law, information to a State court or administrative agency in connection with a garnishment, attachment, or similar proceeding to enforce an alimony or a child support obligation.

24. To disclose to a former spouse information necessary to explain how that former spouse's benefit was computed.

25. To disclose information necessary to locate individuals who are owed money or property by a Federal, State or local government agency, or by a financial institution or similar institution, to the government agency owing or otherwise responsible for the money or property (or its agent).

26. To disclose information necessary in connection with the review of a disputed claim for health benefits to a health plan provider participating in the Federal Employees Health Benefits Program or the health benefits program for employees of the District, and to a program enrollee or covered family member or an enrollee or covered family member's authorized representative.

27. To disclose to an agency of a State or local government, or a private individual or association engaged in volunteer work, identifying and address information and other pertinent facts, for the purpose of developing an application by such an entity or person to serve as a representative payee for a person who is mentally incompetent or under other legal disability and who is or may be eligible for Federal benefit payments.

28. To disclose information to another Federal agency for the purpose of effecting administrative or salary offset against a person employed by that agency or receiving or eligible to receive benefit payments from the agency when the Department as a creditor has a claim against that person relating to Federal benefit payments.

29. To disclose information concerning delinquent debts relating to Federal benefit payments to other Federal agencies for the purpose of barring delinquent debtors from obtaining Federal loans or loan insurance guarantees pursuant to 31 U.S.C. 3720B.

30. To disclose information concerning delinquent debts relating to Federal benefit payments to State and local governments, for the purpose of collecting such debts.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies in accordance with 31 U.S.C. 3711(e).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic tapes, disks, microfiche, and in paper folders.

RETRIEVABILITY:

These records are retrieved by the name and/or Social Security Number and/or an automatically assigned, system generated number, of the individual to whom they pertain.

SAFEGUARDS:

Records are kept in lockable metal file cabinets or in a secured facility with access limited to those persons whose official duties require access. Data in electronic format may also be password protected. Personnel screening and training are employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

All records on a claim for retirement, including salary and service history, survivor annuity elections and tax and other withholdings are maintained permanently. Records not relevant to the calculation, administration, and payment of Federal benefit payments are disposed of in accordance with Department guidelines. Disposal of paper records and microfiche is by shredding or burning; magnetic tapes and discs are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of DC Pensions, U.S. Department of the Treasury, Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its contents, should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.

b. Date of birth.

c. Social Security Number.

d. Name and address of office in which currently and/or formerly employed in the District.

e. Annuity, service credit, or voluntary contributions account number, if assigned.

f. Automatically assigned, system generated number, if known.

Individuals requesting amendment of their records must also follow the Department's Privacy Act regulations regarding verification of identity and amendment of records (31 CFR part 1 subpart C, appendix A).

RECORD ACCESS PROCEDURE:

See "Notification procedure," above.

CONTESTING RECORD PROCEDURE:

See "Notification procedure," above.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from:

a. The individual to whom the information pertains.

b. District pay, leave, and allowance records.

c. Health benefits and life insurance plan systems records maintained by the Office of Personnel Management and the District.

d. Federal civilian retirement systems.

e. Military retired pay system records.

f. Social Security Old Age; Survivor, and Disability Insurance and Medicare Programs.

g. Health insurance carriers and plans participating in the Federal Employee Health Benefits Program and the health benefits program for employees of the District.

h. Official personnel folders.

i. The individual's co-workers and supervisors.

j. Physicians who have examined or treated the individual.

k. Former spouses of the individual to whom the information pertains.

l. State courts or support enforcement agencies.

m. Credit bureaus.

n. The District Police and Firefighters' Retirement and Relief Board.

o. The District Board of Education.

p. The District Public Charter School Board.

q. District public charter schools.

r. The Executive Office of the District of Columbia Courts.

s. The General Services Administration National Payroll Center.

t. The District Retirement Board.

u. The District Office of Personnel.

v. The District Office of the Chief Financial Officer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .216

SYSTEM NAME:

Treasury Security Access Control and Certificates Systems.

SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Treasury employees, contractors, media representatives, other individuals requiring access to Treasury facilities or to receive government property, and those who need to gain access to a Treasury DO cyber asset including the network, LAN, desktops and notebooks.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for security/access badge, individual's photograph, fingerprint record, special credentials, allied papers, registers, and logs reflecting sequential numbering of security/access badges. The system also contains information needed to establish accountability and audit control of digital certificates that have been assigned to personnel who require access to Treasury DO cyber assets including the DO network and LAN as well as those who transmit electronic data that requires protection by enabling the use of public key cryptography. It also contains records that are needed to authorize an individual's access to a Treasury network.

Records may include the individual's name, organization, work telephone number, Social Security Number, date of birth, Electronic Identification Number, work e-mail address, username and password, country of birth, citizenship, clearance and status, title, home address and phone number, biometric data including fingerprint minutia, and alias names.

Records on the creation, renewal, replacement or revocation of digital certificates, including evidence provided by applicants for proof of identity and authority, sources used to verify an applicant's identity and authority, and the certificates issued, denied and revoked, including reasons for denial and revocation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; the Electronic Signatures in Global and National Commerce Act, Pub. L. 106–229, and E.O. 9397 (SSN).

PURPOSE(S):

The purpose is to: Improve security to both Treasury DO physical and cyber assets; maintain records concerning the security/access badges issued; restrict entry to installations and activities; ensure positive identification of personnel authorized access to restricted areas; maintain accountability for issuance and disposition of security/access badges; maintain an electronic system to facilitate secure, on-line communication between Federal automated systems, between Federal employees or contractors, and/or the public, using digital signature technologies to authenticate and verify identity; provide a means of access to Treasury cyber assets including the DO network, LAN, desktop and laptops; and to provide mechanisms for non-repudiation of personal identification and access to DO sensitive cyber systems including but not limited to human resource, financial, procurement, travel and property systems as well as tax, econometric and other mission critical systems. The system also maintains records relating to the issuance of digital certificates utilizing public key cryptography to employees and contractors for purpose of the transmission of sensitive electronic material that requires protection.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to: (1) Appropriate Federal, state, local and foreign agencies for the purpose of enforcing and investigating administrative, civil or criminal law relating to the hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A contractor for the purpose of compiling, organizing, analyzing, programming, or otherwise refining records to accomplish an agency function subject to the same limitations applicable to U.S. Department of the Treasury officers and employees under the Privacy Act;

(4) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(6) The Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and the Office of Special Counsel for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations;

(7) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906; and

(8) Other Federal agencies or entities when the disclosure of the existence of the individual's security clearance is needed for the conduct of government business.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored as electronic media and paper records.

RETRIEVABILITY:

Records are retrieved by individual's name, social security number, electronic identification number and/or access/security badge number.

SAFEGUARDS:

Entrance to data centers and support organization offices are restricted to those employees whose work requires them to be there for the system to operate. Identification (ID) cards are verified to ensure that only authorized personnel are present. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols which are periodically changed. Reports produced from the remote printers are in the custody of personnel and financial management officers and are subject to the same privacy controls as other documents of like sensitivity.

Access is limited to authorized employees. Paper records are maintained in locked safes and/or file cabinets. Electronic records are password-protected. During non-work hours, records are stored in locked safes and/or cabinets in locked room.

Protection and control of any sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual. Access to the records is available only to employees responsible for the management of the system and/or employees of program offices who have a need for such information.

RETENTION AND DISPOSAL:

The records on government employees and contractor employees are retained for the duration of their employment at the Treasury Department. The records on separated employees are destroyed or sent to the Federal Records Center in accordance with General Records Schedule 18.

SYSTEM MANAGER(S) AND ADDRESS:

Departmental Offices:

a. Director, Office of Security Programs, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

b. Chief Information Officer, 1750 Pennsylvania Ave., NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendix A.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

The information contained in these records is provided by or verified by the subject individual of the record, supervisors, other personnel documents, and non-Federal sources such as private employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .301

SYSTEM NAME:

TIGTA General Personnel and Payroll.

SYSTEM LOCATION:

National Headquarters, 1125 15th Street, NW., Washington, DC 20005, field offices listed in Appendices A and B, Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, and Transaction Processing Center, U.S. Department of Agriculture, National Finance Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to personnel actions and determinations made about TIGTA employees. These records contain data on individuals required by the Office of Personnel Management (OPM) and which may also be contained in the Official Personnel File (OPF). This system may also contain letters of commendation, recommendations for awards, awards, reprimands, adverse or disciplinary charges, and other records which OPM and TIGTA require or permit to be maintained. This system may include records that are maintained in support of a personnel action such as a position management or position classification action, a reduction-in-force action, and priority placement actions. Other records maintained about an individual in this system are performance appraisals and related records, expectation and payout records, employee performance file records, suggestion files, award files, financial and tax records, back pay files, jury duty records, outside employment statements, clearance upon separation documents, unemployment compensation records, adverse and disciplinary action files, supervisory drop files, records relating to personnel actions, furlough and recall records, work measurement records, emergency notification records, and employee locator and current address records. This system includes record created and maintained for purposes of administering the payroll system. Time-reporting records include timesheets and records indicating the number of hours by TIGTA employee attributable to a particular project, task, or audit. This system also includes records related to travel expenses and/or costs. This system includes records concerning employee participation in the mobile-workplace (telecommuting) program. This system also contains records relating to life and health insurance, retirement coverage, designations of beneficiaries, and claims for survivor or death benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, and 5 U.S.C. 301, 1302, 2951, 4506, Ch. 83, 87, and 89.

PURPOSE(S):

This system consists of records compiled for personnel, payroll and time-reporting purposes. In addition, this system contains all records created and/or maintained about employees as required by the Office of Personnel Management (OPM) as well as documents relating to personnel matters and determinations. Retirement, life, and health insurance benefit records are collected and maintained in order to administer the Federal Employee's Retirement System (FERS), Civil Service Retirement System (CSRS), Federal Employee's Group Life Insurance Plan, and, the Federal Employees' Health Benefit Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party of the litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties in order to obtain information pertinent and necessary for the hiring or retention of an individual and/or to obtain information pertinent to an investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to educational institutions for recruitment and cooperative education purposes;

(11) Provide information to a Federal, State, or local agency so that the agency may adjudicate an individual's eligibility for a benefit;

(12) Provide information to a Federal, State, or local agency or to a financial institution as required by law for payroll purposes;

(13) Provide information to Federal agencies to effect inter-agency salary offset and administrative offset;

(14) Provide information to a debt collection agency for debt collection services;

(15) Respond to State and local authorities for support garnishment interrogatories;

(16) Provide information to private creditors for the purpose of garnishment of wages of an employee if a debt has been reduced to a judgment;

(17) Provide information to a prospective employer of a current or former TIGTA employee;

(18) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger;

(19) Provide information to the Office of Workers' Compensation, Veterans Administration Pension Benefits Program, Social Security Old Age, Survivor and Disability Insurance and Medicare Programs, Federal civilian employee retirement systems, and other Federal agencies when requested by that program, for use in determining an individual's claim for benefits;

(20) Provide information necessary to support a claim for health insurance benefits under the Federal Employees' Health Benefits Program to a health insurance carrier or plan participating in the program;

(21) Provide information to hospitals and similar institutions to verify an employee's coverage in the Federal Employees' Health Benefits Program; and,

(22) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, paper records, and microfiche.

RETRIEVABILITY:

Name, Social Security Number, and/or claim number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, Nos. 1 and 2.

SYSTEM MANAGER(S) AND ADDRESS:

General Personnel Records—Assistant Inspector General for Management Services. Time-reporting records: (1) For Office of Audit employees—Deputy Inspector General for Audit; (2) For Office of Chief Counsel employees—Chief Counsel; (3) For Office of Investigations employees—Deputy Inspector General for Investigations; (4) For Office of Management Services employees—Assistant Inspector General for Management Services; and, (5) For Office of Information Technology employees—Assistant Inspector General for Information Technology. Address—1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORDS PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies, is derived from information supplied by that individual, or is provided by Department of the Treasury and other Federal agency personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .302

SYSTEM NAME:

TIGTA Medical Records.

SYSTEM LOCATION:

(1) Health Improvement Plan Records—Office of Investigations, 1125 15th Street, NW., Washington, DC 20005 and field division offices listed in Appendix A; and, (2) All other records of: (a) Applicants and current TIGTA employees: Office of Management Services, TIGTA, 1125 15th Street, NW., Washington, DC 20005 and/or Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26106–1328; and, (b) former TIGTA employees: National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Applicants for TIGTA employment; (2) Current and former TIGTA employees; (3) Applicants for disability retirement; and, (4) Visitors to TIGTA offices who require medical attention while on the premises.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Documents relating to an applicant's mental/physical ability to perform the duties of a position; (2) Information relating to an applicant's rejection for a position because of medical reasons; (3) Documents relating to a current or former TIGTA employee's mental/physical ability to perform the duties of the employee's position; (4) Disability retirement records; (5) Health history questionnaires, medical records, and other similar information for employees participating in the Health Improvement Program; (6) Fitness-for-duty examination reports; (7) Employee assistance records; (8) Injury compensation records relating to on-the-job injuries of current or former TIGTA employees; and, (9) Records relating to drug testing program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301, 3301, 7301, 7901, and Ch. 81, 87 and 89.

PURPOSE(S):

To maintain records related to employee physical exams, fitness-for-duty evaluations, drug testing, disability retirement claims, participation in the Health Improvement Program, and worker's compensation claims. In addition, these records may be used for purposes of making suitability and fitness-for duty determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

With the exception of Routine Use "(1)," none of the other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564 "Drug-Free Federal Work Place." Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

RECORDS MAY BE USED TO:

(1) Disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action;

(2) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(3) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(5) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(6) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(7) Provide information to third parties in order to obtain information pertinent and necessary for the hiring or retention of an individual and/or to obtain information pertinent to an investigation;

(8) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to Federal or State agencies responsible for administering Federal benefits programs and private contractors engaged in providing benefits under Federal contracts;

(11) Disclose information to an individual's private physician where medical considerations or the content of medical records indicate that such release is appropriate;

(12) Disclose information to other Federal or State agencies to the extent provided by law or regulation;

(13) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and,

(14) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act

of 1978,as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, electronic media, and x-rays.

RETRIEVABILITY:

Records are retrievable by name, Social Security Number, date of birth and/or claim number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Health Improvement Program records—Deputy Inspector General for Investigations, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005; and, (2) All other records—Assistant Inspector General for Management Services, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing accordance with instructions appearing at 31 CFR part 1, subpart c, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Medical personnel and institutions; (3) Office of Workers' Compensation personnel and records; (4) Military Retired Pay Systems Records; (5) Federal civilian retirement systems; (6) General Accounting Office pay, leave allowance cards; (7) OPM Retirement, Life Insurance and Health Benefits Records System and Personnel Management Records System; (8) Department of Labor; and, (9) Federal Occupation Health Agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .303

SYSTEM NAME:

TIGTA General Correspondence.

SYSTEM LOCATION:

National Headquarters, 1125 15th Street, NW., Washington, DC 20005, and field offices listed in Appendices A and B.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Initiators of correspondence; and, (2) Persons upon whose behalf the correspondence was initiated.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence received by TIGTA and responses generated thereto; and, (2) Records used to respond to incoming correspondence. Special Categories of correspondence may be included in other systems of records described by specific notices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3 and 5 U.S.C. 301.

PURPOSE(S):

This system consists of correspondence received by TIGTA from individuals and their representatives, oversight committees, and others who conduct business with TIGTA and the responses thereto; it serves as a record of in-coming correspondence and the steps taken to respond thereto.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) Provide information to the news media, in accordance with guidelines contained in 28 CFR 50.2;

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and,

(9) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978,as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name of the correspondent and/or name of the individual to whom the record applies.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Paper records are maintained and disposed of in accordance with a record disposition schedule approved by the National Archives Records Administration. TIGTA is in the process of requesting approval for a record retention schedule for electronic records maintained in this system. These electronic records will not be destroyed until TIGTA receives such approval.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management Services, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt sources of information include: (1) Initiators of the correspondence; and (2) Federal Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/DO .304

SYSTEM NAME:

TIGTA General Training Records.

SYSTEM LOCATION:

National Headquarters, 1125 15th Street, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) TIGTA employees; and, (2) Other Federal or non-Government individuals who have participated in or assisted with training programs as instructors, course developers, or interpreters.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Course rosters; (2) Student registration forms; (3) Nomination forms; (4) Course evaluations; (5) Instructor lists; (6) Individual Development Plans (IDPs); (7) Counseling records; (8) Examination and testing materials; (9) Payment records; (10) Continuing professional education requirements; (11) Officer safety files and firearm qualification records; and, (12) Other training records necessary for reporting and evaluative purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301 and Ch. 41, and Executive Order 11348, as amended by Executive Order 12107.

PURPOSE(S):

These records are collected and maintained to document training received by TIGTA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties to the extent necessary to obtain information pertinent to the training request or requirements and/or in the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible

for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties; and,

(10) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Name, Social Security Number, course title, date of training, and/or location of training.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

(1) For records concerning Office of Investigations employees—Deputy Inspector General for Investigations; (2) For records concerning Office of Audit employees—Deputy Inspector General for Audit; (3) For Office of Chief Counsel employees—Chief Counsel; (4) For Office of Information Technology employees—Assistant Inspector General for Information Technology; and, (5) For Office of Management Service employees—Assistant Inspector General for Management Services. Address—1125 15th Street, NW., Room 700A, Washington, DC, 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; and, (2) Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .305

SYSTEM NAME:

TIGTA Personal Property Management Records.

SYSTEM LOCATION:

Office of Information Technology, TIGTA 1125 15th, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information concerning personal property assigned to TIGTA employees including descriptions and identifying information about the property, custody receipts, property passes, maintenance records, and other similar records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301, and 41 CFR Subtitle C Ch. 101 and 102.

PURPOSE(S):

The purpose of this system is to maintain records concerning personal property, including but not limited to, computers and other similar equipment, motor vehicles, firearms and other law enforcement equipment, communication equipment, computers, fixed assets, credit cards, telephone calling cards, credentials, and badges assigned to TIGTA employees for use in their official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties; and, (10) Provide

information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Indexed by name and/or identification number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules, Nos. 4 and 10.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General Information Technology, Office of Information Technology, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Treasury personnel and records; (3) Vehicle maintenance facilities; (4) Property manufacturer; and, (5) Vehicle registration and licensing agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/DO .306

SYSTEM NAME:

TIGTA Recruiting and Placement Records.

SYSTEM LOCATION:

Office of Management Services, 1125 15th Street, NW., Washington, DC 20005 and/or Bureau of Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Applicants for employment; and, (2) Current and former TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Application packages and Resumes; (2) Related correspondence; and, (3) Documents generated as part of the recruitment and hiring process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, 5 U.S.C. 301 and Ch. 33, and Executive Orders 10577 and 11103.

PURPOSE(S):

The purpose of this system is to maintain records received from applicants applying for positions with TIGTA and relating to determining eligibility for employment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties to the extent necessary to obtain information pertinent to the recruitment, hiring, and/or placement determination and/or during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Disclose information to officials of Federal agencies for purposes of consideration for placement, transfer, reassignment, and/or promotion of TIGTA employees; and, (11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector

General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Records are indexed by name, Social Security Number, and/or vacancy announcement number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records in this system are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management Service, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(k)(5) and (k)(6).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Office of Personnel Management; and, (3) Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records in this system have been designated as exempt from 5 U.S.C. 552a (c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) pursuant to 5 U.S.C. 552a (k)(5) and (k)(6). See 31 CFR 1.36.

TREASURY/DO .307

SYSTEM NAME:

TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.

SYSTEM LOCATION:

Office of Management Services, TIGTA 1125 15th Street, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former, and prospective TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Requests, (2) Appeals, (3) Complaints, (4) Letters or notices to the subject of the record, (5) Records of hearings, (6) Materials relied upon in making any decision or determination, (7) Affidavits or statements, (8) Investigative reports, and, (9) Documents effectuating any decisions or determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app 3 and 5 U.S.C. 301, Ch. 13, 31, 33, 73, and 75.

PURPOSE(S):

This system consists of records compiled for administrative purposes concerning personnel matters affecting current, former, and/or prospective TIGTA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Provide information to Executive agencies, including, but not limited to the Office of Personnel Management, Office of Government Ethics, and General Accounting Office in order to obtain legal and/or policy guidance;

(10) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties; and,

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of

Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Indexed by the name of the individual and case number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subjects of a background investigation, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule, No. 1.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Management Services, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

(1) The subject of the records; (2) Treasury personnel and records; (3) Witnesses; (4) Documents relating to the appeal, grievance, or complaint; and, (5) EEOC, MSPB, and other similar organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system may contain investigative records that are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (See 31 CFR 1.36.)

TREASURY/DO .308

SYSTEM NAME:

TIGTA Data Extracts.

SYSTEM LOCATION:

Office of Information Technology, 4800 Buford Highway, Chamblee, GA 30341, and Office of Investigations, Strategic Enforcement Division, 550 Main Street, Cincinnati, OH 45202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) The subjects or potential subjects of investigations; (2) Individuals who have filed, are required to file tax returns, or are included on tax returns, forms, or other information filings; (3) Entities who have filed or are required to file tax returns, IRS forms, or information filings as well as any individuals listed on the returns, forms and filings; and, (4) Taxpayer representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data extracts from various databases maintained by the Internal Revenue Service consisting of records collected in performance of its tax administration responsibilities as well as records maintained by other governmental agencies, entities, and public record sources. This system also contains information obtained via TIGTA's program of computer matches.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3 and 5 U.S.C. 301.

PURPOSE(S):

This system consists of data extracts from various electronic systems of records maintained by governmental agencies and other entities. The data extracts generated by TIGTA are used for audit and investigative purposes and are necessary to identify and deter fraud, waste, and abuse in the programs and operations of the Internal Revenue Service (IRS) and related entities as well as to promote economy, efficiency, and integrity in the administration of the internal revenue laws and detect and deter wrongdoing by IRS and TIGTA employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties; and,

(10) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name, Social Security Number, Taxpayer Identification Number, and/or employee identification number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

TIGTA is in the process of requesting approval of a new record retention schedule concerning the records in this system of records. These records will not be destroyed until TIGTA receives approval from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Inspector General for Information Technology, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above. 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: Department of the Treasury personnel and records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f). and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (See 31 CFR 1.36.)

TREASURY/DO .309

SYSTEM NAME:

TIGTA Chief Counsel Case Files.

SYSTEM LOCATION:

Office of Chief Counsel, TIGTA, 1125 15th Street, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS:

Parties to and persons involved in litigations, actions, personnel matters, administrative claims, administrative appeals, complaints, grievances, advisories, and other matters assigned to, or under the jurisdiction of, the Office of Chief Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Memoranda, (2) Complaints, (3) Claim forms, (4) Reports of Investigations, (5) Accident reports, (6) Witness statements and affidavits, (7) Pleadings, (8) Correspondence, (9) Administrative files, (10) Case management documents, and, (11) Other records collected or generated in response to matters assigned to the Office of Chief Counsel.

PURPOSE(S):

This system contains records created and maintained by the Office of Chief Counsel for purposes of providing legal service to TIGTA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3, and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing, or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to, or necessary to, the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in

the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purposes of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to an investigation or matter under consideration;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Provide information to Executive agencies, including, but not limited to the Office of Personnel Management, Office of Government Ethics, and General Accounting Office;

(10) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties; and,

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

Records are retrievable by the name of the person to whom they apply and/or by case number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of a background investigation, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Paper records are maintained and disposed of in accordance with a record disposition schedule approved by the National Archives and Records Administration. TIGTA is in the process of requesting approval for a record retention schedule for electronic records maintained in this system. These electronic records will not be destroyed until TIGTA receives such approval.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Chief Counsel, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records in this system are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: (1) Department of Treasury personnel and records, (2) The subject of the record, (3) Witnesses, (4) Parties to disputed matters of fact or law, (5) Congressional inquiries, and, (6) Other Federal agencies including, but not limited to, the Office of Personnel Management, the Merit Systems Protection Board, and the Equal Employment Opportunities Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some of the records in this system are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5)(e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C.552a(j)(2) and (k)(2). (See 31 CFR 1.36.)

TREASURY/DO .310

SYSTEM NAME:

TIGTA Chief Counsel Disclosure Section Records.

SYSTEM LOCATION:

Office of Chief Counsel, Disclosure Section, TIGTA, 1125 15th Street, NW., Washington, DC 20005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Requestors for access and amendment pursuant to the Privacy Act of 1974, 5 U.S.C. 552a; (2) Subjects of requests for disclosure of records; (3) Requestors for access to records pursuant to 26 U.S.C. 6103; (4) TIGTA employees who have been subpoenaed or requested to produce TIGTA documents or testimony on behalf of TIGTA in judicial or administrative proceedings; (5) Subjects of investigations who have been referred to another law enforcement authority; (6) Subjects of investigations who are parties to a judicial or administrative proceeding in which testimony of TIGTA employees or production of TIGTA documents has been sought; and, (7) Individuals initiating correspondence or inquiries processed or controlled by the Disclosure Section.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Requests for access to and/or amendment of records, (2) Responses to such requests, (3) Records processed and released in response to such requests, (4) Processing records, (5) Requests or subpoenas for testimony, (6) Testimony authorizations, (7) Referral letters, (8) Documents referred, (9) Record of disclosure forms, and (10) Other supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 552a, 26 U.S.C 6103, and 31 CFR 1.11.

PURPOSE(S):

The purpose of this system is to enable compliance with applicable Federal disclosure laws and regulations, including statutory record-keeping requirements. In addition, this system will be utilized to maintain records obtained and/or generated for purposes of responding to requests for access, amendment, and disclosure of TIGTA records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing, or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to an investigation or matter under consideration.

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2; and,

(9) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and/or electronic media.

RETRIEVABILITY:

Name of the requestor, name of the subject of the investigation, and/or name of the employee requested to produce documents or to testify.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

TIGTA is in the process of requesting approval for a record retention schedule for records maintained in this system. These records will not be destroyed until TIGTA receives such approval.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records in this system are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: (1) Department of Treasury personnel and records, (2) Incoming requests, and (3) Subpoenas and requests for records and/or testimony.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system may contain records that are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2),(e)(3),(e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (See 31 CFR 1.36.)

TREASURY/DO .311

SYSTEM NAME:

TIGTA Office of Investigations Files.

SYSTEM LOCATION:

National Headquarters, Office of Investigations, 1125 15th Street, NW., Washington, DC 20005 and Field Division offices listed in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) The subjects or potential subjects of investigations; (2) The subjects of complaints received by TIGTA; (3) Persons who have filed complaints with TIGTA; (4) Confidential informants; and (5) TIGTA Special Agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Reports of investigations, which may include, but are not limited to, witness statements, affidavits,

transcripts, police reports, photographs, documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring, the subject's prior criminal record, vehicle maintenance records, medical records, accident reports, insurance policies, police reports, and other exhibits and documents collected during an investigation; (2) Status and disposition information concerning a complaint or investigation including prosecutive action and/or administrative action; (3) Complaints or requests to investigate; (4) General case materials and documentation including, but not limited to, Chronological Case Worksheets (CCW), fact sheets, agent work papers, Record of Disclosure forms, and other case management documentation; (5) Subpoenas and evidence obtained in response to a subpoena; (6) Evidence logs; (7) Pen registers; (8) Correspondence; (9) Records of seized money and/or property; (10) Reports of laboratory examination, photographs, and evidentiary reports; (11) Digital image files of physical evidence; (12) Documents generated for purposes of TIGTA's undercover activities; (13) Documents pertaining to the identity of confidential informants; and (14) Other documents collected and/or generated by the Office of Investigations during the course of official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. 3 and 5 U.S.C. 301.

PURPOSE(S):

The purpose of this system of records is to maintain information relevant to complaints received by TIGTA and collected as part of investigations conducted by TIGTA's Office of Investigations. This system also includes investigative material compiled by the IRS's Office of the Chief Inspector, which was previously maintained in the following systems of records: Treasury/IRS 60.001–60.007 and 60.009–60.010.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(10) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(11) Provide information to other Offices of Inspectors General, the President's Council on Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to Section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C.A. Appendix 3.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic media.

RETRIEVABILITY:

By name, Social Security Number, and/or case number.

SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RETENTION AND DISPOSAL:

Some of the records in this system are maintained and disposed of in accordance with a record disposition schedule approved by the National Archives and Records Administration. TIGTA is in the process of requesting approval of new records schedules concerning all records in this system of records. Records not currently covered by an approved record retention schedule will not be destroyed until TIGTA receives approval from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Inspector General for Investigations, Office of Investigations, TIGTA, 1125 15th Street, NW., Room 700A, Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be

addressed to the Office of Chief Counsel, Disclosure Section, Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Room 700A, Washington, DC 20005. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

RECORD ACCESS PROCEDURES:

See "Notification Procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedures" above.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: Department of the Treasury personnel and records, complainants, witnesses, governmental agencies, tax returns and related documents, subjects of investigations, persons acquainted with the individual under investigation, third party witnesses, Notices of Federal Tax Liens, court documents, property records, newspapers or periodicals, financial institutions and other business records, medical records, and insurance companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (See 31 CFR 1.36)

Appendix B—Office of Investigations, TIGTA

Field Division SAC Offices

Treasury IG for Tax Administration, 401 West Peachtree St., Atlanta, GA 30365.

Treasury IG for Tax Administration, 550 Main Street, Cincinnati, OH 45202.

Treasury IG for Tax Administration, 200 W. Adams, Chicago, IL 60606.

Treasury IG for Tax Administration, 4050 Alpha Rd., Dallas, TX 75244–4203.

Treasury IG for Tax Administration, 600 17th St., Denver, CO 80202.

Treasury IG for Tax Administration, 200 W. Forsyth St., Jacksonville, FL 32202.

Treasury IG for Tax Administration, 312 East First Street, Los Angeles, CA 90012.

Treasury IG for Tax Administration, 201 Varick Street, New York, NY 10008.

Treasury IG for Tax Administration, 600 Arch Street, Philadelphia, PA 19106.

Treasury IG for Tax Administration, 1301 Clay Street, Oakland, CA 94612.

Treasury IG for Tax Administration, New Carrollton Federal Bldg., 5000 Ellin Road, Lanham, MD 20706.

Treasury IG for Tax Administration, 1739-H Brightseat Road, Landover, MD 20785.

Treasury IG for Tax Administration, 8484 Georgia Ave., Silver Spring, MD 20910.

Appendix C—Audit Field Offices, TIGTA

Treasury IG for Tax Administration, 310 Lowell Street, Andover, MA 01812.

Treasury IG for Tax Administration, 401 W. Peachtree St., Atlanta, GA 30308–3539.

Treasury IG for Tax Administration, Atlanta Service Center, 4800 Buford Highway, Chamblee, GA 30341.

Treasury IG for Tax Administration, Koger Center-Fordham Building, 2980 Brandywine Road, Chamblee, GA 30341.

Treasury IG for Tax Administration, 3651 South Interstate 35, Austin, TX 78767.

Treasury IG for Tax Administration, 31 Hopkins Plaza, Fallon Federal Building, Baltimore, MD 21201.

Treasury IG for Tax Administration, 1040 Waverly Ave, Holtsville, NY 11742.

Treasury IG for Tax Administration, 200 W Adams, Chicago, IL 60606.

Treasury IG for Tax Administration, Peck Federal Office Bldg, 550 Main Street, Room 5028, Cincinnati, OH 45201.

Treasury IG for Tax Administration, 4050 Alpha Road, Dallas, TX 75244.

Treasury IG for Tax Administration, 600 17th Street, Denver, CO 80202.

Treasury IG for Tax Administration, 197 State Route 18 South, East Brunswick NJ 08816.

Treasury IG for Tax Administration, Fresno Service Center, 5045 E. Butler Stop 11, Fresno, CA 93888.

Treasury IG for Tax Administration, 7850 SW 6th Court, Plantation, FL 33324.

Treasury IG for Tax Administration, 2306 E. Bannister Rd, Kansas City, MO 64131.

Treasury Inspector General for Tax Administration—Audit, 24000 Avila Road, Laguna Niguel, CA 92677.

Treasury IG for Tax Administration, 312 East First Street, Los Angeles, CA 90012.

Treasury IG for Tax Administration, 5333 Getwell Rd, Memphis, TN 38118.

Treasury IG for Tax Administration, 201 Varick Street, Room 1054, New York, NY 10014.

Treasury IG for Tax Administration, 1160 West 1200 South, Ogden, Utah 84201.

Treasury IG for Tax Administration, Federal Office Building. 600 Arch Street, Philadelphia, PA 19106.

Treasury IG for Tax Administration, Philadelphia Service Center, 11601 Roosevelt Boulevard, Philadelphia, PA 19154.

Treasury IG for Tax Administration, 915 2nd Avenue, Seattle, WA 98174.

Treasury IG for Tax Administration, 1222 Spruce, St. Louis, MO 63103.

Treasury IG for Tax Administration, 92 Montvale Avenue, Stoneham, MA 02180.

Treasury IG for Tax Administration, 1600 Riviera Avenue, Walnut Creek, CA 94596.

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August 9, 2005

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea as Endangered With Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI15

Endangered and Threatened Wildlife and Plants; Listing Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea as Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), list the Roswell springsnail (*Pyrgulopsis roswellensis*), Koster's springsnail (*Juturnia kosteri*), and Noel's amphipod (*Gammarus desperatus*) as endangered and the Pecos assiminea (*Assiminea pecos*) as endangered with critical habitat under the Endangered Species Act of 1973, as amended (Act). These four invertebrates occur at sinkholes, springs, and associated spring runs and wetland habitats. They are found at one site in Chaves County, New Mexico, and Pecos assiminea is also found at one site in Pecos County, Texas, and one site in Reeves County, Texas.

These three snails and one amphipod have an exceedingly limited distribution, low mobility, and fragmented habitat. They are imperiled by introduced species, surface and groundwater contamination, oil and gas extraction activities within the supporting aquifer and watershed, local and regional groundwater depletion, severe drought, and direct loss of their habitat (*e.g.*, through burning or removing marsh vegetation, or flooding of habitat). This final rule will implement the Federal protection and recovery provisions of the Act for these invertebrate species. We are also designating critical habitat for the Pecos assiminea in Texas.

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

ADDRESSES: Supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, New Mexico 87113.

FOR FURTHER INFORMATION CONTACT: Susan MacMullin, Field Supervisor, New Mexico Ecological Services Field Office (telephone, 505–761–4706; facsimile, 505–346–2542).

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to this final listing determination. For more information on the four invertebrates, refer to the February 12, 2002, proposed rule (67 FR 6459). However, some of this information is discussed in our analyses below, such as the summary of factors affecting the species.

Springsnails

The Permian Basin of the southwestern United States contains one of the largest carbonate (limestone) deposits in the world (New Mexico Department of Game and Fish (NMDGF) 1998). Within the Permian Basin of the Southwestern United States lies the Roswell Basin. Located in southeastern New Mexico, this Basin has a surface area of around 31,080 square kilometers (km) (12,000 square miles [mi]) and generally begins north of Roswell, New Mexico, and runs to the southeast of Carlsbad, New Mexico. The Roswell Basin contains a deep artesian aquifer and a shallow surficial aquifer. The action of water on soluble rocks (*e.g.*, limestone and dolomite) has formed abundant "karst" features such as sinkholes, caverns, springs, and underground streams (White *et al.* 1995). These hydrogeological formations create unique settings harboring diverse assemblages of flora and fauna. The isolated limestone and gypsum springs, seeps, and wetlands located in and around Roswell, New Mexico, and Pecos and Reeves Counties, Texas, provide the last known habitats in the world for several endemic species of fish, plants, mollusks, and crustaceans. These species include the Roswell springsnail and Koster's springsnail of the freshwater snail family Hydrobiidae, Pecos assiminea of the snail family Assimineidae, and Noel's amphipod (Gammaridae). These species are distributed in isolated, geographically separate populations, and likely evolved from parent species that once enjoyed a wide distribution during wetter, cooler climates of the Pleistocene. Such divergence has been well-documented for aquatic and terrestrial macroinvertebrate groups within arid ecosystems of western North America (*e.g.*, Taylor 1987; Metcalf and Smartt 1997; Bowman 1981; Cole 1985).

North American snails of the family Hydrobiidae inhabit a great diversity of aquatic systems from surface to cave habitats, small springs to large rivers, and high energy riffles to slack water pools (Wu *et al.* 1997). Snails of the family Assimineidae are typically found in coastal brackish waters or along tropical and temperate seacoasts worldwide (Taylor 1987). Inland species of the genus *Assiminea* are known from around the world, and in North America they occur in California (Death Valley National Monument), Utah, New Mexico, Texas (Pecos and Reeves Counties), and Mexico (Bolsón de Cuatro Cienegas).

The Roswell springsnail and Koster's springsnail are aquatic species. These snails have lifespans of 9 to 15 months and reproduce several times during the spring through fall breeding season (Taylor 1987; Pennak 1989; Brown 1991). Snails of the family Hydrobiidae are sexually dimorphic (there are characteristic differences between males and females), with females being characteristically larger and longer-lived than males. As with other snails in the family, the Roswell springsnail and Koster's springsnail are completely aquatic but can survive in seepage areas, as long as flows are perennial and within the species' physiological tolerance limit. These two snails occupy spring heads and runs with variable water temperatures (10 to 20 ° Celsius [C] (50 to 68 ° Fahrenheit [F])) and slow-to-moderate water velocities over compact substrate ranging from deep organic silts to gypsum sands and gravel and compact substrate (NMDGF 1998). Conversely, the Pecos assiminea seldom occurs immersed in water, but prefers a humid microhabitat created by wet mud or beneath vegetation mats, typically within a few centimeters (cm) (inches (in)) of running water.

Gastropods (snails) are a class of mollusks with a body divided into a foot and visceral mass and a head that usually bears eyes and tentacles. Like most gastropods, the Roswell springsnail, Koster's springsnail, and Pecos assiminea feed on algae, bacteria, and decaying organic material (NMDGF 1988). They will also incidentally ingest small invertebrates while grazing on algae and detritus (dead or partially decayed plant materials or animals).

These snails are fairly small; Koster's springsnail is the largest of the three snails, and is about 4 to 4.5 millimeters (mm) (0.16 to 0.18 in) long with a pale tan shell that is narrowly conical with up to 4¼ to 5¾ whorls or twists. The Roswell springsnail is 3 to 3.5 mm (0.12 to 0.14 in) long with a narrowly conical tan shell with up to 5 whorls. Pecos assiminea is the smallest of the three, with a shell length of 1.55 to 1.87 mm (0.06 to 0.07 in) and a thin, nearly transparent chestnut-brown shell that is regularly conical with up to 4½ strongly incised (shouldered) whorls and a broad oval opening. Although their shells are

similar, the Roswell springsnail is distinguished from Koster's springsnail by a dark, amber operculum (a lid which closes the shell opening when the animal is retracted) with white spiral streaks, while that of Koster's springsnail is nearly colorless. The genus *Assiminea* can be determined from other snail genera by an almost complete lack of tentacles, leaving the eyes within the tips of short eye stalks (Taylor 1987).

Taylor (1987) first described the Roswell springsnail from a "seepage" along the west side of an impoundment in Area 7 at Bitter Lake National Wildlife Refuge (BLNWR, Refuge), Chaves County, New Mexico. Since then, Mehlhop (1992, 1993) has documented the species on the BLNWR and in March 1995 also found it in a spring on private land (*i.e.*, North Spring) east of Roswell (NMDGF 1998). In 2004, the Roswell springsnail was determined to have been extirpated from this private land through habitat alteration (NMDGF 2005b). Monitoring efforts at BLNWR (1995 to 1998) led to the discovery of Roswell springsnail populations in Bitter Creek, the Sago Springs Complex, and a drainage canal along the west shoreline of Area 6. The Roswell springsnail is currently known only from BLNWR with the core population in the Sago Springs Complex and Bitter Creek. The Sago Springs complex is approximately 0.3 km long (1,000 linear feet), half of which is subterranean with flow in the upper reaches restricted to sinkholes. Bitter Creek is six times longer than the Sago Springs Complex and has a total length of 1.8 km (1.1 miles). Monthly monitoring and ecological studies of the Roswell springsnail initiated at BLNWR in June 1995 are ongoing (NMDGF 2005b, 2005c).

Roswell springsnail formerly occurred in several other springs in the Roswell area, but these habitats have dried up apparently due to groundwater pumping and no longer contain the species (Cole 1981; Taylor 1983, 1987). As noted, the Roswell springsnail historically occurred on private land at North Spring, but could not be found during surveys in 2004 (NMDGF 2005b). Pleistocene fossils of the Roswell springsnail are known from Berrendo Creek and the Pecos River in Chaves County (Taylor 1987). No populations are currently known from these areas.

Taylor (1987) first reported Koster's springsnail from Sago Spring at BLNWR. Another population was documented in 1995 at North Spring on private land east of Roswell and a second population was found at BLNWR on the west side of Area 3 during extensive surveys conducted between 1998 and 2001 (Warrick 2005). The species formerly occurred in several other springs in the Roswell area, but these habitats have since dried up due to groundwater pumping and no longer contain the species (Cole 1981; Taylor 1983, 1987; NMDGF 2005b). Pleistocene fossils of Koster's springsnail are known from North Spring River and South Spring Creek in Chaves County (Taylor 1987). Monthly monitoring and ecological studies of Koster's springsnail initiated at BLNWR in 1995 indicate the species is most abundant in the deep organic substrates of Bitter Creek (NMDGF 1998, 2005b). It also occurs at the Sago Springs Complex, but in lower numbers. The species has not been found in recent times along the western boundary of Area 3 in BLNWR (NMDGF 2005b). Koster's springsnail has recently been extirpated at North Spring east of Roswell (NMDGF 2005b).

Pecos assiminea is presently known from two sites at BLNWR, Chaves County, New Mexico, from a large population at Diamond Y Spring and its associated drainage (Diamond Y Springs Complex), Pecos County, Texas, and at East Sandia Spring, Reeves County, Texas. It was thought that Pecos assiminea occurred sporadically throughout the Bolsón de Cuatro Cínegas, Coahuila, Mexico (Taylor 1987); however, recent investigations indicate that the population in Mexico might be a different species (Hershler 2005). Investigations are currently underway to determine whether the animals found in the vicinity of Coahuila, Mexico, are Pecos assiminea (Hershler 2005).

Monitoring and ecological studies of Pecos assiminea initiated at BLNWR in 1995 showed the snail to be typically absent from substrate samples. Populations of Pecos assiminea occur sporadically along Bitter Creek, and a dense population was confirmed on moist vegetation and on muddy surfaces within 1 cm (0.39 in) of water in 1999 in an emergent marsh plant community around the perimeter of a sinkhole within the Sago Springs Complex (NMDGF 1999).

Noel's amphipod

Noel's amphipod, in the family Gammaridae, is a small freshwater crustacean. Inland amphipods are sometimes referred to as freshwater shrimp. Noel's amphipod is brown-green in color with elongate, kidney-shaped eyes, and flanked with red bands along the thoracic and abdominal segments, often with a red dorsal stripe. Males are slightly larger than females, and individuals range from 8.5 to 14.8 mm (0.33 to 0.58 in) long (Cole 1981, 1985).

Gammarids commonly inhabit shallow, cool, well-oxygenated waters of streams, ponds, ditches, sloughs, and springs (Holsinger 1976; Pennak 1989). Because they are light-sensitive, these bottom-dwelling amphipods are active mostly at night and feed on algae, submergent vegetation, and decaying organic matter (Holsinger 1976; Pennak 1989). Young amphipods depend on microbial foods, such as algae and bacteria, associated with aquatic plants (Covich and Thorp 1991). Most amphipods complete their life cycle in one year and breed from February to October, depending on water temperature (Pennak 1978). Amphipods form breeding pairs that remain attached for 1 to 7 days at or near the substrate while continuing to feed and swim (Bousfield 1989). They can produce from 15 to 50 offspring, forming a "brood." Most amphipods produce one brood but some species produce a series of broods during the breeding season (Pennak 1978).

Noel's amphipod is one of three species of endemic amphipods of the Pecos River Basin occurring from Roswell, New Mexico, south to Fort Stockton, Texas, known collectively as the Gammarus-pecos complex (Cole 1985). Noel's amphipod is currently known from the following sites at BLNWR: Sago Springs Complex, Bitter Creek, along the western boundary of Area 6, Area 7 spring-ditch, and Hunter Marsh. It is also found in a spring just outside the BLNWR boundary on private property owned by the City of Roswell (G. Warrick 2005). Noel's amphipod was first described by Cole (1981) from a 1967 collection of amphipods taken from North Spring, east of Roswell. Based on morphological similarities, specimens collected from Lander Springbrook near Roswell were also identified as Noel's amphipod (Cole 1981). The amphipod was extirpated from Lander Springbrook between 1951 and 1960, and the North Spring population was lost between 1978 and 1988. The extirpations were attributed to regional groundwater depletions and habitat alterations (spring channelization) respectively (Cole 1981, 1985).

Previous Federal Actions

On November 22, 1985, we received a petition from Mr. Harold F. Olson, Director of the NMDGF, to add 11 species of New Mexican mollusks to the Federal list of endangered and threatened wildlife. Roswell springsnail (*Pyrgulopsis roswellensis*, formerly *Fontelicella roswellensis* (Hershler

1994)), Koster's springsnail (*Juturnia kosteri*, formerly *Durangonella kosteri* and *Tryonia* kosteri (Hershler *et al.* 2002)), and Pecos assiminea were among the 11 species. We determined that the petition presented substantial information that the requested action may be warranted and published a positive 90-day petition finding in the **Federal Register** on August 20, 1986 (51 FR 29671). A subsequent 12-month finding published in the **Federal Register** on July 1, 1987 (52 FR 24485), concluded that the petitioned action was warranted but precluded by other higher priority listing actions.

On August 29, 2001, the Service announced a settlement agreement in response to litigation by the Center for Biological Diversity, the Southern Appalachian Biodiversity Project, and the California Native Plant Society. Terms of the agreement required that we submit to the **Federal Register**, on or by February 6, 2002, a 12-month finding and accompanying proposed listing rule and proposed critical habitat designation for the four invertebrates addressed in this final rule. This agreement was entered by the court on October 2, 2001 (*Center for Biological Diversity, et al.* v. *Norton,* Civ. No. 01–2063 (JR) (D.D.C.)). A proposed rule to list the four invertebrates as endangered with critical habitat was published in the **Federal Register** on February 12, 2002 (67 FR 6459). On May 31, 2002, we reopened the public comment period for 90 days (67 FR 6459). In addition, we published newspaper notices inviting public comment and announcing the public hearing in the following newspapers in New Mexico: the Carlsbad Current-Argus, the Artesia Daily Press, the Roswell Daily Record, and the Albuquerque Journal. On June 18, 2002, we held a public hearing in Carlsbad, New Mexico, to solicit comments on the proposed rule.

On May 4, 2005, we announced the availability of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the four invertebrates (70 FR 23083). Section 4(b)(2) of the Act requires that we consider economic impacts, impacts to national security, and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We solicited data and comments from the public on these draft documents, as well as on all aspects of our proposal, so that we could consider these in this final determination.

Summary of Comments and Recommendations

In the notices announcing the public comment periods, we requested that all interested parties submit comments on the proposed listings and critical habitat designation, as well as on the associated draft economic analysis and draft environmental assessment, and we also requested information pertaining to any actions that affect the four invertebrates; their current status, ecology, distribution, and threats; and management or conservation efforts in place. We requested this information in order to make a final listing determination based on the best scientific and commercial data currently available. We also solicited four independent experts who are familiar with these species to peer review the proposed listing and critical habitat designation. Two of the peer reviewers submitted substantial comments, but did not support or oppose the proposal. During the public comment periods, we also received 967 written comments (952 written comments were identical, in the form of automatically generated emails), and 7 speakers gave verbal comments at the public hearing. Of those oral comments, one supported the proposal, two were opposed to the proposal, and four provided additional information. Of the written comments, 956 supported the proposal, 8 were opposed, and 3 were neutral but provided information. All substantive information provided during the public comment periods, written and verbal, either has been incorporated directly into this final determination or is addressed below. Similar comments are grouped together by issue.

Issue 1: Biological Concerns

(1) *Comment:* It is unlikely that *Melanoides tuberculata,* a fully aquatic animal, competes with Pecos assiminea, a semi-terrestrial species. On the other hand, the presence of introduced *Melanoides tuberculata* could pose a serious threat to aquatic species such as Koster's springsnail, Roswell springsnail, or Noel's amphipod.

Our Response: The commenter is correct. It is unlikely that *Melanoides* would be a competitor with Pecos assiminea and it is very likely that it may be a serious threat to Koster's springsnail, Roswell springsnail, and Noel's amphipod. We have a more complete discussion of the threat of introduced species under the section, "Summary of Factors Affecting the Species" below.

(2) *Comment:* The NMDGF concluded in 1999 that all four invertebrate species are stable on the BLNWR. There is no evidence that these species are at risk.

Our Response: All four invertebrates are classified as Endangered by the NMDGF under the Wildlife Conservation Act of 1974 (*i.e.*, State Endangered Species Act) (19 NMAC 33.6.8). As such, the NMDGF supports the listing and critical habitat designation for these species. They report that recent (1992 to present) population and habitat monitoring on BLNWR has documented the persistence of these species; however, they still face significant threats (Lang 2002, NMDGF 2005a). Our current understanding of the threats to the four invertebrates and their habitat are fully described under the "Summary of Factors Affecting the Species" section below.

(3) *Comment:* Oil and gas development activities in the vicinity of BLNWR pose no threat to the four invertebrates because the New Mexico Oil Conservation Division regulations for installation of oil and gas wells provide protections to limit impacts.

Our Response: The New Mexico Interstate Stream Commission (NMISC) and NMDGF submitted information that is consistent with the proposed rule, which indicated oil and gas, residential, or industrial development on the private lands immediately west of BLNWR may constitute a threat to spring water quality (Balleau *et al.* 1999; McCord *et al.* 2005; NMDGF 2005a) (see "Summary of Factors Affecting the Species" section below). The NMDGF also presented an overview of oil and gas production and potential risk to the four invertebrates (NMDGF 2005a). They note that, although there are no known cases of groundwater contamination by leaking oil or gas wells in the source-water capture zone for the Middle Area of BLNWR (discussed further under "Water Quality" section below), groundwater contamination from petroleum products has been documented north of Roswell (NMDGF 2005a).

There is a history of oil and gas industry operations on and adjacent to BLNWR, which have resulted in the spillage of oil and brine onto the BLNWR. For example, annual reports from 1994 to 1998 document four oil and gas related accidents on and immediately adjacent to BLNWR (NMDGF 2002; NMISC 2002). In May 1993, a private corporation began drilling a well on adjacent Bureau of Land Management (BLM) lands when they hit a water flow with a high chloride content (6,000 parts per million). The salt water was eventually contained, but serves as an example of

potential issues from oil and gas development (Service 2002). Additionally, in 1996, about 70 to 80 barrels of oil spilled within a berm on an adjacent oil well located on BLM lands (Service 2002). In 1997, an additional 11 barrels of crude oil leaked into the BLNWR boundary (Service 2002). In 1998, BLNWR personnel documented probable violations of New Mexico Oil Conservation Division regulations (*e.g.*, a substandard pit for drilling cuttings, fire hazards, lack of spillage notification) (Service 2002; NMISC 2002). In 2000, there was an additional oil spill on adjacent BLM lands (NMISC 2002).

Development of another 91 natural gas and oil wells has been anticipated on lands managed by the BLM within the source-water capture zone (NMDGF 2005a). Contamination of groundwater from underground leaks has the potential to occur in the future, but existing drilling and casing regulations by the State of New Mexico's Oil Conservation Division and requirements of the BLM for oil and gas drilling and operation in cave and karst areas (BLM 1997) are likely to substantially reduce this probability. The NMDGF indicates that a more likely pathway for petroleum-product contamination of groundwater is from leaking storage and transport facilities from the well site downstream to processing facilities (NMDGF 2005a). These may include leaking pipelines, overflowing storage tanks, leaking valves, and other sources. These data indicate that oil and gas production and distribution continue to threaten the four invertebrates.

(4) *Comment:* Contamination threats to the four invertebrates are not limited to oil and gas development, but also include fire effects. Immediate and short-term adverse effects have been demonstrated from the March 2000 Sandhill Fire (NMISC 2002).

Our Response: NMDGF recently reviewed the effects of fire on the invertebrates (NMDGF 2005a). We agree with their assessment and summarize much of the information below. We recognize that populations of these four invertebrates have the potential to be eliminated or habitat may be rendered unsuitable if fire results in complete combustion of vegetation and litter, high soil temperatures, significant amounts of ash flow, large changes in water chemistry (*e.g.*, dissolved oxygen), or extensive vegetation removal resulting in soil and litter drying. As such, we have also revised the "Summary of Factors Affecting the Species" section below to include a more detailed analysis on the threat of wildfire.

(5) *Comment:* Much of the literature is overly general in nature and is not site- or species-specific. Including such citations leaves readers to conclude that a particular author made a statement or presented data that specifically applies to the threats you believe exist for these invertebrates.

Our Response: In determining and evaluating threats to the four invertebrates, we used the best scientific and commercial data available. This included articles published in peer-reviewed journals, data collected by NMDGF, and comments received on the proposed rule, draft economic analysis, and environmental assessment. You are correct that some of our citations are not specific to these species or the geographic area. Nevertheless, the citations offer evidence that certain threats are real for the species because similar examples have been documented elsewhere.

(6) *Comment:* The allegation that fire caused significant decreases in invertebrate populations implies that quantitative sampling was conducted. The Service and NMDGF rarely conduct quantitative sampling, and the case may be overstated in your proposal.

Our Response: Extensive quantitative pre- and post-fire monitoring was conducted by the NMDGF (NMDGF 2005c). Immediately following the Sandhill fire, Lang (2001) documented a decrease in species richness of localized populations of aquatic macroinvertebrates. For example, in 1996 densities of Noel's amphipod at Dragonfly Spring were estimated at 11,625 per square meter (m^2). Out of 74 post-fire monitoring collections conducted from March 2000 to August 2004, only four Noel's amphipod were found (NMDGF 2005c).

(7) *Comment:* Does non-native vegetation such as saltcedar (*Tamarix* sp.) threaten the invertebrates? Will New Mexico's ability to eradicate or manage saltcedar be restricted if these species are listed?

Our Response: Saltcedar management or eradication activities would be subject to section 7 consultation requirements if a proposed project has the potential to affect the four invertebrate species or designated critical habitat. However, the environmental assessment found that some activities may be considered to be of benefit to the four invertebrate species (Service 2005). Examples of such beneficial actions could include removal and control of non-native vegetation, restoration of wetlands, and removal of non-native species.

Non-native saltcedar is present on BLNWR and The Nature Conservancy (TNC) lands at the Diamond Y Spring and East Sandia Springs preserves (Service 2005). This non-native species is currently being controlled where possible by BLNWR and TNC staff. Control and removal of non-native vegetation was identified as a factor responsible for extirpation of localized populations of Pecos assiminea in Mexico and New Mexico (Taylor 1987). However, it is possible that removal and control of saltcedar will improve habitat and hydrologic conditions at springs and seeps (Service 2005). See also "Factor C" under the "Summary of Factors Affecting the Species" section below.

(8) *Comment:* Have laboratory toxicity tests been conducted to determine the four invertebrates' sensitivity to low oxygen, sediments, or contaminants?

Our Response: To our knowledge, laboratory tests have not been conducted specifically on these species to determine their sensitivity to low oxygen, sediments, or contaminants.

(9) *Comment:* Equating the springsnails with Higgin's eye mussel is inappropriate. Clearly, clams and mussels are very different creatures than springsnails.

Our Response: The commenter is correct that mussels that live in the substrate and filter water to obtain nutrition are very different from springsnails that crawl on the substrate and scrape periphyton (various forms of algae and diatoms) off the substrate. Unfortunately, very little research has been done specifically on the effects of contaminants on springsnails and mussels are one of the most closely related groups available for comparison. However, this reference has been removed from this final rule.

(10) *Comment:* The relevance of South Spring River is not apparent in your discussion of Noel's amphipod. The South Spring River has been dry for many years.

Our Response: The discussion of Noel's amphipod and the dry South Spring River was included to document that this previously known population has likely been extirpated.

(11) *Comment:* Are crayfish known predators of springsnails?

Our Response: Crayfish are known to consume aquatic macrophytes and algae that springsnails rely on for grazing and egg laying (Service 2004b). In addition, crayfish have been cited as a threat and are known to directly prey upon aquatic invertebrates such as springsnails (*e.g.*, Three Forks springsnail (*Pyrgulopsis trivialis*)) (Arizona Game and Fish Department 2003; Service 2004b). Nevertheless, we have not observed any crayfish within habitat occupied by

these four invertebrates, with the exception of Diamond Y Springs Complex where an undescribed native crayfish occurs. See also "Factor C" under the "Summary of Factors Affecting the Species" section below.

(12) *Comment:* Effects to these species from prolonged drought, nutrient enrichment, and sedimentation are all unsubstantiated.

Our Response: There is no doubt that prolonged drought leading to spring diminishment or drying would have a negative impact on the invertebrates. Little research has been done specifically on springsnails to document their response to elevated nutrients, contaminants, or sedimentation. However, based on biological principles and effects observed in other related invertebrates, we can draw reasonable conclusions about what we would expect to happen to these species.

(13) *Comment:* Have surveys for these species been conducted at Bottomless Lakes State Park?

Our Response: Surveys were conducted on Bottomless Lakes State Park during the 1990s by the NMDGF and during the 1980s by D.W. Taylor. Perennial sinks west-northwest of Lea Lake and its outflow to the south, which eventually flows to the BLM Overflow Wetlands, were also surveyed for these invertebrates (Lang 2005). Although potentially suitable habitat for the four invertebrates is available at Bottomless Lakes State Park, these surveys failed to document their occurrence (New Mexico Energy Minerals and Natural Resources Department 2000; NMDGF 2005b).

(14) *Comment:* A new population of Noel's amphipod has been recently discovered on BLNWR.

Our Response: The commenter is correct. Noel's amphipod currently persists on BLNWR at the Sago Spring wetland complex (including Sinkhole No. 31), Bitter Creek, and along the western boundary of Area 6, in the west ditch along Area 7, and along the northwest fenceline of Hunter Marsh (NMDGF 2005c). A new population was discovered in 2004 in a spring belonging to the City of Roswell that borders BLNWR. This population is included in the listing portion of this final rule, but is not within the designation of critical habitat. The critical habitat designation does not include these private lands because section 4(b)(4) of the Act and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) requires that areas designated as critical habitat must first be proposed as such. Thus, we cannot make additions in this final rule to include areas that were not included in the proposed rule. Designation of such areas would require a new or revised proposal and subsequent final rule. Should critical habitat be considered in the future for the Noel's amphipod, we will consider this area in any such determination.

(15) *Comment:* The ongoing drought appears to be more of a threat to these species than groundwater pumping.

Our Response: We agree. Please refer to the "Summary of Factors Affecting the Species" for further discussion of this issue.

(16) *Comment:* The proposed rule lacks documentation of groundwater or surface contamination threats to the four invertebrates.

Our Response: Based upon public comments and information received, we have updated our analysis to include our current understanding of the threats from groundwater or surface contamination to the four invertebrates. Please see the "Summary of Factors Affecting the Species" section.

(17) *Comment:* The Pleistocene Era was mentioned several times in the proposed rule. Does the Service intend to recover these species to levels that were present during this historic era?

Our Response: No, section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the List of Endangered and Threatened Wildlife and Plants. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. As detailed below in our analysis, we examine the listing factors and their application to the four invertebrates. The discussion of these species in relation to the Pleistocene Era was presented as evidence of an apparent historical decline in the numbers, range, and distribution. We did not intend to suggest that the four invertebrates need to be restored to Pleistocene Era levels to be considered recovered.

(18) *Comment:* Is there a plan to control introduced or exotic snails or other species that may prey upon or compete with the four invertebrates?

Our Response: BLNWR is managed for wildlife conservation, which includes restoration and maintenance of biological integrity, diversity, and environmental health. Major land management activities on BLNWR include water level management in impoundments to provide habitat for waterfowl, shorebirds, and other groups of species, habitat restoration, prescribed burning, control of saltcedar, and management of noxious weeds (Service 2005a). Management or removal of exotic species that compete with these invertebrates will be evaluated in the development of a recovery plan, but this management is currently conducted as appropriate. For example, removal of non-native fishes from Diamond Y Springs Complex using antimycin, netting, and trapping was conducted in the past for conservation of Leon Springs pupfish (Service 2005a). For further information and analysis concerning exotic species, please refer to the "Factor C" under the "Summary of Factors Affecting the Species" section.

Issue 2: Procedural and Legal Compliance

(19) Comment: In the proposed rule for the four invertebrate species, restrictions are proposed on groundwater pumping within the Pecos Basin, which would have serious effects on the water supply and use of water by the citizens of New Mexico.

Our Response: We disagree, the proposed rule did not propose restrictions on groundwater pumping. Consistent with our Interagency Cooperative Policy for Endangered Species Act Section 9 Prohibitions, published in the **Federal Register** on July 1, 1994 (59 FR 34272), we identified in the proposed rule those activities that we believe would or would not constitute a violation of the prohibitions identified in section 9 of the Act. The final Federal listing of these four invertebrates under the Act requires that Federal agencies consult with the Service on activities involving Federal funding, a Federal permit, Federal authorization,or other Federal actions. Consultation (under section 7 of the Act) is required when activities have the potential to affect the four invertebrates or designated critical habitat. The consultation will analyze and determine to what degree the species are impacted by the proposed action. Section 7 of the Act prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. This final Federal listing does not restrict groundwater pumping or any other actions.

The environmental assessment found that spring flows within the proposed critical habitat on BLNWR are already protected by existing water rights afforded by the New Mexico Office of the State Engineer's administration of the Roswell Basin. In 1967, water rights were adjudicated in the Roswell Basin, wells were metered, and pumping rates administered by the Office of the State Engineer (OSE). Currently, any

proposed change in use of water (underground or surface depletion) in the Roswell Basin will undergo analysis by OSE to determine if there would be impairment to existing water rights (McCord *et al.* 2005). The OSE will not allow such change if it impairs the Federal water right in any respect (NMISC 2005). Thus the spring flows on BLNWR should be protected from any changes in groundwater pumping near the refuge in the future.

In Texas, Pecos assiminea currently has no State or other regulatory protection. Some protection for the habitat of this species is provided with the ownership of the springs by TNC (Karges 2003). Groundwater pumping that could affect spring flows is subject to limited regulation in Texas. State agencies do not control groundwater pumping, and Texas courts have held that, with few exceptions, landowners have the right to take all the water that can be captured under their land (rule of capture), regardless of impacts to neighbors or natural resources. As noted in the economic analysis, within Texas further hydrological studies are necessary to determine the impact of groundwater pumping on surface and groundwater levels at Units 3 and 4. The TNC has stated that additional research on the delineation of watersheds is crucial to the sustainable, long-term conservation of the springs. If hydrological studies determine a link between the various aquifers, we would work with private landowners on a volunteer basis to minimize impacts to the Pecos assiminea from groundwater withdrawals.

(20) *Comment:* The groundwater depletion analysis fails to rely upon the best available science, does not utilize an accurate and reliable model, and mischaracterizes effects of groundwater pumping.

Our Response: Based upon new information we received during the comment periods, we revised our analysis from the proposed rule to reflect our current understanding regarding the threat of groundwater depletion on the four invertebrates and their habitat in New Mexico. Please refer to the "Summary of Factors Affecting Species" section.

(21) *Comment:* The status of these species will not improve if they are listed.

Our Response: Federal listing in and of itself does not improve the status of the species. Listing these species authorizes the development of a recovery plan. The recovery plan will likely identify both State and Federal efforts for conservation of these species and establish a framework for agencies and stakeholders to coordinate activities and cooperate with each other in conservation efforts. The plan will set recovery priorities and describe site-specific management actions necessary to achieve conservation and survival of the four invertebrates. See also response to comment 22 below for related information about the five factors described in section 4(a)(1) of the Act. Also note the discussion on section 7 consultation requirements in our response to comment 19 above.

(22) *Comment:* Why does the Service want to list these four invertebrates when they are already within protected areas?

Our Response: We have analyzed the threats to these species based upon the five factors described in section 4(a)(1) of the Act. Although these species occur on areas that are currently managed for conservation purposes, we have determined based on our analysis of the threats discussed below in the section "Summary of Factors Affecting the Species," that these four invertebrate species are in danger of extinction throughout all or a significant portion of their respective ranges. Our analysis determined that these species are threatened by activities such as oil and gas production and development, groundwater pumping, and introduction of non-native species that are beyond the boundaries and/or the management protected areas where the species are found. Thus, the four invertebrates meet the definition of endangered species.

(23) *Comment:* If these species are listed, is there a possible effect to the U.S. Bureau of Reclamation with respect to delivery of irrigation water?

Our Response: Federal listing will require the Bureau of Reclamation (Reclamation) to consult with us on activities that have the potential to adversely affect the four invertebrates or designated critical habitat. None of Reclamation's current projects will be affected by the listing of the invertebrates and we are not aware of any future projects that may be affected by the listing. Delivery of irrigation water occurs via the Pecos River and we do not anticipate that listing these species will affect that activity.

(24) *Comment:* Will the listing of these species impede the ability of the State of New Mexico to meet Pecos Compact River obligations?

Our Response: No, the NMISC has been actively acquiring and leasing water rights to meet the State's delivery obligations to Texas as specified in the Pecos River Compact and pursuant to an Amended Decree entered by the U.S. Supreme Court. For example, between 1991 and 1999, $27.8 million was spent on the Pecos River water rights acquisition program. We do not anticipate that the listing of these species or the designation of critical habitat will alter the ability of the NMISC to meet Pecos River Compact delivery obligations. The amount of water being pumped from the Roswell Basin should not change; however, the use of water will change. For example, instead of being applied to fields, the water may be delivered to the Pecos River directly to meet Compact delivery obligations.

(25) *Comment:* Will oil and gas exploration be further restricted in areas designated as critical habitat?

Our *Response:* No, the Service does not anticipate that the designation of critical habitat will restrict oil and gas exploration. Section 7 consultation, when required, would analyze any impacts to the species and their designated critical habitat. The environmental assessment found that oil and gas projects with Federal involvement in the BLNWR and the surrounding area are already subject to stipulations for protecting groundwater (Service 2005). The Oil Conservation Division of the New Mexico Energy, Minerals, and Natural Resources Department regulates oil and gas well drilling and casing in part to prevent contamination of groundwater (19 NMAC 15.3).

BLNWR is excluded from the designation of critical habitat for the four invertebrate species, and critical habitat would not result in additional section 7 consultations on federally supported oil and gas projects. Oil and gas well development in the vicinity of Diamond Y Springs Complex and East Sandia Spring occurs on private lands with no Federal involvement. Therefore, section 7 consultations on the effects to designated critical habitat would likely not occur for these projects. For this reason, we do not believe there would be any additional restrictions to oil and gas exploration activities.

Issue 3: National Environmental Policy Act (NEPA) Compliance and Economic Analysis

(26) *Comment:* What has regulation or policy of Federal actions cost State and County governments before listing and critical habitat designation?

Our *Response:* Since the proposed listing of the four invertebrates species, there have been specific conservation actions implemented that have taken into account the protection of the species. An estimated $366,000 to $494,000 in costs have been incurred by Federal and State agencies for the four invertebrates (Service 2005b). These

costs are related to developing the New Mexico State recovery plan and have included monitoring the four invertebrates' habitat, consultant fees, staff time devoted to developing the plan, administrative costs related to past conferences under section 7 of the Act, and associated monitoring of invertebrate habitat. We did not find that County governments have incurred any costs related to the conservation of these species.

(27) *Comment:* Does the Service have an estimate of the costs required to recover the four invertebrates?

Our *Response:* The costs of actions to recover the four invertebrates will be estimated during the development of a recovery plan.

(28) *Comment:* The economic analysis should consider benefits of the critical habitat designation.

Our *Response:* In the context of a critical habitat designation, the primary purpose of the rulemaking (*i.e.*, the direct benefit) is to designate areas that have the features on which the species depend and that are in need of special management.

The designation of critical habitat may result in two distinct categories of benefits to society: (1) Use benefits; and (2) non-use benefits. Use benefits are simply the social benefits that accrue from the physical use of a resource. Visiting critical habitat to see endangered species in their natural habitat would be a primary example. Non-use benefits, in contrast, represent welfare gains from "just knowing" that a particular listed species" natural habitat is being specially managed for the survival and recovery of that species. Both use and non-use benefits may occur unaccompanied by any market transactions.

A primary reason for conducting an economic analysis is to provide information regarding the economic impacts associated with a proposed critical habitat designation. Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, impact to national security, and any other relevant impact, of specifying any particular area as critical habitat. Economic impacts can be both positive and negative and by definition, are observable through market transactions.

Where data are available, the economic analysis attempts to recognize and measure the net economic impact of the proposed designation. For example, if the fencing of a species' habitat to restrict motor vehicles results in an increase in the number of individuals visiting the site for wildlife viewing, then the analysis would recognize the potential for a positive economic impact and attempt to quantify the effect (*e.g.*, impacts that would be associated with an increase in tourism spending by wildlife viewers). In this particular instance, however, the economic analysis did not identify estimates or measures of positive economic impacts that could offset some of the negative economic impacts analyzed earlier in this analysis.

While the Act requires the Service to specifically consider the economic impact of a designation, it does not require the Service to explicitly consider any broader social benefits (or costs) that may be associated with the designation. In fact, the Service believes that this is by Congressional design, because the Act explicitly states that it is the Federal government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. While section 4(b)(2) of the Act gives the Secretary discretion to exclude certain areas from the final designation, she is authorized to do so only if an exclusion does not result in the extinction of the species. Thus, the Service believes that explicit consideration of broader social values for the species and its habitat, beyond economic impacts, is not necessary as Congress has already clarified the importance our society places on conserving all threatened and endangered species and their natural habitats upon which they depend. In terms of carrying out its responsibilities under section 4(b)(2) then, the Service need only consider whether the economic impacts (both positive and negative) are significant enough to merit exclusion of any particular area without causing the species to go extinct.

(29) *Comment:* The economic analysis overstates costs by including past costs that occurred before the species was listed, costs that would result from the listing alone, and costs that derive from conservation efforts for other listed species. Similarly, the economic analysis includes costs of consultation with the Environmental Protection Agency (EPA) regarding Concentrated Animal Feeding Operations (CAFOs), which should be primarily associated with other listed species, and the listing of the four invertebrates, and not critical habitat designation.

Our Response: This analysis identifies those economic activities believed to most likely threaten the four invertebrates and their habitat and, where possible, quantifies the economic impact to avoid, mitigate, or compensate for such threats within the boundaries of the critical habitat determination. The economic analysis considers past impacts associated with species conservation efforts that have been incurred since the proposed listing and critical habitat determination in 2002. The impact of these efforts is considered relevant to understanding the potential impact of the listing and critical habitat determination. Further, due to the difficulty in making a distinction between listing and critical habitat effects within critical habitat boundaries, this analysis considers all future conservation-related impacts to be coextensive with the designation.

The consideration of co-extensive costs was mandated by the 10th Circuit Court of Appeals ruling in the New Mexico Cattle Growers Association case (248 F.3d at 1285), which directed us to consider all impacts, "regardless of whether those impacts are attributable co-extensively to other causes." As explained in the economic analysis, due to possible overlapping regulatory schemes and other reasons, there are also some elements of the analysis which may overstate some costs.

Conversely, the 9th Circuit has recently ruled ("*Gifford Pinchot,*" 378 F.3d at 1071) that the Service's regulations defining "adverse modification" of critical habitat are invalid because they define adverse modification as affecting both survival and recovery of a species. The Court directed us to consider that adverse modification should be focused on impacts to recovery. While we have not yet proposed a new definition for public review and comment, changing the adverse modification definition to respond to the Court's direction may result in additional costs associated with critical habitat definitions (depending upon the outcome of the rulemaking).

As described in section 1.2 of the economic analysis, coextensive effects may also include impacts associated with overlapping protective measures of other Federal, State, and local laws that aid habitat conservation in the areas proposed for designation, including protections for other listed species. These measures may be in part precipitated by the consideration of the presence of the species and impending critical habitat determination. Because the quantified habitat conservation efforts, regardless of their primary impetus, afford protection to the four invertebrates, they likely contribute to the efficacy of the critical habitat determination efforts. The impacts of these actions are therefore considered relevant for understanding the full effect of the proposed critical habitat determination. Enforcement actions

taken in response to violations of the Act, however, are not included.

(30) *Comment:* The economic analysis inappropriately includes costs of delays in proposed drilling operations associated with industry appeals on applications for drilling permits. The oil and gas industry, however, is appealing environmental protections associated with their permits and burdening themselves. This should not be included as a cost of the critical habitat designation.

Our Response: Industry appeals regarding drilling applications are a result of the implementation of environmental regulations, including the Act, that recommend additional species and habitat conservation efforts be undertaken with the drilling activity. The economic impacts of these delays are therefore considered relevant in understanding the impact of conservation efforts for the four invertebrates.

(31) *Comment:* It is unclear from the economic analysis what additional protections from oil and gas activities may be provided by the Service for the four invertebrates as the economic analysis includes costs associated with the listing and with protections for other species, but no additional costs associated specifically with the critical habitat designation.

Our Response: This analysis identifies the types of modifications to economic activities that may be undertaken to avoid, mitigate, or compensate for threats to the species and habitat. The draft economic analysis acknowledges the difficulty in distinguishing between listing and critical habitat effects and therefore considers all future conservation-related impacts to be coextensive with the critical habitat designation. Further, the relative level to which multiple considerations, including that of other species, contribute to the undertaking of a conservation effort is unclear. The impacts quantified in the analysis are assumed to be in some part precipitated by the critical habitat designation for the four invertebrates. Absent information on the specific increment by which critical habitat designation contributes to the undertaking of these efforts, the total impact of the effort is quantified, and not a fraction solely due to critical habitat designation.

(32) *Comment:* The draft economic analysis relies on information provided by impacted industries to quantify the costs to those industries. These costs are inflated. For example, environmentally protective project modifications such as closed-loop systems can result in cost savings to the oil and gas industry. The draft economic analysis, however, only includes the costs to the industry of modifying projects to incorporate conservation measures for the species.

Our Response: As the commenter notes, the potential for cost savings associated with implementing environmentally protective technologies, such as closed-loop systems, is acknowledged in the draft economic analysis on page 4–7. However, the level of benefit these modifications may generate is unclear. Additionally, application of closed-loop systems is not ubiquitous. As the industry indicates, it is not always the most beneficial operations alternative. The draft economic analysis therefore includes the full cost of this modification to oil and gas operations as a high-end estimate of the impact of conservation efforts.

(33) *Comment:* The NMDGF's 2004 Biennial Review of threatened and endangered species in the State indicated that off-refuge land use practices within areas of the Roswell Artesian Basin (RAB), such as regional groundwater pumping for agriculture, municipal water supplies, and the oil and gas industries, threaten the invertebrate species. In contrast, a recent report prepared by the New Mexico Office of the State Engineer (OSE) provides the most recent information regarding the hydrology of the RAB. The report concludes that "* * * an extended, extreme drought, and not groundwater depletion through human activity, would potentially threaten the future supply of water for the proposed critical habitat located within the BLNWR."

Our Response: Paragraph 77 and section 4.2.2 of the draft economic analysis state that no hydrologic models currently exist to determine the impact of groundwater pumping of the RAB on the springs at the BLNWR. The revised economic analysis acknowledges recent information resulting from the OSE report. As the draft economic analysis does not quantify impacts of critical habitat designation to groundwater pumping; however, the quantitative results of this analysis are unchanged as a result of this comment.

Summary of Changes From the Proposed Rule

Based upon our review of the public comments, the economic analysis, environmental assessment, issues addressed at the public hearing, and any new relevant information that may have become available since the publication of the proposal, we reevaluated our proposed listing and critical habitat designation and made changes as appropriate. Other than minor clarifications and incorporation of additional information on the species' biology, this final rule differs from the proposal by:

(1) The exclusion of critical habitat on BLNWR because special management considerations are currently provided to the four invertebrates through current BLNWR management; and

(2) Changes to the primary constituent elements of critical habitat for the Pecos assiminea.

Summary of Factors Affecting the Species

Section 4 of the Act and implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be threatened or endangered due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.*

Several biological traits of a population have been identified as putting a species at risk of extinction (McKinney 1997; O'Grady 2004). Some of these characteristics include having a localized range, limited mobility, and fragmented habitat (McKinney 1997; O'Grady 2004). The four invertebrates have all of these characteristics. Having a small, localized range means that any perturbation, either natural (*e.g.*, drought) or anthropogenic (*e.g.*, water contamination) can eliminate many or all of the existing populations. Having a high number of individuals at a site provides no protection against extinction. Noel (1954) noted that the amphipod in Lander Spring was the most abundant animal present. It was extirpated from that site when the spring dried up (Cole 1985). The range reduction trend in these snail species (*e.g.*, by extirpation of once widely distributed but localized populations) is supported by the Pleistocene fossil record in conjunction with re-inventory of known site occurrences in which no individuals were detected (Noel 1954; Taylor 1987; Mehlhop 1992, 1993; NMDGF 1999). Fossil records indicate that at least one or more of these snail species were historically found at Berrendo Creek, North Spring, and South Spring Rivers, and along the Pecos River (NMDGF 1999). This evidence suggests an apparent historical decline in the numbers, range, and distribution of these species.

Limited mobility restricts the ability of the invertebrates to find and disperse to other suitable habitats or to move out of habitat that becomes unsuitable. Consequently, their range remains restricted and they are unable to avoid contaminants or other unfavorable changes to their habitat. Fragmented (unconnected) habitat restricts gene flow among populations and limits the ability of the invertebrates to recolonize habitats that have been disturbed but then recover. For example, three springs once contributed to Berrendo Creek in the Roswell Basin. If the population of springsnails in one of the springs was eliminated because of a toxic spill, after the habitat had recovered, the spring could have been colonized naturally by dispersal of animals from the other springs. In the currently fragmented habitats, dispersal is highly unlikely and if a population is extirpated the habitat probably will not be recolonized, further restricting the range.

In addition to the characteristics listed above that may put species at greater risk of extinction, habitat loss, introduced species, and habitat degradation can also lead to extinction (Meffe *et al.* 1994; Frankham *et al.* 2002). Each of these topics is discussed in detail. Curtailment of range and habitat of the four invertebrates has occurred primarily through the loss of suitable spring habitat. These species were most likely much more widely distributed throughout the Pecos River Basin during the wetter climatic period of the Pleistocene. As the climate became warmer and drier, the invertebrates were restricted to the remaining free-flowing springs. Fossil records indicate that two of the snail species were found at Berrendo Creek and along the Pecos River (Taylor 1987).

In addition, in the late 1800s, flow at North Spring, South Spring, and Berrendo Creek was 85 cubic feet per second (cfs) (2.4 cubic meters per second [cms], 60 cfs (1.7 cms), and 66 (1.9 cms) cfs, respectively (Fiedler and Nye 1933). These systems each provided abundant habitat for the invertebrates. Lander Spring, a tributary spring of South Spring, harbored Noel's amphipod (Noel 1954). The historic connection of these spring systems to the Pecos River most likely facilitated dispersal of the invertebrates throughout the basin downstream of this area.

In the 1880s, irrigated agriculture in the Roswell and Artesia Basins was limited to a few small farms (Fielder and Nye 1933). By the end of 1905, 485 artesian wells had been drilled and by 1927, 1,424 wells were pumping water (Fiedler and Nye 1933). One well, drilled for the Oasis Cotton Company, is estimated to have produced 9,000 gallons/minute (20 cfs) (Fiedler and Nye 1933, Jones and Balleau 1996). As a result of extensive groundwater pumping, the artesian head in the basin declined (Fiedler and Nye 1933). The amount of decline depended on location within the basin and ranged from 32 to 204 feet (9.7 to 62.2 meters) from original levels by 1927, and led to a decrease in area within the basin that had artesian flow (Fiedler and Nye 1933). Groundwater depletion continued until the mid-1970s, when it reached its maximum (McCord *et al.* 2005).

By 1926, South Spring was dry (Jones and Balleau 1996). Berrendo Spring still produced 8.3 cfs, about 12 percent of the original 1880s flow (Jones and Balleau 1996). Today, Berrendo Well produces less than 1 cfs (McCord *et al.* 2005). Lander Spring went dry in the late 1950s or early 1960s (Cole 1981), extirpating the population of Noel's amphipod, which in the early 1950s had been described by Noel (1954) as the most abundant animal in the spring. Discharge at North Spring is unknown. Jones and Balleau (1996) list its flow as 0 in 1926, but Cole (1981) described 3 small separate brooks that entered a pond on a private golf course in 1967. Surveys in 1995 at the site indicated that Roswell springsnail and Koster's springsnail were still present at the location (Noel's amphipod once occupied the site). Surveys in 2004 found none of the species, most likely due to habitat modification from pond enlargement (NMDGF 2005a). Surface flow at BLNWR was also diminished by artesian pumping. Springs adjacent to Salt Creek no longer flow, and surface flow from the Middle Area of BLNWR (sum of flow in upper Bitter Creek and Middle Area springs) was 15 cfs (0.4 cms) in 1937 and 5 cfs (0.14 cms) in 1995 (Jones and Balleau 1996). Aerial photos which show a larger, meandering channel for Bitter Creek are also evidence that discharge from Bitter Creek was once greater.

Groundwater pumping in the Roswell Basin led to the drying of several springs, many of which are known to have harbored one or more of the four invertebrates. It is not possible to determine the extent of the loss of invertebrate populations because many springs went dry long before these species were described or surveys could be conducted. Members of the family Hydrobiidae (including *Pyrgulopsis*) are susceptible to extirpation or extinction because they often occur in isolated desert springs (Hershler 1989; Hershler and Pratt 1990; Hershler 1994; Lydeard *et al.* 2004). At least three species in this genus have gone extinct (Hershler 1994). In addition, loss can not be measured simply by the number of artesian springs that are now not flowing. Many of these springs were large enough to form rivers that flowed for several miles and creeks such as Bitter Creek, while still flowing, are reduced in length. Most likely there was suitable habitat available for the invertebrates throughout the length of the streams.

Groundwater pumping in the Roswell Basin increased through the 1950s, when approximately 450,000 acre feet/year were extracted (McCord *et al.* 2005). Rates remained fairly stable through 1966 (McCord *et al.* 2005). In 1967, water rights were adjudicated in the Roswell Basin, wells were metered, and pumping rates administered by the Office of the State Engineer (OSE). Currently, any proposed change in use of water (underground or surface depletion) in the Roswell Basin will undergo analysis by OSE to determine if there would be impairment to existing water rights (McCord *et al.* 2005). The OSE will not allow such change if it impairs the Federal water right in any respect (NMISC 2005). Thus the spring flows on BLNWR should be protected from any changes in groundwater pumping near the Refuge in the future.

There was a drought in the 1950s that most likely affected the recharge of the groundwater in the Roswell Basin. In spite of controls on pumping initiated in 1968 and increased precipitation near Roswell in the 1960s and 1970s, artesian groundwater levels continued to decline until 1975 (McCord *et al.* 2005). Thus, it appears that there was a lag between the time of the drought and recovery in the artesian groundwater. Since 1999, New Mexico has been in a drought (Piechota *et al.* 2004). The current drought may also affect groundwater recharge but there may be a lag before the effect of the current drought is seen. However, through the drought of the 1950s, when pumping was at a maximum, several of the springs on BLNWR continued to flow (McCord *et al.* 2005). Groundwater pumping is currently about 100,000 acre feet/year less than it was during the drought of the 1950s and artesian groundwater levels have recovered to the levels they were at in 1950s (McCord *et al.* 2005). Consequently, we expect that there is some added margin of protection for the springs through this current drought.

However, the length or severity of the current drought cycle is not known and the Southwest may be entering a period of prolonged drought (MaCabe *et al.* 2004). Droughts of the twentieth century were eclipsed in severity by droughts in the last 2000 years, with some

characterized by longer duration (multidecadal) and greater spatial extent (Woodhouse and Overpeck 1998; Piechota *et al.* 2004). Certainly, without groundwater pumping or with pumping at reduced volume there would be a greater margin of safety for the springs. But the evidence suggests that the springs at BLNWR will flow in spite of relatively intense drought (*i.e.*, comparable to the drought of the 1950s) (McCord *et al.* 2005). It is unknown how the springs in Texas would respond to extended drought and the current level of groundwater pumping.

Drought could affect the springs through decreased flow. The springs do not have to dry out completely to have an adverse effect on populations. Droughts impact both surface and groundwater resources and can lead to diminished water quality and disturbed riparian habitats (Woodhouse and Overpeck 1998; MacRae *et al.* 2001). Decreased flow could lead to a decrease in habitat availability, increased water temperatures, lower dissolved oxygen levels, and an increase in salinity (MacRae *et al.* 2001). Any of these factors, alone or in combination, could lead either to the reduction or extirpation of a population.

The primary threat to Pecos assiminea in Texas is the potential failure of spring flow due to excessive groundwater pumping and/or drought, which would result in total habitat loss for the species. Diamond Y Spring is the last major spring still flowing in Pecos County, Texas (Service 2005c). Pumping of the regional aquifer system for agricultural production of crops has resulted in the drying of most other springs in this region (Brune 1981). Other springs that have already failed include Comanche Springs, which was once a large spring in Fort Stockton, Texas, about 12.9 km (8 mi) from Diamond Y. Comanche Springs flowed at more than 142 cfs (4.0 cms) (Brune 1981) and undoubtedly provided habitat for rare species of fishes and invertebrates, including springsnails. The spring ceased flowing by 1962 (Brune 1981) except for brief periods (Small and Ozuna 1993). Leon Springs, located upstream of Diamond Y in the Leon Creek watershed, was measured at 18 cfs (0.5 cms) in the 1930s and was also known to contain rare fish, but ceased flowing in the 1950s following significant irrigation pumping (Brune 1981). There have been no continuous records of spring flow discharge at Diamond Y Spring by which to determine any trends in spring flow.

Studies by Veni (1991) and Boghici (1997) indicate that the spring flow at Diamond Y Spring may come from the Rustler aquifers located west of the spring outlets. One significant factor that influences flows at the spring is the large groundwater withdrawals for agricultural irrigation of farms to the southwest in the Belding-Fort Stockton areas. Although TNC of Texas owns and manages the property surrounding the Diamond Y Springs Complex, it has no control over groundwater use that affects spring flow.

East and West Sandia Springs are at the base of the Davis Mountains just east of Balmorhea, Texas, and are part of the San Solomon-Balmorhea Spring Complex, the largest remaining desert spring system in Texas where the Pecos assiminea is found. The springs are included in a 97-hectare (ha) (240-acre (ac)) preserve owned and managed by TNC (Karges 2003). East Sandia Spring discharges at an elevation of 977 meters (3,224 feet) from alluvial sand and gravel (Schuster 1997). Brune (1981) noted that flows from Sandia Springs were declining. East Sandia may be very susceptible to over pumping in the area of the local aquifer that supports the spring. Measured discharges in 1995 and 1996 ranged from 0.45 to 4.07 cfs (0.013 to 0.11 cms) (Schuster 1997). The small outflow channel from East Sandia Spring has not been significantly modified and water flows into an irrigation system approximately 100 to 200 meters (328 to 656 feet) after surfacing. West Sandia Spring also occurs on the TNC preserve, but it ceased flowing in the past 10 years (Schuster 1997).

Phantom Lake Spring , another spring near the Sandia Springs, has experienced a longterm, consistent decline in flow. Discharge data have been recorded from the spring six to eight times per year since the 1940s by the U.S. Geological Survey (Schuster 1997). The record shows a steady decline of flows, from greater than 10 cfs (0.28 cms) in the 1940s to 0 cfs in 2000. The exact causes for the decline in flow from Phantom Lake Spring are unknown. Some of the obvious reasons are groundwater pumping of the supporting aquifer and decreased recharge of the aquifer from drought (Sharp *et al.* 1999; Sharp *et al.* 2003). The Texas Water Development Board (2005) concluded that because of the uncertainties of the regional flow system, it is difficult to assess why spring flow in Phantom Lake Spring has declined. Ashworth *et al.* (1997) noted the improper placement of new wells could have a detrimental effect on the springs. The Texas Water Development Board (2005) agreed with this conclusion. Because of the regional scale of the base flow, slow travel time, and the age of the waters issuing from the spring system, it is anticipated that any substantial pumping in the regional flow system will cause a decline in the spring flow in the San Solomon Springs system (including Phantom Lake, San Solomon, Giffin, and East Sandia springs) (Texas Water Development Board 2005).

Introduced Species

One threat not thoroughly explored in our proposed listing is that of introduced species. Introduced species are one of the primary threats contributing to species' extinction (Pimentel *et al.* 2000; Frankham *et al.* 2002) and are one of the most serious threats to native aquatic species (Williams *et al.* 1989; Lodge *et al.* 2000), especially in the Southwest (Miller *et al.* 1989; Minckley and Douglas 1991). It is estimated that approximately 50,000 non-native species have been introduced into the United States (Pimentel *et al.* 2000). While some of these introductions have been beneficial, many have caused dramatic declines in populations of native plants and animals (Pimentel *et al.* 2000). Because the distribution of the four invertebrates is so limited, and their habitat so restricted, introduction of a non-native species into their habitat could be devastating. Several non-native species have been very successful in invading spring ecosystems in the Southwest. For that reason, we discuss several invasive terrestrial and aquatic animal species that are present in the invertebrates' habitat or are not yet present but have caused problems in other similar habitats in the Southwest and would pose a threat to the four invertebrates if they were introduced.

Several invasive terrestrial plant species that may affect the invertebrates are present at BLNWR: saltcedar (*Tamarix ramossisima*), common reed (*Phragmites australis*), and Russian thistle (tumbleweeds) (*Salsola* spp.). In addition, one non-native, terrestrial snail species (*Rumina decollata*) will be discussed. These plants present unique challenges and threats to the habitat the four invertebrates occupy. Eradication of saltcedar is an ongoing management effort at BLNWR and on TNC property at Diamond Y Spring and East Sandia Springs preserves (Service 2005). The species is removed mechanically by hand (young sprouts), with heavy equipment for large trees, by cutting and burning, or by spraying with herbicides. Control and removal of non-native vegetation has previously been identified as a factor responsible for extirpation of localized populations of

Pecos assiminea in Mexico and New Mexico (Taylor 1987).

Saltcedar is seen as a threat to the spring habitats primarily through the amount of water it consumes and from the chemical composition of the leaves it drops on the ground and into the springs. Invertebrates in small spring ecosystems depend on food from two sources: that which grows in or on the substrate (aquatic plants, algae, and periphyton) and that which falls or is blown into the system (primarily leaves). Leaves from non-native plants that fall into the water are often less suitable food sources for invertebrates because of either their resins or their physical structure (Bailey *et al.* 2001). Saltcedar leaves add salt to the soil through its leaf litter (the leaves contain salt glands) (DiTomosoa 1998). Because saltcedar grows along the edge of water courses, it is possible that this could affect the soil chemistry of areas inhabited by Pecos assiminea. However, no research has been conducted specifically on the effect of saltcedar on Pecos assiminea.

The concentration of common reed at BLNWR has been increasing over the last few years and was seen to increase significantly in Bitter Creek after the Sandhill fire in 2000 (NMDGF 2005b, 2005c). It is unknown if the common reed present at BLNWR is of native origin or if it is introduced. Common reed grows in dense patches and reproduces primarily through an underwater rhizome (an elongated, horizontal stem). Dense stands of the plant choke the channel, slowing water velocity and creating more pool-like habitat. Pool-like habitat is less suitable for the Roswell and Koster's springsnails, which prefer flowing water. In addition, the dense stands of the plant can completely shade the water, inhibiting algal growth, one of the food items for the springsnails.

Russian thistle (tumbleweed) is another introduced plant species that can create problems within the spring ecosystem. Russian thistle is not a riparian species like saltcedar and common reed; however, it often ends up in the springs because wind blows the tumbleweeds into the spring channels. Noel (1954) noted that she had to pull Russian thistle out of Lander Spring so that she could take samples. In 2005, BLNWR conducted an emergency Intra-Service section 7 consultation for the removal of tumbleweeds from the Area 6 spring ditch. Wind had blown the tumbleweeds into the channel to a depth of 0.9 to 1.2 meters (3–4 feet), completely shading the water and overloading the small channel with organic material. While some amount of organic material from outside the spring ecosystem is necessary and desirable, it is not desirable to overload the system with so much organic material that it cannot be processed. In such situations, dissolved oxygen can drop to dangerously low levels as the material decomposes. Primary productivity (growth of algae and native aquatic plants like watercress) would be greatly reduced or prevented because of shading. Control of introduced terrestrial plant species is an on-going management activity at BLNWR that will have to be conducted carefully to have the least impact on the four invertebrates and their habitat.

Water Quality

These four species depend upon water for their survival. Therefore, water contamination is one of the most serious threats to these species. In order to assess the potential for water quality contamination, a study was completed in September 1999 to determine the sources of water for the springs at BLNWR. This study (Balleau *et al.* 1999) reported that the source of water that will reach the BLNWR springs over time periods ranging from 10 to 500 years includes a broad area beginning west of Roswell near Eightmile Draw, extending to the northeast to Salt Creek, and southeast to the BLNWR. Since this area delineates the groundwater source area of surface water on the BLNWR, it likewise represents pathways for contaminants to enter the species' habitat. This broad area sits within a portion of the Roswell Basin and contains a mosaic of Federal, State, and private lands with multiple land uses, including expanding urban development.

Contamination of groundwater sources from industry and commercial operations in and around Roswell is well documented. For example, perchloroethylene (PCE) was discovered in the McGaffey and Main groundwater plume in Roswell in 1994 (Environmental Protection Agency (EPA) 2001a, 2001b). It is suspected that a dry cleaning facility that operated from 1956 to 1963 is the source of the PCE. The New Mexico Environment Department subsequently detected PCE in 13 of 16 groundwater wells in a 1995 investigation (EPA 2001a, 2001b). Trichloroethylene was detected in alluvial and artesian aquifers on the south side of Roswell, at the former site of the Walker Air Force Base, beginning in 1991 (U.S. Army Corps of Engineers, *http://www.spa.usace.army.mil/ec/walker-rab/projectinfo.html*). Although there is no indication that either of these contaminants will enter springs occupied by the four invertebrates, these examples demonstrate that groundwater contamination can easily occur and have long-lasting effects.

Sediments and fish from Hunter Marsh, located on BLNWR, which received municipal wastewater from the City of Roswell, have elevated concentrations of polychlorinated biphenyl (PCB), polycyclic aromatic hydrocarbons (PAHs), selenium, copper, lead, zinc, and mercury (MacRae *et al.* 2001; Lusk 2005). Fish collected from Hunter Marsh and Hunter Oxbow contained PCB concentrations as high as 5 parts per million (ppm) (MacRae *et al.* 2001; Lusk 2005). A diet that contains more than 0.1 ppm total PCBs can have adverse effects on wildlife (MacRae *et al.* 2001). PAHs were found at concentrations as high as 7 ppm in sediment and fish, which exceeds criteria known to cause adverse effects to aquatic organisms (MacRae *et al.* 2001). Values of PCBs in sediment collected from Hunter Marsh are at levels associated with approximately 30 percent mortality to invertebrates (amphipods) (MacDonald *et al.* 2000; Ingersoll *et al.* 2000; Lusk 2005).

Urban development on the west side of BLNWR poses a risk to ground and surface water quality from sewage contamination (*i.e.*, septic discharge). The largest source of groundwater contamination in New Mexico is from household septic tanks and leach fields (NM Water Quality Control Commission 2002). Common pollutants associated with septic tank contamination include total dissolved solids, iron, manganese, sulfides, nitrate, organic chemicals, and microbiological contaminants such as bacteria viruses and parasites (NM Water Quality Control Commission 2002). Septic leachate is known to have contaminated groundwater resources in New Mexico (McQuillan *et al.* 1989); however, specific events have not been documented near BLNWR. Sinkholes west of BLNWR have been used for unregulated domestic refuse dumping. Refuse in the sinkholes has included domestic contaminants such as pesticides, herbicides, and waste oil (Lang 2002). The extent of groundwater contaminants generated from residences and illegal dumps near the BLNWR is unknown.

Wastewater from concentrated animal areas (*e.g.*, dairies, feed lots, chicken farms), septic tanks, and agricultural uses is a known contributor of nitrates to surface and underground water sources (Boyer and Pasquarell 1995). Nitrate levels in the underground aquifer near Roswell are known to be high. A significant source of the nitrates comes from surrounding dairy farms

(Sarah McGrath, New Mexico State Ground Water Bureau, pers. comm. 2001). The effects of nitrates on aquatic species are not entirely known because several outcomes may result from high-level nitrate contamination in aquatic systems. One outcome includes increased growth of algae resulting from increased nutrients in the aquatic system. Too much algae in an aquatic environment could result in periods of low dissolved oxygen and in extreme cases this could be lethal to the snails and the amphipod. At least two dairy farms are currently required to do remediation for their contribution of nitrates to water pollution, both surface and underground (Sarah McGrath, New Mexico State Ground Water Bureau, pers. comm. 2001).

Oil and Gas Operations

Oil drilling occurs throughout the Roswell Basin. This activity and associated actions can threaten the water quality of the aquifer on which these species depend. For example, oil and other contaminants from drilling activities throughout the basin could enter the aquifer supplying the springs inhabited by all four species when the limestone layers are pierced by drilling activities.

There are 196 natural gas and oil wells in the 12-township area encompassing the source-water capture zone for the Middle Area of BLNWR that are potential sources of contamination (New Mexico Petroleum Research Center 2002). Of these, 17 oil and gas leases are currently within the habitat protection zone, which encompasses 12,585 ac (5,093 ha) of Federal mineral estate within the water resource area for BLNWR (Service 2005a). A total of 20 natural gas wells currently exist on these leases. BLM has estimated a maximum potential development of 66 additional wells within the habitat protection zone, according to well spacing requirements established by the New Mexico Oil Conservation Division. 48 (Service 2005a). There were 200 (59 on State, 33 on Private, and 108 on Federal lands) "intentions to drill" (pursuit of required permits has been initiated by an applicant) filed for oil or natural gas on Federal lands in Chavez County, from 2002 through the last update in June 2004 (Go-Tech 2005).

There are numerous examples in which oil and gas operations have employed regulatory standards within the karst lands of the Permian Basin in New Mexico and other states, but these measures failed to protect groundwater resources and aquifer drawdown (NMISC 2002). To remediate (clean) the aquifer would be extremely difficult should it become contaminated by oil, chemicals, or organics such as nitrates. In most cases contamination of an underground aquifer by agricultural, industrial, or domestic sources is treated at the source. When a contamination site is discovered, techniques are used to address the source of the contamination. Rarely do remediation efforts pump water from the aquifer and treat it before sending it back. This is largely because these techniques are very costly and difficult to apply (Sarah McGrath, New Mexico State Ground Water Bureau, pers. comm. 2001). Because these invertebrate species are sensitive to contaminants, efforts to clean up pollution source sites after the aquifer has been contaminated may not be sufficient to protect these species and the aquatic habitat on which they depend.

Operations associated with oil and gas drilling such as exploration, storage, transfer, and refining are also potential threats to these species (Jercinovic 1982, 1984; Longmire 1983; Quarles 1983; Boyer 1986; Green and Trett 1989; Service 1997). Such extractive processes and industry operations are known to contaminate ground and surface waters (Jercinovic 1982, 1984; Longmire 1983; Quarles 1983; Boyer 1986; Richard 1988a, 1988b; Rail 1989; Richard and Boehm 1989a, 1989b; Jones and Balleau 1996). Moreover, large volumes of water (about 12 billion gallons (39,000 acre feet) in 1985) are produced concurrently with oil and gas extraction, especially in southeastern New Mexico (Boyer 1986). For example, in southeastern New Mexico, the average water-to-oil ratio produced in 1985 was 4.5 to 1 (Boyer 1986). This water may be injected into the ground in some areas to recover more oil, but can also be disposed of in permitted surface pits (Boyer 1986). This groundwater depletion and ground and surface water contamination can adversely impact aquatic mollusks (Eisler 1987, Green and Trett 1989) and threaten Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod populations at BLNWR (Service 1997).

Oil and gas activities also threaten the Pecos assiminea because of the potential groundwater or surface water contamination from pollutants (Veni 1991). The Diamond Y Springs Complex is within an active oil and gas extraction field. At this time there are still many active wells and pipelines located within a hundred meters of surface waters. In addition, a natural gas refinery is located within 0.8 km (0.5 mi) upstream of Diamond Y Spring. There are also old brine pits associated with previous drilling within feet of surface waters. Oil and gas pipelines cross the spring outflow channels and marshes where the species occurs, creating a constant potential for contamination from pollutants from leaks or spills. These activities pose a threat to the habitat of the Pecos assiminea by creating the potential for pollutants to enter underground aquifers that contribute to spring flow or by point sources from spills and leaks of petroleum products on the surface.

As an example of this threat, in 1992 approximately 10,600 barrels of crude oil were released from a 6-in (15.2 cm) pipeline that traverses Leon Creek above its confluence with Diamond Y Draw. The oil was from a ruptured pipeline at a point several hundred feet away from the Leon Creek channel. The site itself is about 1 mile (1.6 km) overland from Diamond Y Spring. The distance that surface runoff of oil residues must travel is about 2 miles (3.2) down Leon Creek to reach Diamond Y Draw. The pipeline was operated at the time of the spill by the Texas-New Mexico Pipeline Company, but ownership has since been transferred to several other companies. Texas Railroad Commission has been responsible for overseeing cleanup of the spill site. Remediation of the site initially involved aboveground land farming of contaminated soil and rock strata to allow microbial degradation. In recent years, remediation efforts have focused on vacuuming oil residues from the surface of groundwater exposed by trenches dug at the spill site. To date, no impacts on the rare fauna of Diamond Y Springs Complex have been observed, but no specific monitoring of the effects of the spill was undertaken (Service 2005b).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod may occasionally be collected as specimens for scientific study, but these uses probably have a negligible effect on total population numbers. These species are currently not known to be of commercial value, and overutilization has not been documented. However, as their rarity becomes known, they may become more attractive to collectors. Although scientific collecting is not presently identified as a threat, unregulated collecting by private and institutional collectors could pose a threat to these locally restricted populations. We are aware of overcollection being a potential threat with other snails (*e.g.*, armored snail (*Pyrgulopsis* (*Marstonia*) *pachyta*) (65 FR 10033, February 25, 2000); Bruneau hot springsnail (*P.*

bruneauensis) (58 FR 5938, January 25, 1993); and Socorro springsnail (*P. neomexicana*) and Alamosa springsnail (*Tryonia alamosae*) (56 FR 49646, September 30, 1991)), due to their rarity, restricted distribution, and generally well known locations. Due to the small number of localities for the snails and the amphipod, these species are vulnerable to unrestricted collection, vandalism, or other disturbance. There is no documentation of collection as a significant threat to any of the species. Therefore, we believe that collection of the animals is a minor but present threat.

C. *Disease or predation.* Springsnails and amphipods are a food source for other aquatic animals. Juvenile springsnails appear vulnerable to a variety of predators. Damselflies (Zygoptera) and dragonflies (Anisoptera) were observed feeding upon snails in the wild (Mladenka 1992). Damselflies and dragonflies are native to and abundant at BLNWR and most likely prey upon both the springsnails and Noel's amphipod.

Springsnails are vulnerable to predation by fish (Kennedy 1977; Winemiller and Anderson 1997). Mladenka (1992) observed guppies feeding on springsnails in the laboratory. The non-native fish present at BLNWR (carp and mosquitofish) most likely also prey upon the springsnails and Noel's amphipod when they occur in the same habitats. The extent to which predation from non-native fish affects population size of the three aquatic invertebrates is not known. Predation pressure on Pecos assiminea is also unknown. However, if the land snail Rumina becomes established at BLNWR, the potential exists for it to predate on Pecos assiminea.

Infestation by trematodes (a flatworm or fluke, phylum Platyhelminthes) was noted by Taylor (1987) in populations of Koster's springsnail at Sago Spring, BLNWR. Digenetic trematodes (trematodes in the order Digenera) are parasitic and have the most complicated life histories in the animal kingdom involving two to four intermediate (vertebrate and/or invertebrate) hosts (Hickman *et al.* 1974). The first larval stage of the trematode nearly always uses a mollusk (snail or bivalve) as the first intermediate host (Hickman *et al.* 1974). Larval trematode parasites reduce or completely inhibit snail reproduction through castration (Minchella *et al.* 1985). The effect of the trematodes on the springsnail population is not known.

The terrestrial land snail (Rumina decollate) was introduced to the United States in the early 1800s in South Carolina and spread westward (Selander and Kaufman 1973). It was reported in Arizona in 1952 and California in 1966 but was well-established by the time it was discovered (Selander and Kaufman 1973). It is common in Texas (Selander and Kaufman 1973) and has been reported from the Roswell area in New Mexico (Lang 2005b). It inhabits gardens and agricultural areas but has also invaded riparian and other native habitats (Selander and Kaufman 1973). It is used in California as a biological control agent against the brown garden snail (Helix aspera) (Cowie 2001). It will consume native snails (Cowie 2001) as well as vegetation (Dundee 1984). For these reasons, Rumnia is a potential threat to Pecos assiminea.

Non-native aquatic species such as crayfish, fish, and aquatic snails are also a potential threat to the four invertebrates. There is only one species of crayfish native to New Mexico, but its distribution does not overlap with that of the four invertebrates (Hobbs 1991). Crayfish are typically opportunistic generalists (they will eat anything and everything) (Hobbs 1991). Predation on invertebrates is well-documented (Hobbs 1991; Lodge *et al.* 1994; Charlebois and Lamberti 1996; Strayer 1999). However, because they also feed on organic debris and vegetation and reduce algal biomass (Charlebois and Lamberti 1996), they could potentially compete with Roswell springsnail, Koster's springsnail, and Noel's amphipod for food resources. Currently non-native crayfish are not present at BLNWR or the sites in Texas. Diamond Y Springs Complex does have an undescribed native crayfish which we do not believe to be a concern for Pecos assiminea. However, crayfish have created major problems in aquatic systems in Arizona, and there is no physiological reason why some species of crayfish could not survive in the habitats that now support the four invertebrates. Eradication of crayfish once they are established is extremely difficult (Hyatt 2004). Diamond Y Springs Complex has an undescribed native crayfish which we do not believe to be a concern for Pecos assiminea.

Non-native fish have had a major impact on native aquatic fauna in the Southwest (Minckley and Douglas 1991; Desert Fishes Team 2003). Communities of animals evolved together and developed adaptations to deal with competition and predation from other members of the community (Meffe *et al.* 1994). When a non-native species is introduced into this community the native members often do not have defenses against predation or they may be less successful competitors. As a result, the non-native species can have a major impact on native populations (Minckley and Douglas 1991; Meffe *et al.* 1994). One species of non-native fish, common carp (*Cyprinus carpio*), is known to co-occur with the three aquatic invertebrates at BLNWR. Native to Asia, common carp was introduced into the United States in 1831, has become widely distributed (Sublette *et al.* 1990), and is present at BLNWR in habitats occupied by the invertebrates. Through spawning and feeding behavior it uproots vegetation and increases turbidity (Sublette *et al.* 1990). It is an omnivore feeding on aquatic invertebrates, fish eggs, algae, plants, and organic matter (Sublette *et al.* 1990). Because of its non-discriminatory diet and habitat disturbance, it could have an impact on the three aquatic invertebrate species.

Mosquitofish (*Gambusia affinis*) is also present in some of the spring systems at BLNWR, but it is not known if it is native to the area or not. The species is native to portions of New Mexico but it has also been widely introduced to control mosquitoes (Sublette *et al.* 1990). However, it has negatively affected or extirpated many species of fish and invertebrates (*e.g.*, through predation) (Meffe *et al.* 1994). It is not known if mosquitofish are affecting the three species of aquatic invertebrates.

Non-native mollusks have affected the distribution and abundance of native mollusks in the United States. Of particular concern for three of the invertebrates (Noel's amphipod, Roswell springsnail, and Koster's springsnail) are *Melanoides tuberculata* (red-rim melania) and *Potamopyrgus antipodarum* (New Zealand mudsnail). Both of these snails are excellent colonizers that reach tremendous population sizes and have been found in isolated springs in the West. *Melanoides* has caused the decline and local extirpation of native snail species, and it is considered a threat to endemic aquatic snails that occupy springs and streams in the Bonneville Basin of Utah (Rader *et al.* 2003). It is easily transported on gear or aquatic plants, and because it reproduces asexually (individuals can develop from unfertilized eggs), a single individual is capable of founding a new population. It has become established in isolated desert spring ecosystems such as Ash Meadows, Nevada, and Cuatro Cinegas, Mexico, and within the last 10 years, *Melanoides* has become established in Diamond Y Springs Complex (Echelle 2001; McDermott 2000). It has become the most abundant snail in the upper watercourse of the Diamond Y Springs

Complex (Echelle 2001). In many locations, this exotic snail is so numerous that it essentially is the substrate in the small stream channel. The effect *Melanoides* is having on native snails is not known; however, because it is aquatic it probably has less effect on Pecos assiminea than on the other endemic aquatic snails present in the spring.

Potampyrgus is also a potential threat to the endemic aquatic snails at BLNWR and the spring systems in Texas. It was discovered in the Snake River, Idaho, in the mid-1980s and has quickly spread to every Western state except New Mexico (Montana State University *http://www.esg.montana.edu/aim/mollusca/nzms/status.html*, accessed on June 16, 2005). Like *Melanoides*, *Potamopyrgus* has an operculum (a lid to close off the shell opening), can withstand periods of drying up to 8 days (thereby facilitating transport) and can reproduce either sexually or asexually. Thus, new populations can be established with transport of a single individual. In addition, *Potampyrgus* is tiny (3 mm in height [0.12 in]), is easily overlooked on gear or shoes, and can be transported unknowingly by people visiting various recreational sites. Considering its current rate of expansion, and the availability of suitable habitat, it is highly likely that *Potampyrgus* will soon be discovered in New Mexico.

Potampyrgus tolerates a wide range of habitats, including brackish water. Densities are usually highest in systems with high primary productivity, constant temperatures, and constant flow (typical of spring systems). It has reached densities exceeding 500,000 m^2 (Richards *et al.* 2001) to the detriment of native invertebrates. Not only can it dominate the invertebrate assemblage (97 percent of invertebrate biomass), it can also eat nearly all of the algae and diatoms growing on the substrate, altering ecosystem function at the base of the food web (food is no longer available for native animals) (Hall *et al.* 2003). If *Potampyrgus* is introduced into the spring systems harboring the proposed invertebrates, control would most likely be impossible because the snails are so small and because any chemical treatment would also affect the native species. The impact could be devastating.

D. *The inadequacy of existing regulatory mechanisms.* One primary cause of decline of the Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod is the loss, degradation, and fragmentation of habitat due to human activities. Federal and State laws have been insufficient to prevent past and ongoing losses of the limited habitat of the four invertebrates, and are unlikely to prevent further declines of the species.

Federal

Clean Water Act. Pursuant to section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344), the U.S. Army Corps of Engineers (Corps) regulates the discharge of dredged or fill material into all Waters of the United States, including wetlands. In general, the term "'wetland'" refers to areas meeting the Corps criteria of having hydric soils, hydrology (either a defined minimum duration of continuous inundation or saturation of soil during the growing season), and a plant community that is predominantly hydrophytic vegetation (plants specifically adapted for growing in a wetland environment). The spring complexes occupied by these four invertebrates qualify as wetlands.

Any discharge of dredged or fill material into waters of the United States, including wetlands, requires a permit from the Corps. These include individual permits which would be issued following a review of an individual application, and general permits that authorize a category or categories of activities in a specific geographical location or nationwide (33 CFR parts 320–330). General and special permit conditions may vary among individual Corps Districts and the various general permits. However, the use of any individual or general permit requires compliance with the Act.

While the CWA provides a means for the Corps to regulate the discharge of dredged or fill material into waters and wetlands of the United States, it does not provide complete protection. Many applicants are required to provide compensation for wetlands losses (*i.e.*, no net loss) and many smaller impact projects remain largely unmitigated unless specifically required by other environmental laws such as the Act. Moreover, we are not aware of any Corps permits that have been issued for the spring complexes where these species occur or historically occurred, indicating that there is little protection provided to these species through the CWA.

Recent court cases limit the Corps' ability to utilize the CWA to regulate the discharge of fill or dredged material into the aquatic environment within the current range of the Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod (*Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (SWANCC)). There may be instances where seasonal wetlands used by California tiger salamander lack sufficient connection to waters of the United States for the Corps to assert jurisdiction under the authority of the Clean Water Act. For example, the Corps frequently cites the SWANCC decision as their reason for not taking jurisdiction over waterbodies that do not meet the definition of waters of the United States. For these reasons, we conclude that regulation of wetlands filling by the Corps under Section 404 of the CWA is inadequate to protect the Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod from further decline.

Revisions to the Roswell Approved Resource Management Plan made by BLM in 1997 prompted a formal section 7 consultation with the Service regarding the endangered Pecos gambusia (*Gambusia nobilis*), which resides on BLNWR. The BLM designated an area for protection of habitat for Pecos gambusia from potential groundwater contamination by oil and gas well drilling operations (BLM 2002). This area, referred to as the Habitat Protection Zone (HPZ), includes a portion of the source-water capture area for the springs in the northern part of the Middle Tract of BLNWR, where Pecos gambusia co-occurs with the four invertebrate species. The HPZ includes 12,585 ac (5,093 ha) of the Federal mineral estate and 9,945 ac (4,025 ha) of the Federal surface estate that are within the water source area for the BLNWR. The HPZ was established in October of 2002 and special requirements for oil and gas well development managed to protect the ground and surface water resources (BLM 2002). For example, stipulations for oil and gas wells in the HPZ include storage of drilling muds in steel tanks and use of cement to seal the entire length of the well casing. These requirements reduce the probability of contamination from oil and gas development but do not reduce the likelihood of groundwater contamination attributable to oil and gas storage or transportation activities (*e.g.* leaking pipelines, storage tanks, or other equipment failures). Therefore, the HPZ does not eliminate the threat of oil and gas activities on these species, nor does it address the other threats identified under Factor A (*e.g.*, drought, septic tank leaching, etc).

State

Existing New Mexico State regulatory mechanisms are inadequate to protect the Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod. All four species are listed as New Mexico State endangered species, Group 1, which are those species "whose prospects of survival or

recruitment within the State are in jeopardy." This designation provides the protection of the New Mexico Wildlife Conservation Act, but only prohibits direct take of these species, except under issuance of a scientific collecting permit. New Mexico State statutes do not address habitat protection, indirect effects, or other threats to these species. New Mexico State status as an endangered species only conveys protection from collection or intentional harm. However, there is no formal consultation process to address the habitat requirements of the species or how a proposed action may affect the needs of the species. Because most of the threats to these species are from effects to habitat, protecting individuals will not ensure their long-term protection.

NMDGF recognizes the importance of Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod conservation at the local population level and has the authority to consider and recommend actions to mitigate potential adverse effects to these species during its review of development proposals. As noted, NMDGF's primary regulatory venue is under the New Mexico Wildlife Conservation Act. There are no statutory requirements under NMDGF's jurisdiction that serve as an effective regulatory mechanism for reducing or eliminating the threats (see Factors A and C above) that may adversely affect Roswell springsnail, Koster's springsnail, Pecos assiminea and their habitat.

Still, New Mexico State statutes require the NMDGF to develop a recovery plan that will restore and maintain species' habitat. A recovery and conservation plan for the four invertebrates was finalized by the State of New Mexico in January 2005 (NMDGF 2005b). The plan provides details about the natural history of the invertebrates, a historical perspective of habitat and population trends, and habitat assessment. The goal of the plan is to ensure that the invertebrates occur in sufficient numbers within populations and in a sufficient number of discrete and independent populations, that downlisting and eventual delisting under the Wildlife Conservation Act is warranted (NMDGF 2005b). The plan outlines three parameters to meet the goal: (1) Maintenance or expansion of the existing distribution and abundance of the invertebrates at BLNWR; (2) repatriation of the invertebrates to restored suitable habitat at two or more sites within their known historic range; and (3) establishment and stocking of an artificial and secure refugium to protect against catastrophic loss in the wild (NMDGF 2005b). As noted above, the State's recovery plan does not ensure any long-term protection for these species because there are no mandatory elements to ensure proposed projects do not adversely affect these species or their habitat.

The Oil Conservation Division of the New Mexico Energy, Minerals, and Natural Resources Department regulates oil and gas well drilling and casing in part to prevent contamination of groundwater (19 NMAC 15.3). Although there are no known instances of groundwater contamination by leaking oil or gas wells in the source-water capture zone for the Middle Unit of BLNWR, there is a well documented history of oil and gas industry operations on and adjacent to BLNWR, which have resulted in the spillage of oil and brine onto the BLNWR (Service 1994b, 1996, 1997a, 1998b). Therefore, we find that these regulations provide some protection to the four invertebrates, but do not eliminate the threat of oil spills through accidents or equipment malfunctions.

The environmental assessment found that spring flows within the proposed critical habitat on BLNWR are already protected by existing water rights afforded by the New Mexico Office of the State Engineer's administration of the Roswell Basin. In 1967, water rights were adjudicated in the Roswell Basin, wells were metered, and pumping rates administered by the Office of the State Engineer (OSE). Currently, any proposed change in use of water (underground or surface depletion) in the Roswell Basin will undergo analysis by OSE to determine if there would be impairment to existing water rights (McCord *et al.* 2005). The OSE will not allow such change if it impairs the Federal water right in any respect (NMISC 2005). Thus the spring flows on BLNWR should be protected from any changes in groundwater pumping near the refuge in the future. This provides a regulatory benefit to the four invertebrates.

However, we believe that there was a lag between the time of the drought and recovery in the artesian groundwater in this area. Because New Mexico has been in a drought since 1999, there may be a lag time before the effect of the current drought is observed. We believe that the springs on BLNWR will flow in spite of relatively intense drought (McCord *et al.* 2005). However, it is not known how the springs in Texas would respond to extended drought and the current level of groundwater pumping. Moreover, the habitat occupied by the four invertebrates does not have to dry out completely to have an effect on populations. Lower spring flows may cause a decrease in habitat availability, increased water temperatures, lower dissolved oxygen levels, and an increase in salinity (MacRae *et al.* 2001). Any of these factors, alone or in combination, could lead either to the reduction or extirpation of a population. Additionally, the primary threat to Pecos assiminea in Texas is the potential failure of spring flow due to excessive groundwater pumping and/or drought, which would result in total habitat loss for the species.

In Texas, Pecos assiminea currently has no State or other regulatory protection. Some protection for the habitat of this species is provided with the ownership of the springs by TNC (Karges 2003). However, this land ownership provides no protection from one of the main threats to this species—the loss of necessary groundwater levels to ensure adequate spring flows. Groundwater pumping that could affect spring flows is subject to limited regulation in Texas. State agencies do not control groundwater pumping, and Texas courts have held that, with few exceptions, landowners have the right to take all the water that can be captured under their land (rule of capture), regardless of impacts to neighbors or natural resources. Individual groundwater conservation districts have varying amounts of authority and capacity to limit pumping. Diamond Y Spring is within the jurisdiction of the Middle Pecos Groundwater Conservation District, but generally groundwater districts will not limit groundwater use to allow for conservation of surface water flows (Booth and Richard-Crow 2004; Caroom and Maxwell 2004). Thus, we find no existing regulatory mechanisms in place to protect the Pecos assiminea.

Members of the four invertebrate species that co-exist in springs with the federally endangered Pecos gambusia (*Gambusia nobilis*) at BLNWR and Diamond Y Spring and the federally endangered Leon Springs pupfish at Diamond Y Spring may receive incidental habitat protection from the Act. However, possible habitat protection provided by the federally listed Pecos gambusia and the Leon Springs pupfish offers only partial protection for the Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod because the federally listed fish are not found in all the springs the snails or amphipod inhabit. For example, Pecos assiminea does not normally occur directly within submerged habitats. It is most

commonly found in moist soil or vegetation along the periphery of standing water. As a result, this habitat may not be afforded protection under current management actions or consultations which address conservation for listed fish species in the same area.

Federal water-rights for the BLNWR were secured in 1996 (Service 2005b). This acquisition should ensure minimum surface water discharge of Bitter Creek. However, if this water is contaminated, the Federal water right alone does not provide adequate protection for these species.

E. *Other natural or manmade factors affecting its continued existence.* BLNWR was established in 1937 as wintering and breeding grounds for migratory birds. At the time the four invertebrates were unknown to science. Consequently, management was directed primarily at creating dikes so that ponds could be created and their water levels controlled for the benefit of waterfowl. Some of the ponds created would seasonally flood springs that flowed into these ponds naturally. Because the Roswell springsnail and Noel's amphipod, in particular, prefer flowing over pooled water, this had a negative impact on the habitat available to them. In 2003, a dike rehabilitation project was begun on BLNWR. Two dikes running the length of Areas 6 and 7 were constructed. This isolated the spring systems from the main body of the impoundments, allowing the areas to be flooded in the winter without inundating the springs occupied by the invertebrates. In addition, potential habitat for the invertebrates was created in a new ditch designed to carry water to Area 7. Current management of BLNWR recognizes and includes the invertebrates in its maintenance and operations, and is no longer a threat to the invertebrates.

Fire

BLNWR is characterized by sinkhole/karst terrain. This terrain poses safety threats to fire crews and suppression equipment. As a result, fire suppression efforts are largely restricted to established roads. This severely limits management ability to quickly suppress fires that threaten fragile aquatic habitats on the BLNWR. On March 5, 2000, the Sandhill fire burned 405 ha (1,000 ac) of the western portion of the BLNWR, including portions of Bitter Creek. The fire burned through Dragonfly Spring, eliminated vegetation shading the spring, and generated a substantial amount of ash in the spring system (Lang 2000, NMDGF 2005b, 2005c). Subsequently, dense algal mats formed, water temperature fluctuations and maximum temperatures increased, while dissolved oxygen levels decreased (Lang 2002). The pre-fire dominant vegetation of submerged aquatic plants and mixed native grasses within the burned area has also been replaced by the invasive common reed (NMDGF 2005b, 2005c). Following the fire, a dramatic reduction in Noel's amphipod was observed, and Koster's springsnail occurs at lower densities than were observed prior to the fire (Lang 2002, NMDGF 2005c).

Currently, dense stands of common reed are found throughout most reaches of Bitter Creek, including in habitat occupied by the four invertebrates (NMDGF 2005c) (see also "Factor C" section above). Prior to the Sandhill Fire, common reed occurred only sporadically along Bitter Creek (NMDGF 2005c). These dense stands of common reed have increased the fuel load and threat of wildfire on BLNWR. Standing dead canes of common reed and associated litter often constitute twice as much biomass as living shoots (Uchytil 1992). This abundant dead fuel carries fire well, allowing stands to burn even when the current year's shoots are green (Uchytil 1992). Because of the increase in common reed on BLNWR within habitat occupied by the four invertebrates, we now find that wildfire is a threat to the four invertebrates.

Removal of vegetative cover by burning in habitats occupied by Pecos assiminea may be an important factor in decline or loss of populations (Taylor 1987). Alternatively, Pecos assiminea has been found to persist in areas following fires (Lang 2000). Pecos assiminea was also discovered at Dragonfly Spring following burning of habitat there during the Sandhill Fire (NMDGF 2005a). Season of burning, intensity of the fire, and frequency of fire are likely important determinants of effects on population persistence and abundance of Pecos assiminea (NMDGF 1998). Pecos assiminea is potentially more vulnerable to fires than the springsnails because they reside at or near the surface of the water. However, it is thought that Pecos assiminea may survive fire or other vegetation reduction if sufficient litter and ground cover remain to sustain appropriate soil moisture and humidity at a microhabitat scale (NMDGF 2005a; Service 2004).

Controlled burns have been implemented on BLNWR to burn grass, sedge, cattail, and non-native vegetation (e.g., Russian thistle) in an attempt to reduce the risk of large uncontrolled wildfires or to remove excessive amounts of Russian thistle from a spring run (Service 2004). We have found that controlled burns with appropriate conservation measures do not adversely affect the Koster's springsnail, Pecos assiminea, or Roswell springsnail (Service 2004). On the other hand, prescribed burns to remove Russian thistle may have indirectly affected Noel's amphipod through the release of common reeds, which can reduce water flow and result in decreased dissolved oxygen levels (Service 2005c). Surveys conducted immediately post-fire indicate that Noel's amphipod is still found throughout the burned area, with little to no direct effects (Service 2005c). Still, the Service is continuing to monitor post-fire effects from these activities to determine if Noel's amphipod has been adversely affected.

Fire, particularly during the winter months, will allow ash, sediment, salts, and nutrients to more readily enter the aquatic habitat via precipitation and wind. Ash consists of carbon, soots, and other organic compounds that, upon entering the water column, provide a food source for bacteria and algae. With the addition of associated nutrients, and water temperature increases from the loss of streamside vegetation, populations of bacteria and algae will expand, causing oxygen depletions. As a result, some invertebrates may perish in these situations, where they cannot escape the oxygen deficit. Additionally, denuded areas will allow erosion and sedimentation of the streamside habitat. Sedimentation could have the direct effect on the Roswell springsnail, which is typically found on rocks.

Finding

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining that these species are in danger of extinction throughout all or a significant portion of their respective ranges. The habitat and range of Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod are threatened with destruction, modification, and curtailment. Existing regulatory mechanisms do not provide adequate protection for these species, and other natural and manmade factors affect their continued existence. Because each of these four species has a very limited range, their populations are disjunct and isolated from each other, and potential habitat areas are isolated and separated by large areas of unsuitable habitat, these invertebrates are particularly vulnerable to localized extinction should their habitat be degraded or destroyed. Because their mobility is limited, populations will have little opportunity to leave

degraded habitat areas in search of suitable habitat. As a result, one contamination event, or a short period of drawdown in the aquatic habitat where they are found could result in the loss of an entire population, of which there are few. Because of the limited distribution of these endemic species, any impact from increasing threats (*e.g.*, loss of springflow, contaminants, nonnative species) is likely to result in their extinction because the magnitude of threat is high. These species occur in an arid region plagued by drought and ongoing aquifer withdrawals (*e.g.*, in Texas), making the loss of springflows an imminent threat in the foreseeable future. We also found that their habitat faces a constant threat from water quality contamination. Therefore, we have determined that the Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod meet the definition of an endangered species pursuant to section 3 of the Act. A threatened species designation as defined in section 3 of the Act would not accurately reflect the population status, restricted distribution, vulnerability, and imminent threats. As such, we are listing these four invertebrate species as endangered under the Act.

Critical Habitat

Designation of Critical Habitat Provides Little Additional Protection to Species

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

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

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7."

Currently, only 445 species, or 36 percent, of the 1,244 listed species in the United States under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*, has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

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

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

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

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the NEPA; all are part of the cost of critical habitat designation. These costs result in minimal benefits to the species that are not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographical area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection and that the designation of critical habitat for a given species is prudent and determinable. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary. Because we proposed critical habitat for the four invertebrates, we already determined that critical habitat pursuant to the Act and implementing regulations was both prudent and determinable (67 FR 6459).

Section 3(5)(c) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that "The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Areas within the geographical area occupied by the species that do not contain the features essential for the conservation of the species are not, by

definition, critical habitat. Similarly, within the geographical area occupied by the species, if the features essential for the conservation of the species will not require special management considerations or protection, the area is not, by definition, critical habitat. To determine whether the essential features within an area may require special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the essential features within the area do not require special management.

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, impact on national security, and any other relevant impact of specifying a particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. Under section 7 of the Act, Federal agencies must consult with the Service on activities they undertake, fund, or permit that may affect critical habitat and lead to its destruction or adverse modification. However, the Act prohibits unauthorized take of listed species and requires consultation for activities that may affect them, including habitat alterations, regardless of whether critical habitat has been designated.

When a Federal nexus exists, we work with the appropriate Federal agency, and in some cases the applicant to the consultation, to ensure that the project can be completed without jeopardizing the species or adversely modifying critical habitat. We intend to continue working with our Federal partners to provide technical assistance, coordination, and, in some instances, section 7 consultation. We do not anticipate that the listing of these species or the designation of critical habitat for the Pecos assiminea will preclude projects such as riparian restoration, fire prevention/management, or oil and gas development activities.

Similarly, actions on private lands that have the potential to result in take of any of the four invertebrate species would be subject to section 10 of the Act, which requires development of a Habitat Conservation Plan as part of an application to the Service for an incidental take permit. These incidental take permits are issued pursuant to section 10(a)(1)(B) of the Act. Critical habitat has possible effects on activities conducted by non-Federal entities only if they are conducting activities on Federal lands or that involves Federal funding, a Federal permit, or other Federal action (*e.g.*, grazing permits).

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. When we designate critical habitat, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Nevertheless, we are required to designate those areas we consider to be essential, using the best information available to us. Accordingly, we do not designate critical habitat in areas outside the geographical area occupied by the species unless the best available scientific and commercial data demonstrate that unoccupied areas are essential for the conservation needs of the species.

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

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

In our critical habitat designation we use the provisions outlined in section 3(5)(A) of the Act to evaluate those specific areas defined by the features essential to the conservation of the species that may require special management considerations or protections. On the basis of our evaluation, we have determined that BLNWR does not require special management considerations or protections, and have excluded this area from the designation of critical habitat for these four invertebrates pursuant to section 3(5)(A) of the Act as discussed below (see "Exclusions Under Section 3(5)(A) of the Act" section below). Because the Roswell springsnail, Koster's springsnail, and Noel's amphipod are only found within or adjacent to the BLNWR, we are not designating critical habitat for these three species. The critical habitat discussion below only concerns habitat for the Pecos assiminea.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features include but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light,

minerals or other nutritional or physiological requirements; cover or shelter; sites for germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

This critical habitat designation does not include lands on BLNWR, New Mexico (see Exclusions Under Section 3(5)(A)" and "Summary of Changes to Proposed Rule" sections). We determined the primary constituent elements for the Pecos assiminea (the only species which occurs off of BLNWR) from data and studies on its general habitat and life history requirements including, but not limited to: Taylor 1987; and NMDGF 1996, 1998, 1999, 2005b, and 2005c. A description of the essential environment as it relates to the specific primary constituent elements required of the Pecos assiminea is described below.

Space for Individual and Population Growth and Normal Behavior

The Pecos assiminea requires saturated, moist soil at stream or spring run margins. Spring complexes that contain flowing water create saturated soils that provide the specific habitat needed for population growth, sheltering, and normal behavior of the species. This snail typically occurs near the soil surface or beneath leaf litter or vegetation in these areas (NMDGF 2005b). Consequently, wetland plant species are required to provide the leaf litter, shade, and appropriate microhabitat. Plant species such as American three-square (*Scirpus americanus*), spike rush (*Eleocharis* spp), inland saltgrass (*Distichlis spicata*) and rushes (*Juncus* spp.) provide the appropriate cover and shelter required Pecos assiminea (NMDGF 2005b).

Water

The Pecos assiminea is found in wet mud or beneath mats of vegetation, usually within a few centimeters (inches) of flowing water. The moist soil environment provides foraging and sheltering habitat, as well as habitat structure necessary for reproduction and successful recruitment of offspring. These areas provide the algae, bacteria, and decaying organic matter on which this species depends as a food resource. The Pecos assiminea is rarely found immersed in water or in standing water. Therefore, impoundment of springbrooks or streams is seen as detrimental to the survival of the species. It also does not appear to persist in areas with fluctuating water levels or in wetlands that freeze (Lang 2000). However, water is essential to the conservation of the Pecos assiminea because the species cannot withstand permanent drying (loss of surface flow) of springs or spring complexes. When water quality conditions degrade (*e.g.*, water temperatures are too high, and dissolved oxygen concentrations are too low), Pecos assiminea will likely be injured or die.

Reproduction and Rearing of Offspring

Little is known about the reproductive requirements for the Pecos assiminea. The native wetland plant community was included in this designation because the Pecos assiminea is found within the moist environment directly adjacent to the aquatic habitat. Substrates found in these margin areas provide for temperatures within the environmental tolerance for this species, and the habitat for reproduction that the Pecos assiminea requires.

Food

The Pecos assiminea has a file-like radula (a ribbon of teeth) situated behind the mouth that is used to graze or scrape food from the foraging surface. Saturated soils and wetland vegetation adjacent to spring complexes contribute to the necessary components to support the algae, detritus, and bacteria on which this species forages.

The discussion above describes the physical and biological features essential to the Pecos assiminea and presents our rationale as to why the features identified below were selected. The primary constituent elements described below include the essential features of spring complexes that develop, maintain, and regenerate the habitat components required for the Pecos assiminea to forage, reproduce, and shelter. The specific biological and physical features, otherwise referred to as the primary constituent elements, essential to the conservation of the Pecos assiminea are:

(1) Permanent, flowing, unpolluted, fresh to moderately saline water;

(2) Moist or saturated soil at stream or spring run margins with native vegetation growing in or adapted to aquatic or very wet environment, such as salt grass or sedges; and

(3) Stable water levels with natural diurnal and seasonal variation.

Criteria for Defining Critical Habitat

Restoring an endangered or threatened species to the point where it is recovered is a primary goal of our Endangered Species Program. To help guide the recovery effort, we are required to prepare and implement recovery plans for all of the listed species native to the United States unless such plan will not promote the conservation of the species and the species is therefore exempt from having a plan developed for it. 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 the recovery measures needed. A final recovery plan formalizes the recovery strategy for a species, but is not a regulatory document (*i.e.*, recovery plans are advisory documents because there are no specific protections, prohibitions, or requirements afforded to a species based solely on a recovery plan). Critical habitat contributes to the overall recovery strategy for listed species, but does not by itself achieve recovery plan goals.

We do not currently have a recovery plan for Pecos assiminea. Nevertheless, we have reviewed the recovery plan developed by the State of New Mexico (NMDGF 2005b). In designating critical habitat for the Pecos assiminea, we also reviewed information within our files and recommendations contained in State wildlife resource reports (Balleau *et al.* 1999; NMDGF 2005a, 2005b, 1999, 1998, Boghici 1997; Jones and Balleau 1996; and Cole 1985). We also reviewed the available literature pertaining to habitat requirements, historic localities, and current localities for this species.

We are not aware of any reliable information that is currently available to us that was not considered in this designation process. This final determination constitutes our best assessment of areas needed for the conservation of the species. Much remains to be learned about this species; should credible new information become available which contradicts this designation, we will reevaluate our analysis and, if appropriate, propose to modify this critical habitat designation, depending on available funding and staffing. We must make this determination on the basis of the information available at this time, and we may not delay our decision until more information about the species and its habitat are available (*Southwest Center for Biological Diversity* v. *Babbitt*, 215 F.3d 58 (D.C. Cir. 2000)).

The designated critical habitat constitutes our best assessment of the specific areas that contain the primary constituent elements for Pecos assiminea and that may require special management or protection. The designated areas are within the geographical area occupied by Pecos assiminea populations and currently have one or more constituent elements

(see description of primary constituent elements, above).

Critical Habitat Designation

We designate two units as critical habitat for the Pecos assiminea (see the "Regulation Promulgation" section of this final rule for exact boundary descriptions). These critical habitat units include primary constituent elements that provide for the physiological, behavioral, and ecological requirements essential for the conservation of Pecos assiminea. The designation includes one complex at Diamond Y Spring and a segment of the drainage and East Sandia Spring. Critical habitat units are designated in portions of Pecos and Reeves Counties, Texas. Detailed digital files of each unit can be obtained by contacting the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

A general description of land ownership in both areas follows:

1. Diamond Y Springs Complex, Pecos County, Texas. This area comprises a major population of Pecos assiminea. The designation includes the Diamond Y Spring and approximately 6.8 km (4.2 mi) of its outflow, ending at approximately 0.8 km (0.5 mi) downstream of the State Highway 18 bridge crossing. Also included is approximately 0.8 km (0.5 mi) of Leon Creek upstream of the confluence with Diamond Y Draw. All surrounding riparian vegetation and mesic soil environments within the spring, outflow, and portion of Leon Creek are also designated as these areas are considered habitat for the Pecos assiminea. This designation is approximately 153.8 ha (380 ac) of aquatic and neighboring mesic habitat. This complex occurs entirely on private lands. Private land in the immediate vicinity of the Diamond Y Springs Complex is managed as a nature preserve by TNC.

2. East Sandia Spring, Reeves County, Texas. This spring contains a population of Pecos assiminea. The designation includes the springhead itself, surrounding seeps, and all submergent vegetation and moist soil habitat found at the margins of these areas. These areas are considered habitat for the Pecos assiminea. This designation is approximately 6.7 ha (16.5 ac) of aquatic and neighboring upland habitat. The site is private land managed as a nature preserve by TNC.

Exclusions Under Section 3(5)(A) of the Act

As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. We then evaluate lands defined by those features to assess whether they may require special management considerations or protection. As discussed in the five factor analysis above, the Pecos assiminea is imperiled by a multitude of threats such as oil and gas operations, introduced species, groundwater contamination and depletion, drought, risk of wildfire, and inadequate regulatory mechanisms.

Below we first provide some general background information on the BLNWR and the Comprehensive Conservation Plan (CCP), followed by an analysis pursuant to section 3(5)(A) of the Act of the current management provisions on BLNWR, and an analysis of why we believe special management is not required. Pursuant to section 3(5)(A)(i) of the Act, we consider the areas that we are excluding on the BLNWR to be within the geographical range occupied by the four invertebrate species. As noted in the environmental assessment, one of the areas on the BLNWR, the impoundment complex, contains an area that could allow for future expansion of existing populations. While this area is not known to be currently occupied, we consider it to be within the geographical range occupied by the four invertebrate species because it is in close proximity to known occupied areas (*i.e.*, ranging from approximately 164 to 656 feet (50 to 200 m)), and it would be an area where section 7 consultations would occur because of the potential presence of the four invertebrate species and known proximity to occupied areas.

The BLNWR was established on October 8, 1937, by Executive Order 7724 "as a refuge and breeding ground for migratory birds and other wildlife." The Refuge Recreation Act (16 U.S.C. 460–1) identifies the refuge as being "suitable for incidental fish and wildlife-oriented recreational development, the protection of natural resources, and the conservation of endangered species or threatened species." The Wilderness Act of 1964 (Pub. L. 88–577) directs the Service to "maintain wilderness as a naturally functioning ecosystem" on portions of the Refuge. While the BLNWR was originally established to save wetlands vital to the perpetuation of migratory birds, the isolated gypsum springs, seeps, and associated wetlands protected by the Refuge have been recognized as providing the last known habitats in the world for several unique species. Management emphasis of the BLNWR is placed on the protection and enhancement of habitat for endangered species and Federal candidate species, maintenance and improvement of wintering crane and waterfowl habitat, and monitoring and maintenance of natural ecosystem values.

The BLNWR sits at a juncture between the Roswell Artesian Groundwater Basin and the Pecos River. These two systems and their interactions account for the diversity of water resources on the Refuge, including sinkholes, springs, wetlands, oxbow lakes, and riverine habitats. The BLNWR has a federally reserved water right that essentially protects groundwater levels of the Roswell Basin in the Refuge vicinity. The Refuge has undergone adjudication of its federally reserved water rights by the State of New Mexico (order signed May 1997). The BLNWR is currently in negotiations with the New Mexico Interstate Stream Commission, a State agency responsible for administering New Mexico's water resources, to quantify these reserved rights (Service 2005).

The National Wildlife Refuge System Improvement Act of 1997 establishes a conservation mission for refuges, gives policy direction to the Secretary of the Interior and refuge managers, and contains other provisions such as the requirement to integrate scientific principals into the management of the Refuges. According to Section 7(e)(1)(E) of the Refuge Improvement Act, all lands of the Refuge System are to be managed in accordance with an approved CCP that will guide management decisions and set forth strategies for achieving refuge purposes. In general, the purpose of the CCP is to provide long-range guidance for the management of National Wildlife Refuges. The Refuge Improvement Act requires all refuges to have a CCP and provides the following legislative mandates to guide the development of the CCP: (1) Wildlife has first priority in the management of refuges; (2) wildlife-dependent recreation including hunting, fishing, wildlife observation, wildlife photography, environmental education and environmental interpretation are the priority public uses of the refuge system, and shall be allowed when compatible with the refuge purpose; and (3) other uses have lower priority in the refuge system and are only allowed if not in conflict with any of the priority uses and determined appropriate and compatible with the refuge purpose.

The CCP must also be revised if the Secretary determines that conditions that affect the refuge or planning unit have changed significantly. In other words, a CCP must be followed once it

is approved, and regularly updated in response to environmental changes or new scientific information.

The BLNWR has a Final CCP that was approved in September 1998. The CCP serves as a management tool to be used by the Refuge staff and its partners in the preservation and restoration of the ecosystem's natural resources. The plan is intended to guide management decisions over the next 5 to 10 years and sets forth strategies for achieving Refuge goals and objectives within that timeframe. Key goals of the CCP related to these four invertebrates include the following: (1) To restore, enhance and protect the natural diversity on the BLNWR including threatened and endangered species by (a) appropriate management of habitat and wildlife resources on refuge lands and (b) by strengthening existing and establishing new cooperative efforts with public and private stakeholders and partners, and (2) To restore and maintain selected portions of a hydrological system that more closely mimics the natural processes along the reach of the Pecos River adjacent to the BLNWR by: (a) restoration of the river channel, as well as restoration of threatened, endangered, and special concern species; and (b) control of exotic species and manage trust responsibilities for maintenance of plant and animal communities and to satisfy traditional recreational demands. Specific objectives related to these goals include: (1) The restoration of populations of aquatic species designated as endangered, threatened, or of special concern to a sustainable level (aquatic species in these categories include the four invertebrates), and (2) the monitoring of wildlife populations, including endemic snails.

As explained in detail above, we believe that BLNWR lands are already managed for the conservation of wildlife and special management considerations or protections are not required. Therefore, these lands do not meet the definition of critical habitat, and we are not designating critical habitat for the four invertebrate species within BLNWR.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act. The section 7 consultation process is triggered when a Federal agency determines that its proposed Federal action (*i.e.*, an action that it funds, carries out, or authorizes) may affect a listed species or its critical habitat. Thus, the principal benefit of any designated critical habitat is that Federal activities that may affect critical habitat require consultation under section 7 of the Act.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation is initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of these four invertebrate species. Federal activities that may affect those unprotected areas (such as groundwater pumping, oil and gas activities, and livestock grazing, etc.) outside of critical habitat are still subject to review under section 7 of the Act if they may affect these species. The prohibitions of section 9 of the Act (*e.g.*, harm, harass, capture) also continue to apply both inside and outside of designated critical habitat.

Effect of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define "jeopardize the continued existence of" as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). "Destruction or adverse modification of designated critical habitat" for this species would include habitat alterations that appreciably diminish the value of critical habitat by significantly affecting any of those physical or biological features that were the basis for determining the habitat to be critical. We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

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

Activities on Federal lands that may affect the four invertebrates or their habitat will require consultation pursuant to section 7 of the Act. Activities on State or private lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers, or some other Federal action, including funding, will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat

include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Pecos assiminea is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency that may affect the Pecos assiminea and may require consultation under section 7 of the Act to determine if they adversely modify critical habitat include, but are not limited to:

(1) Any activity that would significantly alter the source-water capture zone, subterranean flows, or water level of the supporting aquifers (groundwater pumping), including any activity that would significantly alter the water chemistry, water quality, or physical parameters (*e.g.*, temperature, pH, contaminants), or wastewater or point-source discharge permits in the wetland habitats and systems that could appreciably diminish the primary constituent elements where this species occurs;

(2) Any activity that would introduce, spread, or augment non-native aquatic predators or competitors, or non-native species that negatively alter Pecos assiminea habitat or primary constituent elements: this would include the introduction of non-native species through contaminated sampling gear, bait-bucket introductions of non-native fishes, or the release of aquarium species (fish, aquatic snails, and aquatic plants) from uninformed members of the public; or

(3) Any activity that would detrimentally alter the habitat for Pecos assiminea. This would include water diversion, drainage alteration projects, road construction, construction of public and private facilities, or ponding of spring runs.

Specific examples of Federal activities include, but are not limited to, EPA authorization of discharges under the National Pollutant Discharge Elimination System and registration of pesticides; Federal Highway Administration approval or funding of road or highway infrastructure and maintenance; BLM issuance of oil and gas leases or permits; U.S. Army Corps of Engineers authorization of discharges of dredged or fill material into waters of the United States under section 404 of the Clean Water Act; USDA-Natural Resources Conservation Service technical assistance and other programs; USDA-Rural Utilities Service infrastructure or development; Federal Energy Regulatory Commission permitting activities; and the Department of Housing and Urban Development's Small Cities Community Development Block Grant and home loan programs.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed animals are discussed in the "Effect of Critical Habitat Designation" section above.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed to be listed or is listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Federal agencies are required to confer with us informally on any action that is likely to jeopardize the continued existence of a proposed species, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. Federal agency actions that may affect the four invertebrates throughout their range and may require consultation with us include, but are not limited to, oil and gas development, irrigated agricultural and livestock activities, residential and commercial development, non-native vegetation control, fire suppression, controlled burns, water control structures, and habitat enhancement projects.

Listing the four invertebrates provides for the development and implementation of a rangewide recovery plan. This plan will bring together Federal, State, and local agency efforts for the conservation of these species. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It also will describe the site-specific actions necessary to achieve conservation and survival of the species.

Listing also will require us to review any actions that may affect the four invertebrates for lands and activities under Federal jurisdiction, State plans developed pursuant to section 6 of the Act, scientific investigations of efforts to enhance the propagation or survival of the animal pursuant to section 10(a)(1)(A) of the Act, and habitat conservation plans prepared for non-Federal lands and activities pursuant to section 10(a)(1)(B) of the Act.

Federal agencies with management responsibility for the four invertebrates include the Service, in relation to the issuance of section 10(a)(1)(A) and (B) permits for scientific research, habitat conservation plans, BLNWR management and maintenance, and other programs.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the U.S. Fish and Wildlife Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in the course of otherwise lawful activities.

Pursuant to the Interagency Cooperative Policy for Endangered Species Act Section 9 Prohibitions, published in the **Federal Register** on July 1, 1994 (59 FR 34272), we identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness as to the effects of this listing on future and

ongoing activities within the species' range. We believe, based on the best available information that the following actions will not result in a violation of the provisions of section 9 of the Act, provided these actions are carried out in accordance with existing regulations and permit requirements:

(1) Possession, delivery, or movement, including interstate transport that does not involve commercial activity, of specimens of these species that were legally acquired prior to the publication in the **Federal Register** of the Federal List of Endangered and Threatened Wildlife and Plants;

(2) Oil and gas exploration and drilling in areas where surface or groundwater is not connected to habitats occupied by the Roswell springsnail, Koster's springsnail, Pecos assiminea, and Noel's amphipod; and

(3) Any actions that may affect the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea that are authorized, funded, or carried out by a Federal agency (*e.g.*, prescribed burns, pesticide/herbicide application, pipeline construction crossing suitable habitat, oil and gas development or extraction activities), when the action is conducted in accordance with the consultation requirements for listed species pursuant to section 7 of the Act.

Potential activities involving these species that we believe will likely be considered a violation of section 9 include, but are not limited to, the following:

(1) Unauthorized possession, collecting, trapping, capturing, killing, harassing, sale, delivery, or movement, including interstate, and foreign commerce, or harming, or attempting any of these actions, of the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea. Research activities where these species are trapped or captured will require a permit under section 10(a)(1)(A) of the Act;

(2) The use of chemical insecticides or herbicides that results in killing or injuring these species;

(3) Intentional release of exotic species (including, but not limited to, mosquitofish, crayfish, or non-native snails) into habitat currently occupied by the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea;

(4) Within the 12,585 ac (5,093 ha) of the Federal mineral estate and 9,945 ac (4,025 ha) habitat protection zone in New Mexico (*e.g.*, BLM 2002, Balleau *et al.* 1999), subsurface drilling or similar activities that contaminate or cause significant degradation of surface drainage water or aquifer water quality that supports the habitat occupied by these species;

(5) Septic tank placement and use where the groundwater is connected to sinkhole or other aquatic habitats occupied by these species;

(6) Unauthorized discharges or dumping of toxic chemicals, silt, or other pollutants into, or other illegal alteration of the areas supporting Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea that results in death or injury of the species or that results in degradation of their occupied habitat to an extent that individuals are killed or injured or essential behaviors such as breeding, feeding, and sheltering are impaired; and

(7) Destruction or alteration of the Roswell springsnail, Koster's springsnail, Noel's amphipod, and Pecos assiminea occupied habitat through discharge of fill materials into occupied sites; draining, ditching, tilling, channelization, drilling, pumping, or other activities that interrupt surface or ground water flow into or out of the spring complexes, and occupied habitats of these species that results in killing or injuring these species by significantly impairing essential life-sustaining requirements such as breeding, feeding, and shelter.

If you have questions regarding whether specific activities will likely violate the provisions of section 9 of the Act, contact the New Mexico Ecological Services Field Office (see **ADDRESSES** section). For Pecos assiminea in Texas, contact the Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505/248–6920; facsimile 505/248–6788).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic impact, impact to national security, and other relevant impacts of designating a particular area as critical habitat. We based this designation on the best available scientific information. We utilized the economic analysis, and took into consideration comments and information submitted during the public hearing and comment periods to make this final listing and critical habitat determination. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

A draft analysis of the economic effects of the proposed critical habitat designation was prepared and made available for public review (70 FR 23083; May 4, 2005). The economic analysis considers the economic impacts of conservation measures taken prior to and subsequent to the final listing and designation of critical habitat for the four invertebrates. Pre-designation impacts are typically defined as all management efforts that have occurred since the time of listing. The four invertebrates have not been listed, but were proposed for listing in February 2002 (67 FR 6459). Total post-designation costs associated with proposed critical habitat Units 3 and 4 for the Pecos assiminea on TNC lands in Texas are estimated to be $707,000 over the next 20 years (Service 2005a). Estimated costs include creating a conservation plan to formally assess conservation elements and future management actions within proposed critical habitat Units 3 and 4. Additionally, future costs to oil and gas activities within proposed Unit 3 are anticipated to be related to continued partnership projects between TNC and regional oil and gas companies.

Based upon these estimates, we conclude in the final analysis, which reviewed and incorporated public comments, that no significant economic impacts (*i.e.*, will not have annual effect on the economy of $100 million or more or affect the economy in a material way discussed further in the "Required Determinations" section below) are expected from the designation of critical habitat for Pecos assiminea. A copy of the economic analysis is included in our supporting record and may be obtained by contacting the New Mexico Ecological Services Field Office (see **ADDRESSES** section) or from our Web site *http://ifw2es.fws.gov/*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, based on our final economic analysis, it is not anticipated that the designation of critical habitat for the four invertebrate species will result in an annual effect on

the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the final rule or accompanying economic analysis.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweighs the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act, (SBREFA) 5 U.S.C. 802 (2), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Our economic analysis of the proposed designation provides the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

Activities anticipated to occur within the next 20 years within or adjacent to critical habitat for the Pecos assiminea that potentially effect small businesses include: oil and gas production, irrigated agricultural production, and livestock operations.

With regard to livestock operations the economic analysis finds that confined animal feeding facilities do not occur in Pecos or Reeves Counties, Texas, within 60 miles of the critical habitat designation. As such, the analysis does not anticipate impacts to small entities within the livestock industry in these counties.

Agricultural production dependent on groundwater irrigation occurs within Pecos and Reeves Counties, Texas. The analysis assumes that all farms operating within the regions are small entities. Within Texas, further hydrological studies are necessary to determine the impact of groundwater pumping on surface and groundwater levels to designated critical habitat. As a result, groundwater withdrawal activities for agricultural production are unlikely to change as a result of the presence of the Pecos assiminea. Thus, no impacts to small entities within the irrigated agricultural industry are expected.

Oil and gas drilling occurs on private lands outside of critical habitat Unit 3 (Diamond Y Springs Complex) in Texas. The economic analysis finds that while oil and gas activities may present water quality issues, they are not considered a threat to groundwater levels in the region. The analysis does not forecast modifications to oil and gas production in Texas and therefore no impacts to small businesses are quantified. This is due to the fact that Unit 3 is owned and managed by TNC. TNC manages this area as a preserve for long term habitat conservation and protection of the functional integrity of surface water systems to benefit rare aquatic species and communities within the preserves. TNC does not own the mineral rights at Unit 3. However, the companies that own or lease these rights have generally worked voluntarily with TNC to protect these lands. The economic analysis finds that future costs to oil and gas activities within Unit 3 are anticipated to be related to continued partnership projects between TNC and regional oil and gas companies. There may also be a potential for costs associated with an incidental take permit and Habitat Conservation Plan under section 10 of the Act. However, the economic analysis finds that the potential for that occurrence is unknown.

There has been one section 7 consultation on an oil and gas project with Federal involvement in the vicinity of habitats occupied by the four invertebrates. This was an informal consultation in 2004 regarding proposed abandonment of 58 miles of pipeline in Winkler, Ward, Reeves, and Pecos counties, Texas (Service 2004b). The proposed project involved permitting by the Federal Energy Regulatory Commission. It was determined that the proposed action would not have any affect on any of the four invertebrate species or any co-occurring, listed, aquatic taxa such as Leon Springs pupfish. There were no conservation recommendations made by the Service regarding protection of aquatic habitats in this consultation. Based upon this and other information presented in the draft economic analysis and draft environmental assessment, we do not anticipate economic costs to small businesses in this industry. Therefore, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities. We have concluded that this final designation of critical habitat for the Pecos assiminea would not affect a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the Pecos assiminea will not have a significant economic impact on a substantial number of small entities, and a final regulatory flexibility analysis is not required.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on

regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule is considered a significant regulatory action under E.O. 12866 due to it potentially raising novel legal and policy issues, but the economic analysis finds that the oil and gas industry is not likely to experience "a significant adverse effect" as a result of conservation efforts for the four invertebrates. Appendix A of the draft economic analysis provides a detailed discussion and analysis of this determination. Specifically, two criteria were determined to be relevant to this analysis: (1) Reductions in natural gas production in excess of 25 million mcf per year, and (2) increases in the cost of energy production in excess of one percent. Impacts to ongoing oil and gas production in Pecos County, Texas, are not forecast as it is unclear whether these activities will require conservation efforts for the Pecos assiminea. As described in Section 4.2.1 of the economic analysis and above, while oil and gas activities in this region may affect groundwater quality, they are not anticipated to affect groundwater levels.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

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

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

(b) We do not believe that this rule will significantly or uniquely affect small governments. This determination is based on information from the economic analysis conducted for this designation of critical habitat for the Pecos assiminea and the fact that critical habitat is only being designated on TNC lands. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the Pecos assiminea in a takings implications assessment. The takings implications assessment concludes that the designation of critical habitat for the Pecos assiminea does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, the Service requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in New Mexico and Texas. The impact of the designation on State and local governments and their activities was fully considered in the economic analysis. As discussed above, the designation of critical habitat for the Pecos assiminea would have little incremental impact on State and local governments and their activities. In fact, the designation of critical habitat may have some benefit to the State and local resource agencies in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of this species are specifically identified.

Civil Justice Reform

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

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

This rule does not contain new or revised information collection for which Office of Management and Budget approval is required under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit

[(*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).] However, when the range of the species includes States within the Tenth Circuit, such as that of the four invertebrates, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. We completed an environmental assessment and finding of no significant impact on the designation of critical habitat for the Pecos assiminea.

Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

The purpose of Secretarial Order 3206 (Secretarial Order) is to "clarif(y) the responsibilities of the component agencies, bureaus, and offices of the Department of the Interior and the Department of Commerce, when actions taken under authority of the Act and associated implementing regulations affect, or may affect, Indian lands, tribal trust resources, or the exercise of American Indian tribal rights." If there is potential that a tribal activity could cause either direct or incidental take of a species proposed for listing under the Act, then meaningful government-to-government consultation will occur to try to harmonize the Federal trust responsibility to tribes and tribal sovereignty with our statutory responsibilities under the Act. The Secretarial Order also requires us to consult with tribes if the designation of an area as critical habitat might impact tribal trust resources, tribally owned fee lands, or the exercise of tribal rights. However, no known tribal activities could cause either direct or incidental take of the four species in this final rule, and no tribal lands or tribal trust resources are anticipated to be affected by the designation of critical habitat.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary authors of this rule are the New Mexico Ecological Services Field Office staff (see **ADDRESSES** section) (telephone 505/346–2525).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

■ 2. Amend § 17.11(h) as follows:
■ a. Add Pecos assiminea, Koster's springsnail, and Roswell springsnail in alphabetical order under "SNAILS;" and
■ b. Add Noel's amphipod in alphabetical order under "CRUSTACEANS," to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* *	*	*	*	*	*		*
SNAILS							
*	*	*	*	*	*		*
Pecos assiminea	*Assiminea pecos*	U.S.A. (NM, TX)	NA	E	17.95(f)	NA	
*	*	*	*	*	*		*
Springsnail, Koster's ...	*Juturnia kosteria*	U.S.A. (NM)	NA	E	NA	NA	
Springsnail, Roswell ...	*Pyrgulopsis roswellensis.*	U.S.A. (NM)	NA	E	NA	NA	
CRUSTACEANS							
*	*	*	*	*	*		*
Amphipod, Noel's	*Gammarus desperatus*	U.S.A. (NM)	NA	E	NA	NA	
*	*	*	*	*	*		*

■ 3. Amend § 17.95 (f) by adding critical habitat for Pecos assiminea in the same order as this species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) Clams and snails.

* * * * *

Pecos assiminea (*Assiminea pecos*)

1. Within the areas designated below as critical habitat, the primary constituent elements for Pecos assiminea include:

(i) Permanent, flowing, unpolluted, fresh to moderately saline water;

(ii) Moist or saturated soil at stream or spring run margins with native vegetation growing in or adapted to aquatic or very wet environment, such as salt grass or sedges; and

(iii) Stable water levels with natural diurnal and seasonal variation.

2. Critical habitat is depicted for the Pecos assiminea in Pecos County, Texas, at the Diamond Y Springs Complex. The designation includes the Diamond Y Spring, which is located at UTM 13–698261 E, 3431372 N, and 6.8 km (4.2

mi) of its outflow, ending at UTM 13–701832 E, 3436112 N, about 0.8 km (0.5 mi) downstream of the State Highway 18 bridge crossing. Also included is 0.8 km (0.5 mi) of Leon Creek upstream of the confluence with Diamond Y Draw. All surrounding riparian vegetation and mesic soil environments within the spring outflow and portion of Leon Creek are also designated as these areas are considered habitat for the Pecos assiminea. Critical habitat is also depicted for the Pecos assiminea in Reeves County, Texas, at the East Sandia Spring complex. East Sandia Spring is located at UTM 13–621366 E, 342929 N. Critical habitat includes the springhead itself, surrounding seeps, and all submergent vegetation and moist soil habitat found at the margins of these areas. These areas are considered habitat for the Pecos assiminea.

(i) Pecos County, Texas, including the Diamond Y Springs Complex, located at longitude –102.923461 and latitude 30.999271, and approximately 6.8 km (4.2 mi) of the spring outflow ending at about 0.8 km (0.5 mi) downstream of the State Highway 18 bridge crossing (approximately longitude –102.885137 and latitude 31.041405). Also included is approximately 0.8 km (0.5 mi) of Leon Creek upstream of the confluence with Diamond Y Draw. All surrounding riparian vegetation and mesic soil environments within the spring, outflow, and portion of Leon Creek are also proposed for designation as these areas are considered habitat for the Pecos assiminea. Legal description (geographic projection, North American Datum 83): Longitude (decimal degrees), Latitude (decimal degrees):

−102.905319869746634, 31.022089444891570;
−102.887036917654868, 31.043947412173729;
−102.884194716234887, 31.042760908977833;
−102.885135806784476, 31.040116604685526;
−102.886447071974004, 31.038190792077721;
−102.886620885824385, 31.037813677269160;
−102.890251036381329, 31.035783323856453;
−102.892481680821120, 31.034679908957198;
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−102.895544792411911, 31.030835296062797;
−102.896058768051944, 31.030036256911551;
−102.898010410716566, 31.029070675153459;
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−102.901948928625941, 31.028042412007075;
−102.901688880906221, 31.027325744767865;
−102.901714918210303, 31.026138774702297;
−102.901732622700223, 31.025331634924694;
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−102.902125889274174, 31.022488286611136;
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−102.912113070098556, 31.012153756020012;
−102.912844195573911, 31.011500644598044;
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−102.914004171668253, 31.013941704157816;
−102.912955733451284, 31.013972240169043;
−102.912389969275623, 31.014628028040637;
−102.912099833183859, 31.015288275173923;
−102.912212159226485, 31.015195101507882;
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−102.906510334381181, 31.021229648922475;
−102.906323124324715, 31.022224022537589;
−102.905476410341578, 31.023112694758801;
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31.025607579972412;
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−102.896823149655987,
31.032898465556570;
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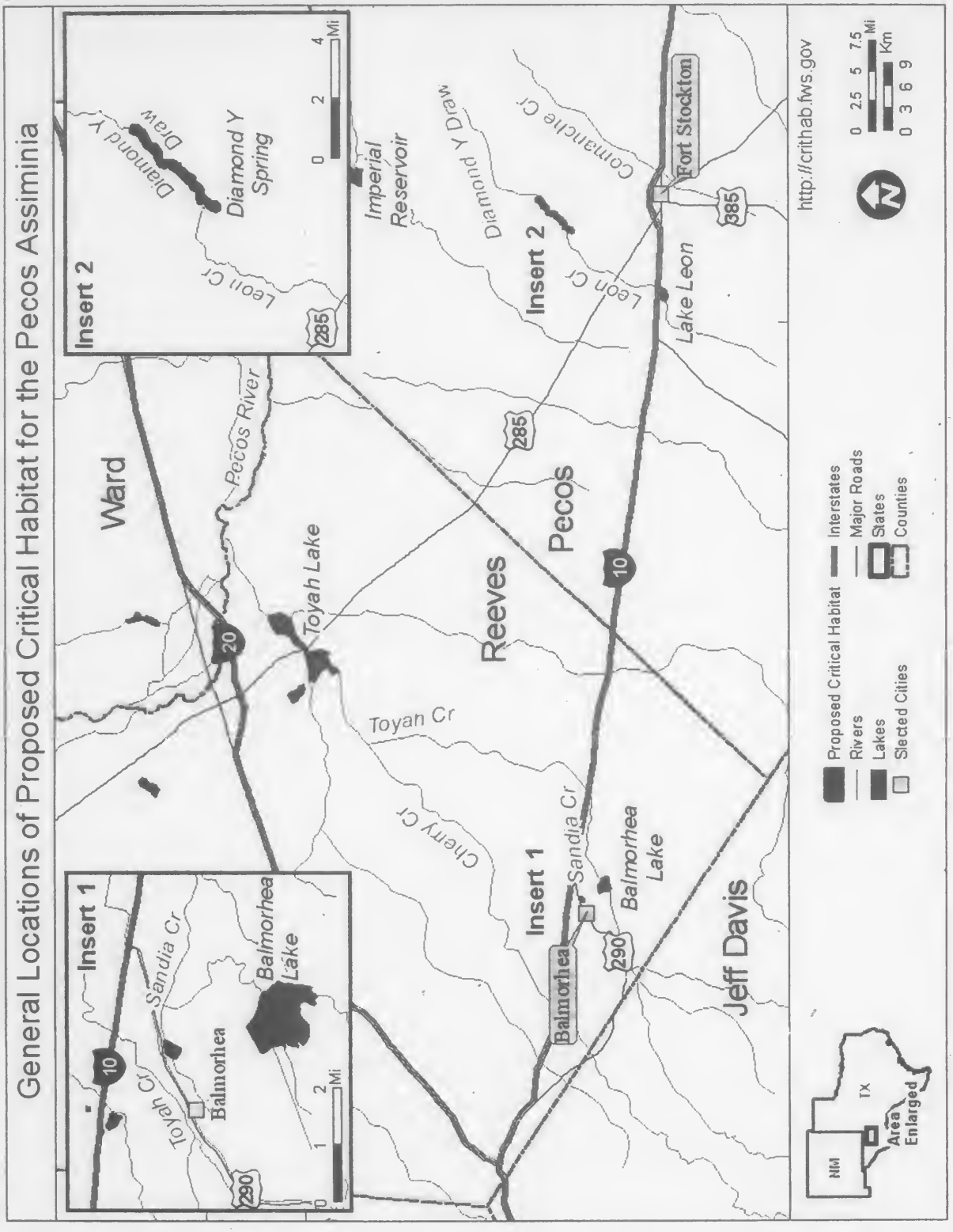
31.035155846795476;
−102.894484140543042,
31.036422464608236;
−102.892135869908444,
31.037856459486278;
−102.890355694384951,
31.038539777638526;
−102.889015567482971,
31.039277771567470;
−102.888427464446750,
31.040930483816535;
−102.887036917654868,
31.043947412173729.

(ii) Reeves County, Texas, at the East Sandia Spring complex. East Sandia Spring is located at longitude −103.728918, latitude 30.991012. The designation includes the springhead itself, surrounding seeps, and all submergent vegetation and moist soil habitat found at the margins of these areas. These areas are considered habitat for the Pecos assiminea. Legal description (geographic projection, North American Datum 83): Longitude (decimal degrees), Latitude (decimal degrees): −103.729296238487009, 30.990656960487129; −103.731179077171333, 30.989695620405591; −103.730160658036496, 30.991850361242875; −103.727182653076312, 30.992477028891606; −103.729159475230986, 30.988608062418542; −103.731179077171333, 30.989695620405591.

3. A map of the Diamond Y Springs Complex and East Sandia Spring Complex follows:

BILLING CODE 4310–55–P


General Locations of Proposed Critical Habitat for the Pecos Assiminia
Insert 1
Insert 2
Ward
Reeves
Pecos
Jeff Davis
Pecos River
Toyah Lake
Toyah Cr
Cherry Cr
Sandia Cr
Balmorhea
Balmorhea Lake
Diamond Y Draw
Diamond Y Spring
Leoll Cr
Imperial Reservoir
Comanche Cr
Leon Cr
Lake Leon
Fort Stockton
http://crithab.fws.gov
Proposed Critical Habitat
Rivers
Lakes
Slected Cities
Interstates
Major Roads
States
Counties
NM
TX
Area Enlarged

Dated: August 1, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–15486 Filed 8–8–05; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
August 9, 2005

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 5, 15, et al.
Fees for Testing, Evaluation, and Approval of Mining Products; Final Rule and Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 5, 15, 18, 19, 20, 22, 23, 27, 28, 33, 35, and 36

RIN 1219–AB38

Fees for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Direct final rule.

SUMMARY: We are amending our regulations to reflect established policy and procedures for administering fees for testing, evaluation, and approval of equipment and materials manufactured for use in the mining industry. This direct final rule eliminates the application fee, allows applicants to pre-authorize expenditures for processing applications, allows outside organizations conducting part 15 testing (explosives and sheathed explosive units) on our behalf to set fees for this testing, incorporates changes concerning our programs and organization, and makes non-substantive conforming changes to related regulations.

DATES: This direct final rule is effective November 7, 2005, without further notice, unless we receive significant adverse comment by October 11, 2005. If we receive such comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register**.

ADDRESSES: Comments must include Regulation Identifier Number (RIN) 1219–AB38 and may be submitted by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail to *comments@msha.gov*. Please include RIN 1219–AB38 in the subject line of the message.

If you are unable to submit comments by e-mail or through the Federal eRulemaking portal, please identify your comments by RIN 1219–AB38 and submit them by any of the following methods:

- Facsimile: (202) 693–9441.
- Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22201–3939.

Access to Docket: We post all comments received without change, including any personal information provided, at *http://www.msha.gov* at the "Rules & Regs" link. Additionally, we post this document, our Program Policy Manual, and all Program Information Bulletins, Standard Administrative Procedures, and Program Policy Letters discussed in the **SUPPLEMENTARY INFORMATION** section of this preamble on our Web site at *http://www.msha.gov*. The public docket may be viewed at our Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Smith, Acting Director, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), 202–693–9441 (fax), or *smith.rebecca@dol.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Direct Final Rule and Concurrent, Identical Proposed Rule

Since the rule requirements are not controversial and primarily concern agency procedures, we have determined that the subject of this rulemaking is suitable for a direct final rule. No significant adverse comments are anticipated. However, concurrent with this direct final rule, a separate, identical proposed rule is published in today's issue of the **Federal Register**. The duplicate proposed rule will speed notice and comment rulemaking in the event we receive significant adverse comments and withdraw this direct final rule. All interested parties should comment at this time because we will not initiate an additional comment period. If no significant adverse comments to the accompanying proposed rule are received on or before October 11, 2005, this direct final rule will become effective November 7, 2005, without further notice.

If significant adverse comments are received, we will publish a timely notice in the **Federal Register** withdrawing this direct final rule, and will then proceed with the rulemaking by addressing the comments and developing a final rule from the proposed rule published elsewhere in today's issue of the **Federal Register**. For purposes of withdrawing this direct final rule, a significant adverse comment is one that explains (1) why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response through the notice and comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this rule would be ineffective without the addition.

II. Background

A. Rulemaking History

The Federal Mine Safety and Health Act of 1977 (the Mine Act) (Pub. L. 91–173, as amended by Pub. L. 95–164) gives the Mine Safety and Health Administration responsibility for prescribing the technical design, construction, and evaluation criteria for certain products used in underground mines and for testing and approving these products so that the products will not cause a mine fire explosion or a mine fire. Most of the Mine Act's regulations for testing and approving these products relate to "permissible" equipment. The Mine Act's implementing regulations at Title 30 of the Code of Federal Regulations (30 CFR), parts 6 through 36 contain procedures by which applicants may apply for and have equipment approved as "permissible," as defined in section 318 of the Mine Act, 30 U.S.C. 878, for use in mines.

On May 8, 1987, we published a final rule (52 FR 17506) adding 30 CFR part 5 (Fees for testing, evaluation, and approval of mining products). This rule created a uniform method for calculating fees and established specific procedures for administering the fee program. Since our initial implementation of part 5, changes to agency policies and procedures have significantly increased the efficiency of the approval process and the administration of the fee program. In particular, we have eliminated the application fee, allowed applicants to pre-authorize expenditures, and restructured existing programs for expediting requests for changes to previously approved mining products. This direct final rule will update part 5 to reflect these initiatives.

Additionally, this rule removes a number of references to the Department of the Interior's former Bureau of Mines, which was dissolved in 1996 (Pub. L. 104–99). Prior to that time, the Bureau of Mines conducted part 15 testing on our behalf. NIOSH has assisted us with part 15 testing; however, NIOSH no longer has the resources to conduct these tests. This rule allows us to use other organizations to conduct part 15 testing.

B. Scope of Approval Activities

The mining products that we approve range from small electronic devices to large complex mining systems. Our

Approval and Certification Center (Center) evaluates and tests these mining products and issues, among other things, "approvals," "certifications," "acceptances," "extensions," and "field modifications."

Under the narrow definition of "approval," approvals are issued to a completely assembled machine or system or to an explosive. Under this definition, approval of a mining product constitutes a license authorizing the approval-holder to build and distribute the product for use in underground mines, and to advertise the product as "MSHA-approved." The approval-holder accepts the responsibility for constructing or formulating the product in exact accordance with all drawings and specifications that accompany the approval.

A "certification" is issued to a component or sub-system of a completely assembled machine or system. An "acceptance" is issued for materials and certain other products. An "extension" of an approval or certification allows the applicant to make design modifications to the product. A "field modification" allows the owner of an MSHA approved piece of equipment to make specific changes to approved electrical equipment.

Additionally, we administer a number of voluntary programs which are covered by this regulation to evaluate products to determine conformance to safety requirements of 30 CFR parts 56, 57, 75, and 77, or to determine the product's suitability for specific mining applications. For example, we use these voluntary programs to evaluate ground wire monitors, lighting systems, sealants and stopping systems, conveyor belt lagging material, belt wipers, and hydraulic hose and fire suppression agents and systems.

Except where stated otherwise, we use the term "approval" in this preamble and regulation in a broad sense to represent our formal recognition of products that are approved, certified, or otherwise formally accepted for use in mining operations.

Our regulations also allow other parties to perform product testing under certain circumstances. Part 6 of 30 CFR allows independent laboratories to test and evaluate certain mining products. It also permits MSHA to approve equipment designed to non-MSHA product safety standards once we have determined that the standard(s) can provide at least the same degree of protection or can be modified to provide at least the same degree of protection as 30 CFR requirements. Part 7 allows the applicant or a third party to test certain products for which the testing requirements are objective in nature and can be routinely conducted by personnel knowledgeable in the particular product line or category. We retain the responsibility for evaluating the test results and issuing the approval for all products tested and evaluated under parts 6 and 7.

C. The Approval Process

The approval process begins with the filing of an application. Parts 6 through 36 provide instructions for preparing and filing applications, which can vary with the type of mining product and type of approval requested. We administratively review each new application, and upon determination that the application is in order, prepare a fee estimate, if one is required. Our technical experts then thoroughly investigate, test, and evaluate the product.

Following successful completion of the evaluation and testing, we provide the applicant with a written notice that the product meets all the applicable requirements.

III. Section-by-Section Analysis

A. Section 5.10 Purpose and Scope

Existing section 5.10 sets out the purpose and scope of part 5. Revised section 5.10 remains substantially unchanged from the existing regulation. The term "testing, evaluation and approval" in existing paragraph (a) is changed to "services provided under this subchapter." This change more clearly conveys that part 5 applies to all services which the Center provides and for which a fee is charged. These services include "approvals" as defined in both the narrow and broad sense as explained earlier in Part II B, "Scope of Approval Activities." The term "Except as provided in section 5.30(a)" is added to the beginning of 5.10(b) to clarify that outside organizations conducting part 15 testing on our behalf may set the fees for this testing. These outside organizations will likely be government agencies or non-government organizations with laboratory facilities capable of performing part 15 tests.

B. Section 5.20 Effective Date

Existing section 5.20 established the effective date of the 1987 rule. Such a notice is not needed at this time because this **Federal Register** document provides the effective date for the direct final rule. For this reason, this revised rule deletes existing § 5.20.

C. Section 5.30 Fee Calculation

Existing paragraph 5.30(a) imposes a non-refundable application fee. This fee was intended to recover costs for initial review and administrative processing of the application in the event the applicant cancelled the action prior to commencement of the technical evaluation. Upon completion of the evaluation and testing, this payment was credited against the total charges billed to the applicant.

Paying and processing this fee placed an additional administrative burden on the applicants and on us, and delayed the approval process. The applicant incurred the burden of remitting two payments during the application process, and we expended resources to process both payments. The technical evaluation could not begin until our finance office confirmed that the payment for the application fee had been posted. After reviewing this activity, we issued Program Policy Letter (PPL) No. 96–II–1, "Waiver of the $100 Application Fee for Testing, Evaluation, and Approval of Mining Products," effective January 1, 1996. This policy is now incorporated into our Program Policy Manual. In revised paragraph 5.30(a), the requirement for an application fee is removed to reflect our elimination of this fee.

Revised paragraph 5.30(a) also incorporates and revises provisions from existing paragraphs 5.30(b) and (e). The provision from revised paragraph 5.30(b), which lists criteria for determining hourly fees, contains three revisions. First, the term "testing, evaluation and approval" in existing paragraph 5.30(b) is changed to "services provided under this subchapter" and moved to revised paragraph 5.30(b). Second, the existing language concerning direct and indirect costs that is repeated from Section 5.10(b)(1) is omitted to eliminate redundancy. Third, since these criteria for determining hourly fees also apply to any flat rate fees that we would establish, the term "hourly fees" is changed to "fees." As noted earlier, when the existing rule was promulgated, we charged flat rate fees for certain services for which turnaround time was predictable and stable. The shift to the current system of hourly fees was driven partially by concerns about the equitable distribution of costs among applicants.

As mentioned above, the provision in existing paragraph 5.30(e), concerning fees for tests conducted for MSHA by the former Bureau of Mines under part 15 (Requirements for approval of explosives and sheathed explosive units) is incorporated into revised paragraph 5.30(a) and is substantially revised. The existing paragraph provides that "Tests conducted by the

Bureau of Mines for MSHA under part 15 are flat rate items." When the existing rule was promulgated, the former Bureau of Mines conducted these tests on our behalf. After the Bureau was dissolved, its facility for conducting explosives testing was transferred first to the Department of Energy and subsequently to NIOSH as a purely research function (30 U.S.C. 1 note).

In January 1996 we received one application for the full range of part 15 tests. Since then we have received six part 15 applications, all for minor tests. During this time we relied on NIOSH to conduct part 15 tests; however, NIOSH did not have the facilities for conducting part 15 chemical analysis tests, and contracted another organization to conduct these tests. That organization subsequently ceased doing chemical analysis tests. NIOSH recently informed us that they no longer have the resources to perform all the part 15 tests. Since we do not have the facilities to conduct these tests, we must contract with other organizations to do any future part 5 testing. Revised paragraph 5.30(a) allows organizations conducting part 15 testing on our behalf to set the fees for these tests. Since we cannot predict what fees the outside organizations will charge for any of these tests, the regularly published fee schedule, required under paragraph 5.50, will no longer specify the fees for part 15 testing.

Revised paragraph 5.30(a) removes the term "Bureau of Mines" as well as the requirement to charge flat rate fees for part 15 testing. The revised paragraph provides that "part 15 fees for services provided to MSHA by other organizations may be set by those organizations." That is, the new rule allows us to pass on the cost of services provided to MSHA by other organizations so that these costs can be billed to the applicant.

Existing paragraph 5.30(b), as explained above, is also moved to revised paragraph 5.30(a). Revised paragraph 5.30(b) contains the provision from existing paragraph 5.30(c) concerning our maximum fee estimate.

Under existing paragraph 5.30(c), we prepare an estimate of the maximum fees that would be incurred during evaluation of the product. The preamble to the existing rule, at 52 FR 17509, indicates our intent to provide this estimate to the applicant before beginning the technical evaluation "to provide the applicant the opportunity to discuss the estimate or withdraw the application." Existing paragraph 5.30(c) further provides that if unforeseen circumstances are discovered during the evaluation that would result in the actual fees exceeding this estimate, the applicant has the choice of canceling the action and paying for all work done up to the time of the cancellation, or approving our estimated maximum amount. If the estimate exceeds the actual fees, the applicant is charged the lesser amount. An exception to this provision exists for applications that were submitted under our two former flat rate fee programs. These services were charged a predetermined amount and therefore no estimate was provided. These two programs are outlined in detail below in the discussion of existing paragraph 5.30(d).

In 1991, we revised our Program Policy Manual to allow applicants seeking approval of longwall equipment the option of pre-authorizing fees for testing and evaluation. The pre-authorization statement, submitted as part of the application, allowed the technical evaluation to begin immediately. At the request of applicants seeking testing and evaluation of other products, we expanded the policy to allow a pre-authorization option for all products submitted for approval. We published this policy in Program Policy Letter No. 92–II–3, "30 CFR Part 5 Fee Pre-Authorization," effective June 1, 1992. Under this policy, which is currently incorporated into our Program Policy Manual, applicants, other than those seeking modifications under our program for expedited modifications, may elect to pre-authorize an expenditure for fees by submitting a pre-authorization statement with the application. The applicant must either specify a maximum authorized expenditure for fees, or authorize an expenditure with no maximum amount. The latter option authorizes us to perform all testing and evaluation services that we deem necessary.

Under existing policy, we determine whether or not to prepare a maximum fee estimate and when to begin the technical evaluation using the following guidelines:

No pre-authorization statement: We prepare a maximum fee estimate which the applicant must authorize before the technical evaluation begins.

Pre-authorized maximum expenditure: The applicant provides us with a maximum pre-authorized amount. We prepare a maximum fee estimate and at the same time forward the application for the technical evaluation. If no other applications are waiting in the queue, the technical evaluation may begin immediately. Where our estimate exceeds the pre-authorized amount, the applicant has the choice of canceling the action and paying for all work done up to the time of the cancellation, or approving our estimated maximum amount.

Pre-authorized expenditure with no stated maximum: The applicant pre-authorizes an expenditure with no stated maximum amount. We forward the application immediately for the technical evaluation, and the applicant receives no estimated maximum fee estimate.

The revised paragraph modifies provisions in existing paragraph 5.30(c) to provide exceptions for pre-authorized fees and flat rate programs. Paragraph 5.30(b)(1) is added to reflect our policy of allowing applicants the option of pre-authorizing fees.

Paragraph 5.30(b)(2) is added to reflect our policy of requiring a specific pre-authorized expenditure for applications submitted under the Revised Application Modification Program (RAMP). This program is discussed in the narrative for § 5.30(d).

Finally, the existing rule uses the term "estimated maximum fee (cap)." For a number of reasons, including continuity, we no longer use the term "cap" to refer to this amount. The revised rule replaces this term wherever it appears in the rule with the term "maximum fee estimate."

The provisions of existing paragraph 5.30(c) address:

(1) Our determination of a maximum fee estimate prior to the start of technical evaluation;

(2) Unforeseen circumstances during the technical evaluation which could result in the actual cost exceeding the maximum fee estimate; and

(3) The situation where the maximum fee estimate exceeds the actual cost.

The first provision is moved to paragraph 5.30(b), and is discussed above. The second provision remains in paragraph 5.30(c), and third provision is moved to paragraph 5.30(d).

The second provision, involving unforeseen circumstances during the technical evaluation that could result in the actual cost exceeding the maximum fee estimate, requires us to provide the applicant with a revised maximum fee estimate for completing the evaluation. The applicant may then either cancel the evaluation or authorize the revised fee estimate. Under our policy, if the applicant chooses to cancel the evaluation, fees will be charged for work performed up to the cancellation. If the applicant authorizes the new maximum fee estimate, we will continue testing and evaluating the product.

Revised paragraph 5.30(c) leaves this provision substantially unchanged, but the concept is applied to any expenditure approved by the applicant,

whether that expenditure is the estimated maximum fee or the applicant's pre-authorized expenditure. This provision is not applicable where the pre-authorized expenditure has no stated maximum. Additionally, the term "cap" is changed to "maximum fee estimate."

Existing paragraph 5.30(d) addresses the former Stamped Notification Acceptance Program (SNAP) and Stamped Revision Acceptance (SRA) program. These programs were developed to expedite the acceptance of certain minor changes to previously approved products, and required only a few documents to be submitted with the application. SNAP addressed acceptance of single changes to an approved product, including changes that pertained to the technical requirements of an approved product without adversely affecting permissibility. SRA addressed acceptance of single or multiple changes to an approved product, provided the change(s) did not affect the technical requirements. The Center charged a flat rate fee for services provided under these programs.

Over time, using and administering both of these programs created inefficiency and unnecessary duplication. Applicants were often uncertain which program (e.g., SNAP, SRA, or an extension of approval) to use for requesting changes in the design of approved products. This confusion often led to administrative errors and the need to re-submit the application. Further, since SNAP applied to single changes to approved products, a separate application was required for each specific proposed change. In 1998, both programs were replaced with the Revised Approval Modification Program (RAMP). Under RAMP, requests for acceptance of minor changes to approved products are made by submitting a letter of application describing the changes, along with drawings and specifications that fully describe each change. Services provided under RAMP are charged an hourly fee, and the letter of application must contain a statement authorizing a minimum dollar amount set by the Agency. A discussion of RAMP was included in the notice of fee adjustments, published on December 18, 1998 (63 FR 70163), and in Standard Application Procedure ASAP1005, "Revised Approval Modification Program (RAMP) Application Procedure" published on March 28, 2000.

Revised paragraph 5.30(d) removes the SNAP and SRA requirements, and retains the provision in existing paragraph 5.30(c) concerning applications for which the estimated maximum fee exceeds the actual hourly fee. The existing provision requires us to charge the actual fee. Revised paragraph 5.30(d) leaves this provision substantially unchanged; however, the scope is expanded to include instances where the actual hourly fee exceeds any expenditure approved by the applicant, whether that expenditure is the estimated maximum fee or the applicant's pre-authorized expenditure.

Existing paragraph 5.30(e) addresses fees for testing under part 15. The revised rule moves this provision to paragraph 5.30(a) and deletes paragraph 5.30(e) entirely. The revisions to part 15 fees are discussed in the narrative for revised paragraph 5.30(a).

D. 5.40 Fee Administration

Existing paragraph 5.40(a) provides applicants with detailed instructions for submitting the application fee. Existing paragraph 5.40(b) concerns the method of paying for services provided under SNAP and SRA. Since the application fee, SNAP, and SRA have been eliminated, as discussed above, these paragraphs are removed. Existing paragraph 5.40(c) addresses billing procedures for services which are billed at an hourly rate. The existing paragraph provides that applicants are billed when processing of the application is complete; any actual travel expenses are included in the bill; and the invoice will contain specific payment instructions. Our current regulations in 30 CFR Parts 18 through 36 allow payment for part 5 fees only by check, bank draft, or money order.

Revised section 5.40 applies the billing procedures in existing paragraph 5.40(c) to all fees administered under part 5, and informs applicants that invoices will contain specific payment instructions, including the address to mail payments and authorized methods of payment.

Applicants had informally requested that MSHA allow payment by credit card as a means of expediting the payment process and decreasing administrative costs to applicants. MSHA determined that this option can benefit both the applicant and the government, and recently began accepting payments by credit card. Revised paragraph 5.40 allows MSHA the flexibility to accept credit card payment as an authorized method of payment. The remaining provisions of existing paragraph 5.40(c) are substantially unchanged.

E. Overview of Conforming Changes

Parts 18, 19, 20, 22, 23, 27, 28, 33, 35, and 36 contain detailed instructions for submitting applications for approvals and certifications. Each part instructs the applicant to send a check, bank draft, or money order with the application. The rule removes this instruction, and any other reference to payments submitted with applications, to allow these sections to conform to the revised part 5 provisions concerning application fees and payment of fees, and to reflect our current policy, as stated in the Program Policy Manual. Additionally, the rule updates the Center's address and removes outdated references to the former Bureau of Mines.

F. Section 15.3 Observers at Tests and Evaluations

The term "Bureau of Mines, U.S. Department of the Interior" is replaced with the term "designees of MSHA." As explained in the discussion of revised paragraph 5.30(a), the Bureau of Mines no longer exists.

G. Section 18.6 Applications

In paragraph 18.6(a)(1), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration to cover the fees," is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

H. Section 19.3 Applications

In paragraph 19.3(a), the term "accompanied by a check, bank draft, or money order, payable to U.S. Mine Safety and Health Administration, to cover all the necessary fees," is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

I. Section 20.3 Applications

In paragraph 20.3(a), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees," is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

J. Section 22.4 Applications

In paragraph 22.4(a), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees," is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

K. Section 23.3 Applications

In paragraph 23.3(a), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees," is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

L. Section 27.4 Applications

In paragraph 27.4(a)(1), the term "and also a check, bank draft, or money order payable to the U.S. Mine Safety and Health Administration, to cover the fees" is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

M. Section 27.9 Date for Conducting Tests

The existing section lists the "application, payment of necessary fees, and submission of required material" as criteria for determining the order of testing when more than one application is pending. The revised section removes the reference to payment of fees and revises the sentence to conform to similar provisions in existing § 18.8 (Date for conducting investigation and tests). The revised sentence reads: "The date of receipt of an application will determine the order of precedence for investigation and testing." The revised section reflects our policy of waiving the application fee.

N. Section 28.10 Application Procedures

Existing § 28.10 requires applicants seeking approval of certain fuses to submit the fuses to a nationally recognized independent testing laboratory for examination, inspection, and testing prior to submitting an approval application to the Center. Paragraph 28.10(c) contains instructions for submitting these laboratory data and results to the Center, and includes a requirement that payment for the application fee accompany these documents. Revised paragraph 28.10(c) removes the requirement to send a payment with the laboratory documents. This change corresponds to the elimination of the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

O. Section 33.3 Consultation

This section contains an outdated address for the Center and a reference to the former Bureau of Mines. The revised section updates the Center's address and replaces the term "Bureau" with "MSHA."

P. Section 33.6 Applications

In paragraph 33.6(a)(1), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees;" is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40 of the revised rule.

Q. Section 35.6 Applications

In paragraph 35.6(a)(1), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees;" is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40.

R. Section 36.6 Applications

In paragraph 36.6(a)(1), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees;" is removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language is added to specify that the procedures for payment of fees are found in § 5.40.

S. Derivation and Distribution Tables

The following derivation table lists each section number of the final rule and the section number of the existing standard from which the section is derived.

DERIVATION TABLE

Final rule	Existing section
Removed	5.20.
Removed	5.30(a).
5.30(a)	5.30(b).
5.30(b)	5.30(c).
5.30(c)	5.30(c).
5.30(d)	5.30(c).
Removed	5.30(e).
5.40	5.40(c).

The following distribution table lists each section number of the existing standards, and the section number of the final rule which contains provisions derived from the corresponding existing section.

DISTRIBUTION TABLE

Existing section	Final rule
5.20(a)	Removed.
5.30(a)	Removed.
5.30(b)	5.30(a).
5.30(c)	5.30(b), (c), and (d).
5.30(d)	Removed.
5.30(e)	Removed.
5.40(a)	Removed.
5.40(b)	Removed.
5.40(c)	5.40.

IV. Regulatory Impact Analysis

A. Executive Order 12866 Regulatory Planning and Review

Compliance Costs

Executive Order 12866, as amended by Executive Order 13258, requires that regulatory agencies assess both the costs and benefits of intended regulations. We have satisfied the requirement of Executive Order 12866 for this rule and determined that the rule does not have an annual effect of $100 million or more on the economy. Therefore, the rule is not an economically significant regulatory action pursuant to section 3(f)(1) of Executive Order 12866.

The rule affects applicants who request approval for products used in the mining industry. The rule does not result in any cost increases or savings to these applicants.

As noted earlier, existing § 5.30(a) imposes a non-refundable standard application fee on each initial application. Since we eliminated the application fee in 1996, deleting the application fee requirement from existing § 5.30(a) would not cause applicants to incur any costs or cost savings.

Benefits

The rule will change our existing regulatory language to be consistent

with current practices and will continue to allow us to process applications in a timely and efficient manner. Thus, new and improved products that enhance the safety of the miner will be allowed to enter the mine as soon as possible.

The application fee discussed above was intended to offset administrative review costs in the event that the applicant cancelled an application prior to commencement of the technical evaluation. We eliminated this fee because it tended to lengthen the approval and certification process and placed unnecessary burdens on us and the applicant. This rulemaking eliminates the outdated application fee language in the existing regulation.

Also as noted earlier, since 1992, we have allowed the applicant to pre-authorize an expenditure for the testing and evaluation that is associated with an application. This permits us to begin immediate evaluation work if no other applications are awaiting initial actions. This rulemaking adds regulatory language that continues to allow applicants the option to pre-authorize an expenditure for testing and evaluation that is associated with an application.

Furthermore, no provision in this rulemaking diminishes the health or safety of U.S. miners.

B. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, we must use the Small Business Administration's (SBA's) criterion for a small entity in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, we established an alternative definition for a small entity and publish that definition in the **Federal Register** for notice and comment. This rule applies to persons or entities applying for approval of products used in the mining industry. These applicants operate in industries involved in measurement, analysis, or controlling instruments; photographic instruments; commercial and industrial lighting fixtures; conveyors; or mining equipment. SBA's definition of a small business for these industries is 500 or fewer employees. Therefore, we have examined the impact on applicants which have 500 or fewer employees and seek MSHA approval for mining products.

C. Factual Basis for Certification

Using SBA's definition of a small entity, there are no annual cost increases or savings to applicants affected by this rulemaking. Therefore, we have concluded that this rule will not have a significant economic impact on a substantial number of small entities.

V. Other Regulatory Matters

A. Paperwork Reduction Act of 1995

There are no paperwork burden hours or costs associated with this rulemaking. Therefore, this direct final rule contains no information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

B. Unfunded Mandates Reform Act

This rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than $100 million annually; nor will it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 requires no further agency action or analysis.

C. Assessment of Federal Regulations and Policies on Families

This rule has no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, Section 654 of the Treasury and General Government Appropriations Act of 1999 requires no further agency action, analysis, or assessment.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This rule does not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

E. Executive Order 12988: Civil Justice Reform

This rule was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. The rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. We have determined that this rule would meet the applicable standards provided in Section 3 of Executive Order 12988.

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

This rule has no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13286, requires no further agency action or analysis.

G. Executive Order 13132: Federalism

This rule does not have "federalism implications," because it does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule has no "tribal implications" because it does not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, MSHA personnel reviewed this rule for its impact on the supply, distribution, and use of energy. This rule does not result in any cost increases or savings to applicants seeking approval for mining products and would not reduce the supply of coal nor increase its price.

This rule is not a "significant energy action," because it is not "likely to have a significant adverse effect on the supply, distribution, or use of energy" "(including a shortfall in supply, price increases, and increased use of foreign supplies)." Accordingly, Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires no further agency action or analysis.

J. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, we thoroughly reviewed this rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. We determined and certified that this rule does not have a significant economic impact on a substantial number of small entities.

Dated: July 29, 2005.

David G. Dye,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

List of Subjects

30 CFR Part 5

Fees, Mine safety and health.

30 CFR Parts 15 and 18

Fees, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Parts 19, 20, 22, 27, and 28

Fees, Mine safety and health.

30 CFR Parts 23, 33, 35, and 36

Fees, Mine safety and health, Reporting and recordkeeping requirements, Research.

■ Accordingly, Chapter I of Title 30 of the Code of Federal Regulations is amended as follows:

PART 5—FEES FOR TESTING, EVALUATION, AND APPROVAL OF MINING PRODUCTS

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

Authority: 30 U.S.C. 957.

■ 2. Section 5.10 is amended by revising paragraph (a) to read as follows:

§ 5.10 Purpose and scope.

(a) This part establishes a system under which MSHA charges a fee for services provided under this subchapter. This part includes the management and calculation of these fees.

* * * * *

■ 3. Section 5.20 is removed.

■ 4. Section 5.30 is revised to read as follows:

§ 5.30 Fee calculation.

(a) MSHA bases fees under this subchapter on the direct and indirect costs of the services provided, except that part 15 fees for services provided to MSHA by other organizations may be set by those organizations.

(b) Except as provided in paragraphs (b)(1) and (2) of this section, upon completion of an initial administrative review of the application, the Approval and Certification Center will prepare a maximum fee estimate for each application and will begin the technical evaluation once the applicant authorizes the fee estimate.

(1) The applicant may pre-authorize an expenditure for services under this subchapter, and may further choose to pre-authorize either a maximum dollar amount or an expenditure without a specified maximum amount. All applications containing a pre-authorization statement will immediately be put in the queue for the technical evaluation upon completion of an initial administrative review. MSHA will concurrently prepare a maximum fee estimate for applications containing a statement pre-authorizing a maximum dollar amount, and will provide the applicant with this estimate. Where MSHA's estimated maximum fee exceeds the pre-authorized maximum dollar amount, the applicant has the choice of cancelling the action and paying for all work done up to the time of the cancellation, or authorizing MSHA's estimate.

(2) Under the Revised Acceptance Modification Program (RAMP), MSHA expedites applications for acceptance of minor changes to previously approved, certified, accepted, or evaluated products. The applicant must pre-authorize a fixed dollar amount, set by MSHA, for processing the application.

(c) If unforeseen circumstances are discovered during the evaluation, and MSHA determines that these circumstances would result in the actual costs exceeding either the pre-authorized expenditure or the authorized maximum fee estimate, as appropriate, MSHA will prepare a revised maximum fee estimate for completing the evaluation. The applicant will have the option of either cancelling the action and paying for services rendered or authorizing MSHA's revised estimate, in which case MSHA will continue to test and evaluate the product.

(d) If the actual cost of processing the application is less than MSHA's maximum fee estimate, MSHA will charge the actual cost.

* * * * *

■ 5. Section 5.40 is revised to read as follows:

§ 5.40 Fee administration.

Applicants will be billed for all fees, including actual travel expenses, if any, when processing of the application is completed. Invoices will contain specific payment instructions, including the address to mail payments and authorized methods of payment.

* * * * *

PART 15—REQUIREMENTS FOR APPROVAL OF EXPLOSIVES AND SHEATHED EXPLOSIVE UNITS

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

Authority: 30 U.S.C. 957.

■ 7. Section 15.3 is revised to read as follows:

§ 15.3 Observers at tests and evaluation.

Only personnel of MSHA, designees of MSHA, representatives of the applicant, and such other persons as agreed upon by MSHA and the applicant shall be present during tests and evaluations conducted under this part.

* * * * *

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

■ 8. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 9. Section 18.6(a)(1) is revised to read as follows:

§ 18.6 Application procedures and requirements.

(a)(1) Investigation leading to approval, certification, extension thereof, or acceptance of hose or conveyor belt, will be undertaken by MSHA only pursuant to a written application. The application shall be accompanied by all necessary drawings, specifications, descriptions, and related materials, as set out in this part. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

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PART 19—ELECTRIC CAP LAMPS

■ 10. The authority citation for part 19 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 11. In § 19.3 the heading and paragraph (a) are revised to read as follows:

§ 19.3 Application procedures and requirements.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the applicant shall make application by letter for an investigation leading to approval of the lamp. This

application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, together with the required drawings, one complete lamp, and instructions for its operation. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

PART 20—ELECTRIC MINE LAMPS OTHER THAN STANDARD CAP LAMPS

■ 12. The authority citation for part 20 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 13. In § 20.3 the heading and paragraph (a) are revised to read as follows:

§ 20.3 Application procedures and requirements.

(a) Before MSHA will undertake the active investigation of any lamp, the applicant shall make application by letter for an investigation of the lamp. This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, together with the required drawings, one complete lamp, and instructions for its operation. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

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PART 22—PORTABLE METHANE DETECTORS

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

Authority: 30 U.S.C. 957, 961.

■ 15. In § 22.4 the heading and paragraph (a) are revised to read as follows:

§ 22.4 Application procedures and requirements.

(a) Before MSHA will undertake the active investigation of leading to approval of any methane detector, the applicant shall make application by letter for an investigation leading to approval of the detector. This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, together with the required drawings, one complete detector, and instructions for its operation. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

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PART 23—TELEPHONES AND SIGNALING DEVICES

■ 16. The authority citation for part 23 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 17. In § 23.3 the heading and paragraph (a) are revised to read as follows:

§ 23.3 Application procedures and requirements.

(a) Before MSHA will undertake the active investigation of leading to approval of any telephone or signaling device, the applicant shall make application by letter for an investigation leading to approval of the device. This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, together with the required drawings, one complete telephone or signaling device, and instructions for its operation. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

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PART 27—METHANE-MONITORING SYSTEMS

■ 18. The authority citation for part 27 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 19. In § 27.4 the heading and paragraph (a)(1) are revised to read as follows:

§ 27.4 Application procedures and requirements.

(a)(1) No investigation or testing for certification will be undertaken by MSHA except pursuant to a written application, accompanied by all drawings, specifications, descriptions, and related materials. The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

§ 27.9 [Amended]

■ 20. Section 27.9 is amended by revising the first sentence to read "The date of receipt of an application will determine the order of precedence for investigation and testing."

PART 28—FUSES FOR USE WITH DIRECT CURRENT IN PROVIDING SHORT-CIRCUIT PROTECTION FOR TRAILING CABLES IN COAL MINES

■ 21. The authority citation for part 28 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

§ 28.10 [Amended]

■ 22. Section 28.10, paragraph (c), is amended by removing the final sentence and adding "Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40." in its place.

PART 33—DUST COLLECTORS FOR USE IN CONNECTION WITH ROCK DRILLING IN COAL MINES

■ 23. The authority citation for part 33 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 24. Section 33.3 is revised to read as follows:

§ 33.3 Consultation.

By appointment, applicants or their representatives may visit the Approval and Certification Center, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, to discuss with MSHA personnel proposed designs of equipment to be submitted in accordance with the regulations of this part. No charge is made for such consultation and no written report thereof will be made to the applicant.

* * * * *

■ 25. In § 33.6 the heading and paragraph (a)(1) are revised to read as follows:

§ 33.6 Application procedures and requirements.

(a)(1) No investigation or testing for certification will be undertaken by MSHA except pursuant to a written application (except as provided in paragraph (e) of this section), accompanied by all prescribed drawings, specifications, and related materials. The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

PART 35—FIRE-RESISTANT HYDRAULIC FLUIDS

■ 26. The authority citation for part 35 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 27. In § 35.6 the heading and paragraph (a)(1) are revised to read as follows:

§ 35.6 Application procedures and requirements.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application accompanied by all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

PART 36—APPROVAL REQUIREMENTS FOR PERMISSIBLE MOBILE DIESEL-POWERED TRANSPORTATION EQUIPMENT

■ 28. The authority citation for part 36 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

■ 29. In § 36.6 the heading and paragraph (a)(1) are revised to read as follows:

§ 36.6 Application procedures and requirements.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application accompanied by all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

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[FR Doc. 05–15495 Filed 8–8–05; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 5, 15, 18, 19, 20, 22, 23, 27, 28, 33, 35, and 36

RIN 1219–AB38

Fees for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our regulations to reflect established policy and procedures for administering fees for testing, evaluation, and approval of equipment and materials manufactured for use in the mining industry. This proposed rule would eliminate the application fee, allow applicants to pre-authorize expenditures for processing applications, allow outside organizations conducting part 15 testing (explosives and sheathed explosive units) on our behalf to set fees for this testing, incorporate changes concerning our programs and organization, and make non-substantive conforming changes to related regulations.

DATES: Comments must be received by October 11, 2005.

ADDRESSES: Comments must include Regulation Identifier Number (RIN) 1219–AB38 and may be submitted by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail to *comments@zzmsha.gov*. Please include RIN 1219–AB38 in the subject line of the message.

If you are unable to submit comments by e-mail or through the Federal eRulemaking portal, please identify your comments by RIN 1219–AB38 and submit them by any of the following methods:

- Facsimile: (202) 693–9441.
- Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22201–3939.

Access to Docket: We post all comments received without change, including any personal information provided, at *http://www.msha.gov* at the "Rules & Regs" link. Additionally, we post this document, our Program Policy Manual, and all Program Information Bulletins, Standard Administrative Procedures, and Program Policy Letters discussed in the **SUPPLEMENTARY INFORMATION** section of this preamble on our Web site at *http://www.msha.gov*. The public docket may be viewed at our Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Smith, Acting Director, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), 202–693–9441 (fax), or *smith.rebecca@dol.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Direct Final Rule and Concurrent, Identical Proposed Rule

We have determined that the subject of this rulemaking is suitable for a direct final rule. Since the rule requirements are not controversial and primarily concern agency procedures, no significant adverse comments are anticipated. Therefore, concurrent with this proposed rule, a separate, identical direct final rule is published in today's issue of the **Federal Register**. The duplicate direct final rule will speed notice and comment rulemaking in the event we receive no significant adverse comments to this proposed rule. All interested parties should comment at this time because we will not initiate an additional comment period. If no significant adverse comments to this proposed rule are received on or before October 11, 2005, the direct final rule will become effective November 7, 2005, without further notice.

If significant adverse comments are received, we will publish a timely notice in the **Federal Register** withdrawing the direct final rule, and will then proceed with the rulemaking by addressing the comments and developing a final rule from this proposed rule. For purposes of withdrawing the direct final rule, a significant adverse comment is one that explains (1) why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of the accompanying direct final rule, we will consider whether the comment raises an issue serious enough to warrant a substantive response through the notice and comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this rule would be ineffective without the addition.

II. Background

A. Rulemaking History

The Federal Mine Safety and Health Act of 1977 (the Mine Act) (Pub. L. 91–173, as amended by Pub. L. 95–164) gives the Mine Safety and Health Administration responsibility for prescribing the technical design, construction, and evaluation criteria for certain products used in underground mines and for testing and approving these products so that the products will not cause a mine fire explosion or a mine fire. Most of the Mine Act's regulations for testing and approving these products relate to "permissible" equipment. The Mine Act's implementing regulations at Title 30 of the Code of Federal Regulations (30 CFR), parts 6 through 36 contain procedures by which applicants may apply for and have equipment approved as "permissible," as defined in section 318 of the Mine Act, 30 U.S.C. 878, for use in mines.

On May 8, 1987, we published a final rule (52 FR 17506) adding 30 CFR part 5 (Fees for testing, evaluation, and approval of mining products). This rule created a uniform method for calculating fees and established specific procedures for administering the fee program. Since our initial implementation of part 5, changes to agency policies and procedures have significantly increased the efficiency of the approval process and the administration of the fee program. In particular, we have eliminated the application fee, allowed applicants to pre-authorize expenditures, and restructured existing programs for expediting requests for changes to previously approved mining products. This proposed rule would update part 5 to reflect these initiatives.

Additionally, this proposed rule would remove a number of references to the Department of the Interior's former Bureau of Mines, which was dissolved in 1996 (Pub. L. 104–99). Prior to that time, the Bureau of Mines conducted part 15 testing on our behalf. NIOSH has assisted us with part 15 testing; however, NIOSH no longer has the resources to conduct these tests. This proposed rule would allow us to use other organizations to conduct part 15 testing.

B. Scope of Approval Activities

The mining products that we approve range from small electronic devices to large complex mining systems. Our Approval and Certification Center (Center) evaluates and tests these mining products and issues, among other things, "approvals,"

"certifications," "acceptances," "extensions," and "field modifications."

Under the narrow definition of "approval," approvals are issued to a completely assembled machine or system or to an explosive. Under this definition, approval of a mining product constitutes a license authorizing the approval-holder to build and distribute the product for use in underground mines, and to advertise the product as "MSHA-approved." The approval-holder accepts the responsibility for constructing or formulating the product in exact accordance with all drawings and specifications that accompany the approval.

A "certification" is issued to a component or sub-system of a completely assembled machine or system. An "acceptance" is issued for materials and certain other products. An "extension" of an approval or certification allows the applicant to make design modifications to the product. A "field modification" allows the owner of an MSHA approved piece of equipment to make specific changes to approved electrical equipment.

A "certification" is issued to a component or sub-system of a completely assembled machine or system. An "acceptance" is issued for materials and certain other products. An "extension" of an approval or certification allows the applicant to make design modifications to the product. A "field modification" allows the owner of an MSHA approved piece of equipment to make specific changes to approved electrical equipment.

Additionally, we administer a number of voluntary programs which are covered by this regulation to evaluate products to determine conformance to safety requirements of 30 CFR parts 56, 57, 75, and 77, or to determine the product's suitability for specific mining applications. For example, we use these voluntary programs to evaluate ground wire monitors, lighting systems, sealants and stopping systems, conveyor belt lagging material, belt wipers, and hydraulic hose and fire suppression agents and systems.

Except where stated otherwise, we use the term "approval" in this preamble and regulation in a broad sense to represent our formal recognition of products that are approved, certified, or otherwise formally accepted for use in mining operations.

Our regulations also allow other parties to perform product testing under certain circumstances. Part 6 of 30 CFR allows independent laboratories to test and evaluate certain mining products. It also permits MSHA to approve equipment designed to non-MSHA product safety standards once we have determined that the standard(s) can provide at least the same degree of protection or can be modified to provide at least the same degree of protection as 30 CFR requirements. Part 7 allows the applicant or a third party to test certain products for which the testing requirements are objective in nature and can be routinely conducted by personnel knowledgeable in the particular product line or category. We retain the responsibility for evaluating the test results and issuing the approval for all products tested and evaluated under parts 6 and 7.

C. The Approval Process

The approval process begins with the filing of an application. Parts 6 through 36 provide instructions for preparing and filing applications, which can vary with the type of mining product and type of approval requested. We administratively review each new application, and upon determination that the application is in order, prepare a fee estimate, if one is required. Our technical experts then thoroughly investigate, test, and evaluate the product.

Following successful completion of the evaluation and testing, we provide the applicant with a written notice that the product meets all the applicable requirements.

III. Section-by-Section Analysis

A. Section 5.10 Purpose and Scope

Existing section 5.10 sets out the purpose and scope of part 5. Revised section 5.10 remains substantially unchanged from the existing regulation. The term "testing, evaluation and approval" in existing paragraph 5.10(a) would be changed to "services provided under this subchapter." This change would more clearly convey that part 5 applies to all services which the Center provides and for which a fee is charged. These services include "approvals" as defined in both the narrow and broad sense as explained earlier in Part II B, "Scope of Approval Activities." The term "Except as provided in section 5.30(a)" would be added to the beginning of 5.10(b) to clarify that outside organizations conducting part 15 testing on our behalf may set the fees for this testing. These outside organizations will likely be government agencies or non-government organizations with laboratory facilities capable of performing part 15 tests.

B. Section 5.20 Effective Date

Existing section 5.20 established the effective date of the 1987 rule. Such a notice is not needed at this time because the **Federal Register** document containing the final rule would provide the effective date for the rule. For this reason, this proposed rule would delete existing § 5.20, which established the effective date of the 1987 rule.

C. Section 5.30 Fee Calculation

Existing paragraph 5.30(a) imposes a non-refundable application fee. This fee was intended to recover costs for initial review and administrative processing of the application in the event the applicant cancelled the action prior to commencement of the technical evaluation. Upon completion of the evaluation and testing, this payment was credited against the total charges billed to the applicant.

Paying and processing this fee placed an additional administrative burden on the applicants and on us, and delayed the approval process. The applicant incurred the burden of remitting two payments during the application process, and we expended resources to process both payments. The technical evaluation could not begin until our finance office confirmed that the payment for the application fee had been posted. After reviewing this activity, we issued Program Policy Letter (PPL) No. 96–II–1, "Waiver of the $100 Application Fee for Testing, Evaluation, and Approval of Mining Products," effective January 1, 1996. This policy is now incorporated into our Program Policy Manual. In proposed paragraph 5.30(a), the requirement for an application fee would be removed to reflect our elimination of this fee.

Proposed paragraph 5.30(a) would also incorporate and revise provisions from existing paragraphs 5.30(b) and (e). The provision from revised paragraph 5.30(b), which lists criteria for determining hourly fees, would contain three revisions. First, the term "testing, evaluation and approval" would be in existing paragraph 5.30(b) is changed to "services provided under this subchapter" and moved to revised paragraph 5.30(b). Second, the existing language concerning direct and indirect costs that is repeated from Section 5.10(b)(1) would be omitted to eliminate redundancy. Third, since these criteria for determining hourly fees also apply to any flat rate fees that we would establish, the term "hourly fees" would be changed to "fees." As noted earlier, when the existing rule was promulgated, we charged flat rate fees for certain services for which

turnaround time was predictable and stable. The shift to the current system of hourly fees was driven partially by concerns about the equitable distribution of costs among applicants.

As mentioned above, the provision in existing paragraph 5.30(e), concerning fees for tests conducted for MSHA by the former Bureau of Mines under part 15 (Requirements for approval of explosives and sheathed explosive units) would be incorporated into revised paragraph 5.30(a) and substantially revised. The existing paragraph provides that "Tests conducted by the Bureau of Mines for MSHA under part 15 are flat rate items." When the existing rule was promulgated, the former Bureau of Mines conducted these tests on our behalf. After the Bureau was dissolved, its facility for conducting explosives testing was transferred first to the Department of Energy and subsequently to NIOSH as a purely research function (30 U.S.C. 1 note).

In January 1996 we received one application for the full range of part 15 tests. Since then we have received six part 15 applications, all for minor tests. During this time we relied on NIOSH to conduct part 15 tests; however, NIOSH did not have the facilities for conducting part 15 chemical analysis tests, and contracted another organization to conduct these tests. That organization subsequently ceased doing chemical analysis tests. NIOSH recently informed us that they no longer have the resources to perform all the part 15 tests. Since we do not have the facilities to conduct these tests, we must contract with other organizations to do any future part 5 testing. Revised paragraph 5.30(a) would allow organizations conducting part 15 testing on our behalf to set the fees for these tests. Since we cannot predict what fees the outside organizations will charge for any of these tests, the regularly published fee schedule, required under paragraph 5.50, would no longer specify the fees for part 15 testing.

Proposed paragraph 5.30(a) would remove the term "Bureau of Mines" as well as the requirement to charge flat rate fees for part 15 testing. The proposed paragraph would provide that "part 15 fees for services provided to MSHA by other organizations may be set by those organizations." That is, the proposed rule language would allow us to pass on the cost of services provided to MSHA by other organizations so that these costs could be billed to the applicant.

Existing paragraph 5.30(b), as explained above, would also be moved to revised paragraph 5.30(a). Revised paragraph 5.30(b) would contain the provision from existing paragraph 5.30(c) concerning our maximum fee estimate.

Under existing paragraph 5.30(c), we prepare an estimate of the maximum fees that would be incurred during evaluation of the product. The preamble to the existing rule, at 52 FR 17509, indicates our intent to provide this estimate to the applicant before beginning the technical evaluation "to provide the applicant the opportunity to discuss the estimate or withdraw the application." Existing paragraph 5.30(c) further provides that if unforeseen circumstances are discovered during the evaluation that would result in the actual fees exceeding this estimate, the applicant has the choice of canceling the action and paying for all work done up to the time of the cancellation, or approving our estimated maximum amount. If the estimate exceeds the actual fees, the applicant is charged the lesser amount. An exception to this provision exists for applications that were submitted under our two former flat rate fee programs. These services were charged a predetermined amount and therefore no estimate was provided. These two programs are outlined in detail below in the discussion of existing paragraph 5.30(d).

In 1991, we revised our Program Policy Manual to allow applicants seeking approval of longwall equipment the option of pre-authorizing fees for testing and evaluation. The pre-authorization statement, submitted as part of the application, allowed the technical evaluation to begin immediately. At the request of applicants seeking testing and evaluation of other products, we expanded the policy to allow a pre-authorization option for all products submitted for approval. We published this policy in Program Policy Letter No. 92–II–3, "30 CFR Part 5 Fee Pre-Authorization," effective June 1, 1992. Under this policy, which is currently incorporated into our Program Policy Manual, applicants, other than those seeking modifications under our program for expedited modifications, may elect to pre-authorize an expenditure for fees by submitting a pre-authorization statement with the application. The applicant must either specify a maximum authorized expenditure for fees, or authorize an expenditure with no maximum amount. The latter option authorizes us to perform all testing and evaluation services that we deem necessary.

Under existing policy, we determine whether or not to prepare a maximum fee estimate and when to begin the technical evaluation using the following guidelines:

No pre-authorization statement: We prepare a maximum fee estimate which the applicant must authorize before the technical evaluation begins.

Pre-authorized maximum expenditure: The applicant provides us with a maximum pre-authorized amount. We prepare a maximum fee estimate and at the same time forward the application for the technical evaluation. If no other applications are waiting in the queue, the technical evaluation may begin immediately. Where our estimate exceeds the pre-authorized amount, the applicant has the choice of canceling the action and paying for all work done up to the time of the cancellation, or approving our estimated maximum amount.

Pre-authorized expenditure with no stated maximum: The applicant pre-authorizes an expenditure with no stated maximum amount. We forward the application immediately for the technical evaluation, and the applicant receives no estimated maximum fee estimate.

The revised paragraph would modify provisions in existing paragraph 5.30(c) to provide exceptions for pre-authorized fees and flat rate programs. Paragraph 5.30(b)(1) would be added to reflect our policy of allowing applicants the option of pre-authorizing fees.

Paragraph 5.30(b)(2) would be added to reflect our policy of requiring a specific pre-authorized expenditure for applications submitted under the Revised Application Modification Program (RAMP). This program is discussed in the narrative for § 5.30(d).

Finally, the existing rule uses the term "estimated maximum fee (cap)." For a number of reasons, including continuity, we no longer use the term "cap" to refer to this amount. The proposed rule would replace this term wherever it appears in the rule with the term "maximum fee estimate."

The provisions of existing paragraph 5.30(c) address:

(1) Our determination of a maximum fee estimate prior to the start of technical evaluation;

(2) Unforeseen circumstances during the technical evaluation which could result in the actual cost exceeding the maximum fee estimate; and

(3) The situation where the maximum fee estimate exceeds the actual cost.

The first provision would be moved to paragraph 5.30(b), and is discussed above. The second provision would remain in paragraph 5.30(c), and third provisions would be moved to paragraph 5.30(d).

The second provision, involving unforeseen circumstances during the technical evaluation that could result in the actual cost exceeding the maximum fee estimate, requires us to provide the applicant with a revised maximum fee estimate for completing the evaluation. The applicant may then either cancel the evaluation or authorize the revised fee estimate. Under our policy, if the applicant chooses to cancel the evaluation, fees will be charged for work performed up to the cancellation. If the applicant authorizes the new maximum fee estimate, we will continue testing and evaluating the product.

Proposed paragraph 5.30(c) would leave this provision substantially unchanged, but the concept would applied to any expenditure approved by the applicant, whether that expenditure is the estimated maximum fee or the applicant's pre-authorized expenditure. This provision is not applicable where the pre-authorized expenditure has no stated maximum. Additionally, the term "cap" would be changed to "maximum fee estimate."

Existing paragraph 5.30(d) addresses the former Stamped Notification Acceptance Program (SNAP) and Stamped Revision Acceptance (SRA) program. These programs were developed to expedite the acceptance of certain minor changes to previously approved products, and required only a few documents to be submitted with the application. SNAP addressed acceptance of single changes to an approved product, including changes that pertained to the technical requirements of an approved product without adversely affecting permissibility. SRA addressed acceptance of single or multiple changes to an approved product, provided the change(s) did not affect the technical requirements. The Center charged a flat rate fee for services provided under these programs.

Over time, using and administering both of these programs created inefficiency and unnecessary duplication. Applicants were often uncertain which program (*e.g.*, SNAP, SRA, or an extension of approval) to use for requesting changes in the design of approved products. This confusion often led to administrative errors and the need to re-submit the application. Further, since SNAP applied to single changes to approved products, a separate application was required for each specific proposed change. In 1998, both programs were replaced with the Revised Approval Modification Program (RAMP). Under RAMP, requests for acceptance of minor changes to approved products are made by submitting a letter of application describing the changes, along with drawings and specifications that fully describe each change. Services provided under RAMP are charged an hourly fee, and the letter of application must contain a statement authorizing a minimum dollar amount set by the Agency. A discussion of RAMP was included in the notice of fee adjustments, published on December 18, 1998 (63 FR 70163), and in Standard Application Procedure ASAP1005, "Revised Approval Modification Program (RAMP) Application Procedure" published on March 28, 2000.

Revised paragraph 5.30(d) would remove the SNAP and SRA requirements, and would retain the provision in existing paragraph 5.30(c) concerning applications for which the estimated maximum fee exceeds the actual hourly fee. The existing provision requires us to charge the actual fee. Proposed paragraph 5.30(d) leaves this provision substantially unchanged; however, the scope would be expanded to include instances where the actual hourly fee exceeds any expenditure approved by the applicant, whether that expenditure is the estimated maximum fee or the applicant's pre-authorized expenditure.

Existing paragraph 5.30(e) addresses fees for testing under part 15. The proposed rule would move this provision to paragraph 5.30(a) and would delete paragraph 5.30(e) entirely. The proposed revisions to part 15 fees are discussed in the narrative for proposed paragraph 5.30(a).

D. 5.40 Fee Administration

Existing paragraph 5.40(a) provides applicants with detailed instructions for submitting the application fee. Existing paragraph (b) concerns the method of paying for services provided under SNAP and SRA. Since the application fee, SNAP, and SRA have been eliminated, as discussed above, these paragraphs are removed.

Existing paragraph 5.40(a) provides applicants with detailed instructions for submitting the application fee. Existing paragraph 5.40(b) concerns the method of paying for services provided under SNAP and SRA. Since the application fee, SNAP, and SRA have been eliminated, as discussed above, these paragraphs are removed. Existing paragraph 5.40(c) addresses billing procedures for services which are billed at an hourly rate. The existing paragraph provides that applicants are billed when processing of the application is complete; any actual travel expenses are included in the bill; and the invoice will contain specific payment instructions. Our current regulations in 30 CFR Parts 18 through 36 allow payment for part 5 fees only by check, bank draft, or money order.

Proposed section 5.40 would apply the billing procedures in existing paragraph 5.40(c) to all fees administered under part 5, and would inform applicants that invoices will contain specific payment instructions, including the address to mail payments and authorized methods of payment.

Applicants had informally requested that MSHA allow payment by credit card as a means of expediting the payment process and decreasing administrative costs to applicants. MSHA determined that this option can benefit both the applicant and the government, and recently began accepting payments by credit card. Proposed paragraph 5.40 would allow MSHA the flexibility to accept credit card payment as an authorized method of payment. The remaining provisions of existing paragraph 5.40(c) would be substantially unchanged.

E. Overview of Conforming Changes

Parts 18, 19, 20, 22, 23, 27, 28, 33, 35, and 36 contain detailed instructions for submitting applications for approvals and certifications. Each part instructs the applicant to send a check, bank draft, or money order with the application. The proposed rule would remove this instruction, and any other reference to payments submitted with applications, to allow these sections to conform to the proposed part 5 provisions concerning application fees and payment of fees, and to reflect our current policy, as stated in the Program Policy Manual. Additionally, the proposed rule would update the Center's address and would remove outdated references to the former Bureau of Mines.

F. Section 15.3 Observers at Tests and Evaluations

The term "Bureau of Mines, U.S. Department of the Interior" would be replaced with the term "designees of MSHA." As explained in the discussion of revised paragraph 5.30(a), the Bureau of Mines no longer exists.

G. Section 18.6 Applications

In paragraph 18.6(a)(1), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration to cover the fees," would be removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language would be added to specify that the procedures for

payment of fees are found in § 5.40 of the proposed rule.

H. Section 19.3 Applications

In paragraph (a), the term "accompanied by a check, bank draft. or money order, payable to U.S. Mine Safety and Health Administration, to cover all the necessary fees," would be removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language would be added to specify that the procedures for payment of fees are found in § 5.40 of the proposed rule.

I. Section 20.3 Applications

In paragraph (a), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees," would be removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language would be added to specify that the procedures for payment of fees are found in § 5.40 of the proposed rule.

J. Section 22.4 Applications

In paragraph (a), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees," would be removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language would be added to specify that the procedures for payment of fees are found in § 5.40 of the proposed rule.

K. Section 23.3 Applications

In paragraph (a), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover all the necessary fees," would be removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language would be added to specify that the procedures for payment of fees are found in § 5.40 of the proposed rule.

L. Section 27.4 Applications

In paragraph (a)(1), the term "and also a check, bank draft, or money order payable to the U.S. Mine Safety and Health Administration, to cover the fees" would be removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language would be added to specify that the procedures for payment of fees are found in § 5.40 of the proposed rule.

M. Section 27.9 Date for Conducting Tests

The existing section lists the "application, payment of necessary fees, and submission of required material" as criteria for determining the order of testing when more than one application is pending. The proposed section would remove the reference to payment of fees and would revise the sentence to conform to similar provisions in existing § 18.8 (Date for conducting investigation and tests). The proposed sentence would read: "The date of receipt of an application will determine the order of precedence for investigation and testing." The proposed section would reflect our policy of waiving the application fee.

N. Section 28.10 Application Procedures

Existing § 28.10 requires applicants seeking approval of certain fuses to submit the fuses to a nationally recognized independent testing laboratory for examination, inspection, and testing prior to submitting an approval application to the Center. Paragraph 28.10(c) contains instructions for submitting these laboratory data and results to the Center, and includes a requirement that payment for the application fee accompany these documents. Proposed paragraph 28.10(c) would remove the requirement to send a payment with the laboratory documents. This proposed change corresponds to the elimination of the application fee. Additionally, language would be added to specify that the procedures for payment of fees are found in § 5.40 of the proposed rule.

O. Section 33.3 Consultation

This section contains an outdated address for the Center and a reference to the former Bureau of Mines. The proposed section would update the Center's address and would replace the term "Bureau" with "MSHA."

P. Section 33.6 Applications

In paragraph 33.6(a)(1), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees;" would be removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language would be added to specify that the procedures for payment of fees are found in § 5.40 of the proposed rule.

Q. Section 35.6 Applications

In paragraph (a)(1), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees;" would be removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language would be added to specify that the procedures for payment of fees are found in § 5.40 of the proposed rule.

R. Section 36.6 Applications

In paragraph (a)(1), the term "accompanied by a check, bank draft, or money order, payable to the U.S. Mine Safety and Health Administration, to cover the fees;" would be removed from the application instructions to reflect our policy of waiving the application fee. Additionally, language would be added to specify that the procedures for payment of fees are found in § 5.40 of the proposed rule.

S. Derivation and Distribution Tables

The following derivation table lists each section number of the final rule and the section number of the existing standard from which the section is derived.

DERIVATION TABLE

Final rule	Existing section
Removed	5.20.
Removed	5.30(a).
5.30(a)	5.30(b).
5.30(b)	5.30(c).
5.30(c)	5.30(c).
5.30(d)	5.30(c).
Removed	5.30(e).
5.40	5.40(c).

The following distribution table lists each section number of the existing standards, and the section number of the final rule which contains provisions derived from the corresponding existing section.

DISTRIBUTION TABLE

Existing section	Final rule
5.20(a)	Removed.
5.30(a)	Removed.
5.30(b)	5.30(a).
5.30(c)	5.30(b), (c), and (d).
5.30(d)	Removed.
5.30(e)	Removed.
5.40(a)	Removed.
5.40(b)	Removed.
5.40(c)	5.40.

IV. Regulatory Impact Analysis

A. Executive Order 12866 Regulatory Planning and Review

Compliance Costs

Executive Order 12866, as amended by Executive Order 13258, requires that regulatory agencies assess both the costs and benefits of intended regulations. We have satisfied the requirement of Executive Order 12866 for this proposed rule and determined that the proposed rule would not have an annual effect of $100 million or more on the economy. Therefore, the proposed rule is not an economically significant regulatory action pursuant to § 3(f)(1) of Executive Order 12866.

The proposed rule affects applicants who request approval for products used in the mining industry. The proposed rule would not result in any cost increases or savings to these applicants.

As noted earlier, existing § 5.30(a) imposes a non-refundable standard application fee on each initial application. Since we eliminated this application fee in 1996, deleting the application fee language from existing § 5.30(a) would not cause applicants to incur any costs or cost savings.

Benefits

The proposed rule would change our existing regulatory language to be consistent with our current practices and will continue to allow us to process applications in a timely and efficient manner. Thus, new and improved products that enhance the safety of the miner will be allowed to enter the mine as soon as possible.

The application fee discussed above was intended to offset administrative review costs in the event that the applicant cancelled an application prior to commencement of the technical evaluation. We eliminated this fee because it tended to lengthen the approval and certification process and placed unnecessary burdens on us and the applicant. This proposed rule would eliminate the outdated application fee language in the existing regulation.

Also as noted earlier, since 1992, we have allowed the applicant to pre-authorize an expenditure for the testing and evaluation that is associated with an application. This permits us to begin immediate evaluation work if no other applications are awaiting initial actions. This rulemaking would add regulatory language that continues to allow applicants the option to pre-authorize an expenditure for testing and evaluation that is associated with an application.

Furthermore, no provision in this rulemaking would diminish the health or safety of U.S. miners.

B. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, we must use the Small Business Administration's (SBA's) criterion for a small entity in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, we established an alternative definition for a small entity and publish that definition in the **Federal Register** for notice and comment. This proposed rule would apply to persons or entities applying for approval of products used in the mining industry. These applicants operate in industries involved in measurement, analysis, or controlling instruments; photographic instruments; commercial and industrial lighting fixtures; conveyors; or mining equipment. SBA's definition of a small business for these industries is 500 or fewer employees. Therefore, we examined the impact on applicants which have 500 or fewer employees and seek MSHA approval for mining products.

C. Factual Basis for Certification

Using SBA's definition of a small entity, there are no annual cost increases or savings to applicants affected by this rulemaking. Therefore, we concluded that this proposed rule would not have a significant economic impact on a substantial number of small entities.

V. Other Regulatory Matters

A. Unfunded Mandates Reform Act of 1995

This proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, nor does it increase private sector expenditures by more than $100 million annually, nor does it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

B. Treasury And General Government Appropriations Act of 1999, Assessment of Federal Regulations and Policies on Families

This proposed rule would have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

C. Executive Order 12630 Government Actions and Interference With Constitutionally Protected Property Rights

This proposed rule would not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights, requires no further agency action or analysis.

D. Executive Order 12988 Civil Justice Reform

This proposed rule was drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform. The proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. We have determined that this proposed rule would meet the applicable standards provided in Section 3 of Executive Order 12988.

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

This proposed rule would have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

F. Executive Order 13132 Federalism

This proposed rule does not have "federalism implications" because it does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

G. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have "tribal implications" because it does not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal

government and Indian tribes." Accordingly, Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, requires no further agency action or analysis.

H. Executive Order 13211 Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule regulates both the coal and metal/nonmetal mining sectors. Because this proposed rule would result in no yearly net cost to the coal mining industry, the proposed rule would neither reduce the supply of coal nor increase its price. This proposed rule is not a "significant energy action" because it would not be "likely to have a significant adverse effect on the supply, distribution, or use of energy (including a shortfall in supply, price increases, and increased use of foreign supplies)." Accordingly, Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires no further agency action or analysis.

I. Executive Order 13272 Proper Consideration of Small Entities in Agency Rulemaking

We thoroughly reviewed this proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. We determined and certified that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Dated: July 29, 2005.

David G. Dye,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

List of Subjects

30 CFR Part 5

Fees, Mine safety and health.

30 CFR Parts 15 and 18

Fees, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Parts 19, 20, 22, 27, and 28

Fees, Mine safety and health.

30 CFR Parts 23, 33, 35, and 36

Fees, Mine safety and health, Reporting and recordkeeping requirements, Research.

Accordingly, Chapter I of Title 30 of the Code of Federal Regulations is proposed to be amended as follows:

PART 5—FEES FOR TESTING, EVALUATION, AND APPROVAL OF MINING PRODUCTS

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

Authority: 30 U.S.C. 957.

2. Section 5.10 is amended by revising paragraph (a) to read as follows:

§ 5.10 Purpose and scope.

(a) This part establishes a system under which MSHA charges a fee for services provided under this subchapter. This part includes the management and calculation of these fees.

* * * * *

§ 5.20 [Removed]

3. Section 5.20 is removed.

4. Section 5.30 is revised to read as follows:

§ 5.30 Fee calculation.

(a) MSHA bases fees under this subchapter on the direct and indirect costs of the services provided, except that part 15 fees for services provided to MSHA by other organizations may be set by those organizations.

(b) Except as provided in paragraphs (b)(1) and (2) of this section, upon completion of an initial administrative review of the application, the Approval and Certification Center will prepare a maximum fee estimate for each application and will begin the technical evaluation once the applicant authorizes the fee estimate.

(1) The applicant may pre-authorize an expenditure for services under this subchapter, and may further choose to pre-authorize either a maximum dollar amount or an expenditure without a specified maximum amount. All applications containing a pre-authorization statement will immediately be put in the queue for the technical evaluation upon completion of an initial administrative review. MSHA will concurrently prepare a maximum fee estimate for applications containing a statement pre-authorizing a maximum dollar amount, and will provide the applicant with this estimate. Where MSHA's estimated maximum fee exceeds the pre-authorized maximum dollar amount, the applicant has the choice of cancelling the action and paying for all work done up to the time of the cancellation, or authorizing MSHA's estimate.

(2) Under the Revised Acceptance Modification Program (RAMP), MSHA expedites applications for acceptance of minor changes to previously approved, certified, accepted, or evaluated products. The applicant must pre-authorize a fixed dollar amount, set by MSHA, for processing the application.

(c) If unforeseen circumstances are discovered during the evaluation, and MSHA determines that these circumstances would result in the actual costs exceeding either the pre-authorized expenditure or the authorized maximum fee estimate, as appropriate, MSHA will prepare a revised maximum fee estimate for completing the evaluation. The applicant will have the option of either cancelling the action and paying for services rendered or authorizing MSHA's revised estimate, in which case MSHA will continue to test and evaluate the product.

(d) If the actual cost of processing the application is less than MSHA's maximum fee estimate, MSHA will charge the actual cost.

5. Section 5.40 is revised to read as follows:

§ 5.40 Fee administration.

Applicants will be billed for all fees, including actual travel expenses, if any, when processing of the application is completed. Invoices will contain specific payment instructions, including the address to mail payments and authorized methods of payment.

PART 15—REQUIREMENTS FOR APPROVAL OF EXPLOSIVES AND SHEATHED EXPLOSIVE UNITS

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

Authority: 30 U.S.C. 957.

7. Section 15.3 is revised to read as follows:

§ 15.3 Observers at tests and evaluation.

Only personnel of MSHA, designees of MSHA, representatives of the applicant, and such other persons as agreed upon by MSHA and the applicant shall be present during tests and evaluations conducted under this part.

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

8. The authority citation for part 18 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

9. Section 18.6 (a)(1) is revised to read as follows:

§ 18.6 Application procedures and requirements.

(a)(1) Investigation leading to approval, certification, extension thereof, or acceptance of hose or conveyor belt, will be undertaken by

MSHA only pursuant to a written application. The application shall be accompanied by all necessary drawings, specifications, descriptions, and related materials, as set out in this part. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

PART 19—ELECTRIC CAP LAMPS

10. The authority citation for part 19 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

11. In § 19.3 the heading and paragraph (a) are revised to read as follows:

§ 19.3 Application procedures and requirements.

(a) Before MSHA will undertake the active investigation leading to approval of any lamp, the applicant shall make application by letter for an investigation leading to approval of the lamp. This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, together with the required drawings, one complete lamp, and instructions for its operation. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

PART 20—ELECTRIC MINE LAMPS OTHER THAN STANDARD CAP LAMPS

12. The authority citation for part 20 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

13. In § 20.3 the heading and paragraph (a) are revised to read as follows:

§ 20.3 Application procedures and requirements.

(a) Before MSHA will undertake the active investigation of any lamp, the applicant shall make application by letter for an investigation of the lamp. This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, together with the required drawings, one complete lamp, and instructions for its operation. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

PART 22—PORTABLE METHANE DETECTORS

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

Authority: 30 U.S.C. 957, 961.

15. In § 22.4 the heading and paragraph (a) are revised to read as follows:

§ 22.4 Application procedures and requirements.

(a) Before MSHA will undertake the active investigation of leading to approval of any methane detector, the applicant shall make application by letter for an investigation leading to approval of the detector. This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, together with the required drawings, one complete detector, and instructions for its operation. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

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PART 23—TELEPHONES AND SIGNALING DEVICES

16. The authority citation for part 23 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

17. In § 23.3 the heading and paragraph (a) are revised to read as follows:

§ 23.3 Application procedures and requirements.

(a) Before MSHA will undertake the active investigation of leading to approval of any telephone or signaling device, the applicant shall make application by letter for an investigation leading to approval of the device. This application shall be sent to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059, together with the required drawings, one complete telephone or signaling device, and instructions for its operation. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

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PART 27—METHANE-MONITORING SYSTEMS

18. The authority citation for part 27 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

19. In § 27.4 the heading and paragraph (a)(1) are revised to read as follows:

§ 27.4 Application procedures and requirements.

(a)(1) No investigation or testing for certification will be undertaken by MSHA except pursuant to a written application, accompanied by all drawings, specifications, descriptions, and related materials. The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

* * * * *

§ 27.9 [Amended]

20. Section 27.9 is amended by revising the first sentence to read "The date of receipt of an application will determine the order of precedence for investigation and testing."

PART 28—FUSES FOR USE WITH DIRECT CURRENT IN PROVIDING SHORT-CIRCUIT PROTECTION FOR TRAILING CABLES IN COAL MINES

21. The authority citation for part 28 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

§ 28.10 [Amended]

22. Section 28.10, paragraph (c), is amended by removing the final sentence and adding "Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40." in its place.

PART 33—DUST COLLECTORS FOR USE IN CONNECTION WITH ROCK DRILLING IN COAL MINES

23. The authority citation for part 33 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

24. Section 33.3 is revised to read as follows:

§ 33.3 Consultation.

By appointment, applicants or their representatives may visit the Approval and Certification Center, Industrial Park Road, Dallas Pike, Triadelphia, WV 26059, to discuss with MSHA personnel proposed designs of equipment to be submitted in accordance with the regulations of this part. No charge is made for such consultation and no written report thereof will be made to the applicant.

25. In § 33.6 the heading and paragraph (a)(1) are revised to read as follows:

§ 33.6 Application procedures and requirements.

(a)(1) No investigation or testing for certification will be undertaken by MSHA except pursuant to a written application (except as provided in paragraph (e) of this section), accompanied by all prescribed drawings, specifications, and related materials. The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

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PART 35—FIRE-RESISTANT HYDRAULIC FLUIDS

26. The authority citation for part 35 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

27. In § 35.6 the heading and paragraph (a)(1) are revised to read as follows:

§ 35.6 Application procedures and requirements.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application accompanied by all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

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PART 36—APPROVAL REQUIREMENTS FOR PERMISSIBLE MOBILE DIESEL-POWERED TRANSPORTATION EQUIPMENT

28. The authority citation for part 36 continues to read as follows:

Authority: 30 U.S.C. 957, 961.

29. In § 36.6 the heading and paragraph (a)(1) are revised to read as follows:

§ 36.6 Application procedures and requirements.

(a)(1) No investigation or testing will be undertaken by MSHA except pursuant to a written application accompanied by all descriptions, specifications, test samples, and related materials. The application and all related matters and correspondence shall be addressed to: U.S. Department of Labor, Mine Safety and Health Administration, Approval and Certification Center, RR #1, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059. Fees calculated in accordance with part 5 of this title shall be submitted in accordance with § 5.40.

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[FR Doc. 05–15494 Filed 8–8–05; 8:45 am]

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Federal Register

Tuesday,
August 9, 2005

Part V

Department of Housing and Urban Development

Notice of HUD's Fiscal Year (FY) 2005 Notice of Funding Availability Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs (SuperNOFA); Policy on Quality Assurance Review of Electronic Application Submission Difficulties; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–C–1C]

Notice of HUD's Fiscal Year (FY) 2005 Notice of Funding Availability Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs (SuperNOFA); Policy on Quality Assurance Review of Electronic Application Submission Difficulties

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; policy on quality control review of electronic application submission difficulties.

SUMMARY: On March 21, 2005, HUD published its Fiscal Year (FY) 2005 Notice of Funding Availability, Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Programs (SuperNOFA). The FY2005 SuperNOFA announced that, for the first time and consistent with the Administration's Electronic Government (E-Government) Initiative, applicants for HUD funding would be required to submit their applications electronically through the governmentwide grant portal, Grants.gov. While to date, the majority of applicants have been submitting successfully their applications electronically through Grants.gov, other applicants were found to have experienced difficulties with electronic submission to such an extent that they were unable to successfully submit their applications.

This notice announces that HUD is taking action to respond to these concerns and is conducting a quality assurance review to identify applicants that correctly followed all electronic application submission procedures, including registration for electronic submission, but were unable to submit an application because of technological problems. This notice provides HUD's review procedures as well as outlines the application submission procedures an applicant may follow if HUD determines that the applicant complied with all electronic submission requirements of the FY2005 SuperNOFA but was unable to submit an application because of technological difficulties. If HUD makes this determination, the applicant will be contacted by HUD and invited to submit a paper application.

DATES: Application submission dates remain as announced in the March 21, 2005, SuperNOFA as amended by subsequent notices of technical corrections.

FOR FURTHER INFORMATION CONTACT: For further information about each funded program, please contact the individual listed in the appendix to this notice.

SUPPLEMENTARY INFORMATION: On March 21, 2005 (70 FR 13575), HUD published its FY2005 SuperNOFA, which announced the availability of approximately $2.26 billion in HUD assistance. The FY2005 SuperNOFA also announced that, for the first time and consistent with the E-Government Initiative, applicants for HUD funding, except for the Continuum of Care funding opportunity, would be required to submit their applications electronically through the governmentwide grant portal, Grants.gov. The FY2005 SuperNOFA permitted prospective applicants to request a waiver of electronic submission for good cause, such as lack of a computer or absence of Internet service. Although to date, few applicants requested a waiver of electronic application submission and the majority of applicants successfully submitted their applications electronically through Grants.gov, HUD understands that some applicants may have been unable to submit their applications electronically due to unanticipated technological problems.

In response to applicant reports of difficulties with technology, this notice announces that HUD is undertaking a review of its records and those of Grants.gov to identify applicants that met all of the electronic submission requirements and instructions of the SuperNOFA, but were unable to submit an application electronically through Grants.gov because of problems with technology. This policy is in effect for all funding opportunities announced in the March 21, 2005, SuperNOFA, except for the Continuum of Care and Rural Housing and Economic Development programs. This policy also excludes any FY2005 funding opportunity that the Department reopens. As of the date of this publication, HUD is reopening the following competitions: Brownfields Economic Development Initiative, Youthbuild, Section 202 Supportive Housing for the Elderly, Section 811 Supportive Housing for Persons with Disabilities, Service Coordinators in Multifamily Housing, and Community Development Block Grant Program of Indian Tribes and Alaska Native Villages. HUD will announce the reopening of competitions through separate publication in the **Federal Register**.

If HUD determines that an applicant met the submission requirements and instructions of the SuperNOFA but was unable to submit its application because of unanticipated technological difficulties, the applicant will be invited to submit a paper application and be given five business days of receipt of notice from HUD to submit the paper application. The following describes HUD's policy and review procedures with respect to these unsuccessfully submitted applications.

Policy and Procedures on Quality Assurance Review of Unsuccessful Electronic Applications

HUD's quality assurance review will focus on those application submissions where HUD's records and those of Grants.gov document that the applicant followed all of the electronic submission requirements and instructions of the FY2005 SuperNOFA.

HUD's records and those of Grants.gov indicate that, of the group of applicants that were unable to submit an application electronically through Grants.gov, the majority were unable to do so because they failed to register for electronic application submission or failed to allow sufficient time to complete the registration process. As detailed in the General Section of the SuperNOFA, the registration process required applicants to obtain a Dun and Bradstreet Universal Data (DUNS) number (the DUNS number is a governmentwide and regulatory requirement for all grant applications), and register with the Federal Central Contractor Registry and with the credential provider for E-Authentication. As explained in the General Section of the FY2005 SuperNOFA, this registration process was necessary to ensure that the electronically submitted application was that of the applicant and that the individual or organization that submitted the application was authorized to submit it on behalf of the applicant.[1] The SuperNOFA also advised applicants to allow at least two weeks to complete the registration process. Applicants that failed to complete the registration process will not be considered for review.

Similarly, HUD records and those of Grants.gov reflect that other applicants were unable to submit an electronic application successfully because the applicant-provided password and ID number did not match the DUNS number provided in the application, thereby indicating that the applicant

[1] In addition to the General Section of the FY2005 SuperNOFA, HUD's Web broadcasts on the FY2005 SuperNOFA discussed the electronic application submission procedures, as did three mailings to prior applicants for HUD funding during the summer and fall of 2004.

was not authorized to submit the application. Applicants that submitted applications with incorrect DUNS numbers will not be considered for review.

HUD's quality assurance review for application submission will focus on circumstances where an applicant's failure to submit an application in accordance with the electronic application submission procedures of the FY2005 SuperNOFA was based on unanticipated technological problems. In these cases, HUD will hold the applicant harmless and permit the applicant to submit a paper application.

Examples of unanticipated technological difficulties that may have resulted in an applicant's failure to submit an electronic application include:

- The records demonstrate that the applicant attempted to submit an application but was cut off by the applicant's Internet service provider and but for this circumstance the application would have been timely received for validation by Grants.gov;
- The records demonstrate that an applicant successfully began submission prior to the 11:59 p.m. application deadline, but completed the upload of the application on the date following the application due date. HUD will consider such applicants as having met the deadline date and time stamp requirements of the NOFA. HUD acknowledges that dial-up access can result in slow transmission of a large application and the applicant has no control over the upload processing time;
- The records indicate that the applicant was unable to submit an application because HUD inadvertently posted the same funding opportunity under two different funding opportunity numbers and, as a result, an application was rejected in error.
- The records reflect that an applicant completed the registration process in a timely manner but was rejected because the database did not recognize the registration; and
- Other unique situations brought to HUD's attention that may lead HUD to conclude that an applicant's failure to submit was based on misleading technical advice or other such technology-related problem.

As noted in today's **Federal Register** notice, HUD will base its review on its records and those of Grants.gov, including records from the Grants.gov Call Center. HUD will initiate this review when HUD believes it has sufficient information to determine whether an applicant's failure to submit was because of problems with technology.

Applicants that contacted the Grants.gov Call Center and believe they meet the conditions described in this notice may contact the individuals identified in the appendix to request that HUD review its application submission situation to determine whether the applicant is eligible for hard copy submission. Applicants in this situation must provide HUD the:

1. Applicant DUNS number;
2. Authorized Organization Representative (AOR) ID;
3. Applicant MPIN:
4. Catalog of Federal Domestic Assistance (CFDA) number and name of the program for which the applicant is seeking funding;
5. Grants.gov Help Desk Ticket number, if available;
6. Statement of the problem including dates and times, with whom the applicant spoke and advice provided, if available; and
7. Application submission tracking number received from Grants.gov, and date and approximate times of upload transmission, if applicable.

Failure to provide the information listed in items 1–4 will result in an applicant being ineligible for the quality assurance review procedures outlined in this notice. Applicants that believe they meet the requirements described in this notice should provide this information to HUD by August 23, 2005. Applicants that have already provided this information to HUD do not need to resubmit the information.

Procedures for Submitting Applications

Upon the conclusion of HUD's review, applicants will be notified of HUD's determination through means that provide for confirmation that the applicant has received notification. If HUD determines that the applicant correctly followed the electronic application submission requirements of the SuperNOFA and advice from the Grants.gov help desk but was unable to submit an application because of technological problems, the applicant will be given five business days to submit a hard copy application to HUD commencing from the date of confirmation of the applicant's receipt of HUD's notification. The paper copy submission must contain an original signature of the person able to make a legally binding commitment to HUD for the applicant organization. Applicants will be required to submit applications via overnight delivery (United States Postal Service, Federal Express, or UPS) to the applicable address listed in the appendix to this notice. Hand deliveries are not accepted.

Dated: July 27, 2005.

Roy A. Bernardi,

Deputy Secretary.

BILLING CODE 4210–29–P

Instructions for Quality Control Reviews of Electronic Application Submission Problems

HUD Program Contacts Send Requests for Quality Control reviews to the following address, email or fax number:	If HUD determines that you were not able to submit your application due to technological problems beyond your control, and sends you a notice to that effect, submit a paper application to the appropriate program location(s) listed below within five business days of receipt of the notice from HUD	Requested Number of Copies to be Submitted
A. Office of Fair Housing and Equal Opportunity (FHEO) **Fair Housing Initiatives Programs (FHIP):** Department of Housing and Urban Development Attn: Myron P. Newry, Office of Fair Housing and Equal Opportunity (FHEO) 451 Seventh Street SW, Room 5224 Washington, DC 20410 Telephone: (202) 708-2288 x 7095 Fax: (202) 708-4445 Email: Myron_P._Newry@hud.gov	**Fair Housing Initiatives Programs (FHIP):** HUD Headquarters Robert C. Weaver Federal Building Office of Fair Housing and Equal Opportunity FHIP NOFA 2005 [Specify the Initiative/Component to which you wish to apply] 451 Seventh Street, SW, Room 5224 Washington, DC 20410	Original and 3 copies
B. Office of Housing/Federal Housing Commissioner (FHA). **1. Assisted Living Conversion for Multifamily Projects (ALCP):** Department of Housing and Urban Development Attn: Aretha M. Williams, Office of Multifamily Housing 451 Seventh Street SW, Room 6142 Washington, DC 20410 Telephone: (202) 708-2866 x 2480 Fax: (202) 708-3104 Email: Aretha_M._Williams@hud.gov **2. Housing Counseling:** Department of Housing and Urban Development Attn: Brian Siebenlist, Office of Single Family Housing 451 Seventh Street SW, Room 9274 Washington, DC 20410 Telephone: (202) 708-1672 x 5415 Fax: (202) 708-3537 Email: Brian_N._Siebenlist@hud.gov	**1. Assisted Living Conversion for Multifamily Projects (ALCP):** Submit hard copy applications to the appropriate HUD Multifamily (MF) Hub office identified in the Appendix of the program NOFA. See Appendix 1 of the ALCP program NOFA for a list of HUD Multifamily Hub offices. To determine the appropriate HUD MF Hub office to which you must submit your application, HUD Program Centers are under each Hub. **Do not use the list of addresses in the General Section of the SuperNOFA.** **2. Housing Counseling:** **a. Local Housing Counseling Agencies (LHCAs):** Submit hard copy applications to the appropriate Homeownership Center (HOC) identified in Section VII. of the Housing Counseling program NOFA. **b. State Housing Finance Agencies (SHFAs):** Submit hard copy applications to the appropriate Homeownership Center (HOC) identified in Section VII. of the program NOFA. **c. National and Regional Intermediaries:** Submit hard copy applications to HUD Headquarters HUD Headquarters, Robert C. Weaver Federal Building Program Support Division, Room 9274 451 Seventh Street, SW Washington, DC 20410	Original and 4 copies Original and 2 copies

Instructions for Quality Control Reviews of Electronic Application Submission Problems

HUD Program Contacts Send Requests for Quality Control reviews to the following address, email or fax number:	If HUD determines that you were not able to submit your application due to technological problems beyond your control, and sends you a notice to that effect, submit a paper application to the appropriate program location(s) listed below within five business days of receipt of the notice from HUD	Requested Number of Copies to be Submitted
C. Office of Community Planning and Development (CPD)		
1. Community Development - Technical Assistance Programs (CD-TA): Department of Housing and Urban Development Attn: Jean E. Whaley 451 Seventh Street SW, Room 7216 Washington, DC 20410 Telephone: (202) 708-3176 x 2774 Fax: (202) 619-5979 Email: Jean_E._Whaley@hud.gov	**1. Community Development - Technical Assistance Programs (CD-TA):** HUD Headquarters Robert C. Weaver Federal Building Attn: CD-TA 451 Seventh Street, SW, Room 7251 Washington, DC 20410 For National TA, submit hard copy applications to HUD Headquarters (HQ). For Local TA, submit one hard copy to HUD HQ and one to the HUD field office to which you are applying. Field Offices: HUD field offices are listed on the internet at http://www.hud.gov/offices/cpd/about/staff/fodirectors/index.cfm.	Original and 1 copy
2. Housing Opportunities for Persons with AIDS (HOPWA): Department of Housing and Urban Development Attn: David Vos, Office of HIV/AIDS 451 Seventh Street SW, Room 7212 Washington, DC 20410 Telephone: (202) 708-1934 x 4620 Fax: (202) 708-9313 Email: David_Vos@hud.gov	**2. Housing Opportunities for Persons with AIDS (HOPWA):** HUD Headquarters Robert C. Weaver Federal Building Attn: HOPWA 451 Seventh Street, SW, Room 7251 Washington, DC 20410 Submit original and one hard copy application to HUD HQ and one copy to the CPD Division of the state or area office that serves the area in which activities are proposed. For multi-state efforts, submit the copy to the field office that serves your main office.	Original and 2 copies
3. Housing for People Who Are Homeless and Addicted to Alcohol: Department of Housing and Urban Development Attn: Marianne Nazzaro, Office of Special Needs 451 Seventh Street SW, Room 10126 Washington, DC 20410 Telephone: (202) 708-1590 x 2076 Fax: (202) 619-8339 Email: Marianne_Nazzaro@hud.gov	**3. Housing for People Who Are Homeless and Addicted to Alcohol:** HUD Headquarters Robert C. Weaver Federal Building Attn: Homeless and Addicted to Alcohol 451 Seventh Street, SW, Room 7251 Washington, DC 20410	Original and 2 copies.

Instructions for Quality Control Reviews of Electronic Application Submission Problems

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D. Office of Policy Development and Research (PD&R)		
1. **Alaska Native and Native Hawaiian Institutions Assisting Communities Program (AN/NHIAC):** Department of Housing and Urban Development Attn: Susan Brunson, Office of University Partnerships 451 Seventh Street SW, Room 8106 Washington, DC 20410 Telephone: (202) 708-3061 x 3852 Fax: (202) 708-0573 Email: Susan_S._Brunson@hud.gov	1. **Alaska Native and Native Hawaiian Institutions Assisting Communities Program (AN/NHIAC):** University Partnerships Clearinghouse c/o Danya International, Inc. Attn: AN/NHIAC NOFA 8737 Colesville Rd, Suite 1200 Silver Spring, MD 20910 Be sure to include a complete return address on your application package.	Original and 3 copies and one disk using M.S. Word 6.0 or higher.
2. **Community Development Work Study Program (CDWSP):** Same as above.	2. **Community Development Work Study Program (CDWSP):** University Partnerships Clearinghouse c/o Danya International, Inc. Attn: CDWSP NOFA 8737 Colesville Rd, Suite 1200 Silver Spring, MD 20910 Be sure to include a complete return address on your application package.	Original and 3 copies and one disk using M.S. Word 6.0 or higher.
3. **Community Outreach Partnership Centers (COPC):** Same as above.	3. **Community Outreach Partnership Centers (COPC):** University Partnerships Clearinghouse c/o Danya International, Inc. Attn: COPC NOFA 8737 Colesville Rd, Suite 1200 Silver Spring, MD 20910 Be sure to include a complete return address on your application package.	Original and 3 copies and one disk using M.S. Word 6.0 or higher.
4. **Doctoral Dissertation Research Grant (DDRG) and Early Doctoral Student Research Grant (EDSRG):** Same as above.	4. **Doctoral Dissertation Research Grant (DDRG) and Early Doctoral Student Research Grant (EDSRG):** University Partnerships Clearinghouse c/o Danya International, Inc. Attn: DDRG or EDSRG NOFA 8737 Colesville Rd, Suite 1200 Silver Spring, MD 20910 Be sure to include a complete return address on your application package.	Original and 3 copies and one disk using M.S. Word 6.0 or higher.

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5. Hispanic Serving Institutions Assisting Communities (HSIAC): Same as above.	5. Hispanic Serving Institutions Assisting Communities (HSIAC): University Partnerships Clearinghouse c/o Danya International, Inc. Attn: HSIAC NOFA 8737 Colesville Rd, Suite 1200 Silver Spring, MD 20910 Be sure to include a complete return address on your application package.	Original and 3 copies and one disk using M.S. Word 6.0 or higher.
6. Historically Black Colleges and Universities (HBCU): Same as above.	6. Historically Black Colleges and Universities (HBCU): University Partnerships Clearinghouse c/o Danya International, Inc. Attn: HBCU NOFA 8737 Colesville Rd, Suite 1200 Silver Spring, MD 20910 Be sure to include a complete return address on your application package.	Original and 3 copies and one disk using M.S. Word 6.0 or higher.
7. Tribal Colleges and Universities Program (TCUP): Same as above.	7. Tribal Colleges and Universities Program (TCUP): University Partnerships Clearinghouse c/o Danya International, Inc. Attn: TCUP NOFA 8737 Colesville Rd, Suite 1200 Silver Spring, MD 20910 Be sure to include a complete return address on your application package.	Original and 3 copies and one disk using M.S. Word 6.0 or higher.
E. Office of Public and Indian Housing (PIH) 1. Housing Choice Voucher Family Self Sufficiency Program Coordinators: Department of Housing and Urban Development Attn: Alfred C. Jurison, 451 Seventh Street SW, Room 4210 Washington, DC 20410 Telephone: (202) 708-0477 x 4830 Fax: (202) 401-7974 Email: Alfred_C._Jurison @hud.gov	1. Housing Choice Voucher Family Self Sufficiency Program Coordinators: Submit original and one copy to the GMC and one copy to your local HUD field office (PIH). HUD Grants Management Center (GMC) Mail Stop: Housing Choice Voucher Family Self-Sufficiency Program Coordinators 501 School Street, SW, 8th floor Washington, DC 20024	Original and 2 copies

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2. Public Housing Neighborhood Networks: Department of Housing and Urban Development Attn: Anice M. Schervish 451 Seventh Street SW, Room 3236 Washington, DC 20410 Telephone: (202) 401-8812 x 2341 Fax: (202) 401-1236 Email: Anice_M._Schervish@hud.gov	**2. Public Housing Neighborhood Networks:** Submit original and one copy to the GMC and one copy to your local HUD field office (PIH). HUD Grants Management Center (GMC) Mail Stop: Neighborhood Networks 501 School Street, SW, 8th floor Washington, DC 20024	Original and 2 copies
3. Resident Opportunities and Self Sufficiency (ROSS): **a. Resident Service Delivery Models-Elderly/Disabled (RSDM):** **b. Resident Service Delivery Models-Family:** **c. Homeownership Supportive Services:** Department of Housing and Urban Development Attn: Anice M. Schervish 451 Seventh Street SW, Room 3236 Washington, DC 20410 Telephone: (202) 401-8812 x 2341 Fax: (202) 401-1236 Email: Anice_M._Schervish@hud.gov	**3. Resident Opportunities and Self Sufficiency (ROSS):** **a. Resident Service Delivery Models-Elderly/Disabled (RSDM):** **b. Resident Service Delivery Models-Family:** **c. Homeownership Supportive Services:** All applicants submit an original and one copy to the GMC. HUD Grants Management Center (GMC) Mail Stop: [Insert name of funding category] 501 School Street, SW, 8th floor Washington, DC 20024 Additionally, Tribes and TDHEs submit one hard copy to the Denver Program Office of Native American Programs. Dept. of Housing and Urban Development Denver Program Office of Native American Programs (DPONAP) 1670 Broadway, 23rd floor Denver, CO 80202-4801 All other applicants submit one copy to your local HUD field office (PIH).	Original and 2 copies
5. Public Housing Family Self Sufficiency: Department of Housing and Urban Development Attn: Anice M. Schervish 451 Seventh Street SW, Room 3236 Washington, DC 20410 Telephone: (202) 401-8812 x 2341 Fax: (202) 401-1236 Email: Anice_M._Schervish@hud.gov	**5. Public Housing Family Self Sufficiency:** Submit original and one copy to the GMC and one copy to your local HUD field office (PIH). HUD Grants Management Center (GMC) Mail Stop: Public Housing Family Self-Sufficiency Program 501 School Street, SW, 8th floor Washington, DC 20024	Original and 2 copies

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F. ***Office of Healthy Homes and Lead Hazard Control (OHHLHC)***		
1. Healthy Homes Technical Studies Program: Department of Housing and Urban Development Attn: Peter J. Ashley, Office of Healthy Homes and Lead Hazard Control 451 Seventh Street SW, Room P3206 Washington, DC 20410 Telephone: (202) 755-1785 x 115 Fax: (202) 755-1000 Email: Peter_J._Ashley@hud.gov	**1. Healthy Homes Technical Studies Program:** Department of Housing and Urban Development Office of Healthy Homes and Lead Hazard Control Attn: Healthy Homes Tech Studies Program 451 Seventh Street, SW, Room P3206 Washington, DC 20410	Original and 3 copies
2. Healthy Homes Demonstration Program: Department of Housing and Urban Development Attn: Jonnette G. Hawkins, Office of Healthy Homes and Lead Hazard Control 451 Seventh Street SW, Room P3206 Washington, DC 20410 Telephone: (202) 755-1785 x 126 Fax: (336) 755-1000 Email: Jonnette_G._Hawkins@hud.gov	**2. Healthy Homes Demonstration Program:** Department of Housing and Urban Development Office of Healthy Homes and Lead Hazard Control Attn: Healthy Homes Demonstration Program 451 Seventh Street, SW, Room P3206 Washington, DC 20410	Original and 3 copies
3. Lead Based Paint Hazard Control Grant Program: Department of Housing and Urban Development Attn: Jonnette Hawkins, 451 Seventh Street SW, Room P3206 Washington, DC 20410 Telephone: (202) 755-1785 x 126 Fax: (202) 755-1000 Email: Jonnette_G._Hawkins@hud.gov	**3. Lead Based Paint Hazard Control Grant Program:** Department of Housing and Urban Development Office of Healthy Homes and Lead Hazard Control Attn: Lead Hazard Control Grant Program 451 Seventh Street, SW, Room P3206 Washington, DC 20410	Original and 3 copies
4. Lead Hazard Reduction Demonstration Grant Program: Department of Housing and Urban Development Attn: Jonnette Hawkins, 451 Seventh Street SW, Room P3206 Washington, DC 20410 Telephone: (202) 755-1785 x 126 Fax: (202) 755-1000 Email: Jonnette_G._Hawkins@hud.gov	**4. Lead Hazard Reduction Demonstration Grant Program:** Department of Housing and Urban Development Office of Healthy Homes and Lead Hazard Control Attn: Lead Hazard Reduction Demonstration Program 451 Seventh Street, SW, Room P3206 Washington, DC 20410	Original and 3 copies

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5. Lead Outreach Program: Department of Housing and Urban Development Attn: Jonnette Hawkins, 451 Seventh Street SW, Room P3206 Washington, DC 20410 Telephone: (202) 755-1785 x 126 Fax: (202) 755-1000 Email: Jonnette_G._Hawkins@hud.gov	**5. Lead Outreach Program:** Department of Housing and Urban Development Office of Healthy Homes and Lead Hazard Control Attn: Lead Outreach Program 451 Seventh Street., SW, Room P3206 Washington, DC 20410	Original and 3 copies
6. Lead Tech Studies Program: Department of Housing and Urban Development Attn: Peter J. Ashley, Office of Healthy Homes and Lead Hazard Control 451 Seventh Street SW, Room P3206 Washington, DC 20410 Telephone: (202) 755-1785 x 115 Fax: (202) 755-1000 Email: Peter_J._Ashley@hud.gov	**6. Lead Tech Studies Program:** Department of Housing and Urban Development Office of Healthy Homes and Lead Hazard Control Attn: Lead Technical Studies Program 451 Seventh Street, SW, Room P3206 Washington, DC 20410	Original and 3 copies
7. Operation Lead Elimination Action Program (LEAP): Department of Housing and Urban Development Attn: Jonnette Hawkins, 451 Seventh Street SW, Room P3206 Washington, DC 20410 Telephone: (202) 755-1785 x 126 Fax: (202) 755-1000 Email: Jonnette_G._Hawkins@hud.gov	**7. Operation Lead Elimination Action Program (LEAP):** Department of Housing and Urban Development Office of Healthy Homes and Lead Hazard Control Attn: Operation Lead Elimination Action Program (LEAP) 451 Seventh Street, SW, Room P3206 Washington, DC 20410	Original and 3 copies

[FR Doc. 05–15701 Filed 8–4–05; 11:26 am]
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Federal Register

Tuesday,
August 9, 2005

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status and Special Rule for the Southwest Alaska Distinct Population Segment of the Northern Sea Otter (Enhydra lutris kenyoni); Final Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI44

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Southwest Alaska Distinct Population Segment of the Northern Sea Otter (Enhydra lutris kenyoni)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), determine threatened status for the southwest Alaska distinct population segment of the northern sea otter (*Enhydra lutris kenyoni*) under the authority of the Endangered Species Act of 1973, as amended (Act). Once containing more than half of the world's sea otters, this population segment has undergone an overall population decline of at least 55–67 percent since the mid-1980s. In some areas within southwest Alaska, the population has declined by over 90 percent during this time period. This final rule extends the Federal protection and recovery provisions of the Act to this population segment.

DATES: This rule is effective on September 8, 2005.

ADDRESSES: The complete file for this final rule is available for inspection, by appointment, during normal business hours at the Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Douglas Burn, (see **ADDRESSES**) (telephone 907/786–3800; facsimile 907/786–3816).

SUPPLEMENTARY INFORMATION:

Background

This section has been updated from the proposed rule to incorporate comments from peer reviewers, and to include new survey results collected in 2003 and 2004.

The sea otter (*Enhydra lutris*) is a mammal in the family Mustelidae and it is the only species in the genus *Enhydra*. The overall range of *E. lutris* from northern Japan to southern California is approximately 10,000 kilometers (km) (6,212 miles (mi)). There are three recognized subspecies (Wilson *et al.* 1991): *E. l. lutris,* known as the northern sea otter, occurs in the Kuril Islands, Kamchatka Peninsula, and Commander Islands in Russia; *E. l. kenyoni,* also known as the northern sea otter, has a range that extends from the Aleutian Islands in southwestern Alaska to the coast of the State of Washington; and *E. l. nereis,* known as the southern sea otter, occurs in coastal southern California. The taxonomy of sea otters is complicated by the lack of historical information prior to their discovery in 1741, as well as the population bottlenecks (reductions in genetic diversity as a result of small population sizes) that resulted from commercial fur harvests that extirpated the species throughout much of its range. Figure 1 in the Proposed Rule illustrates the approximate ranges of the three currently recognized subspecies.

The two subspecies of northern sea otter (*E. l. kenyoni* and *E. l. lutris*) are separated by an expanse of open water that measures approximately 320 km (200 mi) between the Near Islands of the United States and the Commander Islands in Russia. Wide, deep-water passes serve as a barrier to sea otter movements (Kenyon 1969), and interchange between these two subspecies is considered to be low. (See later sections on food habits and animal movements.) Genetic analyses show some similarities between sea otters in the Commander Islands and Alaska (Cronin *et al.* 1996), which indicates that movements between these areas has occurred, at least over evolutionary/geologic time scales.

The southernmost extent of the range of *E. l. kenyoni* is in Washington state and British Columbia, and is the result of translocations of sea otters from Alaska between 1969 and 1972 (Jameson *et al.* 1982). The Washington and British Columbia population is separated from the nearest sea otters in Alaska by a distance roughly of 483 km (300 mi) to the north, and is separated from the southern sea otter (*E. l. nereis*) by a distance of more than 965 km (600 mi) to the south.

It is the smallest marine mammal in the world, except for the South American marine otter (*Lontra* (= *Lutra*) *felina*) (Reidman and Estes 1990). Adult males average 130 centimeters (cm) (4.3 feet (ft)) in length and 30 kilograms (kg) (66 pounds (lb)) in weight; adult females average 120 cm (3.9 ft) in length and 20 kg (44 lb) in weight (Kenyon 1969). The northern sea otter in Russian waters (*E. l. lutris*) is the largest of the three subspecies, characterized as having a wide skull with short nasal bones (Wilson *et al.* 1991). The southern sea otter (*E. l. nereis*) is smaller and has a narrower skull with a long rostrum and small teeth. The northern sea otter in Alaska (*E. l. kenyoni*) is intermediate in size and has a longer mandible than either of the other two subspecies.

Sea otters lack the blubber layer found in most marine mammals and depend entirely upon their fur for insulation (Riedman and Estes 1990). Their pelage consists of a sparse outer layer of guard hairs and an underfur that is the densest mammalian fur in the world, averaging more than 100,000 hairs per square centimeter (645,000 hairs per square inch) (Kenyon 1969). As compared to pinnipeds (seals and sea lions) that have a distinct molting season, sea otters molt gradually throughout the year (Kenyon 1969).

Sea otters have a relatively high rate of metabolism as compared to land mammals of similar size (Costa 1978; Costa and Kooyman 1982, 1984). To maintain the level of heat production required to sustain them, sea otters eat large amounts of food, estimated at 23–33 percent of their body weight per day (Riedman and Estes 1990). Sea otters are carnivores that primarily eat a wide variety of benthic (living in or on the sea floor) invertebrates, including sea urchins, clams, mussels, crabs, and octopus. In some parts of Alaska, sea otters also eat epibenthic (living upon the sea floor) fishes (Estes *et al.* 1982; Estes 1990).

Much of the marine habitat of the sea otter in southwest Alaska is characterized by a rocky substrate. In these areas, sea otters typically are concentrated between the shoreline and the outer limit of the kelp canopy (Riedman and Estes 1990), but can also occur further seaward. Sea otters also inhabit marine environments that have soft sediment substrates, such as Bristol Bay and the Kodiak archipelago. As communities of benthic invertebrates differ between rocky and soft sediment substrate areas, so do sea otter diets. In general, prey species in rocky substrate habitats include sea urchins, octopus, and mussels, while in soft substrates, clams dominate the diet.

Sea otters are considered a keystone species, strongly influencing the species composition and diversity of the nearshore marine environment they inhabit (Estes *et al.* 1978). For example, studies of subtidal communities in Alaska have demonstrated that, when sea otters are abundant, epibenthic herbivores such as sea urchins will be present at low densities whereas kelp, which are consumed by sea urchins, will flourish. Conversely, when sea otters are absent, grazing by abundant sea urchin populations creates areas of low kelp abundance, known as urchin barrens (Estes and Harrold 1988).

Sea otters generally occur in shallow water areas near the shoreline. They

primarily forage in shallow water areas less than 100 meters (m) (328 ft) in depth, and the majority of all foraging dives take place in waters less than 30 m (98 ft) in depth (Bodkin *et al.* 2004). As water depth is generally correlated with distance to shore, sea otters typically inhabit waters within 1–2 km (0.62–1.24 mi) of shore (Riedman and Estes 1990). While sea otters can also be found at greater distances from shore, this typically occurs in areas of, or near, shallow water. For example, a broad shelf of shallow water extends several miles from shore in Bristol Bay, along the north side of the Alaska Peninsula. Prior to the onset of the sea otter population decline (described below), large rafts of sea otters were commonly observed above this shelf of shallow water at distances as far as 40 km (25 mi) from shore (Schneider 1976).

Movement patterns of sea otters have been influenced by the processes of natural population recolonization and the translocation of sea otters into former habitat. While sea otters have been known to make long distance movements up to 350 km (217 mi) over a relatively short period of time when translocated to new or vacant habitat (Ralls *et al.* 1992), the home ranges of sea otters in established populations are relatively small. Once a population has become established and has reached equilibrium density within the habitat, movement of individual sea otters appears to be largely dictated by environmental and social factors, including gender, breeding status, age, climatic variables (*e.g.* weather, tidal state, season), and human disturbance, as described below.

Home range and movement patterns of sea otters vary depending on the gender and breeding status of the otter. In the Aleutian Islands, breeding males remain for all or part of the year within the bounds of their breeding territory, which constitutes a length of coastline anywhere from 100 m (328 ft) to approximately 1 km (0.62 mi). Sexually mature females have home ranges of approximately 8–16 km (5–10 mi), which may include one or more male territories. Male sea otters that do not hold territories may move greater distances between resting and foraging areas than territorial males (Lensink 1962, Kenyon 1969, Riedman and Estes 1990, Estes and Tinker 1996).

Juvenile males (1–2 years of age) are known to disperse later and for greater distances, up to 120 km (75 mi), from their natal (birth) area than 1-year-old females, for which the greatest distance traveled was 38 km (23.6 mi) (Garshelis and Garshelis 1984, Monnett and Rotterman 1988, Riedman and Estes 1990). Intraspecific aggression between breeding males and juvenile sea otters may cause juvenile otters to move from their natal areas to lower quality habitat (Ralls *et al.* 1996), and survival of juvenile sea otters, though highly variable, is influenced by intraspecific aggression and dispersal (Ballachey *et al.* 2003).

Sea otter movements are also influenced by local climatic conditions such as storm events, prevailing winds, and in some areas, tidal states. Sea otters tend to move to protected or sheltered waters (bays, inlets, or lees) during storm events or high winds. In calm weather conditions, sea otters may be encountered further from shore (Lensink 1962, Kenyon 1969). In the Commander Islands, Russia, weather, season, time of day, and human disturbance have been cited as factors that induce sea otter movement (Barabash-Nikiforov 1947, Barabash-Nikiforov *et al.* 1968).

Due to their dependence on shallow-water feeding areas, most sea otters in Alaska occur within State-owned waters, which include the area from mean high tide to 4.8 km (3 mi) offshore, and any that go further offshore are within the U.S. Exclusive Economic Zone, which extends 370.4 km (200 nautical miles) seaward from the coast of the United States.

While sea otters typically rest in the water, they can also haul out and rest on shore (Kenyon 1969). Female sea otters typically give birth in the water, however, they have also been observed to give birth while on shore (Barabash-Nikiforov *et al.* 1968, Jameson 1983). Although they typically haul out and remain close to the water's edge, sea otters have been observed on land at distances up to several hundred meters from the water (Riedman and Estes 1990). The majority of coastal lands within the range of the southwest Alaska population of the northern sea otter are part of the Service's National Wildlife Refuge (NWR) system, including Alaska Maritime NWR, Izembek NWR, Alaska Peninsula/Becharof NWR, and Kodiak NWR. The National Park Service also has large parcels of coastal lands in southwest Alaska, including Katmai National Park and Aniakchak National Monument and Preserve. The vast majority of remaining coastal lands in southwest Alaska are owned by the State of Alaska and Alaska Native Corporations. Privately owned lands constitute a very minor proportion of coastal lands in southwest Alaska.

Female sea otters in Alaska live an estimated 15–20 years, while male lifespan appears to be about 10–15 years (Calkins and Schneider 1985). First-year survival of sea otter pups is generally substantially lower than that for prime age (2–10 years old) animals (Monson and DeGange 1995, Monson *et al.* 2000). Male sea otters appear to reach sexual maturity at 5–6 years of age (Schneider 1978, Garshelis 1983). The average age of sexual maturity for female sea otters is 3–4 years, but some appear to reach sexual maturity as early as 2 years of age. The presence of pups and fetuses at different stages of development throughout the year suggests that reproduction occurs at all times of the year. Most areas that have been studied show evidence of one or more seasonal peaks in pupping (Rotterman and Simon-Jackson 1988).

Similar to other mustelids, sea otters can have delayed implantation of the blastocyst (developing embryo) (Sinha *et al.* 1966). As a result, pregnancy can have two phases: from fertilization to implantation, and from implantation to birth (Rotterman and Simon-Jackson 1988). The average time between copulation and birth is 6–7 months. Female sea otters typically will not mate while accompanied by a pup (Lensink 1962; Kenyon 1969; Schneider 1978; Garshelis *et al.* 1984). The interval between pups is typically 1 year.

Estes (1990) estimated population growth rates ranging from 17–20 percent per year for four northern sea otter populations expanding into unoccupied habitat. While Bodkin *et al.* (1999) also reported similar population growth rates, they also note that population growth rates in translocated populations were significantly greater than for remnant populations. After the initial period of growth, populations typically reach an equilibrium density, defined as the average density, relatively stable over time, that can be supported by the habitat (Estes 1990).

Distribution and Status

Historically, sea otters occurred throughout the coastal waters of the north Pacific Ocean, from the northern Japanese archipelago around the north Pacific rim to central Baja California, Mexico. The historic distribution of sea otters is depicted in Figure 2 of the Proposed Rule.

Prior to commercial exploitation, the range-wide estimate for the species was 150,000–300,000 individuals (Kenyon 1969, Johnson 1982). Commercial hunting of sea otters began shortly after the Bering/Chirikof expedition to Alaska in 1741. Over the next 170 years, sea otters were hunted to the brink of extinction first by Russian, and later by American, fur hunters.

Sea otters became protected from commercial harvests under the International Fur Seal Treaty of 1911, when only 13 small remnant populations were known to still exist (Figure 2 in the Proposed Rule). The entire species at that time may have been reduced to only 1,000–2,000 animals. Two of the 13 remnant populations (Queen Charlotte Island and San Benito Islands) subsequently became extinct (Kenyon 1969, Estes 1980). The remaining 11 populations began to grow in number, and expanded to recolonize much of the former range. Six of the remnant populations (Rat Islands, Delarof Islands, False Pass, Sandman Reefs, Shumagin Islands, and Kodiak Island) were located within the bounds of what we now recognize as the southwest Alaska population of the northern sea otter (see Distinct Vertebrate Population Segment). All 6 of these remnant populations grew during the first 50 years following protection from further commercial hunting. At several locations in the Aleutian Islands, the rapid growth of sea otter populations appears to have initially exceeded the carrying capacity of the local environment, as sea otter abundance at these islands then declined, either by starvation or emigration, eventually reaching equilibrium density (Kenyon 1969).

Population Trends of Sea Otters in Southwest Alaska

The following discussion of population trends is related to the southwest Alaska distinct population segment of sea otters addressed in this final rule. The southwest Alaska population ranges from Attu Island at the western end of Near Islands in the Aleutians, east to Kamishak Bay on the western side of lower Cook Inlet, and includes waters adjacent to the Aleutian Islands, the Alaska Peninsula, the Kodiak archipelago, and the Barren Islands (see Figure 3 of the Proposed Rule).

Survey methods vary in different locations. In some parts of southwest Alaska, sea otters have been counted from boats or aircraft within a narrow band of water adjacent to the shoreline; in others, transects have been used to sample an area, and the resulting sea otter density is extrapolated to generate a population estimate for the entire study area. Like survey efforts of most species, detection of all the individuals present is not always possible. Sea otters spend considerable time under water, and it is not possible to detect individuals that are below the surface at the time a survey is conducted. Also, observers do not always detect every individual present on the surface. Only a few surveys have been conducted using methods that allow for calculation of a correction factor to adjust for the estimated proportion of otters not detected by observers. One way to make this adjustment requires an independent estimate of the actual number of otters present in an area, also known as "ground-truth," combined with the regular survey data in order to calculate a correction factor to adjust for sea otters not detected during the survey. Thus, survey results can be of several types: they can be direct counts or estimates, either of which may be adjusted or unadjusted for sea otters not detected by observers. In areas where we compare unadjusted sea otter counts or estimates, we assume that there is no significant difference between the proportion of otters not detected by observers.

In the following discussion of population trends, results are presented separately for surveys conducted in the Aleutian Islands, the Alaska Peninsula, the Kodiak Archipelago, and Kamishak Bay. For the Alaska Peninsula, results are presented for various surveys that have been conducted for north Peninsula offshore areas, south Peninsula offshore areas, south Alaska Peninsula Islands, and the South Alaska Peninsula shoreline. The general locations of the survey areas are depicted in Figure 4 A–D of the Proposed Rule.

Unless otherwise specified, the survey results are unadjusted for otters not detected by observers. Within each study area, recent surveys were conducted using methods similar to those used in the past, so that counts or estimates would be as comparable as possible with baseline information for that area. Although there may be slight differences in the time of year that surveys were conducted, we do not believe these timing differences hinder comparisons of survey results because otters are likely to remain in the same general area, as they are not migratory. A summary of sea otter survey data from each survey area within the southwest Alaska population is presented in Table 1, followed by a narrative description of the results for each area.

TABLE 1.—SUMMARY OF SEA OTTER POPULATION SURVEYS IN SOUTHWEST ALASKA

[Estimates include 95 percent confidence intervals where available. Estimates for the Kodiak archipelago and Kamishak Bay are the only values adjusted for sea otters not detected.]

Survey area	Year	Count or estimate	Source
Aleutian Islands	1965	9,700	Kenyon (1969).
	1992	8,048	Evans et al. (1997).
	2000	2,442	Doroff et al. (2003).
North Alaska Peninsula Offshore Areas	1976	11,681	9,215 ± 3,709 (AUG)
	*1986	6,474 ± 2,003 (JUN)	7,539 ± 2,103 (OCT) Schneider (1976). Brueggeman et al. (1988), Burn and Doroff (2005).
	2000	4,728 ± 3,023 (MAY)	Burn and Doroff (2005).
South Alaska Peninsula Offshore Areas	*1986	13,900 ± 6,456 (MAR) 14,042 ± 5,178 (JUN) 17,500 ± 5,768 (OCT)	Brueggeman et al. (1988), Burn and Doroff (2005).
	2001	1,005 ± 1,597 (APR)	Burn and Doroff (2005).
South Alaska Peninsula Islands	1962	2,195	Kenyon (1969).
	1986	2,122	Brueggeman et al. (1988).
	1989	1,589	DeGange et al. (1995).
	2001	405	Burn and Doroff (2005).
South Alaska Peninsula Shoreline	1989	2,632	DeGange et al. (1995).
	2001	2,651	Burn and Doroff (2005).
Kodiak Archipelago	1989	13,526 ± 2,350	DeGange et al. (1995).
	1994	9,817 ± 5,169	Doroff et al. (in prep.).

TABLE 1.—SUMMARY OF SEA OTTER POPULATION SURVEYS IN SOUTHWEST ALASKA—Continued

[Estimates include 95 percent confidence intervals where available. Estimates for the Kodiak archipelago and Kamishak Bay are the only values adjusted for sea otters not detected.]

Survey area	Year	Count or estimate	Source
	2001	5,893 ± 2,630	Doroff et al. (in prep.).
	2004	6,284 ± 1,807	Doroff et al. (in prep.).
Kamishak Bay	2002	6,918 ± 4,271	USGS in litt. (2002).

*Estimates recalculated by the Service (Burn and Doroff 2005) from original data of Brueggeman et al. (1988).

Aleutian Islands

The first systematic, large-scale population surveys of sea otters in the Aleutian Islands (Figure 4A of the Proposed Rule) were conducted from 1957 to 1965 by Kenyon (1969). The descendants of two remnant colonies had expanded throughout the Rat, Delarof, and western Andreanof Island groups. The total unadjusted count for the entire Aleutian archipelago during the 1965 survey was 9,700 sea otters. In 1965, sea otters were believed to have reached equilibrium densities throughout roughly one-third of the Aleutian archipelago, ranging from Adak Island in the east to Buldir Island in the west (Estes 1990). Islands in the other two-thirds of the archipelago had few sea otters, and researchers expected additional population growth in the Aleutians to occur through range expansion.

From the mid-1960's to the mid-1980's, otters expanded their range, and presumably their numbers as well, until they had recolonized all the major island groups in the Aleutians. Although the maximum size reached by the sea otter population is unknown, a habitat-based computer model estimates that the population in the late-1980s may have numbered approximately 74,000 individuals in the Aleutians (Burn *et al.* 2003).

In a 1992 aerial survey of the entire Aleutian archipelago, we counted a total of 8,048 otters (Evans *et al.* 1997), approximately 1,650 (19 percent) fewer than the total reported for the 1965 survey. Although sea otters had recolonized all major island groups, they had unexpectedly declined in number by roughly 50 percent in portions of the western and central Aleutians since 1965, based on a comparison of the 1965 and 1992 survey results. Sea otter surveys conducted from skiffs during the mid-1990s also indicated substantial declines at several islands in the western and central Aleutians (Estes *et al.* 1998). It was not known at the time if these observed declines were representative of the entire Aleutian sea otter population or merely a local phenomenon.

In April 2000, we conducted another complete aerial survey of the Aleutian archipelago. We counted 2,442 sea otters, which is a 70-percent decline from the count 8 years previously (Doroff *et al.* 2003). Along the more than 5,000 km (3,107 miles) of shoreline surveyed, sea otter density was at a uniformly low level, which clearly indicated that sea otter abundance had declined throughout the archipelago.

The aerial and skiff survey data both indicate that the onset of the decline began in the latter half of the 1980s or early 1990s. Doroff *et al.* (2003) calculated that the decline proceeded at an average rate of -17.5 percent per year in the Aleutians. Although otters declined in all island groups within the archipelago, the greatest declines were observed in the Rat, Delarof, and Andreanof Island groups. This result was unexpected, as the remnant colonies in these island groups were the first to recover from the effects of commercial harvest, and sea otters were believed to have been at equilibrium density at most of these islands in the mid-1960s.

Doroff *et al.* (2003) used skiff-based counts at six islands in the western and central Aleutians as ground-truth data, and calculated that aerial observers detected roughly 28 percent of the sea otters present. Adjusting for otters not detected by observers, the estimated population size in April 2000 was 8,742 sea otters. Additional skiff-based surveys at these islands conducted in the summer of 2003 indicated that the sea otter population has declined by a further 63 percent at an estimated annual rate of 29 percent per year (Estes *et al.* 2005). If the declines at these islands are representative of the Aleutian archipelago as a whole, the entire population in this area may number as few as 3,311 individuals.

In July 2004, we also conducted aerial surveys of sea otters at several islands in the eastern Aleutians using the same methods as the 2000 survey. Due to dense fog, we were only able to survey 223 km of the total shoreline (62 percent). In 2000 we counted 73 otters within this surveyed area, but only 38 otters there in 2004; a decline of 48 percent, at an estimated annual rate of 15 percent per year (USFWS in litt.). These results indicate that similar to the western and central Aleutians, the sea otter decline has not abated in the eastern Aleutians.

Alaska Peninsula

Three remnant colonies (at False Pass, Sandman Reefs, and Shumagin Islands) were believed to have existed near the western end of the Alaska Peninsula after commercial fur harvests ended in 1911 (Kenyon 1969). During surveys in the late 1950s and early 1960s, substantial numbers of sea otters were observed between Unimak Island and Amak Island (2,892 in 1965) on the north side of the Peninsula, and around Sanak Island and the Sandman reefs (1,186 in 1962), and the Shumagin Islands on the south side (1,352 in 1962) (Kenyon 1969).

As summarized in Table 1 and described below, surveys of sea otters along the Alaska Peninsula have covered four areas, with the same method used in a given area. For the north Alaska Peninsula offshore area (Figure 4B of the Proposed Rule), shoreline counts are not an appropriate survey method due to the broad, shallow shelf in Bristol Bay, a condition under which sea otters occur further from the shore than elsewhere. Consequently, the north Alaska Peninsula offshore area has been surveyed from aircraft using north-south transects extending from the shoreline out over the shelf. Using this method, Schneider (1976) calculated an unadjusted population estimate of 11,681 sea otters on the north side of the Alaska Peninsula in 1976, which he believed to have been within the carrying capacity for that area. Brueggeman *et al.* (1988) conducted replicate surveys of the same area during three time periods in 1986. We re-analyzed the original 1986 survey data to address computational errors in the survey report; our re-calculated estimates range from 6,474–9,215 sea otters for this area for the three surveys in 1986 (Burn and Doroff 2005). In May 2000, we replicated the survey design of Brueggeman *et al.* (1988) using identical

survey methods. The 2000 survey estimate of 4,728 sea otters indicates abundance on the north side of the Alaska Peninsula had fallen by 27–49 percent in comparison with the minimum and maximum point estimates of the 1986 survey (Burn and Doroff 2005).

The largest aggregations of sea otters in May 2000 were observed in Port Moller. This concentration of sea otters has been described as a seasonal phenomenon, as surveys conducted later in the summer have not recorded similar numbers of sea otters (B. Murphy, Alaska Department of Fish and Game, in litt. 2002). To test this assumption, we conducted sea otter surveys in the Port Moller, Herendeen Bay, and Nelson Lagoon areas in May and July 2004 (USFWS in litt. 2004). Sea otter abundance was high during both survey periods, so it is not clear to what degree there may be seasonal use of these areas.

Offshore areas on the south side of the Alaska Peninsula (Figure 4B of the Proposed Rule) were surveyed at three different time periods in 1986 (Brueggeman *et al.* 1988). Noting computational errors in the survey report, we re-analyzed the original 1986 survey data, resulting in estimates of 13,900–17,500 sea otters for the three surveys conducted in 1986 (Burn and Doroff 2005). We replicated the survey in April 2001, when our estimate of 1,005 otters for the south Alaska Peninsula offshore area indicated a decline in abundance of at least 93 percent when compared with the minimum and maximum point estimates in this area from the 1986 surveys. Specific areas of high sea otter concentrations in 1986, such as Sandman Reefs, were almost devoid of sea otters when surveyed in 2001 (Burn and Doroff 2005).

Several island groups along the south side of the Alaska Peninsula (Figure 4C of the Proposed Rule; Pavlof and Shumagin Islands, as well as Sanak, Caton, and Deer Islands) are another survey area. In 1962, Kenyon (1969) counted 1,900 otters along these islands. Twenty-four years later, in 1986, Brueggeman *et al.* (1988) counted 2,122 otters in the same survey area. In 1989, DeGange *et al.* (1995) counted 1,589 otters along the shorelines of the islands that had been surveyed in 1962 and 1986, which was approximately 16–28 percent fewer sea otters than were reported in the earlier counts. This decrease was the first indication of a sea otter population decline in the area of the Alaska Peninsula. When we counted sea otters in these island groups in 2001, we recorded only 405 individuals (Burn and Doroff 2005), which is an 81-percent decline from the 1986 count reported by Brueggeman *et al.* (1988). We conducted additional aerial surveys at 13 of these islands in May and July of 2004 using similar methods as in 2001. Sea otter counts at these islands declined a further 33 percent from 268 to 179 in the past 3 years (USFWS in litt. 2004). Similar to recent surveys in the Aleutians, these results indicate that the sea otter population decline in this area has not abated.

The southern shoreline of the Alaska Peninsula from False Pass to Cape Douglas (Figure 4D of the Proposed Rule) is another survey area. In 1989, DeGange *et al.* (1995) counted 2,632 sea otters along this stretch of shoreline. In 2001 we counted 2,651 sea otters (Burn and Doroff 2005), nearly the same as the 1989 count. When we subdivided and compared the results for the eastern and western components of the survey areas, we found that sea otter density along the eastern end of the Peninsula, from Cape Douglas to Castle Cape, increased approximately 4 percent, from 1989 to 2001 (Burn and Doroff 2005). For the western end of the Peninsula from False Pass to Castle Cape, however, there was evidence of a population decline, with sea otter density falling by 35 percent over the same time period. We also counted 42 sea otters along the shoreline of Unimak Island in 2001, but there is no suitable baseline data for comparison. Based on what is known about sea otter movements and the distance between the eastern and western ends of the Peninsula, we believe that it is unlikely that these observations represent a change in distribution. In May 2004 we conducted an aerial survey of Sutwick Island and counted only 23 sea otters along the shoreline. In May 2001 we counted 73 otters in this area, which is further evidence that the sea otter decline in southwest Alaska has not abated (USFWS in litt).

The results from the different survey areas along the Alaska Peninsula indicate various rates of change. Overall, the combined counts for the Peninsula have declined by 65–72 percent since the mid-1980s, based on the data presented in Table 1.

We have calculated an estimate of the sea otter population for the entire Alaska Peninsula using the most recent survey data, including an adjustment for otters not detected by observers. In making this calculation, we first revised the combined total number of sea otters observed during the most recent surveys (8,789), to account for potential double-counting in an area of overlap between two of the study areas along the Peninsula. We then multiplied this revised number of otters (8,328) by the correction factor of 2.38 provided by Evans *et al.* (1997) for the type of aircraft used, to account for otters not detected by observers. The result is an adjusted estimate of 19,821 sea otters along the Alaska Peninsula as of 2001.

Kodiak Archipelago

One of the remnant sea otter colonies in southwest Alaska is thought to have occurred at the northern end of the Kodiak archipelago (Figure 4D of the Proposed Rule), near Shuyak Island. In 1959, Kenyon (1969) counted 395 sea otters in the Shuyak Island area. Over the next 30 years, the sea otter population in the Kodiak archipelago grew in numbers, and its range expanded southward around Afognak and Kodiak Islands (Schneider 1976, Simon-Jackson *et al.* 1984, Simon-Jackson *et al.* 1985). DeGange *et al.* (1995) surveyed the Kodiak archipelago in 1989 and calculated an adjusted population estimate of 13,526 sea otters. In July and August 1994, we conducted an aerial survey using the methods of Bodkin and Udevitz (1999) and calculated an adjusted population estimate of 9,817, approximately 27 percent lower than the estimate for 1989 (Doroff *et al.* in prep.). In June 2001, we surveyed the Kodiak archipelago using the same observer, pilot, and methods as in 1994. The result was an adjusted population estimate of 5,893 sea otters for the archipelago in 2001 (Doroff *et al.* prep.), which is a 40-percent decline in comparison to the 1994 estimate and a 56-percent decline from the 1989 estimate.

In summer 2004 we surveyed the Kodiak archipelago using the same methods as in 1994 and 2001 and estimated the current population size at 6,284 sea otters. While this represents a slight increase since 2001, the estimates are not significantly different from one another ($Z = 0.24$, $p = 0.81$; Doroff *et al.* in prep.). Although these results suggest that, in contrast to the Aleutian archipelago and Alaska Peninsula study areas, the sea otter population in the Kodiak archipelago likely has not declined in the past several years; the current estimate remains 36 percent lower than in 1994, and 54 percent lower than in 1989.

Kamishak Bay

Kamishak Bay is located on the west side of lower Cook Inlet, north of Cape Douglas (Figure 4D of the Proposed Rule). In the summer of 2002, the U.S. Geological Survey (USGS), Biological Resources Discipline conducted an aerial survey of lower Cook Inlet and the

Kenai Fiords area. This survey was designed, in part, to estimate sea otter abundance in Kamishak Bay. The method used was identical to that of the 2001 aerial survey of the Kodiak archipelago, which includes a correction factor for sea otters not detected by the observer (Bodkin and Udevitz 1999). Sea otters were relatively abundant within Kamishak Bay during the 2002 survey, with numerous large rafts of sea otters observed. The adjusted estimate for the current sea otter population size in Kamishak Bay is 6,918 (USGS in litt. 2002). As no previous estimates for Kamishak Bay exist, the population trend for this area is unknown.

Overall Comparison

The history of sea otters in southwest Alaska is one of commercial exploitation to near extinction (1742 to 1911), protection under the International Fur Seal Treaty (1911), and population recovery (post-1911). By the mid-to late-1980s, sea otters in southwest Alaska had grown in numbers and recolonized much of their former range. The surveys conducted in various areas, described above, provide information about the geographic extent and magnitude of declines within those areas. Due to differences in the years of the various baseline surveys for different areas (1962, 1965, 1976, 1989), it is difficult to combine those surveys as a basis for estimating the overall size of the sea otter population throughout southwest Alaska at the onset of the decline. Therefore, as part of our effort to evaluate information reflecting the overall magnitude of the decline, we also have considered information provided by Calkins and Schneider (1985), who summarized sea otter population estimates worldwide based on data collected through 1976. Much of the information they present is from unpublished Alaska Department of Fish and Game survey results, and we include this information as it is the only comprehensive reference for estimating the overall magnitude of the sea otter decline in southwest Alaska.

Calkins and Schneider (1985) provided estimates from survey data collected as of 1976, adjusted for animals not detected by observers, for the Aleutian Islands (55,100–73,700), north Alaska Peninsula (11,700–17,200), south Alaska Peninsula (22,000–30,000) and Kodiak archipelago (4,000–6,000). They did not report a specific estimate for the Kamishak Bay area, which presumably was included within their estimate for the Kenai Peninsula and Cook Inlet area (2,500–3,500 otters), and we are assuming that half of the sea otters estimated for Kenai Peninsula and Cook Inlet occurred in Kamishak Bay (1,250–1,750). Combining these estimates, the sea otter population in the area encompassing the range of the southwest Alaska population was believed to have numbered between 94,050–128,650 animals as of 1976. As sea otters had not yet fully recolonized southwest Alaska or reached equilibrium density in all areas in 1976, additional population growth was expected. Therefore, the overall population prior to the onset of the decline in the 1980's probably was higher than the population estimate for 1976.

Our current estimate of the size of the southwest Alaska population of the northern sea otter, which includes the 2004 estimate for the Kodiak archipelago, is 41,865 animals (Table 2). This estimate is based on range-wide survey information collected from 2000–2004, and is adjusted for animals not detected. As recent site-specific surveys indicate the decline has not abated in the Aleutian archipelago and south Alaska Peninsula study areas, it is possible that the current population size in 2004 is actually lower.

TABLE 2.—RECENT POPULATION ESTIMATES FOR THE SEA OTTER IN SOUTHWEST ALASKA

[Alaska Peninsula and Unimak Island counts are adjusted using a correction factor of 2.38 for twin-engine aircraft surveys of sea otters according to Evans *et al.* (1997). Aleutian Islands, Kodiak Archipelago, and Kamishak Bay surveys are adjusted using survey-specific correction factors.]

Survey area	Year	Unadjusted count or estimate	Adjusted count or estimate	Reference
Aleutian Islands	2000	2,442	8,742	Doroff *et al.* (2003).
North Alaska Peninsula Offshore Areas	2000	4,728	11,253	Burn and Doroff (2005).
South Alaska Peninsula Offshore Areas	2001	1,005	2,392	Burn and Doroff (2005).
South Alaska Peninsula Shoreline	2001	[a] 2,190	5,212	Burn and Doroff (2005).
South Alaska Peninsula Islands	2001	405	964	Burn and Doroff (2005).
Unimak Island	2001	42	100	Burn and Doroff (2005).
Kodiak Archipelago	2004	.....	6,284	Doroff *et al.* (in prep.).
Kamishak Bay	2002	.....	6,918	USGS Unpublished data.
Total	.....	.....	41,865	

[a] Does not include a count of 461 sea otters from False Pass to Seal Cape, which was also surveyed as part of the south Alaska Peninsula Offshore Areas survey.

The 1976 population estimate based on the work of Calkins and Schneider (1985) is not directly comparable to our current estimate because of somewhat different survey approaches and estimation techniques. Nevertheless, the results provide a basis for at least a rough comparison of the overall extent of the decline of sea otters in southwest Alaska. When compared to the estimate of 94,050 to 128,650 from Calkins and Schneider (1985), the current estimate of approximately 41,865 sea otters is 52,185 to 86,785 lower, which is 55 to 67 percent less than the estimate for 1976.

Translocated Sea Otter Populations

As part of efforts to re-establish sea otters in portions of their historical range, otters from Amchitka Island (part of the Aleutian Islands) and Prince William Sound were translocated to other areas outside the range of what we now recognize as the southwest Alaska distinct population segment, but within the range of *E. l. kenyoni* (Jameson *et al.* 1982). These translocation efforts met with varying degrees of success. From 1965 to 1969, 412 otters (89 percent from Amchitka Island, and 11 percent from Prince William Sound, which is in southcentral Alaska, outside the range of the southwest Alaska DPS) were translocated to six sites in southeast Alaska (Jameson *et al.* 1982). In the first 20 years following translocation, these populations grew in numbers and expanded their range (Pitcher 1989).

The most recent survey of southeast Alaska, conducted in the summers of 2002 and 2003, estimated the sea otter population at just over 9,000 individuals (USGS in litt. 2003). Comparing this survey with skiff survey data from the late 1980s, it appears that further range expansion and population growth in southeast Alaska has not occurred in the past decade.

Sea otters from Alaska also were translocated to Washington, Oregon, and British Columbia, Canada, between 1969 and 1972 (Jameson *et al.* 1982). Sea otters translocated to British Columbia were captured at Amchitka Island and Prince William Sound; the otters translocated to Washington and Oregon were captured at Amchitka Island only. The British Columbia and Washington populations have grown in number and expanded their range, while the Oregon population disappeared. The most recent estimates of population size are 743 in Washington and 2,000 in British Columbia (Jameson and Jefferies 2004; Watson *et al.* 1997). Although these populations, as well as sea otters in southeast Alaska, are at least in part descended from sea otters at Amchitka Island, they are geographically isolated from the southwest Alaska population and their parent population by hundreds of kilometers (see Distinct Vertebrate Population Segment) and are not included in this proposed listing action.

The total number of otters removed from Amchitka as part of this translocation program was just over 600 animals (Jameson *et al.* 1982). Estes (1990) estimated that the sea otter population at Amchitka Island remained essentially stable at more than 5,000 otters between 1972 and 1986, and consequently there is no evidence that removals for the translocation program were a contributing factor in the current population decline.

Previous Federal Action

Based on the results of the April 2000 sea otter survey in the Aleutian Islands, we added sea otters in the Aleutians to our list of candidate species on August 22, 2000 (65 FR 67343). The Center for Biological Diversity (Center) filed a petition to list the Aleutian population of the northern sea otter as endangered on October 26, 2000. Although the petition referred to it as the "Aleutian population," the verbal description of the geographic extent corresponded to the southwest Alaska DPS. On November 14, 2000, we received a Notice of Intent to sue from the Center challenging our decision not to propose to list sea otters in the Aleutians under the Act. We responded to the Center that funds were not available during Fiscal Year 2001 to prepare a proposed listing rule.

On August 21, 2001, we received a petition from the Center to designate the Alaska stock of sea otters (State-wide) as depleted under the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*). Under the MMPA, a marine mammal species or population stock is considered to be depleted when it is below its Optimum Sustainable Population (OSP) level. The OSP is defined in the MMPA as: "the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element." In accordance with the MMPA, we published a notice in the **Federal Register** on September 6, 2001, announcing the receipt of this petition (66 FR 4661). On November 2, 2001, we published our finding on the petition in the **Federal Register** (66 FR 55693). While we acknowledged the evidence of a population decline in the southwest Alaska stock, the best available information at that time suggested that the southeast Alaska stock was increasing, and the southcentral Alaska stock was either stable or increasing. We found that the petitioned action was not warranted under the MMPA for the following reasons: (1) The best estimate of the population size for the entire State of Alaska was greater than the value presented in the petition; (2) based on the best estimate of population size, the Alaska stock of sea otters was above OSP level; and (3) recent information had identified the existence of three stocks of sea otters in Alaska: southwest, southcentral, and southeast (Gorbics and Bodkin 2001). The boundaries of these three stocks are depicted in Figure 5 of the Proposed Rule.

We recently revised the MMPA stock assessment reports for sea otters in Alaska. Draft stock assessment reports identifying the three stocks of sea otters were made available for public review and comment from March 28 to June 26, 2002 (67 FR 14959) (March 28, 2002). The sea otter stock assessment reports were finalized on August 20, 2002, and notice of their availability was published on October 9, 2002 (67 FR 62979).

On January 11, 2002, we received a petition from the Sea Otter Defense Initiative (SODI), a project of the Earth Island Institute, in Deer Isle, Maine. The petition requested that we emergency and permanently list the southwest Alaska stock of sea otters as endangered. We responded to SODI on February 1, 2002, informing them that, based on the best available population estimate that we prepared in response to the Center's petition to list the Alaska stock of sea otters as depleted under the MMPA, an emergency listing of the southwest Alaska stock was not warranted. We also notified SODI that we had begun the preparation of this proposed rule during Fiscal Year 2002.

Based on additional sea otter surveys along the Alaska Peninsula and Kodiak archipelago, and the identification of multiple stocks of sea otters in Alaska, we expanded the candidate species designation on June 3, 2002, to include the geographic range of the southwest Alaska stock of the northern sea otter. Notification of this change was included in our June 13, 2002, notice of review of candidate species (67 FR 40657).

The Center filed a second Notice of Intent to sue on May 5, 2003, and on December 4, 2003, the Center and the Turtle Island Restoration Network (TIRN) filed a lawsuit against Assistant Secretary for Fish and Wildlife and Parks Craig Manson, Secretary of the Interior Gale Norton, and the U.S. Fish and Wildlife Service for failure to comply with non-discretionary provisions of the Act. Specifically, the plaintiffs challenged the defendants' determination that processing the Center's October 26, 2000, petition was "warranted but precluded" by higher listing actions. Plaintiffs also challenged the defendants' failure to issue 90-day and 12-month findings on the petition, and for failure to implement an effective system to monitor the status of the southwest Alaska DPS. Finally, the plaintiffs challenged the defendants' adoption and implementation of their 1996 Petition Management Guidance policy for processing petitions that request the listing of candidate species.

On February 11, 2004, we published the proposed rule to list the southwest Alaska DPS of the northern sea otter as threatened (69 FR 6600). On May 13, 2004, the December 4, 2003, lawsuit by the Center and TIRN was voluntarily dismissed.

Summary of Comments and Recommendations

In the February 11, 2004, proposed rule, we requested all interested parties to submit factual reports, information, and comments that might contribute to development of a final determination. A 120-day public comment period closed on June 10, 2004. We contacted appropriate Federal agencies, State agencies, county and city governments, Alaska Native Tribes and tribal organizations, scientific organizations,

affected landowners and other interested parties to request comments. The Secretary personally announced this action and issued a press release on February 5, 2004, notifying the public of the proposed listing and comment period. Newspaper articles appeared in the Anchorage Daily News and Los Angeles Times on February 6, 2004, that also notified the public about the proposed listing and comment period. We requested 5 peer reviewers to comment on the proposed rule in compliance with our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34270). We held public meetings at 6 locations in Alaska: Cold Bay (May 3, 2004), King Cove (May 4, 2004), Anchorage (May 13, 2004), Kodiak (May 19, 2004), Sand Point (May 24, 2004), and Unalaska (May 27, 2004). These meetings were attended by approximately 50 people in total.

We received requests for public hearings in Kodiak, Unalaska, Sand Point, and Dillingham, Alaska, and held one public hearing in Kodiak, Alaska on May 19, 2004, immediately following a public meeting. We published an announcement of the public hearing in the **Federal Register** on May 5, 2004 (69 FR 25055), the Anchorage Daily News on May 9, 2004, and the Kodiak Daily Mirror on May 14, 17, 18, and 19, 2004. The public hearing was attended by 18 individuals in person, and 5 more by teleconference.

In accordance with Secretarial Order 3225 regarding the Act and subsistence uses in Alaska, we engaged in government-to-government consultation with Alaska Native tribes. Since 1997, we have signed cooperative agreements annually with The Alaska Sea Otter and Steller Sea Lion Commission (TASSC) to fund their activities. As a tribally-authorized Alaska Native Organization, TASSC represents the interests of sea otter hunters throughout the State of Alaska. We attended TASSC board meetings during the preparation of the proposed rule and public comment period, regularly briefing their board of commissioners and staff on relevant issues. In addition to working closely with TASSC, we sent copies of the proposed rule to 52 Alaska Native Tribal Councils specifically requesting their comments on this listing action.

During the public comment period, we received a total of 6,860 comments by letter (27), facsimile (4), e-mail (6,819), and public hearing testimony (10). We received comments from Alaska Native Tribes and tribal organizations, Federal commissions, State agencies, local governments, commercial fishing organizations, conservation organizations, and private citizens. Seventeen commenters opposed the listing, and 6,831 supported it. The remaining 12 commenters expressed neither opposition or support for the listing, but voiced concerns about the possible effects of listing. The vast majority of comments were the result of an organized e-mail campaign that produced 6,787 identical comments in support of the listing. Most of the comments that were opposed to the listing were from residents of southwest Alaska. Several comments were received after the public comment period closed.

We revised the final rule to reflect comments and information we received during the comment period. We address substantive comments concerning the rule below. Comments of a similar nature are grouped together (referred to as "Issues" for the purpose of this summary).

Issue 1: Sea Otter Population Decline

Comment 1: One commenter stated that the current population level of sea otters in southwest Alaska does not warrant listing under the Act. Two other commenters noted that following protection from commercial hunting in 1911, the sea otter population recovered from as low as 1,000–2,000 individuals.

Our Response: Our determination that the southwest Alaska DPS of the northern sea otter warrants listing as threatened is based on the observed declining population trend, rather than the absolute number of sea otters remaining. The definition of a threatened species is one that is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Recent surveys conducted in 2003 and 2004 indicate that the population decline has not abated in several areas within southwest Alaska. If the decline continues at the observed rates, the population may become extirpated throughout portions of its range within the next decade (Estes *et al.* 2005), at which point the DPS may be in danger of extinction. Therefore, the southwest Alaska DPS of the northern sea otter meets the definition of threatened, as it is likely to become endangered in the foreseeable future.

Although sea otters rebounded from an estimated 1,000–2,000 individuals after the cessation of commercial hunting, those remaining otters were distributed in 13 isolated colonies. The current distribution of sea otters is different in that they occur throughout their former range, but at extremely low densities in most areas. Otters are now absent, or nearly so at some of the smaller islands in the Aleutian archipelago to the point where it is possible that Allee effects (reduced productivity at low population densities) may occur (Estes *et al.* 2005).

The recovery of sea otters following the cessation of commercial hunting demonstrated that the species has the potential for recovery once the cause of its decline has been removed. As the cause of the current decline is not known with certainty, the future recovery of the southwest Alaska DPS of the northern sea otter is likewise uncertain.

Comment 2: Several commenters state that sea otters have not really declined, they have simply moved to other areas.

Our Response: Aerial surveys that documented the geographic extent and magnitude of the sea otter decline covered the vast majority of available sea otter habitat in southwest Alaska, so it is highly unlikely that there has been a redistribution of otters within the region. As sea otters typically inhabit relatively small home ranges, it is also unlikely that there has been such a large-scale emigration of animals outside southwest Alaska. The magnitude of the decline is estimated to be more than 50,000 otters, so it is highly unlikely that redistribution on this scale would go unnoticed. Survey data in adjacent areas, such as the Commander Islands, Russia to the west, and Kachemak Bay, Kenai Fiords, and Prince William Sound to the east, do not show population increases that would account for animal movements. See Population Trends of Sea Otters in Southwest Alaska.

Comment 3: Several commenters were critical of the survey data used to estimate the sea otter population size and trend. Specific criticisms included the age of the survey data used, the length of time between surveys, differences in timing of surveys, differences in methods, and the variability of the estimates.

Our Response: We used the best scientific information available to estimate sea otter population size and trend. Although some survey data is now 3–4 years old, more recent surveys in 2003 and 2004 indicate that the sea otter population decline has not abated. Although the length of time between surveys makes it difficult to estimate the onset of the population decline, it does not affect our ability to estimate the magnitude of the decline. Differences in timing of surveys is likely not a factor because study areas were large enough that movement of individual otters would have minimal effect on the overall population estimate. To the greatest extent possible, aerial surveys

of sea otters in southwest Alaska have been conducted using similar methods to earlier surveys to allow for direct comparison of results. While some of the sea otter population estimates (such as the pre-decline surveys along the Alaska Peninsula) have considerable variability, the magnitude of the decline in these areas is so great that the likelihood that the population has not declined is exceedingly small.

Comment 4: Several commenters questioned whether sea otters have declined in some areas within southwest Alaska. Three commenters stated that there has been no decline of sea otters in the Kodiak archipelago, and five commenters cited survey data that suggests the population at Unalaska Island has been stable for the past 4 years.

Our Response: The results of our summer 2004 aerial survey of the Kodiak archipelago indicate that the sea otters in this area may not have continued to decline since 2001; however, the two estimates are not significantly different statistically. The current estimate remains 36 percent lower than in 1994, and 54 percent lower than in 1989 (Doroff *et al.* in prep.).

Doroff *et al.* (2003) estimated that the onset of the decline in the Aleutians occurred in the late 1980s or early 1990s. In 1992, observers recorded 554 sea otters along the shoreline of Unalaska island. In 2000, only 374 otters were observed, which is a decline of 32 percent over the intervening 8-year period. By the time that skiff survey data from Unalaska were collected beginning in 1999, the majority of the decline had already occurred. It is not possible to determine sea otter population trends from the Unalaska skiff survey data, as it has not been standardized by the amount of survey effort to allow for a valid comparison over time.

Comment 5: Several commenters stated that the sea otters have exceeded the carrying capacity of the environment, and that decline is part of a natural cycle. Some commenters stated that archaeological data shows that changes in sea otter abundance have occurred over time.

Our Response: As sea otters recolonized their former range during the 20th century, the typically observed pattern was for initial rapid population growth, followed by a period of decline until the population reached equilibrium density. The driving factor in the subsequent decline was prey scarcity, which led to either starvation and/or emigration of otters. If sea otters had in fact exceeded the carrying capacity of the environment, we would expect to see fewer prey and more starving sea otters, neither of which have been observed. Contrary to this expectation, the biomass of sea urchins, the preferred prey species of sea otters in the Aleutians, is significantly greater in areas where otters have declined, and sea otter carcasses are relatively scarce (Estes *et al.* 1998).

We are aware of some recent archaeological information from a small number of sites that indicates the presence of sea otter remains in midden sites has fluctuated over long time scales; however, several interpretations are possible from these data. For example, it is not known if the abundance of items in these sites is a function of their abundance in the environment or hunter selectivity. It is also not clear if cultural uses of sea otters may have varied over time, resulting in changes in the deposition of bones present in middens. For example, if otters were harvested for their pelts only and the remainder of the carcass were not retrieved, it is unlikely that their bones would be represented in midden sites.

Comment 6: One commenter stated that the use of counts in some areas and estimates in other areas was confusing.

Our Response: We revised the rule to clarify the difference between the counts and estimates in an earlier section (see Population Trends of Sea Otters in Southwest Alaska). While there are differences between the two types of surveys, in all cases we compare counts with counts and estimates with estimates to determine sea otter population trends.

Comment 7: One commenter stated that there are no reliable estimates of pre-decline abundance of sea otters in southwest Alaska.

Our Response: We acknowledge that the data record for sea otters in southwest Alaska is sparse, and that with the exception of Calkins and Schneider (1985), there are no comprehensive population estimates for the pre-decline population. Burn *et al.* (2003) used computer models to estimate the carrying capacity and pre-decline abundance of sea otters in the Aleutian islands, and their result was comparable to that of Calkins and Schneider (1985). Regardless of the lack of a comprehensive pre-decline estimate, comparisons between baseline (1986–1992) and recent (2000–2001) surveys clearly indicate that the sea otter population in southwest Alaska has undergone a substantial decline. Furthermore, aerial and skiff-based surveys conducted in 2003 and 2004 indicate that the decline has not abated throughout much of the region.

Comment 8: One commenter stated that there appears to be different rates of decline between the different study areas within southwest Alaska.

Our Response: This observation is correct. In addition to differences in the overall magnitude of the decline between study areas, there are also differences in the estimated annual rates of decline between regions as well as time periods. For example, Doroff *et al.* (2003) estimated that sea otters declined at an annual rate of 17.5 percent per year during the 1990s. During the same time period, sea otters in the Kodiak archipelago declined at an estimated rate of 6–7 percent per year (Doroff *et al.* in prep.). More recently, otters in the western and central Aleutians have declined by an estimated 29 percent per year between 2000 and 2003 (Estes *et al.* 2005). As the cause of the decline is not known with certainty, it is unclear why there are differences in the estimated rates of decline. That the rates are different does not alter the fact that the sea otter population has declined significantly throughout much of southwest Alaska.

Issue 2: DPS Justification

Comment 9: Two commenters stated that the sea otter population in southwest Alaska does not meet the test of discreteness because it is not genetically distinct from translocated populations. One commenter also noted that studies indicate there is further genetic differentiation of sea otters within southwest Alaska. This commenter also stated that there is no long-term genetic separation in evolutionary time, and that there is nothing genetically special about sea otters in southwest Alaska. Lastly, this commenter stated that the proposed rule did not consider all available genetics information.

Our Response: Genetic distinctness may be important in recognizing some DPS's, but this kind of evidence is not specifically required in order for a DPS to be recognized. Genetic information can play two different roles in the evaluation of whether a population should be recognized as a distinct vertebrate population segment for the purposes of listing under the Act. First, quantitative genetic information may, but is not required to, provide evidence that the population is markedly separated from other populations and thus meets the DPS policy's criterion of being discrete. The DPS policy's standard for discreteness is meant to allow an entity given DPS status under the Act to be adequately defined and

described. The standard adopted is believed to allow entities recognized under the Act to be identified without requiring an unreasonably rigid test for distinctness. At the same time, the standard does not require absolute separation of a DPS from other members of its species, because this can rarely be demonstrated in nature for any population of organisms. Second, genetic characteristics that differ markedly from other populations may be one consideration in evaluating the DPS's biological and ecological significance to the taxon in which it belongs.

We considered all available genetic information in our discreteness evaluation. Some of these studies were specifically conducted to look at population structuring, while others were designed to look at the amount of genetic variability of both remnant and translocated sea otter populations. All existing sea otter populations have experienced at least one genetic bottleneck caused by the commercial fur harvests from 1741 to 1911. Translocated populations experienced a second bottleneck, as it is likely that only an unknown portion of the available genetic diversity was sampled in the process of moving sea otters into other areas (Larson *et al.* 2002). Furthermore, we can consider an entity eligible for listing if the entity meets the third factor of our DPS policy: evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historic range.

Rather than rely on genetic information alone to determine if sea otters in southwest Alaska are markedly separated from other populations, we gave considerable weight to the work of Gorbics and Bodkin (2001), who followed the phylogeographic approach of Dizon *et al.* (1992) to identify stock structure. We believe that this approach, which considers multiple lines of evidence including distribution, population response, morphology, and genetics, provides a more robust assessment of separation than any single technique alone.

Comment 10: One commenter stated that morphological differences between sea otters may reflect differences in environmental conditions, rather than genetic differences.

Our Response: We agree with this observation, which is one reason we did not base our determination of discreteness for the DPS on morphological information alone. As outlined in our response to comment 9, we relied upon a method that considered multiple types of information including morphology, genetics, and geographic distribution (Dizon *et al.* 1992).

Comment 11: One commenter and one peer reviewer questioned whether Cook Inlet constitutes a barrier to sea otter movements.

Our Response: As the historical distribution of sea otters prior to the onset of commercial fur harvests in 1741 included ice-free waters of the Pacific rim from northern Japan to Baja, Mexico, it is clear that expanses of deep water such as Cook Inlet do not constitute an impenetrable barrier to animal movements. Available survey information suggests that this may not be a common occurrence, however. In accordance with our DPS policy, absolute reproductive isolation is not a prerequisite to recognition of a DPS. This would be an impracticably stringent standard, and one that would not be satisfied even by some recognized species that are known to sustain a low frequency of interbreeding with related species.

Comment 12: One commenter stated that the Service subdivided the Alaska population into three population stocks under the MMPA in order to invoke the Act and list sea otters in southwest Alaska as a DPS.

Our Response: The Service initially proposed the identification of three stocks of sea otters in Alaska in March 1998 (63 FR 10936). The preparation of three draft stock assessment reports occurred prior to both the initial publication of information about the sea otter decline in the Aleutians (Estes *et al.* 1998) and completion of aerial surveys that determined the geographic extent and magnitude of the decline. Our proposal of three sea otter stocks in 1998 was challenged by the Alaska Sea Otter Commission (ASOC, name now changed to TASSC), an Alaska Native Organization, in accordance with Section 117(b)(2) of the MMPA. The Service and ASOC entered into a memorandum of agreement to resolve this disagreement. After additional genetic analysis addressing the issue of stock identification was completed, in March 2002 we once again proposed the identification of three stocks of sea otters in Alaska (67 FR 14959). ASOC did not challenge the proposal, and we finalized the stock assessment reports in August 2002 (67 FR 62979). The identification of three stocks of sea otters in Alaska was based on the best available scientific information, that had been published in peer-reviewed scientific journals and was reviewed and approved by the Alaska Regional Scientific Review Group that advises the Service on our stock assessment reports.

Comment 13: One commenter stated that the sea otter population in southwest Alaska does not meet the test of significance because other genetic information suggests other population groupings are possible.

Our Response: This comment cited studies that indicate there is a degree of genetic similarity between sea otters in the Commander Islands, Russia, and California with otters in southwest Alaska. We relied on the most recent and generally scientifically accepted taxonomic classification of the sea otter by Wilson *et al.* (1991) to determine the significance of the southwest Alaska DPS to both the species (*Enhydra lutris*) and the subspecies (*Enhydra lutris kenyoni*). The loss of this population would result in a significant gap of over 2,500 km (1,552 miles) in the range of both the species and subspecies.

Criteria for judging the significance of a DPS includes, but is not limited to, the four examples listed in our DPS policy (see Distinct Vertebrate Population Segment). Of the 11 surviving remnant populations present in 1911, 6 occurred within the range of the southwest Alaska DPS. Although otters were translocated from Amchitka Island, they were most likely descended from only one remnant colony. Therefore we believe the extinction of this DPS would constitute a loss of a significant portion of the genetic diversity of the taxon.

Issue 3: Causes of the Decline

Comment 14: Several commenters stated that the cause of the decline is unknown. Other commenters stated that the decline was not caused by human activities, and one commenter stated that killer whales are not responsible for the decline.

Our Response: We agree that the cause of the decline is not known with certainty. Although there is still considerable disagreement within the scientific community, the weight of evidence at this time suggests that the cause of the decline may be increased predation by killer whales. It is not a requirement for listing under the Act that the threat to a species be caused by human activities, nor is it a requirement that the cause be known at the time of listing.

Comment 15: One commenter stated that none of the five factors under the Act are applicable in this instance.

Our Response: The third factor in the five factor analysis identified in section 4(a)(1) of the Act is Disease or Predation. As stated in our response to comment 14, the best available scientific information suggests that the cause of

the decline may be predation by killer whales, so this factor is applicable to the sea otter decline.

The fourth factor in the five factor analysis is the Inadequacy of Existing Regulatory Mechanisms. The MMPA of 1972 is the primary existing statute that protects sea otters in U.S. waters, yet the southwest Alaska DPS of sea otters has declined despite these existing protections. Additional provisions that would regulate subsistence harvest and minimize incidental take in fisheries are not likely to help conserve the DPS, as the impact of these factors is believed to be negligible.

The remaining three factors in the five factor analysis (Habitat, Overutilization, and Other Natural or Manmade factors), while likely not causes of the current decline, could become threats to the DPS. If the current population trend continues, sea otters may disappear from parts of the range of the DPS, and the remaining areas of high concentration may be more vulnerable to catastrophic events such as disease epidemics and oil spills.

Comment 16: Several commenters expressed concern over the impacts of a variety of human activities, including commercial fisheries, fish waste from processors, oil spills, and contaminants.

Our Response: As stated in our response to comment 15, we do not believe that these activities have played a significant role in the sea otter decline in southwest Alaska, and do not pose an immediate threat to the DPS. We anticipate that these factors will be more fully considered during the development of a recovery plan.

Issue 4: Threatened vs. Endangered Status

Comment 17: There were 6,814 commenters who stated that the southwest Alaska DPS of the northern sea otter should be listed as endangered rather than threatened. Although these commenters did not express a rationale for listing at the endangered level, one other commenter stated that the magnitude of the decline in the Aleutian islands, which constitute a "significant portion of the range," warrants listing the DPS as endangered.

Our Response: The southwest Alaska DPS contains areas with diverse population trends, including: (1) The Aleutians and portions of the Alaska Peninsula that have declined precipitously and are continuing to decline; (2) the Kodiak archipelago, which has declined overall but not during the past 3 years; and (3) Port Moller and Kamishak Bay, which do not appear to have declined, and continue to support high concentrations of sea otters that have the potential to recolonize the rest of the DPS. The population trend in the Aleutian archipelago, which constitutes approximately 30 percent of the available habitat within the range of the DPS, is a cause for concern: The continuation of the current trends could lead to the loss of all of the otters in that area in the foreseeable future. Although that loss would not result in the extinction of the DPS, it might put the DPS in danger of extinction at that time (see Conclusion of Status Evaluation). Therefore, a designation of threatened status is most appropriate for the southwest Alaska DPS of the northern sea otter.

Issue 5: Subsistence Harvest

Comment 18: Several commenters stated that the subsistence harvest of sea otters by Alaska Natives is contributing to the sea otter decline, and that the removal of 100 otters per year from the population is not prudent. Several other commenters stated that the subsistence harvest is not contributing to the decline.

Our Response: The best available scientific information does not indicate that the subsistence harvest has had a major impact on the southwest Alaska DPS of the northern sea otter. Some of the largest observed sea otter declines have occurred in areas where subsistence harvest is either nonexistent (the Near and Rat islands in the Aleutians) or extremely low (the Shumagin and Pavlof islands). The majority of the subsistence harvest in southwest Alaska occurs in the Kodiak archipelago, where the level of subsistence harvest ranged from 0.4–1.3 percent of the estimated population size from 1989'2001 (Doroff *et al.* in prep.). Given the estimated population growth rate of 10 percent per year estimated for the Kodiak archipelago by Bodkin et al. (1999), we would expect that these harvest levels by themselves would not cause a population decline.

Section 10(e) of the Act provides an exemption that allows Alaska Natives to take endangered or threatened species for subsistence purposes. The Service may only prescribe regulations on subsistence harvest if we determine that such taking materially and negatively affects the endangered or threatened species. Areas within the southwest Alaska DPS with the steepest population declines, such as the Aleutian islands, have virtually no subsistence harvest due to minimal human habitation. The majority of the subsistence harvest occurs in the Kodiak archipelago, where the harvest has been well below the estimated population growth rate. Given the geographic distribution and historic levels of the subsistence harvest relative to the size of the sea otter population, we do not believe the harvest is materially and negatively affecting the DPS at this time. If the sea otter population continues to decline in southwest Alaska, however, it is possible that the harvest of 100 otters per year could materially and negatively impact the remaining population, and regulation of the harvest would be warranted.

Comment 19: One commenter stated that the subsistence harvest should be managed. Conversely, several commenters expressed concern that the rights of Alaska Natives to take sea otters for subsistence should be protected.

Our Response: In order to regulate the subsistence harvest of sea otters by Alaska Natives, the Secretary would have to make a determination that the harvest was materially and negatively impacting the DPS, and promulgate regulations under Section 10(e)(4) of the Act. In addition, once it is listed as threatened under the Act, the southwest Alaska stock of the northern sea otter will automatically be considered "depleted" under the MMPA, and the Secretary could prescribe regulations of the subsistence harvest under section 101(b)(3) of the MMPA. In order to do so, the Secretary would be responsible for demonstrating that such regulations are "supported by substantial evidence on the basis of the record as a whole." As stated in the response to Comment 18, we do not believe that the subsistence harvest poses an immediate threat to the southwest Alaska DPS; therefore, regulation of the harvest is not warranted at this time.

Comment 20: Several other commenters expressed concern that listing under the Act may result in the prohibition on export of authentic Native handicrafts made from sea otters.

Our Response: Our regulations at 50 CFR 17.31 of the Act outline prohibited activities, including import or export of listed species from the United States. As we do not believe the current level of subsistence harvest poses a threat to the southwest Alaska DPS, in today's **Federal Register**, we proposed the promulgation of a special rule under Section 4(d) of the Act that would align the provisions of the Act relating to the creation, shipment, and sale of the authentic native handicrafts and clothing by Alaska Natives with what is already allowed under the MMPA. Export for commercial purposes is prohibited under both the MMPA and the Act, and would not be authorized under the proposed special rule.

Issue 6: Impacts of Listing

Comment 21: Several commenters expressed concern that listing under the Act may result in additional regulation of commercial fisheries in southwest Alaska. Other commenters expressed concern about the impacts of listing on harbor and dock projects in the region.

Our Response: The best available scientific information indicates that interactions between commercial fisheries and sea otters, either in the form of competition for prey species or entanglement in gear, do not pose an immediate threat to sea otters in southwest Alaska. Information on fishery interactions is limited, however, and additional observer programs directed at fisheries with the greatest potential for entanglement of sea otters is recommended.

Harbor and dock projects that have a Federal nexus and that may affect listed species require interagency consultation under Section 7 of the Act. Those projects that are likely to adversely affect the species must undergo formal consultation, which may result in minor changes to the project design to minimize the impact to sea otters.

Lastly, while economic impacts are considered when designating critical habitat for a listed species, they do not factor into decisions about listing.

Issue 7: Critical Habitat

Comment 22: Several commenters state that habitat protection is important for the survival of sea otters in southwest Alaska. Other commenters stated that it was unclear how critical habitat will be designated. Yet another commenter stated that critical habitat should not be broadly defined, and that shallow coves and lagoons may be important for sea otters as refugia from predators.

Our Response: Although there is no evidence to suggest that loss of habitat has been a contributing factor in the sea otter decline, we agree that habitat protection may be an important factor in the recovery of the population. However, the extent of critical habitat is not yet determinable. The Service specifically requested input on this subject during the public comment period, and we are currently considering how best to delineate critical habitat for the southwest Alaska DPS of the northern sea otter. Once we are able to determine the geographic extent of critical habitat, it will be designated through a separate rulemaking process that will include an opportunity for public review and comment.

Comment 23: One peer reviewer and one commenter stated that if killer whale predation is the cause of the sea otter decline, then the true critical habitat for this DPS may actually be further offshore in areas not inhabited by the otters themselves. That is, changes in killer whale habitat may be responsible for increased predation of sea otters.

Our Response: We find that designation of critical habitat for the southwest Alaska DPS of the northern sea otter is not determinable at this time because we are unable to identify the physical and biological features essential to the conservation of this DPS. See Critical Habitat. We will consider designating critical habitat for this species later, as allowed under the Act when the Service considers critical habitat "not determinable" at the time of listing.

Issue 8: Interagency Consultation and Recovery Planning

Comment 24: One reviewer stated that interagency consultation under Section 7 of the Act will not be an effective means of enhancing the sea otter population in southwest Alaska.

Our Response: The purpose of interagency consultation is to determine if activities with a Federal nexus may affect listed species. Although we cannot identify any human activities that have been directly responsible for the sea otter decline, interagency consultation will help minimize the impacts of future activities on the recovery of the DPS.

Comment 25: One commenter stated that the Service should promptly form a recovery team and begin the process of recovery planning.

Our Response: We agree that recovery planning should commence as soon as possible, and have been working throughout the listing process with potential members of a recovery team. We anticipate forming the recovery team and beginning the process of recovery planning within the first year following publication of this final rule.

Comment 26: Several commenters stated that, as there is no evidence that human activities are directly responsible for the sea otter decline, a recovery plan will not be effective. Similarly, several other commenters stated that there are no human actions that can be taken that would increase the sea otter population in southwest Alaska.

Our Response: We believe that it is premature to conclude that there are no human actions that could be taken to conserve the sea otter population in southwest Alaska. This issue will be more appropriately addressed in the recovery planning process. Although there is no evidence to suggest that human activities are directly responsible for the decline, we also believe that the development of a recovery plan will help identify potential future threats to the southwest Alaska DPS of the northern sea otter. Protection from these threats would become even more important should the population continue to decline. For example, although there is no evidence to suggest that oil spills have caused the sea otter decline, there may be areas of high concentrations of sea otters that could benefit from additional spill response planning and protection measures. The recent spill from the M/V *Selendang Ayu* underscores the unpredictable, and potentially catastrophic, effects of oil spills in southwest Alaska.

Comment 27: One commenter proposed that sea otters could be translocated from southeast to southwest Alaska to help reverse the population decline.

Our Response: As evidenced by the success of translocations to southeast Alaska, Washington State, and British Columbia, Canada, this technique has been effective at re-establishing sea otter populations in areas where they had been extirpated by commercial fur harvests. Specific measures to help conserve the sea otter population in southwest Alaska will be considered during the recovery planning process.

Comment 28: One commenter proposed that management authority for sea otters should be transferred to the Alaska Department of Fish and Game.

Our Response: The MMPA delegates authority for sea otters in U.S. waters to the Secretary of the Interior. Sections 109(b) and 109(f) of the MMPA outline the procedure for transfer of management authority from Federal to State jurisdiction. Any transfer of authority must be initiated by a request from the State, which has not occurred.

Issue 9: Research Needs

Comment 29: Several commenters stated that additional research is needed, including studies into the cause of the decline, the genetic structure of sea otter populations in Alaska, population surveys, tagging and tracking individual otters, and fisheries observer programs, prior to listing the population under the ESA.

Our Response: We fully agree that additional research is needed to help determine the cause of the sea otter decline as well as identify future threats to the southwest Alaska DPS. In April 2002 we convened a workshop in Anchorage, Alaska, to review available information regarding the sea otter

decline in southwest Alaska and develop recommendations for future research. In April 2004, a second similar workshop was hosted by the Alaska SeaLife Center in Seward, Alaska. We have continued to monitor the population at several locations throughout southwest Alaska, and have initiated several studies in conjunction with the U.S. Geological Survey, Alaska SeaLife Center, and TASSC.

The need for additional research does not preclude us from listing the DPS at this time, as the Act requires us to consider the best scientific and commercial data available. Although some of these studies are ongoing now, to postpone this listing action until additional research has been completed would not improve the status of the species, and would not be in keeping with the mandates of the Act.

Issue 10: The Listing Process

Comment 30: Several commenters stated that the Service did not follow standard operating procedures and Secretarial Order 3225 regarding government-to-government consultation with Alaska Native Tribes.

Our Response: As detailed in the introduction to this section of the final rule, the Service actively engaged in consultation with Alaska Native Tribes in southwest Alaska. From the time that we developed plans to conduct the aerial survey of sea otters in the Aleutians in January 2000 until publication of the proposed rule in February 2004, the Service kept TASSC, a tribally authorized organization, fully informed on this issue. The Service attended multiple board meetings each year to present updated information on survey plans and results, as well as progress on the development of the proposed rule. In addition to board meetings, we provided TASSC with monthly updates on these issues. Following publication of the proposed rule, the Service actively solicited comments from 52 Alaska Native Tribes within the range of the southwest Alaska DPS of the northern sea otter. We received comments on the proposed rule from six tribal councils, as well as TASSC and the Aleut Marine Mammal Commission, both tribally-authorized Alaska Native Organizations.

Comment 31: Several commenters stated that the listing action was not initiated by individuals, communities, or organizations within southwest Alaska.

Our Response: It is not a requirement of the Act that listing actions be initiated by residents of the area where the species, subspecies, or DPS occurs. The listing action was initiated by the Service, the Federal agency with management responsibility for sea otters in U.S. waters. Biologists from the Marine Mammals Management Office in Anchorage, Alaska, conducted the aerial surveys of sea otters in 2000 and 2001 that determined the geographic extent and magnitude of the decline. Based on the results of these surveys, the Service designated sea otters in the Aleutians as a candidate species in August 2000. We later expanded candidate species designation to encompass the range of the southwest Alaska DPS in June 2002.

Comment 32: The Service did not follow its own policy on the recognition of distinct vertebrate population segments under the Act (61 FR 4722).

Our Response: As detailed in our responses to earlier comments, the Service followed the DPS policy. We first examined the discreteness of the population segment in relation to the remainder of the species to which it belongs. Next we determined the significance of the population segment to the species to which it belongs, and finally, we evaluated the population segment's conservation status in relation to the Act's standards for listing. In doing so, we found that the sea otters in southwest Alaska meet the definition of a DPS (see Distinct Vertebrate Population Segment).

Comment 33: One commenter stated that the public comment period was inconvenient.

Our Response: The typical public comment period for a proposed rule to list a species under the Act is 60 days. Understanding that many residents of southwest Alaska rely on subsistence and/or commercial fishing, and that these activities are seasonal in nature, we established a 120-day public comment period to give people more time to review and comment on the proposed rule. We also scheduled the public comment period to avoid conflict with summer fishing activities.

Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Act Activities (59 FR 34270), we solicited review from five experts in the fields of ecology, conservation, genetics, taxonomy, pathology, and management. Three of these experts have direct experience with sea otters in Alaska, and the other two experts are well-known marine mammal biologists. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input from appropriate experts. Two reviewers sent us letters during the public comment period. Neither reviewer expressed support or opposition to the listing of the southwest Alaska DPS of the northern sea otter as threatened, but both provided corrections on minor factual issues, interpretation of data, and citations. Their information has been incorporated, as appropriate.

Distinct Vertebrate Population Segment

Pursuant to the Act, we must consider for listing any species, subspecies, or, for vertebrates, any distinct population segment (DPS) of these taxa if sufficient information indicates that such action may be warranted. To interpret and implement the DPS provision of the Act and Congressional guidance, the Service and the National Marine Fisheries Service published, on December 21, 1994, a draft Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Act and invited public comments on it (59 FR 65885). After review of comments and further consideration, the Services adopted the interagency policy as issued in draft form, and published it in the **Federal Register** on February 7, 1996 (61 FR 4722). This policy addresses the recognition of DPSs for potential listing actions. The policy allows for more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require its protective measures.

Under our DPS policy, three elements are considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act. These are applied similarly for additions to the list of endangered and threatened species, reclassification, and removal from the list. They are: (1) Discreteness of the population segment in relation to the remainder of the taxon; (2) the significance of the population segment to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment, when treated as if it were a species, endangered or threatened?). A systematic application of the above elements is appropriate, with discreteness criteria applied first, followed by significance analysis. Discreteness refers to the isolation of a population from other members of the species and we evaluate this based on specific criteria. We determine significance by using the available scientific information to determine the DPS's importance to the taxon to which it belongs. If we determine that a population segment is discrete and significant, we then evaluate it for

endangered or threatened status based on the Act's standards.

Discreteness

Under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions:

1. It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

2. It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

The focus of our DPS evaluation is the subspecies *E. l. kenyoni*, which occurs from the west end of the Aleutian Islands in Alaska, to the coast of the State of Washington (Wilson *et al.* 1991), as depicted in Figure 1 of the Proposed Rule. To the west of the Aleutian Islands, the sea otters in Russia are recognized as a separate subspecies, *E. l. lutris*. Although sea otters in Russia are also delimited by an international governmental boundary, differences in control of exploitation, management of habitat, conservation status, and regulatory mechanisms are not clear. Russia includes the sea otter as a species that is recovering in its Red Data Book of the Russian Federation (the Red Data Book is a listing of species afforded special recognition or legal protection within Russia). Sea otters in Russia are under jurisdiction of the Ministry of Natural Resources, and are protected from all hunting, although poaching remains a concern. The distance between the Near Islands in the Aleutians to the Commander Islands in Russia is approximately 320 km (200 mi), and the amount of interchange between the two subspecies is believed to be low because of the long distance between island groups over deep water.

In the lower portion of Cook Inlet, a different type of barrier exists in the form of an expanse of deep water. The distance across lower Cook Inlet ranges from 50–90 km (31–56 miles). While sea otters are physically capable of swimming these distances, the water depths of up to 260 m (142 fathoms) and lack of food resources for sea otters in deep water areas makes such movements across this open water area unlikely. The degree to which this barrier limits sea otter movements is not known with certainty.

Surveys conducted for sea otters and other species in the area of lower Cook Inlet confirm the discontinuity of sea otters in this area. In the summer of 1993, Agler *et al.* (1995) conducted boat-based surveys of marine birds and mammals, including sea otters, in lower Cook Inlet. During approximately 1,574 km (978 miles) of survey effort, only one sea otter was observed in the center of the Inlet. More recently, during an aerial survey of sea otters conducted in the summer of 2002, no otters were observed on 324 km (201 miles) of transects flown across the center of Cook Inlet (USGS in litt. 2002).

Information gathered incidental to surveys of other species also indicates that sea otters rarely occur in the offshore areas of lower Cook Inlet, further confirming the discontinuity of sea otters in this area. The NMFS has conducted aerial surveys of beluga whales, *Delphinapterus leucas*, in Cook Inlet since 1993. In addition to beluga whales, observers recorded observations of other marine mammals, including sea otters. During these surveys, which covered a combined total of 11,583 km (7,197 miles) of systematic transects flown across the inlet over several years, no sea otters were observed in the deeper, offshore areas of Cook Inlet (Rugh *et al.* 2000). The NMFS also conducted a marine mammal observer program during the Cook Inlet salmon drift and set gillnet fisheries in 1999 and 2000 (Fadely and Merklein 2001). During this period with several thousand hours of observations, no sea otters were recorded in the offshore areas of Cook Inlet. Given the amount of survey effort that has been expended, the almost complete lack of observations in deeper offshore waters suggests that there may be only limited exchange of sea otters between the eastern and western shores of lower Cook Inlet.

Sea otters in southwest and southcentral Alaska also differ morphologically. Comparison of 10 skull characteristics between 26 adult sea otters from Amchitka Island and 42 sea otters from Prince William Sound showed numerous statistically significant differences, with the Amchitka otters being the larger of the two (Gorbics and Bodkin 2001).

Genetic and morphological differences were part of the basis for identification of sea otter population stocks under the MMPA (USFWS 2002a, USFWS 2002b, USFWS 2002c). The Service and NMFS have adopted the methods of Dizon *et al.* (1992), who outlined four criteria for consideration when identifying marine mammal population stocks: (1) Distribution; (2) population response; (3) morphology; and (4) genetics. Applying these criteria to the best available scientific information, Gorbics and Bodkin (2001) identified three stocks of sea otters in Alaska, the southwest, southcentral, and southeast stocks, with ranges as depicted in Figure 5 of the Proposed Rule.

Within the range of the southwest Alaska stock of the northern sea otter, we recognize that there are differences in the rates and magnitude of population decline since the mid-1980s. Although there is some evidence of additional genetic differentiation within the southwest Alaska stock (Cronin *et al.* 2002), the best available scientific information on taxonomy, genetics, and morphometrics does not support identification of additional sea otter stocks at this time. The stock assessment process outlined in Section 117 of the MMPA includes oversight by Regional Scientific Review Groups (SRGs) composed of non-Federal marine mammal experts. The information upon which the Service based currently recognized stock structure was reviewed by the Alaska Regional SRG, who concurred with the identification of three sea otter stocks in Alaska. As both the identification of marine mammal stocks under the MMPA and the discreteness evaluation of a DPS under the Act are based upon similar criteria, we believe that the appropriate geographic extent for this DPS corresponds to the entire southwest Alaska stock, rather than any smaller area within the stock boundary.

In summary, sea otters from the Aleutian Islands to lower western Cook Inlet are a population that differs from other sea otters in several respects. Sea otters to the west of the Aleutians are geographically separated by an expanse of approximately 320 km of open water and an international boundary, and are recognized as belonging to a different taxon, the subspecies *E. l. lutris*. Within the taxon *E. l. kenyoni*, there are physical barriers to movement across the upper and the lower portions of Cook Inlet, and there are morphological and some genetic differences between sea otters that correspond to the southwest and southcentral Alaska stocks that we identified under the MMPA, with Cook Inlet being the boundary separating these stocks. The geographic separation between the southwest and southeast Alaska stocks is even greater than between the southwest and southcentral Alaska stocks.

Based on our consideration of the best scientific information available, we find

that the southwest Alaska population of the northern sea otter that occurs from the Aleutian Islands to Cook Inlet, corresponding to the southwest Alaska stock as identified by us previously under the MMPA (Figure 5 of the Proposed Rule), is markedly separated from other populations of the same taxon as a consequence of physical factors, and there is genetic and morphological discontinuity that is evidence of this separation. Therefore, the southwest Alaska population of the northern sea otter meets the criterion of discreteness under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments.

Significance

If we determine a population segment is discrete, we next consider available scientific evidence of its significance to the taxon to which it belongs. Our policy states that this consideration may include, but is not limited to, the following:

1. Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon,
2. Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon,
3. Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range, or
4. Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The sea otter population that corresponds to the southwest Alaska stock contains over 60 percent of the current geographic range for the subspecies *E. l. kenyoni*. Following protection from commercial exploitation in 1911, sea otters recovered quickly in southwest Alaska, which is a remote part of the State. In the mid-1980s, biologists believed that 94 percent of the subspecies *E. l. kenyoni*, and 84 percent of the world population of E. lutris, existed in southwest Alaska (Calkins and Schneider 1985). Loss of this population segment would result in a significant gap of more than 2,500 km (1,553 mi.), in both the current and historical range of the species, *E. lutris*. Loss of this DPS would result in the loss of a "major geographic area" to both the species and subspecies.

The range of the southwest Alaska DPS contains 6 of the 11 remnant sea otter populations that survived the commercial fur harvests. Descendants of only one of these remnant populations (Amchitka) have been translocated beyond the boundaries of the DPS to southeast Alaska, Washington State, and British Columbia, Canada. The genetic diversity of the other 5 remnant populations within the southwest Alaska DPS occurs nowhere else in the world. Loss of this DPS would therefore result in a significant loss of genetic diversity of both the species *E. lutris* and subspecies *E. lustris kenyoni*. The worldwide population of sea otters underwent a genetic bottleneck as a result of commercial fur harvests; additional loss of genetic diversity may reduce overall fitness of both the species and subspecies.

Therefore, we find that the southwest Alaska population segment is significant to the taxon to which it belongs because the loss of this segment would result in a significant gap in the range and the segment contains a significant amount of genetic diversity of the taxon.

Summary of Discreteness and Significance Evaluations

Based on the above consideration of the southwest Alaska population of the northern sea otter's discreteness and its significance to the remainder of the taxon, we find that it is a distinct population segment. The population's discreteness is due to its separation from other populations of the same taxon as a consequence of physical factors, and there are morphological and genetic differences from the remainder of the taxon that are evidence of this separation. The population segment's significance to the remainder of the taxon is due principally to the significant gap that its loss would represent in the range of the taxon. In addition, this population segment represents a considerable portion of the overall genetic variability of the species. We refer to this population segment as the southwest Alaska DPS throughout this final rule.

Conservation Status

Pursuant to the Act, we must consider for listing any species, subspecies, or, for vertebrates, any distinct population segment of these taxa, if there is sufficient information to indicate that such action may be warranted. We have evaluated the conservation status of the southwest Alaska DPS of the northern sea otter in order to make a determination relative to whether it meets the Act's standards for listing the DPS as endangered or threatened. Based on the definitions provided in section 3 of the Act, endangered means the DPS is in danger of extinction throughout all or a significant portion of its range, and threatened means the DPS is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal list. As defined in section 3 of the Act, the term "species" includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature. We may determine a species to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors, and their application to the southwest Alaska DPS of the northern sea otter, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat destruction or modification are not known to be major factors in the decline of the southwest Alaska DPS of the northern sea otter. At present, no curtailment of range has occurred, as sea otters still persist throughout the range of the DPS, albeit at markedly reduced densities. As there is no evidence to suggest that the decline has abated, it is possible that additional population losses may occur that would curtail the range of sea otters in southwest Alaska. In particular, sea otters in the western and central Aleutian islands, and Shumagin and Pavlof islands, have declined by an order of magnitude or more, and recent survey data indicates the decline continues in these areas. If this trend continues, the range of sea otters in the southwest Alaska DPS may contract within the foreseeable future.

Human-induced habitat effects occur primarily in the form of removal of some of the prey species used by sea otters as a result of resource use such as commercial fishing, which occurs throughout southwest Alaska. While there are some fisheries for benthic invertebrates in southwest Alaska, there is little competition for prey resources due to the limited overlap between the geographic distribution of sea otters and fishing effort. In addition, the total commercial catch of prey species used by sea otters is relatively small (Funk 2003). In studies of sea otters in the Aleutians, there was no evidence that sea otters are nutritionally stressed in that area, and foraging behavior, measured as percent feeding success, has increased during the 1990's (Estes *et al.* 1998).

Development of harbors and channels by dredging may affect sea otter habitat on a local scale by disturbing the sea floor and affecting benthic invertebrates that sea otters eat. There are approximately 40 communities located within the range of the southwest Alaska DPS. As harbor and dredging projects typically impact an area of 50 hectares or less, we consider the overall impact of these projects on sea otter habitat to be negligible.

Catastrophic oil spills have the potential to adversely modify sea otter habitat, and are discussed in detail under Factor E.

Considering the broad range of the southwest Alaska DPS of the northern sea otter, along with the relatively minimal amount of human habitation and activities in this region, destruction or modification of habitat is not a threat to the continued existence of this DPS in the foreseeable future. If current population trends continue, however, the range of sea otters within the DPS may contract. Areas of higher otter concentrations may be more susceptible to catastrophic events such as oil spills, disease epidemics, and severe weather conditions that could remove a significant portion of the remaining sea otter population.

The most recent example of a catastrophic event occurred on December 8, 2004, when the M/V *Selendang Ayu*, a 225-m (738-ft) freighter lost power and ran aground near Spray Cape on Unalaska Island. The vessel split apart, spilling approximately 40,000 of the estimate 500,000 gallons of intermediate fuel oil 380 (IFO 380). It is uncertain how many otters were in the vicinity at the time of the spill, but as of January 31, 2005, two oiled otter carcassed had been recovered by response workers. The full impacts of this vessel grounding will likely not be known for several years. If a vessel of this size were to run aground in one of the remaining areas of high sea otter abundance, the potential exists for serious impacts to the remaining population.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Following 170 years of commercial exploitation, sea otters were protected in 1911 under the International Fur Seal Treaty, which prohibited further hunting. In 1972, the MMPA established a moratorium on the take of all marine mammals in U.S. waters. Section 101(b) of the MMPA provides an exemption for Alaska Natives to take marine mammals for subsistence purposes. Although the Native exemption was established in 1972, appreciable numbers of sea otters were not harvested until the mid-1980s (Simon-Jackson 1988). In October 1988, we initiated the marine mammal Marking, Tagging, and Reporting Program (MTRP) to monitor the harvest of sea otter, polar bear (*Ursus maritimus*), and Pacific walrus (*Odobenus rosmarus divergens*) in Alaska (50 CFR 18.23(f)).

The majority of the reported sea otter harvest occurs in southeast and southcentral Alaska. Information from the MTRP estimates that the subsistence harvest has removed fewer than 1,400 sea otters from the southwest Alaska DPS since 1989 (average = 85/year; range = 24 to 180/year). The majority of this harvest occurred in the Kodiak archipelago, where levels ranged from 0.4 to 1.3 percent of the estimated population size, which is well below the estimated growth rate of the population (Doroff *et al.* in prep.). Although the average harvest in Kodiak from 2001 to 2003 was 76 otters per year, recent survey results indicate that the sea otter population was relatively stable over that time period. Based on the geographic extent and magnitude of the decline, it appears that the current levels of subsistence harvest do not pose an immediate threat to the southwest Alaska DPS. The impact of the subsistence harvest will continue to be evaluated to insure that the level of harvest does not materially and negatively affect the DPS in the future.

Scientific research on sea otters occurs primarily as aerial and skiff surveys of abundance, and such surveys are conducted infrequently (once every few years) and when they occur, they last for very short durations of time. During the 1990s, 198 otters were captured and released as part of health monitoring and radio telemetry studies at Adak and Amchitka (T. Tinker, University of California at Santa Cruz, *in litt.* 2003). In 2004, sea otters from the southwest Alaska DPS were captured as part of a multi-agency health monitoring study. All of the 60 otters captured in this study were released back into the wild. All future scientific research on the southwest Alaska DPS will require permits under Section 10 of the Act. In addition, review of permit applications will require the Service to consult pursuant to Section 7 of the Act. Based on the magnitude of the current decline and the statutory permit review requirements, we do not believe that the impact of surveys, or the impact of capture/release activities, will be a significant threat in the immediate future.

Translocations of sea otters from southwest Alaska to other areas also has occurred. These translocations took place from 1965 to 1972, and involved removal of a total of just over 600 sea otters from Amchitka Island (Jameson *et al.* 1982). Estes (1990) estimated that the sea otter population at Amchitka Island remained essentially stable at more than 5,000 otters between 1972 and 1986, and consequently there is no evidence that removals for the translocation program have resulted in overutilization.

As there is no commercial use of sea otters in the United States, and recreational, scientific, and educational use have been regulated under the MMPA of 1972, we do not expect these factors will increase in the foreseeable future. Based on a review of historical harvest patterns, we also do not expect the subsistence harvest to increase in the foreseeable future.

C. Disease or Predation

Parasitic infection was identified as a cause of increased mortality of sea otters at Amchitka Island in 1951 (Rausch 1953). These highly pathogenic infestations were apparently the result of sea otters foraging on fish, combined with a weakened body condition brought about by nutritional stress. More recently, sea otters have been impacted by parasitic infections resulting from the consumption of fish waste. Necropsies of carcasses recovered in Orca Inlet, Prince William Sound (which is not within the range of the southwest Alaska DPS), revealed that some otters in these areas had developed parasitic infections and fish bone impactions that contributed to their deaths (Ballachey *et al.* 2002, King *et al.* 2000). Measures such as heating and grinding waste materials, or barging it further offshore, have proven successful at eliminating these impacts. There is no evidence that the fish processing operations are resulting in disease on any substantial scope or scale for the southwest Alaska DPS of the northern sea otter.

The cause of the sea otter decline in the Aleutians has been explored by reviewing available data on sea otter reproduction, survival, distribution, habitat, and environmental contaminants. Estes *et al.* (1998) concluded that the observed sea otter decline was most likely the result of increased adult mortality. While disease, pollution, and starvation may all influence sea otter mortality, no evidence available at this time suggests these factors are significantly contributing to the decline in the Aleutians. If the declining population

trend continues and sea otters disappear from portions of the range of the southwest Alaska DPS, however, the remaining otters that persist in areas of higher concentration may be more vulnerable to disease epidemics.

The weight of evidence of available information suggests that predation by killer whales (*Orcinus orca*) may be the most likely cause of the sea otter decline in the Aleutian Islands (Estes *et al.* 1998). Data that support this hypothesis include: (1) A significant increase in the number of killer whale attacks on sea otters during the 1990s, (Hatfield *et al.* 1998); (2) the number of observed attacks fits expectations from computer models of killer whale energetics; (3) the scarcity of beachcast otter carcasses that would be expected if disease or starvation were occurring; and (4) markedly lower mortality rates between sea otters in a sheltered lagoon (where killer whales cannot go) as compared to an adjacent exposed bay. Similar detailed studies have not yet been conducted in other areas within the southwest Alaska DPS, and the role of killer whale predation on sea otters outside of the Aleutians is unknown.

Doroff *et al.* (2003) speculated that killer whale predation on sea otters was density dependent, and that as of the April 2000 aerial survey of the Aleutians, a steady state between predator and prey may have been attained. Recent skiff survey results of Estes *et al.* (2005) indicate that further sea otter declines occurred between 2000 and 2003, so it is not clear if a steady state between predator and prey had been reached, or whether other factors were involved in the continuing decline in the Aleutians.

The hypothesis that killer whales may be the principal cause of the sea otter decline suggests that there may have been significant changes in the Bering Sea ecosystem (Estes *et al.* 1998). For the past several decades, harbor seals (*Phoca vitulina*) and Steller sea lions (*Eumetopias jubatus*), the preferred prey species of transient, marine mammal-eating killer whales, have been in decline throughout the western north Pacific. In 1990, Steller sea lions were listed as threatened under the Act (55 FR 49204). Their designation was later revised to endangered in western Alaska, and threatened in eastern Alaska, with the dividing line located at 144 degrees west longitude (62 FR 24345). Estes *et al.* (1998) hypothesized that killer whales may have responded to declines in their preferred prey species, harbor seals and Steller sea lions, by broadening their prey base to include sea otters. While the cause of sea lion and harbor seal declines is the subject of much debate, it is possible that changes in composition and abundance of forage fish as a result of climatic changes and/or commercial fishing practices may be contributing factors.

It also recently has been hypothesized that the substantial reduction of large whales from the North Pacific Ocean as a result of post-World War II industrial whaling may be the ultimate cause of the decline of several species of marine mammals in the north Pacific (Springer *et al.* 2003). Killer whales are considered to be the foremost natural predator of large whales. By the early 1970's, the biomass of large whales had been reduced by 95 percent, a result attributed to commercial harvesting. This reduction may have caused killer whales to begin feeding more intensively on smaller coastal marine mammals such as sea lions and harbor seals. As those species became increasingly rare, the killer whales that preyed on them may have expanded their diet to include the even smaller, and calorically inferior, sea otter. The information supporting this theory is still under review. Although the proximate cause of the current sea otter decline may be predation by killer whales, the ultimate cause remains unknown. If these hypotheses are correct, and prey selection by killer whales is closely tied to the availability of other species, we would not expect this threat to decrease in the future, perhaps until populations of other prey species recover in numbers, or transient killer whale populations decrease.

Besides killer whales, other predators on sea otters include white sharks (*Carcharodon carcharias*), brown bears (*Ursus arctos*), and coyotes (*Canis latrans*) (Riedman and Estes 1990). Carcasses of sea otter pups have been observed in bald eagle (*Haliaeetus leucocephalus*) nests (Sherrod *et al.* 1975). Although there is anecdotal information regarding shark attacks on sea otters in Alaska, available data does not suggest that the impact of sharks and predators other than killer whales on the southwest Alaska DPS of the northern sea otter is significant.

D. The Inadequacy of Existing Regulatory Mechanisms

The MMPA (16 U.S.C. 1361), enacted in 1972, is an existing regulatory mechanism that protects sea otters. The MMPA placed a moratorium on the taking of marine mammals in U.S. waters. Similar to the definition of "take" under section 3 of the Act, "take" is defined under the MMPA as "harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill" (16 U.S.C. 1362). The MMPA does not include provisions for restoration of depleted species or population stocks, and does not provide measures for habitat protection.

The MMPA defines depleted as a species or population stock that is below its optimum sustainable population (OSP), which is defined as "the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element." By definition, a marine mammal species or stock that is designated as "threatened" or "endangered" under the Act is also classified as "depleted" under the MMPA. The converse is not true, however, as a marine mammal species or stock may be designated as depleted under the MMPA, but not be listed as threatened or endangered under the Act.

Section 118 of the MMPA addresses the taking of marine mammals incidental to commercial fishing operations. This section, which was added to the MMPA in 1994, establishes a framework that authorizes the incidental take of marine mammals during commercial fishing activities. In addition, this section outlines mechanisms to monitor and reduce the level of incidental take due to commercial fishing. Information from monitoring programs administered by NMFS indicates that interactions between sea otters and commercial fisheries result in less than one instance of mortality or serious injury per year within the southwest Alaska DPS and are, therefore, not a cause for concern at this time (USFWS 2002a). An analysis of State-managed fisheries in southwest Alaska reached a similar conclusion that there is little geographic overlap between sea otters and commercial fishing activities (Funk 2003).

Although the MMPA contains provisions to regulate the take of sea otters by Alaska Natives and to reduce the level of incidental take in commercial fisheries, we do not believe that these impacts pose an immediate threat to the southwest Alaska DPS. Therefore, the MMPA is inadequate to prevent the continuing decline of sea otters in southwest Alaska.

Northern sea otters are not on the State of Alaska list of endangered species or species of special concern. Alaska Statutes sections 46.04 200–210 specify State requirements for Oil and Hazardous Substance Discharge and Prevention Contingency Plans. These sections include prohibitions against oil spills and provide for the development

of contingency plans to respond to spills should they occur. The potential impacts of oil spills on sea otters are addressed below in Factor E.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Sea otters are particularly vulnerable to contamination by oil (Costa and Kooyman 1981). As they rely solely on fur for insulation, sea otters must groom themselves frequently to maintain the insulative properties of the fur. Vigorous grooming bouts generally occur before and after feeding episodes and rest periods. Oiled sea otters are highly susceptible to hypothermia resulting from the reduced insulative properties of oil-matted fur. Contaminated sea otters also are susceptible to the toxic effects from oil ingested while grooming. In addition, volatile hydrocarbons may affect the eyes and lung tissues of sea otters in oil-contaminated habitats and contribute to mortality.

The sea otter's vulnerability to oil was clearly demonstrated during the *Exxon Valdez* oil spill in 1989, when thousands of sea otters were killed in Prince William Sound, Kenai Fjords, the Kodiak archipelago, and the Alaska Peninsula. Although the spill occurred hundreds of miles outside the range of the southwest Alaska DPS of the northern sea otter, an estimated 905 sea otters from this population segment died as a result of the spill (Handler 1990, Doroff *et al.* 1993, DeGange *et al.* 1994).

Although numerous safeguards have been established since the *Exxon Valdez* oil spill to minimize the likelihood of another spill of catastrophic proportions in Prince William Sound, vessels and fuel barges are a potential source of oil spills that could impact sea otters in southwest Alaska. Since 1990 in Alaska, more than 4,000 spills of oil and chemicals on water have been reported to the U.S. Coast Guard National Response Center. Of these, nearly 1,100 occurred within the range of the southwest Alaska DPS of the northern sea otter. Reported spills include a variety of quantities (from a few gallons to thousands of gallons) and materials (primarily diesel fuel, gasoline, and lubricating oils). Reports of direct mortality of sea otters as a result of these spills are lacking and the impact of chronic oiling on sea otters in general, or on the southwest Alaska DPS in particular, is unknown. Also, despite the fact that locations such as boat harbors have higher occurrences of small spills than more remote areas, individual sea otters have been observed to frequent boat harbors for years without apparent adverse impacts. The overall health, survival, and reproductive success of these otters is not known.

Currently, there is no oil and gas production within the range of the southwest Alaska DPS of the northern sea otter. Proposed Outer Continental Shelf (OCS) oil and gas lease sales are planned, however, for lower Cook Inlet. Based on a review of the draft Environmental Impact Statement for these lease sales, it is our opinion that the potential impacts of this development on the southwest Alaska DPS will be negligible as sea otters occur primarily in the nearshore zone and the lease sale area is at least 3 miles off shore. Therefore, sea otters do not significantly overlap with the lease sale area. As demonstrated by the *Exxon Valdez* oil spill, however, spilled oil can impact sea otters at great distances from the initial release site.

Contaminants may also affect sea otters and their habitat. Potential sources of contaminants include local sources at specific sites in Alaska, and remote sources outside of Alaska. One category of contaminants that has been studied are polychlorinated biphenyls (PCBs), which may originate from a wide variety of sources. Data from blue mussels collected from the Aleutian Islands in southwest Alaska through southeast Alaska indicate low background concentrations of PCBs at most sampling locations, with "hot spots" of high PCB concentrations evident at Adak (Sweeper Cove), Dutch Harbor, and Amchitka. Notwithstanding these "hot spots," PCB levels in samples from southwest Alaska actually are lower than those in southeast Alaska sites. The PCB concentrations found in liver tissues of sea otters from the Aleutians were similar to or higher than those causing reproductive failure in captive mink (Estes *et al.* 1997, Giger and Trust 1997), but the toxicity of PCBs to sea otters is unknown. Population survey data for the Adak Island area indicates normal ratios of mothers and pups, which suggests that reproduction in sea otters is not being suppressed in that area (Tinker and Estes 1996). As PCBs typically inhibit reproduction rather than cause adult mortality, these findings do not suggest a reproductive impact due to PCBs. As sample sizes in these studies were limited, the data needed to fully evaluate the potential role of PCBs and other environmental contaminants in the observed sea otter population decline are incomplete. In summary, a link between the sea otter decline and the effects of specific contaminants in their environment has not been established.

Sea otters are sometimes taken incidentally in commercial fishing operations. Information from the NMFS list of fisheries indicates that entanglement leading to injury or death occurs infrequently in set net, trawl, and finfish pot fisheries within the range of the southwest Alaska DPS of the northern sea otter (67 FR 2410, January 17, 2002). During the summers of 1999 and 2000, NMFS conducted a marine mammal observer program in Cook Inlet for salmon drift and set net fisheries. No mortality or serious injury of sea otters was observed in either of these fisheries in Cook Inlet (Fadely and Merklein 2001). Similarly, preliminary results from an ongoing observer program for the Kodiak salmon set net fishery also report only four incidents of entanglement of sea otters, with no mortality or serious injury (Manly *et al.* 2003). Additional marine mammal observer programs will continue to improve our understanding of this potential source of sea otter mortality.

The distribution of sea otters in the southwest Alaska DPS now occurs at markedly low densities throughout much of their range, with some areas of higher concentrations. The consequence of this distribution is that Allee effects (as the probability of individuals to find mates is reduced) may occur in areas of low otter density (Estes *et al.* 2005). Conversely, areas of higher otter concentrations are more susceptible to stochastic events such as oil spills, disease epidemics, and severe weather conditions that could adversely affect a significant portion of the remaining sea otter population.

Conclusion of Status Evaluation

In making this determination, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the southwest Alaska DPS of the northern sea otter. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. Our status evaluation indicates that Threatened status is most appropriate for the southwest Alaska DPS of the northern sea otter.

To date, investigations of the cause(s) of the sea otter decline have been limited to the Aleutian Islands; little research has been conducted in other portions of the southwest Alaska DPS. Although killer whale predation has been hypothesized to be responsible for

the sea otter decline in the Aleutian Islands, the cause(s) of the decline throughout southwest Alaska are not definitively known. As detailed earlier in the response to public comments, it is not necessary to identify the cause of the decline with certainty to warrant listing of a species, subspecies, or DPS.

At present, sea otters have not been extirpated from any portion of the range of the southwest Alaska DPS; however, they have been reduced to markedly lower densities, particularly in the Aleutian Islands and south Alaska Peninsula areas. These areas of decline are balanced by other areas, such as Port Moller and Kamishak Bay, which do not appear to have declined and continue to maintain high concentrations of sea otters.

Recent survey information indicates that the southwest Alaska DPS has declined by at least 55 to 67 percent overall since the mid-1980s, and sea otters now occur at extremely low densities throughout much of the range of the DPS. Estimated annual rates of decline are sensitive to the geographic area and time period in question. The most recent survey data available indicate that within areas that continue to decline, annual rates range from 12.5 percent per year at islands along the south side of the Alaska Peninsula (USFWS in litt. 2004), to 15 percent per year in the eastern Aleutians (USFWS in litt. 2004) to 29 percent per year in the western and central Aleutians (Estes *et al.* 2005).

With the exception of the Kodiak archipelago, we have no evidence to indicate that the decline has abated; indeed, recent surveys indicate that the decline has continued throughout much of the southwest Alaska DPS, and we have no reason to expect that the decline in these areas will cease in the foreseeable future. Because the remaining areas of high sea otter concentrations have shown no evidence of declines to date, the DPS is currently not in danger of extinction. Consequently, the DPS does not meet the definition of endangered at the present time. If the decline continues at recently observed rates, however, sea otters could become extirpated in some portions of the range in the foreseeable future. Based on threats to the remaining population, including stochastic events, and our uncertainty regarding the cause of the decline, the DPS could become in danger of extinction at that time. Therefore, we are listing the southwest Alaska DPS of the northern sea otter as threatened, as it is likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. With respect to whether it is prudent to designate critical habitat for the southwest Alaska DPS of the northern sea otter at the time of listing, such a designation would not be expected to increase the threat to the DPS. In addition, we are unable at this time to make a determination that designation of critical habitat would not be beneficial to the species. Therefore, we believe that designation of critical habitat for the southwest Alaska DPS of the northern sea otter would be prudent.

Our implementing regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform the required analyses of impacts of the designation is lacking, or if the biological needs of the species are not sufficiently well known to permit identification of an area as suitable habitat. We find that designation of critical habitat for the southwest Alaska DPS of the northern sea otter is not determinable at this time because we are unable to identify the physical and biological features essential to the conservation of this DPS. Although we are able to identify sea otter habitat in a broad sense, without a clear understanding of the cause of the population decline, we are unable to delineate areas in which are found those physical and biological features that are—(1) Essential to the conservation of the species, and (2) which may require special management considerations or protection. When a "'not determinable'" finding is made, we must, within one year of the publication date of the final listing rule, propose critical habitat, unless the designation is found to be not prudent. We will continue to protect the southwest Alaska DPS of the northern sea otter and their habitat through the recovery process and section 7 consultations to assist Federal agencies in avoiding jeopardizing this DPS.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us under the provisions of section 7(a)(2) of the Act.

Several Federal agencies are expected to have involvement under section 7 of the Act regarding the southwest Alaska DPS of the northern sea otter. The Service will consult with itself on a variety of activities within southwest Alaska, such as Refuge operations and research permits. The National Marine Fisheries Service may become involved through their permitting authority for crab and groundfish fisheries. The Environmental Protection Agency may become involved through their permitting authority for the Clean Water Act. The U.S. Corps of Engineers may become involved through its responsibilities and permitting authority under section 404 of the Clean Water Act and through future development of harbor projects. The Minerals Management Service may become

involved through administering their programs directed toward offshore oil and gas development. The Denali Commission may be involved through their potential funding of fueling and power generation projects. The U.S. Coast Guard may become involved through their development of docking facilities. Other Federal agencies and departments, such as the National Park Service and Department of Defense, may conduct activities in southwest Alaska that will require consultation.

The listing of the southwest Alaska DPS of the northern sea otter will lead to the development of a recovery plan for this species. The recovery plan establishes a framework for interested parties to coordinate activities and to cooperate with each other in conservation efforts. The plan will set recovery priorities, identify responsibilities, and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe site-specific management actions necessary to achieve the conservation of the southwest Alaska DPS of the northern sea otter. Additionally, pursuant to Section 6 of the Act, we will be able to grant funds to the State of Alaska for management actions promoting the conservation of the southwest Alaska DPS of the northern sea otter.

Section 9 of the Act prohibits take of endangered wildlife. In accordance with our regulations, these prohibitions extend to threatened wildlife as well (50 CFR 17.31(a)). The Act defines take to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct. However, the Act also provides for the authorization of take and exceptions to the take prohibitions. Take of listed species by non-Federal property owners can be permitted through the process set forth in section 10 of the Act. For federally funded or permitted activities, take of listed species may be allowed through the consultation process of section 7 of the Act.

The Service has issued regulations (50 CFR 17.31) that generally apply to threatened wildlife the prohibitions that section 9 of the Act establishes with respect to endangered wildlife. Our regulations for threatened wildlife also provide that a "special rule" under Section 4(d) of the Act can be tailored for a particular threatened species. In a separate Section 4(d) rulemaking action published in today's **Federal Register**, we propose a special rule for the Alaska DPS of northern sea otters that would align the provisions of the Act relating to the creation, shipment, and sale of authentic Native handicrafts and clothing by Alaska Natives with what is already allowed under the MMPA. Thus the proposed rule would provide for the conservation of sea otters, while at the same time accommodating Alaska Natives' subsistence, cultural, and economic interests. See the proposed special rule published in today's **Federal Register** for complete details.

It is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Further, it is illegal for any person to commit, to solicit another person to commit, or cause to be committed, any of these acts. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act provides for an exemption for Alaska Natives in section 10(e) that allows any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska to take a threatened or endangered species if such taking is primarily for subsistence purposes. Non-edible by-products of species taken pursuant to section 10(e) may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing.

The Act provides for the issuance of permits to carry out otherwise prohibited activities involving threatened or endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. Permits are also available for zoological exhibitions, educational purposes, or special purposes consistent with the purposes of the Act. Requests for copies of the regulations on listed species and inquiries about prohibitions and permits may be addressed to the Endangered Species Coordinator, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not likely constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within a species' range.

For the southwest DPS of the northern sea otter, we believe that, based on the best available information, the following activities are unlikely to result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Possession, delivery, or movement, including interstate transport of authentic native articles of handicrafts and clothing made from northern sea otters that were collected prior to the date of publication in the **Federal Register** of a final regulation adding the southwest Alaska DPS of the northern sea otter to the list of threatened species;

(2) Sale, possession, delivery, or movement, including interstate transport of authentic native articles of handicrafts and clothing made from sea otters from the southwest Alaska DPS that were taken and produced in accordance with section 10(e) of the Act;

(3) Any action authorized, funded, or carried out by a Federal agency that may affect the southwest Alaska DPS of the northern sea otter, when the action is conducted in accordance with an incidental take statement issued by us under section 7 of the Act;

(4) Any action carried out for the scientific research or to enhance the propagation or survival of the southwest Alaska DPS of the northern sea otter that is conducted in accordance with the conditions of a section 10(a)(1)(A) permit; and

(5) Any incidental take of the southwest Alaska DPS of the northern sea otter resulting from an otherwise lawful activity conducted in accordance with the conditions of an incidental take permit issued under section 10(a)(1)(B) of the Act. Non-Federal applicants may design a habitat conservation plan (HCP) for the species and apply for an incidental take permit. HCPs may be developed for listed species and are designed to minimize and mitigate impacts to the species to the greatest extent practicable.

We believe the following activities could potentially result in a violation of section 9 and associated regulations at 50 CFR 17.3 with regard to the southwest DPS of the northern sea otter; however, possible violations are not limited to these actions alone:

(1) Unauthorized killing, collecting, handling, or harassing of individual sea otters;

(2) Possessing, selling, transporting, or shipping illegally taken sea otters or their pelts;

(3) Unauthorized destruction or alteration of the nearshore marine benthos that actually kills or injures individual sea otters by significantly impairing their essential behavioral patterns, including breeding, feeding or sheltering; and,

(4) Discharge or dumping of toxic chemicals, silt, or other pollutants (*i.e.*,

sewage, oil, pesticides, and gasoline) into the nearshore marine environment that actually kills or injures individual sea otters by significantly impairing their essential behavioral patterns, including breeding, feeding or sheltering.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive and provide them as information to the public. You may direct questions regarding whether specific activities may constitute a violation of section 9 to the Field Supervisor, U.S. Fish and Wildlife Service, Anchorage Ecological Services Field Office, 605 West 4th Avenue, Room G–62, Anchorage, Alaska 99501.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

National Environmental Policy Act

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

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*). This final rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, business, or organizations. We 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.

References Cited

A complete list of all references cited in this final rule is available upon request. You may request a list of all references cited in this document from the Supervisor, Marine Mammals Management Office (see **ADDRESSES**).

Author

The primary author of this rule is Douglas M. Burn, Marine Mammals Management Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

■ 2. Section 17.11(h) is amended by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Otter, northern sea	*Enhydra lutris kenyoni.*	U.S.A. (AK, WA)	Southwest Alaska, from Attu Island to Western Cook Inlet, including Bristol Bay, the Kodiak Archipelago, and the Barren Islands.	T	.....	NA	NA
*	*	*	*	*	*	*	*

Dated: August 1, 2005.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 05–15718 Filed 8–4–05; 2:04 pm]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU21

Endangered and Threatened Wildlife and Plants; Special Rule for the Southwest Alaska Distinct Population Segment of the Northern Sea Otter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to amend the regulations at 50 CFR part 17, which implement the Endangered Species Act (Act), as amended (16 U.S.C. 1531 *et seq.*), to create a special rule for the southwest Alaska distinct population segment (DPS) of the northern sea otter (*Enhydra lutris kenyoni*). This DPS of the northern sea otter is listed as threatened under the Act. The special rule would allow for the limited, noncommercial import and export of items that qualify as authentic native articles of handicrafts and clothing that were derived from sea otters legally taken for subsistence purposes by Alaska Natives from the listed population. This special rule would also allow for cultural exchange by Alaska Natives and activities conducted by persons registered as an agent or tannery under existing law. We also propose to amend our definition of "Authentic native articles of handicrafts and clothing" which currently stipulates, among other things, that such items were commonly produced on or before December 28, 1973. We propose to strike the requirement with respect to December 28, 1973. We believe that such a definition change is appropriate in light of a court ruling on the Service's definition of "Authentic native articles of handicrafts and clothing" and consistent with our proposed rule regarding the definition of "Authentic native articles of handicrafts and clothing" published on June 4, 2004.

DATES: We will consider comments on the proposed rule if received by October 11, 2005.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments to the Supervisor, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503.

2. You may send comments by electronic mail (e-mail) to: *fw7_swakseaotter@fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Charles Hamilton, (see **ADDRESSES**) (telephone 907/786–3800; facsimile 907/786–3816). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

In the Rules and Regulations section of today's **Federal Register**, we published a final rule to list the southwest Alaska DPS of the northern sea otter as threatened. Section 4(d) of the Act specifies that for species listed as threatened, the Secretary shall develop such regulations as determined necessary and advisable for the conservation of the species. Our regulations at 50 CFR 17.31 provide that all the prohibitions for endangered wildlife under 50 CFR 17.21, with the exception of 17.21(c)(5), will generally also be applied to threatened wildlife. Prohibitions include, among others, take, import, export, and shipment in interstate or foreign commerce in the course of a commercial activity. The general provisions for issuing a permit for any activity otherwise prohibited with regard to threatened species are found at 50 CFR 17.32.

The Service may, however, also develop a special rule for a threatened species that specifies prohibitions and authorizations that are necessary and advisable for the conservation of that particular species. In such cases, some of the prohibitions and authorizations under 50 CFR 17.31 and 17.32 may be appropriate for the species and incorporated into the special rule, but the rule will include special provisions tailored to the specific conservation needs of the listed species.

Section 10(e) of the Act provides an exemption for Alaska Natives that allows for the taking and importation of listed species if such taking is primarily for subsistence purposes. Nonedible by-products of species taken in accordance with the exemption, when made into authentic native articles of handicraft and clothing, may be transported, exchanged, or sold in interstate commerce. The Act defines authentic native articles of handicraft and clothing as items composed wholly or in some significant respect of natural materials, and which are produced, decorated or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices (16 U.S.C. 1539(e)(3)(ii). That definition also provides that traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. These exemptions are similar to those under the Marine Mammal Protection Act of 1972 (MMPA) as amended (16 U.S.C. 1361 *et seq.*), which likewise includes special provisions for subsistence harvest and the creation and sale of authentic native articles of handicrafts or clothing by Alaska Natives. For more information on the definition of authentic native articles of handicrafts and clothing, see the Definition Change section of this document.

Both the Act and the MMPA recognize the intrinsic role that marine mammals have played and continue to play in the subsistence, cultural, and economic lives of Alaska Natives. The Service, in turn, recognizes the important role that Alaska Natives can play in the conservation of marine mammals. Amendments to the MMPA in 1994 acknowledged this role by authorizing the Service to enter into cooperative agreements with Alaska Natives for the conservation and co-management of subsistence use of marine mammals (16 U.S.C. 1388). Since 1997, the Service has entered into annual cooperative agreements with The Alaska Sea Otter and Steller Sea Lion Commission (TASSC) under this section of the MMPA. TASSC was established in 1988 as the Alaska Sea Otter Commission to represent the interests of subsistence users and sea otter hunters on issues relating to the subsistence harvest of sea otters in Alaska. Through these cooperative agreements, the Service has worked with TASSC to better understand the status and trends of sea otters throughout Alaska. For example, Alaska Natives collect and contribute biological specimens from subsistence-harvested animals for biological analysis. Analysis of these samples allows us to monitor the health and status of sea otter stocks. Additionally, some communities that harvest sea otters conduct skiff surveys of sea otters in their local areas. The results of these surveys may serve to complement the Service's own surveying and monitoring program, and provide us with a better understanding of sea otter distribution and abundance. Further, the Service and TASSC are exploring the development of harvest management programs that are consistent with both sound wildlife management techniques and the

socioeconomic requirements of Alaska Native subsistence hunters. We recognize the unique contributions Alaska Natives are able to provide to the Service's understanding of sea otters, and their interest in ensuring that northern sea otters stocks are conserved and managed for healthy populations throughout the range in coastal Alaska.

As discussed in our proposed and final rules listing this DPS of the northern sea otter as threatened (69 FR 6600 and a rule in today's **Federal Register**), since 1989, the annual subsistence harvest of sea otters from the southwest Alaska DPS has averaged fewer than 100 otters per year. During that time period, nearly 80 percent of the harvest occurred in the Kodiak archipelago. Areas that have experienced the most severe population declines within the southwest Alaska DPS have had little or no subsistence harvest. In our final rule to list the southwest Alaska DPS of the northern sea otter as threatened, we found that the current level and geographic distribution of the subsistence harvest was neither negatively nor materially impacting the DPS. Thus, at this time, the harvest of northern sea otters from this DPS and associated creation, sale, and shipment of authentic handicrafts and clothing are not threats to the DPS. Nor does the Service find that Alaska Native activities associated with subsistence harvests negatively affect our efforts at recovery for this DPS. The Service will continue to monitor the subsistence harvest of sea otters from the southwest Alaska DPS, and will periodically reevaluate the impact of the subsistence harvest on the conservation of the species.

The Service, in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175 and the Department of the Interior's manual at 512 DM 2, and Secretarial Order 3225, acknowledges our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. During the public comment period following our proposal to list the southwest Alaska DPS of the northern sea otter as threatened (69 FR 6600), Alaska Native tribes and tribally-authorized organizations were among those that provided comments on the listing action. Alaska Natives noted to the Service that prohibitions on export and import under the Act could limit their ability to participate in cultural exchanges that foster the sharing and exchange of ideas, information, gifts, clothing, or handicrafts between Indians, Aleuts, and Eskimos residing in Alaska and Native inhabitants of Russia, Canada, and Greenland. Further, Alaska Natives noted their concern that foreign visitors to the United States might be restricted from leaving the country with their lawfully acquired and possessed authentic Native articles of handicrafts or clothing derived from sea otters from the southwest Alaska DPS, thus limiting Alaska Natives' ability to sell authentic native handicrafts to foreign visitors or tourists.

We are mindful of the unique exemptions from the prohibitions against take, import, and interstate sale of authentic native handicrafts and clothing provided to Alaska Natives under the Act. These exemptions are similar to the exemptions provided Alaska Natives under the MMPA. Furthermore, as discussed above, the Service has determined that not only is the listed population of northern sea otters subjected to little or no impact from Alaska Native harvest, but TASSC and its constituent members are working with the Service to better understand this DPS and the possible causes for its decline. The Service recognizes that there is a benefit to this DPS, and northern sea otters throughout Alaska, to maintain and encourage involvement of the Alaska Native community in the conservation of sea otters. Therefore we have developed this special rule to provide for the conservation of sea otters, while at the same time accommodating Alaska Natives' subsistence, cultural, and economic interests. This proposed rule would align the provisions of the ESA relating to the creation, shipment, and sale of authentic native handicrafts and clothing by Alaska Natives with what is already allowed under the MMPA.

Under this proposed special rule, except for persons and activities covered by the specific provisions relating to authentic native handicrafts and clothing, cultural exchange, and limited types of travel, all of the prohibitions under 50 CFR 17.31 would apply. Thus, import, export, take, possession of unlawfully taken sea otters, interstate or foreign commerce in the course of a commercial activity, and sale would be generally prohibited unless the activity qualifies for a permit for purposes of science, enhancement of propagation or survival, economic hardship, zoological exhibition, education, or other special purpose, or the activity qualifies for incidental take authorization, and the person has received the necessary approval. Who may qualify for such permits and the criteria we use to evaluate applications are found at 50 CFR part 13 and § 17.32. The deviations in this proposed rule from the standard provisions found at 50 CFR 17.31 and 17.32 would apply only to cultural exchange, limited types of travel, or to activities associated with the creation and sale of authentic native articles of handicrafts and clothing from sea otters taken by Alaska Natives.

This special rule is also limited to activities that are not already exempted under the Act. The Act itself provides a statutory exemption to Alaska Natives for the harvesting of sea otters from the wild as long as the taking is for primarily subsistence purposes. The Act then specifies that sea otters taken under this provision can be used to create handicrafts and clothing and that these items can be sold in interstate commerce. Thus this proposed rule would not regulate the taking or importation of northern sea otters nor the sale in interstate commerce of authentic native articles of handicrafts and clothing by qualifying Alaska Natives; these have already been exempted by statute. The proposed rule addresses only activities relating to cultural exchange and limited types of travel, and to the creation and shipment of authentic native handicrafts and clothing that are currently allowed under section 101 of the MMPA that are not already clearly exempted under the Act. As discussed earlier, neither the activities already exempted under the Act nor the associated activities that would be allowed under this proposed rule have been identified as threats to the DPS.

One of the activities addressed in the proposed special rule is cultural exchange between Alaska Natives and Native inhabitants of Russia, Canada, and Greenland with whom Alaska Natives share a common heritage. The MMPA allows the import and export of marine mammal parts and products that are components of a cultural exchange, which is defined as the sharing or exchange of ideas, information, gifts, clothing, or handicrafts. Cultural exchange has been an important exemption for Alaska Natives under the MMPA, and this special rule would ensure that such exchanges would not be interrupted.

The limited, noncommercial import and export of authentic native articles of handicrafts and clothing that are created from sea otters taken by Alaska Natives would also continue. The proposed rule clarifies that all such imports and exports involving DPS sea otters would need to conform to what is currently allowed under the MMPA, comply with our import and export regulations found at 50 CFR part 14, and be noncommercial in nature. Service

regulations define commercial as related to the offering for sale or resale, purchase, trade, barter, or the actual or intended transfer in the pursuit of gain or profit, of any item of wildlife and includes the use of any wildlife article as an exhibit for the purpose of soliciting sales, without regard to the quantity or weight. There is a presumption that eight or more similar unused items are for commercial use. The Service or the importer/exporter/owner may rebut this presumption based upon the particular facts and circumstances of each case (see 50 CFR 14.4).

Finally, this rule adopts the registered agent and tannery process from the current MMPA regulations. In order to assist Alaska Natives in the creation of authentic native articles of handicrafts and clothing, the Service's MMPA implementing regulations at 50 CFR 18.23(b) and (d) allow persons who are not Alaska Natives to register as an agent or tannery. Once registered, agents are authorized to receive or acquire marine mammal parts or products from Alaskan Natives or other registered agents. They are also authorized to transfer (not sell) hides to registered tanners for further processing. A registered tannery may receive untanned hides from Alaska Natives or registered agents for tanning and return. The tanned skins may then be made into authentic articles of clothing or handicrafts. Registered agents and tanneries must maintain strict inventory control and accounting methods for any marine mammal part, including skins, they receive and provide accountings of such activities and inventories to the Service. These restrictions and requirements for agents and tanners allow the Service to monitor the processing of such items while ensuring that Alaska Natives can exercise their rights under the exemption. Adopting the registered agent and tannery process will align Act provisions relating to the creation of handicrafts and clothing by Alaska Natives with the current process under the MMPA.

Any person engaging in activities under this special rule would also want to ensure that their actions are consistent with the other conservation laws that apply to the northern sea otter including other provisions of the MMPA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). For example, the exemption for Alaska Natives in section 10(e)(1) of the Act applies to "any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska" and also applies to "any non-native permanent resident of an Alaskan native village." However, the Alaska Native exemption under section 101 of the MMPA is limited to only an "Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean." Because the MMPA is more restrictive, only a person who qualifies under the MMPA Native exemption may legally take sea otters for subsistence purposes, as a take by certain persons under the broader ESA Native exemption would not be exempted under the MMPA. This special rule is intended to reconcile Alaska Native subsistence activities under the Act with Alaska Native subsistence activities that have been conducted for more than 30 years under the MMPA, which is more restrictive in some areas than the Act. Therefore, all persons, including those who qualify under the Alaska Native exemption of the Act, should consult the MMPA and our regulations at 50 CFR part 18 before engaging in any activity that may result in a prohibited act to ensure that their activities will be consistent with both laws.

Northern sea otters from the DPS are also listed under Appendix II of CITES. CITES regulates the import and export of listed specimens, which include live and dead animals and plants as well as parts and items made from the species. CITES applies if you transport legally possessed specimens from this DPS of sea otters over an international border, including driving from Alaska through Canada to a destination elsewhere in the United States. Appendix II specimens may not be exported from a member country without the prior grant of an export permit. Some limited exceptions to this permit requirement exist. For example, member countries may exempt personal and household effects from the permitting requirements. Personal and household effects must be personally owned for noncommercial purposes, and the quantity must be necessary or appropriate for the nature of the trip or stay or for household use. Persons who may cross an international border with a specimen of this DPS should check with the Service and the country of transit or destination in advance as to applicable requirements. Thus a person engaging in activities involving DPS sea otters must comply with the requirements of the MMPA and CITES, as well as the requirements of the Act, all of which will work together to conserve animals in the DPS.

This proposed rulemaking would revise our regulations at 50 CFR part 17 to include a special rule that allows for activities associated with the use of animals taken by Alaska Natives for subsistence purposes. The proposed special rule would encourage cooperative management efforts between the Service and Alaska Natives by recognizing and providing for the cultural, social, and economic activities of Alaska Natives, and thus support conservation of the DPS by discouraging excessive harvests and by encouraging self-regulation of the northern sea otter harvest by subsistence hunters in ways that meet the Service's goal for recovery of the DPS. The taking of northern sea otters and the creation, shipment, and interstate sale of authentic native handicrafts and clothing derived from such taking are already exempted under the Act, and neither the take nor the activities associated with the creation and sale of handicrafts and clothing or with cultural exchange have been identified as threats to the DPS. The Service recognizes the important contributions Alaska Natives may make to our recovery effort for this species, including, for example, information gained from biological samples derived from subsistence harvested animals. Therefore, we find that the proposed regulations are necessary and advisable for the conservation of the southwest Alaska DPS of the northern sea otter.

Definition Change

This rule also proposes to adopt a change to the definition of "Authentic native articles of handicrafts and clothing" similar to that proposed for 50 CFR 18.3 on June 4, 2004 (69 FR 31582). Specifically, this change would eliminate the requirement in 50 CFR 17.3 for authentic native articles of handicrafts and clothing to have been commonly produced on or before December 28, 1973. The reasons for the proposed change to the definition at 50 CFR 17.3 are similar to those provided in the proposed rule published on June 4, 2004, and are explained below.

The Service's definition of "Authentic native articles of handicrafts and clothing" at 50 CFR 17.3 includes a requirement that such items were commonly produced on or before December 28, 1973 (the effective date of the Act), and is similar to the definition for that term in 50 CFR 18.3, Service regulations implementing the MMPA, which includes a requirement that such items were commonly produced on or before December 21, 1972 (the effective date of the MMPA). These definitions reflect the Service's determination at the time that the exemptions provided Alaska Natives under both the Act and the MMPA were to protect traditional ways of subsistence rather than to provide a means of initiating commercial activities (55 FR 14973).

However, in 1990, a number of parties challenged our definition at 50 CFR 18.3 as violating the MMPA. On July 17, 1991, in *Didrickson* v. *U.S. Department of the Interior*, the U.S. District Court for the District of Alaska ruled in favor of the Plaintiffs. The Court ruled that the Service's definition was inconsistent with the language and overall regulatory scheme of the MMPA. This decision was appealed to the Ninth Circuit Court of Appeals, which, on December 28, 1992, affirmed the District Court's ruling. The Circuit Court examined the statutory definition of "Authentic native articles of handicrafts and clothing" and found that there was no statutory requirement that those items be made or sold prior to the date of the MMPA. The cut-off date in the definition at 50 CFR 17.3 was similarly based on the effective date of the Act. The statutory definition of "Authentic native articles of handicrafts and clothing" in the Alaska Native exemption of the Act is identical to the definition in the MMPA. We believe that the analysis of the court in its ruling on our definition at 50 CFR 18.3 also applies to our definition at 50 CFR 17.3. Therefore we are proposing to change our definition at 50 CFR 17.3 to delete the provision that the item be commonly produced on or before December 28, 1973.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods, as listed above in **ADDRESSES.** If you submit comments by e-mail, please submit them as an ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [RIN 1018–AU21]" and your name and return address in your e-mail message. Please note that this e-mail address will be closed out at the termination of the public comment period.

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the Supplementary Information section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to the following address: *Execsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866.

a. This proposed rule will not have an annual economic impact of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. There are no compliance costs to any sector of the economy. A cost-benefit analysis is not required. We do not expect that any significant economic impacts would result from the promulgation of this special rule. The only expenses related to this will be to the Federal Government to write the rule and required Record of Compliance, and to publish the final rule in the **Federal Register.**

b. This proposed rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This proposed rule will not raise a novel legal issue.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. Based on the information that is available to us at this time, we are certifying that this proposed special rule to allow for the limited, noncommercial import and export of items that qualify as authentic native articles of handicrafts and clothing that were derived from sea otters legally taken for subsistence purposes by Alaska Natives from the listed population; the cultural exchange by Alaska Natives with Native inhabitants of Russia, Canada, or Greenland; and limited types of travel, as well as activities conducted by persons registered as an agent or tannery under existing law, will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, including any independent nonprofit organization that is not dominant in its field, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The SBA defines small

businesses categorically and has provided standards for determining what constitutes a small business at 13 CFR 121.201 (also found at *http://www.sba.gov/size/*), which the RFA requires all federal agencies to follow. To determine if potential economic impacts to these small entities would be significant, we considered the types of activities that might trigger regulatory impacts if the activities were to be allowed as proposed. However, because this special rule for the northern sea otter DPS designated as threatened under the Act would allow for a maintenance of the status quo regarding activities that had previously been authorized or exempted under the MMPA, we are certifying that this rule would not have a significant economic impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

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

a. This proposed rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required.

b. This proposed rule will not produce a Federal mandate of $100 million or greater in any year. As such, it is not a significant regulatory action under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. We have determined that the rule has no potential takings of private property implications as defined by this Executive Order because, if implemented, this special rule will maintain the status quo regarding activities currently allowed under the MMPA. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. This proposed rule will not have substantial direct effects on the State, in the relationship between the Federal Government and the State, or on the distribution of power and responsibilities among the various levels of government.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed regulation does not contain any collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* The proposed regulation will not impose new record keeping or reporting requirements on State or local governments, individuals, and businesses, or organizations. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA), and have determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the NEPA, and it would not involve unresolved conflicts concerning alternative uses of available resources (516 DM 2.3A). Therefore, this rule is categorically excluded under 516 DM 2, Appendix 1.9.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, Secretarial Order 3225, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have evaluated possible effects on federally recognized Alaska Native tribes. Because this proposed rule would align activities that are allowed under the Act with activities that are currently allowed under the MMPA, we have determined that there are no negative effects to Alaska Natives.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866 and it is not expected to have any effect on energy supplies, distribution, and use. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to 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.

2. In § 17.3, revise the definition for "Authentic native articles of handicrafts and clothing" as follows:

§ 17.3 Definitions.

* * * * *

Authentic native articles of handicrafts and clothing means items made by an Indian, Aleut, or Eskimo that are composed wholly or in some significant respect of natural materials and are significantly altered from their natural form and are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass-copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern techniques at a tannery registered pursuant to § 18.23(c) of this subchapter (in the case of marine mammals) may be used so long as no large-scale mass production industry results. Traditional native handicrafts

include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as cooperatives, is permitted so long as no large-scale mass production results;

* * * * *

3. Amend § 17.40 by adding paragraph (p) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(p) Northern sea otter (*Enhydra lutris kenyoni*).

(1) *To what population of sea otter does this special rule apply?* The regulations in paragraph (p) of this section apply to the southwest Alaska distinct population segment (DPS) of the northern sea otter as set forth at § 17.11(h).

(2) *What provisions apply to this DPS?* Except as noted in paragraph (p)(3) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 apply to the southwest Alaska DPS of the northern sea otter.

(3) *What additional activities are allowed for this DPS?* In addition to the activities authorized under paragraph (p)(2) of this section, you may conduct any activity authorized or exempted under the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) with a part or product of a southwest Alaska DPS northern sea otter, provided that:

(i) The product qualifies as an authentic native article of handicrafts or clothing as defined in § 17.3 of this subchapter; and

(A) It was created by an Indian, Aleut, or Eskimo who is an Alaskan Native, and

(B) It is not being exported or imported for commercial purposes; or

(ii) The part or product is owned by an Indian, Aleut, or Eskimo who is an Alaskan Native and resides in Alaska, or by a Native inhabitant of Russia, Canada, or Greenland, and is part of a cultural exchange; or

(iii) The product is owned by a Native inhabitant of Russia, Canada, or Greenland, and is in conjunction with travel for noncommercial purposes; or

(iv) The part or product has been received or acquired by a person registered as an agent or tannery under § 18.23 of this subchapter.

(4) *What other wildlife regulations may apply?* All applicable provisions of 50 CFR parts 14, 18, and 23 must be met.

Dated: August 1, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–15717 Filed 8–4–05; 2:04 pm]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
August 9, 2005

Part VII

The President

Federal Register
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Tuesday, August 9, 2005

Presidential Documents

Title 3—

The President

Presidential Determination No. 2005–31 of August 2, 2005

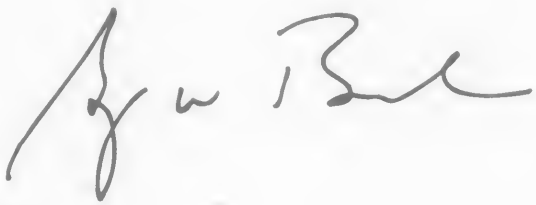
Waiving Prohibition on U.S. Military Assistance with respect to Cambodia

Memorandum for the Secretary of State

Consistent with the authority vested in me by section 2007 of the American Servicemembers' Protection Act of 2002 (the "Act"), title II of Public Law 107–206 (22 U.S.C. 7421 *et seq.*), I hereby:

- Determine that Cambodia has entered into an agreement with the United States pursuant to Article 98 of the Rome Statute preventing the International Criminal Court from proceeding against U.S. personnel present in such country; and
- Waive the prohibition of section 2007(a) of the Act with respect to this country for as long as such agreement remains in force.

You are authorized and directed to report this determination to the Congress, and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, August 2, 2005.

[FR Doc. 05–15877
Filed 8–8–05; 9:05 am]
Billing code 4710–10–P

Presidential Documents

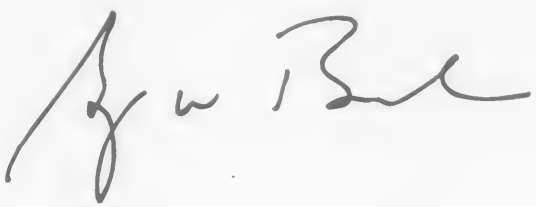
Memorandum of August 5, 2005

Assignment of Reporting Function

Memorandum for the Secretary of Commerce

By virtue of the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby assign to you the functions of the President under section 316 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451, *et seq.*).

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, August 5, 2005.

[FR Doc. 05–15878
Filed 8–8–05; 9:05 am]
Billing code 3510–BP–P

Federal Register

Tuesday,
August 9, 2005

Part VIII

The President

Proclamation 7916—40th Anniversary of the Voting Rights Act of 1965

Federal Register
Vol. 70, No. 152
Tuesday, August 9, 2005

Presidential Documents

Title 3—

The President

Proclamation 7916 of August 5, 2005

40th Anniversary of the Voting Rights Act of 1965

By the President of the United States of America

A Proclamation

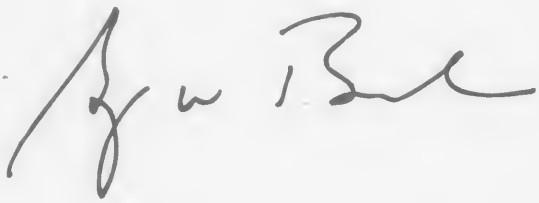
In America, we believe in the freedom of every individual. This freedom includes the ability to participate in one of the most cherished rights and fundamental responsibilities of citizenship: the right to vote. The Voting Rights Act of 1965 helped ensure that all citizens would have the opportunity to vote, regardless of race. As President Lyndon Johnson said when he signed the Act, "Millions of Americans are denied the right to vote because of their color. This law will ensure them the right to vote. The wrong is one which no American, in his heart, can justify. The right is one which no American, true to our principles, can deny." As we celebrate the 40th anniversary of this historic act, we reaffirm this bedrock commitment to equality and justice for all.

America's history is a story of people working for freedom, justice, and equality. We have made great progress toward achieving these ideals. In the middle of the 20th century, the conscience of America was awakened by the struggles and the courage of those who overcame racial slurs, fire hoses, and burning crosses. Brave men and women held sit-ins at lunch counters, rode buses on Freedom Rides, and marched in our Nation's Capital and throughout our country to demand the full promise of the Declaration of Independence. The work of these courageous Americans led to the Voting Rights Act of 1965, and we remember their heroism on this anniversary.

America is a stronger and better Nation because of the Voting Rights Act of 1965. As President Johnson said upon signing the Act, it is "a triumph for freedom as huge as any victory that has ever been won on any battlefield." The Act was a great step forward in the history of our Nation, and it remains essential as we continue our progress toward a society in which every person of every background can realize the American Dream.

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 6, 2005, as a day of celebration in honor of the 40th Anniversary of the Voting Rights Act of 1965. I call upon all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth 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. 05–15911
Filed 8–8–05; 11:21 am]
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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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